



OFFICE OF SENATOR SABINA FLORES PEREZ

Chairperson

Committee on Environment, Revenue and Taxation, and Procurement

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÁHAN

35TH GUAM LEGISLATURE

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Sent by Electronic Mail

david.b.olson@usace.army.mil

David B. Olson
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Subject: Application for Pacific Ocean Live Fire Training Range Complex Danger Zone at U.S. Marine Corps Base, North Coast of Guam COE-2020-0015

Dear Mr. Olson,

I'm writing to express my opposition to the federal action listed in Docket No. COE-2020-0015 for the following reasons:

1. Review Under Executive Orders 12866, 13563, 13771

The application states that the proposed rule has not been designated a "significant regulatory action", and accordingly has not been reviewed by the Office of Management and Budget (OMB). Evidence is needed to support the designation of "no significant regulatory action" and thus exemption from review of the OMB.

The Live Fire Training Range Complex (LFTRC) consists of five separate firing ranges. The Surface Danger Zone (SDZ) extends 2.8 miles from the pristine North coast of Guam and is approximately 3,668 square miles. The LFTRC is scheduled to be in operation for 9 of 12 months of the year from 7am-7pm during days, and 7pm-10pm or 6am-6:59am two nights of the week. Additionally, these waters are a prime fishing ground for local subsistence and commercial fishermen. Due to the expansiveness of the water which is frequented by local subsistence and commercial fishermen and the prohibition of fishing 75% of the year, the evidence is needed to support the claim that no significant regulatory effort and resources are needed. Should the determination that significant regulatory effort and resources are needed, OMB review is required, and appropriations need to be delineated through the budgetary process.

Regulatory action under all relevant federal and local laws and regulations is needed to determine release, exposure, and health effects to lead and other toxins from the 6.7 million bullets expended annually. Health effects from exposure to lead and other toxins will exacerbate the healthcare capacity of our island, which is already experiencing strain from the pandemic. The impacts of the exposure to lead and other toxins may be difficult to determine at this time due to its long-term effects. Lead, which was banned in the US since 1986 and 1999 on Guam, is particularly dangerous to children because their growing bodies absorb more than adults do and their brains and nervous systems are more sensitive to its damaging effects. Even low levels of lead in the blood of children can result in: behavior and learning problems, lower IQ and hyperactivity, slowed growth, hearing problems, and anemia. A concrete plan and resources to address lead and toxin release into the environment must be provided to the local government and the public for review and comment.

Regulatory action pertaining to the monitoring and cleanup of hazardous waste from 6.7 million bullets expended which has a probability of extending into adjacent waters must have a concrete plan that is readily available for governmental and public review and comment.

Regulatory action under all relevant federal and local laws to ensure compliance with, but not limited to, the Endangered Species Act, Migratory Bird Act, and Marine Mammal Act, needs to be fully prepared and a plan must be presented to the federal and local government and community to review and comment to ensure the health, survival and recovery of listed threatened and endangered species.

2. Review Under Regulatory Flexibility Act

Regulatory flexibility analysis needs to be developed under the Administrative Procedure Act to ensure the following considerations:

- Individual and cumulative impacts would have to be determined with the prohibition on the fishing industry on Guam, regarding economic impacts and lack of access for subsistence, commercial, and recreational purposes.
- The proposed danger zone will need to first research the negative economic impact to Guam's Fishing Industry. We would need to know the amount of loss to Guam's economy
- The Executive Branch and the Legislative Branch of Guam have proposed ship cruises from Guam to the CNMI which will utilize the beautiful scenery of Guam's western coast from *Apra* Harbor to *Ritidian/Litekyan*. The SDZ for the LFTRC in the application including those for other firing ranges at Orote Point, Finegayan, Tarague, and others will destroy opportunities to make this economic booster a success if firing ranges are allowed to be used as planned for 273 days out of the year.
- In order to properly develop an accurate regulatory flexibility analysis, a series of public hearings must be coordinated to ensure key stakeholders are identified and engaged. The coordinates in the proposed rule change may not be easily understood by the public.

Area 2: A subset of waters within Area 1 bounded by the following six points: Point A (13°39'7.432" N; 144°52'8.210" E) following the mean high water line to Point B (13°38'36.722" N; 144°52'50.256" E), following the mean high water line to Point C (13°38'33.936" N; 144°52'53.031" E), to Point D (13°39'54.724" N; 144°53'37.400" E), to Point E (13°40'25.737" N; 144°52'43.157" E), and Point F (13°40'6.494" N; 144°52'7.349" E).

Hosting a series of public hearings will also serve to increase awareness amongst the community who may be impacted by the danger zone.

- Health effects from exposure to lead and other toxins from the 6.7 million bullets expended annually will exacerbate the healthcare capacity of our island, which is already experiencing strain from the pandemic. The impacts from the exposure to lead and other toxins may be difficult to determine at this time due to its long-term effects. Lead, which was banned in the US since 1986 and 1999 on Guam, is particularly dangerous to children because their growing bodies absorb more than adults do and their brains and nervous systems are more sensitive to its

damaging effects. Even low levels of lead in the blood of children can result in: behavior and learning problems, lower IQ and hyperactivity, slowed growth, hearing problems, and anemia. Mitigation measures must be sufficient to prevent the release of lead into our environment that could end up in our food chain and our drinking water. Mitigation must include cleanup and addressing long term impacts to health, education, and related socioeconomic impacts. Government and community stakeholders must be actively engaged by Department of Navy to ensure government and community concerns are adequately addressed and mitigated.

3. Review Under the National Environmental Policy Act

This application is for amending the rules for a “danger zone” instead for an “surface danger zone.” Does the term “danger zone” constitute a significant change in the use of the LFTRC and the adjacent waters? If so, please provide the definitions, and a supplemental environmental impact statement would need to be implemented to address the change in utilization.

Additionally, has the Department of the Navy made plans for nations who participate in joint military exercises to utilize the LFTRC? If so, a supplemental EIS is required to address this change.

Please refer to item #5 pertaining to the discussion of Environmental Justice.

4. Unfunded Mandates Act

The application contains an unfunded mandate for the following reasons:

- The Live Fire Training Range Complex (LFTRC) consists of five separate firing ranges with the largest of the ranges to be funded by US taxpayer’s money. The largest firing range, which has not been constructed, is estimated to cost approximately \$100 million dollars prior to Covid19. Prior to the pandemic, labor costs have increased due to difficulties in securing H2B1 visas. A recent outbreak of Covid19 within the construction industry on Guam has delayed the projects potentially increasing the cost to the government. The budget needs to be reevaluated in light of addressing the health and economic needs during this pandemic.
- The privileging of military construction projects has exacerbated the availability of labor for capital improvement projects by the local government and private sector projects. This has a cascading effect on the high cost of living on Guam and the availability of affordable housing. The lack of funding to mitigate affordable housing for local residents constitutes an unfunded mandate that needs to be addressed and mitigated with input from local government and the public.
- Non-hazardous waste from military operations will most likely be landfilled at our municipal landfill. Future cleanups of our waters from munitions landing in adjacent waters will add to the burden of our limited space and will increase the rate of expansion of our municipal landfill, which costs \$30 million dollars per cell.
- The frequency of cleanups of hazardous waste must be appropriately scheduled and regulatory action by Guam EPA needs to be defined and adequately funded and appropriately staffed in order to minimize, if not eliminate exposure to our community.

- Health effects from exposure to lead and other toxins from the 6.7 million bullets expended annually will burden the healthcare capacity of our island, which is already experiencing strain from the pandemic. The impacts of lead exposure may be difficult to determine at this time due to its long-term effects. Lead, which was banned in the US since 1986 and 1999 on Guam, is particularly dangerous to children because their growing bodies absorb more than adults do and their brains and nervous systems are more sensitive to its damaging effects. Even low levels of lead in the blood of children can result in: behavior and learning problems, lower IQ and hyperactivity, slowed growth, hearing problems, and anemia. Assessment needs to be done with the health impacts to our community and associated costs in addressing these impacts to our healthcare, educational and related socioeconomic needs.
- Unfunded mandate exists due to the regulatory actions that have not been addressed and which are previously discussed in item #1 *Review Under Executive Orders 12866, 13563, 13771*.

5. Environmental Justice

The environmental justice section of the EIS erroneously limits the analysis to Guam without acknowledging the political power imbalance of an unincorporated territory, which lacks the political power to elect the President, the Commander-in-Chief, who determines military initiatives. Environmental justice is rooted in Title VI of the Civil Rights Act of 1964 that states, “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Those of us who call Guam home do not have the same rights as those of the States, and we were not part of the lawmaking body that created the laws that are being used to carry out the construction for the LFTRC and associated SDZ. Although the community at large has expressed opposition to the LFTRC, our concerns have not been adequately addressed.

The Endangered Species Act, which was successful in saving a national symbol from extinction, has not lived up to its intent in protecting threatened and critically endangered species that are culturally significant to the CHamoru people. The opposite has occurred, in which justifications for federal actions consistently supersede and ignore local community concerns of disrupting critical habitats and jeopardizing threatened and endangered species.

The Live Fire Training Range Complex (LFTRC) will cause significant, long-term impacts to Guam’s natural environment through the permanent destruction of native limestone forest habitat. This area is home to over ten listed endangered species. One of the species is the critically endangered *Serianthes nelsonii* with the last remaining reproductive tree on Guam that stands 100 feet away from the largest of the firing ranges. The LFTRC impacts the designated critical habitat of 215 acres of Mariana fruit bat recovery habitat, 215 acres of Mariana crow recovery habitat, and 215 acres of Guam Micronesian kingfisher recovery habitat conversion to developed areas. Of further concern is the effect of noise, human disturbance, and lighting from the construction phases of development and the operation of the LFTRC on the Mariana fruit bat. Research on the impacts to the Mariana fruit bat are insufficient and requires further study. The natural resources are part of the heritage of the CHamoru people, who are indigenous to Guam. The destruction of our natural resources has been repeatedly

opposed by the community at large and constitutes the irreplaceable “taking” of the CHamoru natural and cultural birthright.

The development of the LFTRC will result in a loss of biodiversity, and the significant impacts to limestone forest habitat will further hinder Guam’s ability to mitigate the effects of climate change. The operation of the LFTRC, which will encompass 68 percent of the Guam National Wildlife Refuge (GNWR), will also cause significant impact to the GNWR’s habitat management capabilities and undermine the work toward the recovery of critically endangered terrestrial and marine species. Additionally, the LFTRC will jeopardize over million dollars that have been used for conservation measures over the years. Regular oversight and transparency are needed to analyze the outcomes of all the mitigation projects and the amount of money spent thus far.

As noted earlier, the operation of the LFTRC and SDZ will result in the loss of access to fishing zones. These are sites which have historical significance as sites utilized by precolonial CHamoru for subsistence fishing. Present day fishers similarly use these fishing zones for subsistence and recreation and reflects a continuity in the Indigenous knowledge of Ritidian and its waters. Despite the significant impacts to subsistence and recreational fishers, no consultation with fishers or the Indigenous community has occurred to determine more appropriate mitigation measures. Prohibition of fishing for 273 days of the year in this prime fishing ground is an environmental injustice for the CHamoru people because it prohibits the continuation of cultural practices that has sustained us for generations. The prohibition unjustly privileges use of the land and adjacent waters to others who have other means of subsistence and are able continue their own cultural practices at the expense of the local indigenous people.

The operation of the LFTRC and SDZ will similarly result in a significant loss of access by the public to ancestral sites such as caves, and other sites of interest, with a deep history of precolonial CHamoru settlement, knowledge, and activity. These sites are important to the preservation of Indigenous knowledge and are utilized by the public for both learning and recreation. However, the people of Guam were not consulted in the decision-making process. Nor was the right of the CHamoru people to free, prior, and informed consent considered.

Further, recent findings suggest initial archaeological surveys severely underestimated the historical and cultural significance of Ritidian/Litekyan and the greater northern plateau. Given these developments, an updated EIS should be conducted to mitigate the impacts of the LFTRC and SDZ on these cultural resources.

As an additional point, the integrity of the LFTRC and the studies involved have been called into question by the public on a number of occasions. Over the years, there have been widespread protests against the LFTRC and its associated projects related to the ongoing military buildup. Government of Guam entities have also joined community opposition with the filing of two legislative resolutions opposing the LFTRC, and has called for a pause to clearing, pre-construction, data recovery, and construction activities related to the development of the LFTRC following the discovery of at least 98 historic sites and artifacts discovered in the planned LFTRC. An updated EIS which seeks the consultation and consent of the Indigenous people of Guam, fishers, and cultural practitioners may assuage these concerns.

I look forward to your response and dialogue.

Sincerely,

Sabina Flores Perez

Sabina Flores Perez
Senator, 35th Guam Legislature

Cc: Governor Lourdes A. Leon Guerrero
CC: Lieutenant Governor Joshua F. Tenorio
CC: Attorney General Leevin Camacho
Cc: Speaker Tina Rose Muña Barnes, 35th Guam Legislature
CC: Senator Therese M. Terlaje, 35th Guam Legislature
Cc: Tyrone Taitano, Director, Bureau of Statistics and Plans