

Club Fed: Closed to the Public

An Investigative Report Revealing the Cronyism and Deception of Federal Officials to Evade the Rules to Allow Special Access to the Desecheo Island National Wildlife Refuge

Prepared by the Committee on Resources, Democratic Staff

ABSTRACT

Desecheo Island is a small, uninhabited island located in the Caribbean near Puerto Rico. The island is managed as a National Wildlife Refuge by the U.S. Fish and Wildlife Service. Concerns for public safety have led the Service to close the refuge to all use. Despite this firm policy, the Service granted undocumented and unsupervised access to the island to two individuals apparently operating as Federal vendors or contractors for the period of December 15-17, 2005. Ham radio transmissions made by these two individuals revealed their presence on the island and subsequently provoked a joint investigation by the Service's Office of Law Enforcement and the U.S. Attorney's Office in Atlanta, Georgia. A final report of this completed investigation has yet to be released, despite a formal request by a Member of Congress. Additionally, a criminal investigation was initiated by the Office of the Inspector General within the Department of Homeland Security concerning the involvement of the United States Coast Guard personnel; this investigation remains ongoing. These events raise serious questions that remain unanswered regarding the circumstances surrounding this incident, its cover-up and the casual indifference by which the Service implements its access policy at Desecheo Island.

I. DESECHEO ISLAND NWR BACKGROUND

The National Wildlife Refuge System was established in 1903 with the creation of the Pelican Island sanctuary in Florida. The System today includes 549 refuges, 37 wetland management districts and hundreds of waterfowl production areas managed by the U.S. Fish and Wildlife Service (hereafter, the Service), a bureau within the Department of the Interior. The System includes over 97 million acres

representing roughly 14 percent of all Federal lands. Located in every state and territory, the System conserves the best of our Nation's diverse ecosystems and provides invaluable fish and wildlife habitat. Because at least one refuge is located within an hour's drive from any major metropolitan area, the System draws more than 39 million visitors annually to experience our country's outdoor heritage. Eighty seven refuges, or 16 percent of the total number of refuges, are closed to public use.¹ These closed refuges comprise a cumulative total of 54,000 acres, or less than one-tenth of one percent of the total Refuge System.²

Desecheo Island is a small (360 acre) and uninhabited island located 14 miles off the West Coast of Puerto Rico in the Mona Passage between Puerto Rico and the Island of Hispaniola.³ The island is managed as a National Wildlife Refuge within the Caribbean Island National Wildlife Refuge Complex; the Complex headquarters are located in Boqueron, Puerto Rico.



Figure 1. Map of Puerto Rico Showing the Location of Desecheo Island (Isla Desecheo) in the Mona Passage⁴

Used as a former military bombing site from 1940-1952, as a survival training area from 1952-1960 and as a medical research site by the National Institutes of Health from 1966-1975, the island was transferred to the Interior Department and formally established as a refuge in 1976. The rugged, hilly terrain of the island, the presence of three endemic lizards and an endangered cactus, and the near-pristine quality of surrounding coral reefs validate the island's protected status.

The refuge was held open by the Service to public use through 1997 despite the known presence of unexploded ordinance (UXO). Special use permits to visit Desecheo were issued commonly.⁵ The Service in 1998 reversed course and formally closed Desecheo to all public access citing concerns about UXO and concomitant threats to public safety made possible through hazardous encounters with illegal aliens and/or drug smugglers trespassing on the island.⁶

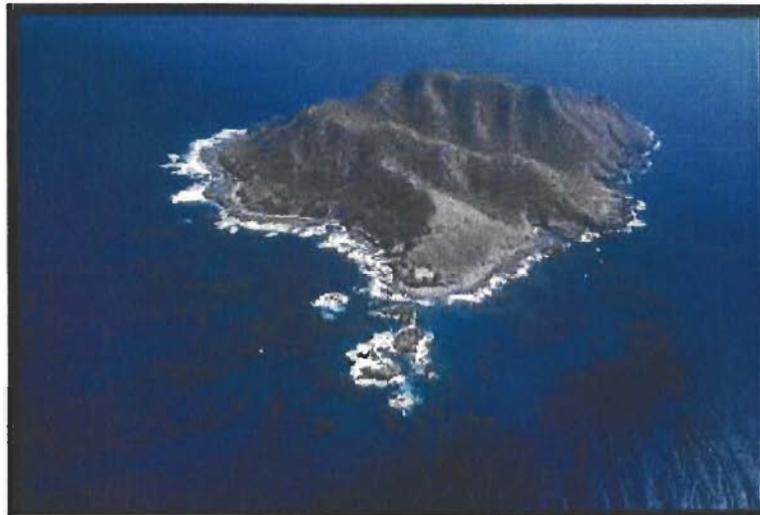


Figure 2. Aerial View of Desecheo Island⁷

Notwithstanding these concerns, the history of public access at Desecheo Island via special use permits remains uneventful.⁸ Public use had been safely cordoned off to secure areas for years and there was no recorded history of calamitous mishaps with drug traffickers or smugglers.⁹ Moreover, the island remains closed despite surveys conducted by the Department of Defense in 2002 which identified and documented the location of UXO hazards and detonated those UXO which presented obvious threats to public safety.¹⁰ This record suggests that the Service's claims for public safety at the island are exaggerated.

II. SUMMARY OF EVENTS OCCURRING FROM DECEMBER 15-17, 2005¹¹

Since the time the Service first denied all public access to Desecheo Island in 1998, numerous requests have been made of, and denied by, the Service to allow some limited form of access to American citizens who own the refuge. These requests include, notably, requests from amateur radio operators who had previously received special use permits for years to transmit from the remote location.

Then, on Thursday, December 15, 2005, in what appeared to be a stark reversal of agency policy, two men arrived on the Federally-protected Desecheo

Island NWR and announced their presence to the world by conducting amateur radio transmissions. The two men did not just pull up to the island in a private boat and set up camp on their own. According to a public account by one of the perpetrators, the logistics of their journey, their travel, and their safety while on the island were all secured, facilitated and monitored by the U.S. Government.

So who were these two men who were granted special privileges at a wildlife refuge closed to the rest of the American public?

Leading the two-man amateur radio expedition was Federal Vendor #1 whose firm specializes in Global Position System (GPS) tracking, surveillance and related technologies. Among the firm's clients are several Federal Government agencies primarily involved in drug interdiction and control of trafficking of illegal aliens. A second person referred to as Federal Vendor #2 accompanied Federal Vendor #1 on the trip. Federal Vendor #2 works as a principal executive in a firm claiming the Department of Defense and the National Aeronautical and Space Administration among its clients.

According to information posted online by Federal Vendor #1, the Desecheo trip was initiated "as a result of my ongoing work with a U.S. Government agency primarily involved in counter-drug and counter-people smuggling operations."

The genesis of the expedition dates back to November, 2005, when Federal Vendor #1's firm was conducting training sessions in Baltimore, Maryland. At that event, a representative of one of the firm's contracting agencies informed Federal Vendor #1 of a planned field operation on the western side of Puerto Rico in the vicinity of Desecheo Island.

Federal Vendor #1 volunteered to assist in the technical aspects of this operation. At the same time, Federal Vendor #1 also requested permission to be landed on Desecheo Island to initiate FCC licensed Amateur Radio communications as time permitted. After a couple of weeks of discussion between Federal Vendor #1 and the Federal agency, Federal Vendor #1 was informed that permission had been granted to land on the island.

After gaining approval, Federal Vendor #1 contacted Federal Vendor #2, a fellow amateur radio operator, to solicit his interest. Federal Vendor #2 agreed to participate and the trip was confirmed.

On the morning of December 14, the pair departed from Baltimore/Washington International Airport for Puerto Rico to meet their U.S. government contacts. An afternoon meeting was arranged in Condado, PR, with an unidentified government agent to brief both vendors on what would transpire during the equipment testing

and vessel operations. The agent was joined at the meeting by the vessel captain, identified loosely as a “task force member.”

At that meeting, Federal Vendor #1 and Federal Vendor #2 were informed that they would be transported to Desecheo Island on a 52-foot vessel, typical of those used in undercover law enforcement operations. They were also informed that, upon arrival on the island, they would have to operate in and around the helipad area – an area considered safe from unexploded ordinance – and would not be able to roam the island.¹²

On the evening before their vessel was to leave from Puerto Rico, the two men traveled to Salinas, their point of departure. There, Federal Vendor #1 placed a call to inform the amateur radio community of the expedition to the island, their intention to transmit, and a general schedule of transmission times and frequencies. Federal Vendor #1 indicated that he and Federal Vendor #2 were part of a communications project team that would be working on Desecheo Island.

Federal Vendor #1 noted that the vendors placed a second call the morning of Thursday, December 15 while on the vessel en route to Desecheo NWR. At the time, they were about 12 nautical miles from the island and, in addition to the captain, were accompanied by an additional “task force member,” as well as a Forces United for Rapid Action (FURA) diver – FURA being an office on the Puerto Rican Police Department.¹³ The communication clearly stated that the vendors had permission to land and that the permission was granted by the Service. Furthermore, Federal Vendor #1 announced their intention to transmit from the island either late in the afternoon or early in the evening to coincide with their “down time” from the surveillance equipment testing operations. The communication stated that the expedition’s duration on the island would be a minimum of 48 hours, but that it could be extended to as late as 10:00 a.m., on Monday, December 19th.

Upon their arrival, the two men hauled more than 1,000 pounds of equipment onto Desecheo Island, including two Troybilt 3550 watt generators, radios, antennae, tents, camping gear, food and water. They made an estimated 15 trips in an inflatable zodiac dingy between the island and the U.S. government-operated support boat that had motored them to the island.

The men set up camp and then spent two days on the island where they reported having been in constant contact with their 52-foot, U.S. government host vessel, and regularly reported seeing police boat traffic in the waters offshore.¹⁴ The men also reported having been spotted by a U.S. Government Customs and Border Blackhawk patrol helicopter, which briefly landed on the island’s helipad in an attempt to ascertain their identities.

Friday, December 16 started in promising fashion, with both operators rising early to complete their equipment assembly for transmissions by mid-morning. They transmitted all day. Then, that evening, events took a turn when both vendors received word (source unstated) that a U.S. Amateur Radio operator was upset with the activation of Desecheo Island. The vendors were told that this individual had contacted the Service demanding the expedition be halted. The vendors were informed by the vessel captain that they would be asked to leave by Saturday. As there would be no way to safely break camp and depart the island at night, the vendors proceeded to transmit for much of the night.

On Saturday, December 17, Federal Vendor # and Federal Vendor #2, after finishing their transmissions, broke down their camp and initiated their departure from the island. The transport of equipment from the island to the support vessel lasted well into the evening. After sleeping onboard their support vessel overnight, the vendors headed back toward Salinas on Sunday, December 18. The vendors unloaded their equipment and subsequently donated some gear to local Puerto Rican police departments prior to leaving Puerto Rico for the mainland.

Federal Vendor #1's account included descriptions of two follow-up discussions with the Federal agent who arranged for his authorization to land on Desecheo Island. The agent on December 19 was alleged to have told Federal Vendor #1 that the unidentified amateur radio operator who had complained about the Desecheo expedition "was incredibly persistent," and "was insisting that something be done about the operation." More telling, on December 20, the agent, according to Federal Vendor #1's account, asked that neither vendor make any formal announcements regarding the trip until the agent had a clearer understanding of the complaints

This account is disquieting in several respects. Despite the Service's stated concern for safety of visitors and its mission to conserve the resources of Desecheo Island NWR, and contrary to the offers of other interested radio operators to accept liability and pay the costs of their visits, and who have nonetheless repeatedly been denied access, these two men were given access to, and left unescorted on, the island. Moreover, their spree was, apparently, subsidized by the U.S. taxpayer. And ominously, it appears that the Federal agency personnel who actively aided and abetted these two vendors knowingly acted to contravene Federal regulations governing public access to Desecheo Island NWR.

III. SUMMARY OF FEDERAL AGENCY ACTIONS AND RESPONSES

Upon learning, on December 15, that two ham radio operators were transmitting from Desecheo Island, contact was made by Committee staff of the Service to request an explanation for this unusual approval.

Initially, the Service responded to that request with a denial of any knowledge or involvement. According to the Service, no one in the Service's headquarters in Washington, DC, at its Southeast Region 4 headquarters in Atlanta, Georgia, or at the Refuge Complex office in Boqueron, Puerto Rico, was aware of this expedition.¹⁵ The Service explained, as well, that it had no scheduled research or resource management trips to the island that might have explained the men's presence, but offered to check with the U.S. Department of Defense and U.S. Coast Guard (USCG) to determine if either agency had approved an expedition to the island.

On December 19, the Service confirmed in follow-up conversations that the USCG had been involved in the Desecheo visit and, in contradiction to its earlier denial, explained that verbal, not written, authorization had been granted by Caribbean Complex Deputy Refuge Manager. This person neglected to inform anyone else higher up the chain of command. The Service noted, however, that the authorization was intended to allow drug trafficking and surveillance equipment to be set up on the island, and that operations – unsupervised and unaccompanied by Service personnel – would be restricted to the helipad area.

Subsequently, the Service's Southeast Region 4 Office initiated a joint internal investigation, purportedly with the USCG, to determine what precisely had transpired and how the two Federal vendors had gained access to Desecheo Island to conduct ham radio transmissions.¹⁶ The Committee later learned that the joint investigation involved the U.S. Attorney's office in Atlanta, Georgia, rather than the USCG. In the agency's correspondence confirming that it had launched an internal investigation the Service noted customary mutual aid agreements between it and other agencies with law enforcement responsibilities for homeland security as the underlying motive behind the Service's approval of the USCG's request. The letter also unequivocally stated that the Service did not authorize any Amateur Radio communications as part of this approval.

In the ensuing weeks, the USCG denied any direct involvement in the vendor/ham radio operator visit to Desecheo Island other than early conversations on the staff level in Puerto Rico, and attention turned, instead, to the involvement of High Intensity Drug Trafficking Areas (HIDTA) personnel, a part of the White House Office of National Drug Control Policy.¹⁷ The USCG noted that both Federal Vendor #1 and Federal Vendor #2 were included on the GSA vendors list and suggested that the vendors may have been involved in a drug interdiction mission being conducted in the area at the time by HIDTA or by FURA. This statement is consistent with Federal Vendor #1's reference to meeting with "a task force member."

Responding to questions posed by the Committee in December, the Service, in March, provided additional details regarding the Desecheo Island expedition that shed further light on the USCG and HIDTA involvement.¹⁸ Specifically, the Service

stated that it was “the USCG Criminal Investigation Service who requested access to conduct surveillance on shipping suspected of smuggling drugs in the Mona Channel and position HIDTA agents on Desecheo for this purpose.” Furthermore, “the only people authorized onto the island were USCG/HIDTA task force law enforcement agents.” If the veracity of these statements is upheld, it would affirm that the person who made this request purposefully misled the Deputy Refuge Manager by withholding information about the full extent of the surveillance sensor testing operation, the Federal vendors, and their intentions to conduct Amateur Radio communications.

By mid-March, the Service’s internal investigation had been completed for a month, the USCG was insisting that it had no direct involvement, the U.S. Attorney had declined to prosecute either Federal vendor, and the perpetrators were, de facto, off the hook for any violation.¹⁹ Nevertheless, the Service had still not released a copy of its investigation report to the Committee. When contacted the Service insisted that they were still unable to officially release a copy of the report to the Committee due to the initiation of a Department of Homeland Security Inspector General (DHS/IG) criminal investigation.

In response to the Service’s unwillingness, or inability, to forward a copy of the investigation report, Resources Committee Ranking Democrat Member Rahall sent a letter to the Service specifically requesting a copy of the report at the earliest convenience.²⁰ Notwithstanding the subsequent referral to DHS/IG, the letter noted that the Service’s report was a matter subject to the review of the Committee on Resources which has exclusive Congressional oversight jurisdiction over the Service and its activities, including the National Wildlife Refuge System.

Efforts by the Committee to learn exactly how these two men skirted the system and gained access to Desecheo Island NWR have been frustrated. What we do know is that, subsequent to the ham radio expedition, information about the incident was transmitted to the U.S. Attorney’s office in San Juan, Puerto Rico, which ultimately declined to prosecute. Officials at the Service undertook and completed an investigation, yet the findings of that investigation remain under wraps. The expedition became and remains the subject of an internal criminal investigation by the Department of Homeland Security. And, in its most recent letter, dated May 12, 2006, the Service again refused to release its report to the Committee, explaining that it has been asked by the Department of Homeland Security, Special Agent in Charge in Miami, Florida, “not to release any documents on this case because the report is still being used as part of an ongoing Federal investigation.”²¹

ANALYSIS AND CONCLUSIONS:

In the absence of the public release of the Service's report of its internal investigation, and with the Department of Homeland Security Inspector General criminal investigation ongoing, it is impossible to know with any certainty exactly how these two amateur radio operators found their way onto Desecheo Island. Considering the pattern of delay and obfuscation exercised by both Federal agencies, the release of these reports in the near future is at best uncertain. Nevertheless, reasonable conclusions can be drawn from the facts assembled. These facts paint an unflattering portrait of evasive, unaccountable Federal officials who purposefully conspired to deceive other Federal officials to afford special treatment to select government vendors.

- At least two government agencies, the USCG and an unnamed HIDTA-member agency, intentionally misrepresented their stated reason for landing on Desecheo Island NWR and deceived the Deputy Refuge Manager to gain an informal approval to land. Based on what has been learned it seems certain that neither radio operator had any contact with the Service regarding this operation around Desecheo Island. Although the idea to land on the island was their idea, nothing has been uncovered to demonstrate that anyone other than a Federal law enforcement agent facilitated the approval to land on the island.
- The nature and extent of cooperative Federal law enforcement activities on or around National Wildlife Refuges is lacking oversight and warrants attention by the Congress. Considering that many National Wildlife Refuges are located along border regions of the U.S., cooperative law enforcement mutual aid agreements involving the Service and other agencies, such as HIDTA, are almost a certainty. The extent and scope of other cooperative law enforcement activities should be evaluated to determine whether adequate policies are in place to ensure accountability and conformance with existing statutory and regulatory authorities to avoid abuses such as this one.
- The Service failed miserably in its due diligence to evaluate this request for special access to Desecheo Island. Service personnel exercised poor professional judgment when they deviated from their own regulations to grant approval for access to a refuge closed for all public use without any written documentation to either support the decision, specify the conditions upon which access was given, or designate supervisory personnel to accompany the visitors to ensure their safety and to protect the resource.
- The credibility of one of the Service's principal reasons for closing Desecheo Island to the public, that UXO, drug runners and other illegal trespassers on the island present an unacceptable threat to public safety, has been shown to be an exaggeration. This expedition was observed once by air and intercepted twice – once while at sea and once while on the island -- by two

different law enforcement agencies. These incidents indicate that the Mona Channel surrounding Desecheo Island is adequately patrolled by law enforcement agencies in the course of normal operations. Additionally, according to the Service's Caribbean Complex Supervisor, refuge personnel routinely visit the island. The very casual guidance given to the radio operators by the Task Force agent to stay in the area between the landing zone and the helipad while on the island indicates either a remarkable indifference to a genuine threat of UXO, or a recognition that the Service knows from experience that this area is completely safe for restricted access. The risk of a visitor to Desecheo running afoul of unsavory characters appears no greater than the risk a person might reasonably accept in a visit to any other wilderness-type environment open to the public.

- This episode undermines the legitimacy of special use permits. Authority to issue special use permits affords the Service necessary administrative flexibility to allow uses which fall outside preferred public uses but that would have no negative impact on the fish and wildlife resources. They also ensure accountability when requests for special uses are accommodated. Notwithstanding the pre-existing mutual aid agreement between HIDTA-member agencies and the Service, this expedition to Desecheo Island should have been authorized under a written permit. The closed status of the refuge requires the Service to be accountable for all visits to the island, not some.

Endnotes

1. U.S. Fish and Wildlife Service, U.S. Department of the Interior. Response to questions submitted for the record. U.S. House of Representatives, Committee on Resources Hearing Report 109-16, pp 62. May 26, 2005.
2. Ibid.
3. From www.fws.gov/southeast/desecheo. U.S. Fish and Wildlife Service, U.S. Department of the Interior, 2006.
4. Desecheo Island in relation to the Island of Puerto Rico. University of Texas Libraries, University of Texas at Austin. 2005.
5. U.S. Fish and Wildlife Service, U.S. Department of the Interior. Response to questions submitted for the record, U.S. House of Representatives, Committee on Resources Hearing Report 109-16, pp 63. May 26, 2005. As described, a special use permit is required for uses of refuge services, facilities, privileges, and products of the soil, that are provided at refuge expense and not usually available to the general public.

6. U.S. Fish and Wildlife Service, U.S. Department of the Interior. Letter from Deputy Director Matt Hogan to the Honorable Mark Souder, Member of Congress, September 10, 2004. This letter mirrors additional correspondence sent to other House members and senators for the period of 2003-2005 who inquired about access policies concerning Desecheo Island NWR.
7. Photo available through the U.S. Fish and Wildlife Service, U.S. Department of the Interior. 2006
8. U.S. Fish and Wildlife Service, U.S. Department of the Interior. Responses to questions submitted for the record, U.S. House of Representatives, Committee on Resources Report 109-16, pp 65. The Service reports that for the period of 1994-1998 alone there were eleven special use permits issued for Desecheo Island NWR.
9. U.S. Fish and Wildlife Service, U.S. Department of the Interior. Letter from Jon Andrews, Southeast Regional Chief, National Wildlife Refuge System, to Bradley A. Farrell, pp. 4. July 6, 2004.
10. U.S. Army Corps of Engineers, U.S. Department of Defense. Defense Environmental Restoration Program for Formerly Use Defense Sites, Ordnance and Explosives: Archives Search Report Findings, Desecheo Island, Commonwealth of Puerto Rico. Project No. I02PR006900. The Service actually had preliminary survey information dating back to 1991 (see U.S. Fish and Wildlife Service, U.S. Department of the Interior, Letter from Michael Andrews to Sue Rice. April 22, 1991.
11. The sensitive nature of an ongoing Federal agency criminal investigation concerning these events prevents this report from revealing the names of the two people involved directly, or the names of any Federal agency or other government personnel contacted by Committee staff for information during the preparation of this report. For this reason, the two perpetrators will be referenced by generic titles and any mention of actions taken by Federal agency personnel will be referenced at the agency level.
12. U.S. Fish and Wildlife Service, U.S. Department of the Interior. As detailed in numerous annual narrative reports filed between 1979-1998 and trip reports to Desecheo Island filed between 1993-2003, the helipad area was the principal locus of operations as it was considered safe from the threat of UXO. Oral directions given by Federal authorities to these two radio operators were essentially the same as guidance given to prior permitted visitors.
13. FURA was formed in 1986 by Executive Order 4645-B. As stated in the program's webpage, the mission of FURA is to identify, to intercept, to arrest and to confiscate the ships or boats...whose intention is to promote drug

trafficking or illegal traffic of immigrants or arms. FURA operates modest fleets of helicopters, airplanes and vessels.

14. Federal Vendor #1 reported, in fact, that their vessel was intercepted by a USCG 110-foot cutter responding to a report filed by a USCG patrol aircraft that had flagged the vessel as suspicious due to multiple fuel containers stored on the aft deck. This interception indicates, contrary to the Service's contention, that Desecheo Island NWR and the waters of the Mona Passage are routinely patrolled by law enforcement agencies.
15. At the time of these events, legislation (H.R. 1183) that would open the Desecheo Island and Navassa refuges to limited public access had been ordered reported without amendment by the Committee on Resources on December 6, 2005. A views letter drafted by the Service opposing the bill was in the Office of Management and Budget clearance process. Considering these facts, the Service's lack of any knowledge of this expedition was unusual, if not surprising.
16. U.S. Fish and Wildlife Service, U.S. Department of the Interior. Letter from Acting Director, Matt Hogan, to the Honorable Nick J. Rahall, II. December 22, 2005.
17. According the information on the Office of National Drug Control Policy (ONDCP) webpage, HIDTA programs are designated by ONDCP. The regional program helps improve the effectiveness and efficiency of drug control efforts by facilitating cooperation between drug control organizations through resource and information sharing, collocating and implementing joint initiatives. HIDTA member Federal agencies other than USCG include the Drug Enforcement Agency, Bureau of Alcohol, Tobacco and Firearms, Federal Bureau of Investigation, Immigration and Customs Enforcement, Internal Revenue Service, the U.S. Marshal Service and the U.S. Attorney Offices in Puerto Rico and the U.S. Virgin Islands.
18. Summarizing, these questions were: 1) who authorized access to Desecheo Island? 2) what government agency requested access? 3) why did the Service no issue a written permit? 4) why were the visitors allowed on the island unsupervised? 5) was the Service aware of the intent to broadcast or the volume of broadcast equipment? and 6) who authorized radio transmissions from the island?
19. U.S. Fish and Wildlife Service, U.S. Department of the Interior. Letters from Bud Oliviera, Regional Chief, National Wildlife Refuge System, Southeast Region 4, to Federal Vendor #1 and Federal Vendor #2, FWS/R4/RF/CLE. February 27, 2006. These letters officially absolved both vendors of trespass and re-stated the Service's position that the agency had never given

permission for ham radio operator access or for any transmissions from Desecheo Island NWR.

- 20. Letter from the Honorable Nick J. Rahall, II to Dale Hall, Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior. March 17, 2006.**
- 21. Office of the Inspector General, Office of Investigations, U.S. Department of Homeland Security, Letter from Catherine Finley for Donald Balberchak, Special Agent in Charge, Miami Field Office, to Mike Elkins, Assistant Special Agent in Charge, Office of Law Enforcement, Miami FL, U.S. Fish and Wildlife Service, U.S. Department of the Interior. FWS Case no. 2006400530. March 30, 2006.**