

**Congress of the United States**  
**Washington, DC 20515**

October 14, 2014

Mr. Patrick J. O'Brien  
Director  
Office of Economic Adjustment  
Department of Defense  
2231 Crystal Drive, Suite 520  
Arlington, VA 22202

Dear Mr. O'Brien:

We write to you, in your capacity as the Department of Defense representative on the President's Task Force on Puerto Rico, to seek your assistance in securing DOD's support for a legislative provision that would enable the U.S. Army Corps of Engineers to remove the public safety threat posed by unexploded ordnance located in limited, publicly-accessible areas of the Northwest Peninsula of the island of Culebra, Puerto Rico. This unexploded ordnance and related munitions scrap are remnants of the historic use of the island by DOD for ship-to-shore and air-to-ground live-fire weapons training that spanned seven decades.

Over the past several years, we have led a bipartisan, bicameral effort to resolve this issue in a reasonable and cost-efficient manner. Despite repeated attempts to prompt DOD to remove this dangerous unexploded ordnance and munitions scrap through its Formerly Used Defense Sites (FUDS) program and through a process that would be consistent with its responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), DOD has asserted that it lacks authority from Congress to clean up the particular 408-acre parcel on Culebra where this unexploded ordnance and munitions scrap is found. This parcel, which was conveyed from the federal government to the government of Puerto Rico in 1982, is located on the Northwest Peninsula and constituted the "bombardment area" when the site was in use as a military training range. In light of DOD's interpretation of current law, we have sought a legislative remedy. That remedy takes the form of a legislative provision under active review by the House and Senate Armed Services Committees for potential inclusion in the *National Defense Authorization Act for Fiscal Year 2015*.

It is important that any information conveyed by DOD to the Committees regarding this provision be aligned with the overarching objectives of the President's Task Force on Puerto Rico. This does not seem to be occurring, however. To our disappointment, the Office of General Counsel at DOD has continually objected to enactment of this provision. This opposition appears to be incongruent with the posture of the Task Force, which has made environmental restoration on Culebra a priority. Contrary to the argument expressed by the Office of General Counsel, the issue facing Culebra is unique—emanating from an unprecedented provision enacted by Congress in 1973 at the time the Navy was directed to relocate its training range off of Culebra and before CERCLA was enacted and DOD had a program in place to decontaminate its current or former property.

DOD itself has acknowledged the public safety threat that exists on Culebra with respect to this unexploded ordnance. In recent years, the U.S. Army Corps of Engineers has issued public warnings in advance of popular tourist seasons to warn visitors to Flamenco Beach and other publicly-accessible areas of the Northwest Peninsula to take special precautions and avoid contact with unexploded ordnance and military munitions, stating that “[t]he likelihood of encountering munitions on Culebra, and particularly on the Northwest Peninsula, is relatively high.” Indeed, DOD reported to Congress in 2012 on the extent of unexploded ordnance remaining on the property and identified the specific areas of the property that are publicly-accessible.

Our legislative provision, which we successfully worked to have included in S. 2410, the Senate version of this year’s *National Defense Authorization Act*, would resolve this issue, providing DOD with the clear authority it needs to remove this public safety threat. The language of the provision is based on a DOD drafting service and already represents a significant compromise. Congress would be authorizing DOD to clean up only a small fraction of the 408-acre parcel—that is, only those four areas that DOD identified as publicly-accessible. If Congress were to enact this provision, and DOD were to carry out the clean-up authority that the provision would provide, this particular property would then be treated by DOD in accordance with how DOD is treating other FUDS sites including the other areas of Culebra that were impacted by DOD training activities.

We urge you to work to ensure that DOD communicates support for, rather than opposition to, the enactment of Section 316 of S. 2410 as part of the final, negotiated *National Defense Authorization Act for Fiscal Year 2015*, which is likely to be voted on when Congress reconvenes after the current recess.

Please do not hesitate to contact us should you have any questions about this issue.

Sincerely,



Pedro R. Pierluisi  
Member of Congress



Kirsten E. Gillibrand  
United States Senator



Don Young  
Member of Congress



Richard Blumenthal  
United States Senator



Jose E. Serrano  
Member of Congress



Ted Cruz  
United States Senator