

United States Department of the Interior



FISH & WILDLIFE SERVICE

Boqueron Field Office

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P.O. Box 491

Boqueron, PR 00622

May 18, 2006

Eng. Juan Alicea Flores
Director, Planning and Environmental Protection
PR Electric Power Authority
PO Box 364267
San Juan, Puerto Rico 00936

Re: Gas Pipeline, Guayanilla to Salinas

Dear Mr. Alicea:

This is to follow up the March 10 and April 24, 2006 meetings with Ms. Madeline Ramos and other PREPA personnel to discuss the proposed natural gas pipeline from Guayanilla to Salinas.

The Service's main concerns are the possible impacts to the endangered Puerto Rican nightjars or guabairo (*Cuprimulgus noctitherus*) in the forested limestone hills from Guayanilla to Ponce and to coastal wetlands along the proposed routes. The proposed pipeline route presented at the meetings would also have impacts to aquatic resources that at this time seem to be confined to wetland impacts in river crossings. We are concerned with the route alignment near Jobos area since the pipeline route comes close to the existing Jobos Natural Reserve and Estuarine Research Reserve. This route needs to be verified with DNER.

The Puerto Rican nightjar or guabairo is an endemic species only known from the southwestern Puerto Rico. The forested hills between Guayanilla and Ponce (commonly known as Guayanilla Hills) are one of the five areas the species is currently distributed. Habitat consists of dry semi-deciduous forests or woodlands, with a closed tree canopy at about five to seven meters. This ground-nester depends on forested habitats for all essential behaviors: feeding, nesting and sheltering. It has nocturnal habits and cryptic plumage that make it difficult to see and study. The species is threatened by restricted distribution, habitat destruction and degradation, and predation by exotic species such as mongoose, cats, and rats. Research conducted for the species from 1985 to 1992 detected 188 nightjars along 20 survey routes in approximately 2,700 ha (6,750 acres) of privately-owned land in the Guayanilla-Peñuelas region. The 2,700 ha represent only 66 percent of the available habitat in this area. Based on this information, the Guayanilla-Peñuelas region may support more than 4,000 ha (10,000 acres) of suitable habitat for the species.

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In our meetings, we mentioned that placing the pipeline right-of-way through the forested hills may possibly adversely affect the species and its habitat. We recommended considering alternative routes to avoid or minimize possible adverse effects. Possible alternatives include:

- 1) Moving the pipeline closer to the PR 2 right of way
- 2) Aligning the pipeline with existing power line maintenance right of ways, if existing in the area.
- 3) Moving the pipeline alignment to areas currently affected by developed areas following lower elevation and disturbed vegetation areas.

Guabairo suitable habitat may be affected by the construction and operation of the proposed pipeline. The first step should be that qualified and experienced personnel, following established guabairo surveying methods, determine the presence or absence of the species in the area. Surveys should be designed and conducted maximizing the area to be covered, establishing appropriate distances between transects (200-250 meters), using appropriate distances to establish locations of calling birds (300 meters or less), and covering the transects during the appropriate time and date frames (three hours before sunset and three hours after sunset, monthly from March to early July which is the peak of the nesting season). Standard methodology utilized for previous surveys, recommends that surveys be conducted with playback recordings, playing the recording every 200 meters for 2 minutes, and listening for a minimum of 3 minutes. More details on appropriate survey techniques are available in Vilella, 1989; and Vilella and Zwank, 1993. (Copy attached).

Threatened and endangered species and their habitats are protected by both federal and Commonwealth laws and regulations. At the Federal level, the species are protected by the Endangered Species Act of 1973 as amended. Section 7 of the Endangered Species Act requires that federal agencies ensure the actions permitted, funded, or carried out by that agency will not adversely modify and/or will not jeopardize the continued existence of threatened and endangered species. Since it seems that the project will need a Federal permit from the Corps of Engineers, we have identified that at this stage there is federal nexus for this project. Projects with federal nexus utilize section 7 of the ESA to consult in actions that may result in adverse effects to the species or their designated critical habitat. To initiate formal consultation, the federal agency should submit a complete Consultation Initiation Package to the Service. A biological evaluation or a biological assessment would be part of the consultation package. The purpose of this assessment or evaluation is to evaluate the potential effects of the action on listed species and designated critical habitat and determine whether these are likely to be adversely affected by the action.

However, should this action not need a Federal permit, it is the Service intentions to work with your agency to avoid and minimize the possible impacts to the guabairo and its habitat or even a take of the species. It is prohibited by Section 9 of the Endangered Mr.

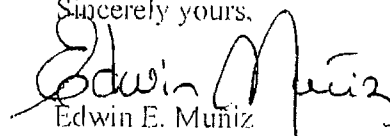
Species Act of 1973, as amended to take an endangered species. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm in the definition of "take" in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

One could foresee that placing the gas pipeline through this habitat may constitute take in the form of harm. The only route to provide legal protection is the issuing of an incidental take permit. Incidental taking means any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Incidental take permits are required when non-Federal activities will result in "take" of threatened and endangered species. A habitat conservation plan or "HCP" must accompany an application for an incidental take permit. The purpose of the habitat conservation planning process associated with the permit is to ensure there is adequate minimizing and mitigating of the effects to the authorized incidental take. However, be aware that applying to an incidental take permit is a voluntary and lengthy process. Attached please find information about our habitat conservation planning process.

I was informed that in the last meeting my staff discussed with your staff the alternative of entering in a Memorandum of Agreement with the Service. This agreement would contain the conservation measures agreed between the cooperators to avoid, minimize and compensate for action(s) on endangered species and its habitat. This agreement is signed locally by the Field Supervisor and could include other partners such as the Department of Natural and Environmental Resources that has similar endangered species laws and regulations. However, since the meetings took place we have further learned that this alternative is limited to projects with low level effects or for projects with small land owners. Therefore at this time this alternative is not viable for this proposed project.

We appreciate the opportunity to work proactively in the conservation of our children's legacy while conducting a public interest project. We hope that these comments help PREPA in further refining the final pipeline route. If you have any questions please contact Felix López or Marelisa Rivera at 787 851-7297.

Sincerely yours,


Edwin E. Muñoz
Field Supervisor