



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

July 2, 2004

Colonel Timothy J. Gallagher  
District Engineer  
U.S. Army Corps of Engineers  
P.O. Box 898  
Anchorage, Alaska 99506-0898

Re: POA-2002-768-M  
Herring Bay 3

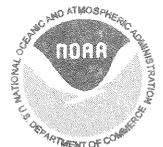
Attn: Dr. Jan Stuart

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) has reviewed the above referenced application by Mr. Ron Fitzgerald to construct a floating dock and relocate the existing boat launch ramp. The applicant would fill approximately .1 acre above mean high water (MHW) and .575 acre below MHW with 6,931 cubic yards of fill and 1,760 cubic yards of riprap for bank protection. A 5-foot by 120-foot treated wood float would be secured with five 18-inch steel pilings driven to refusal. The floats would ground at low tide on the fill placed for the ramp.

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act requires Federal agencies to consult with NMFS on all actions that may adversely affect Essential Fish Habitat (EFH). NMFS is required to make conservation recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects. The Alaska Department of Fish and Game's Anadromous Streams Catalog indicates that Herring Cove Creek provides important habitat for chum, coho and pink salmon. A fish hatchery is located upstream of the project site. Herring Bay itself is an estuarine flat that provides spawning and rearing habitat for a number of commercially important species, as well as providing forage for marine mammals.

The Corps has concluded that the proposed project may adversely affect EFH. NMFS concurs with this conclusion. NMFS recommended denial of this application in September 2002. The project proposal has been reduced in size by approximately .241 acre from the earlier application. However, the concerns raised by NMFS in 2002 remain. The proposed fill would remove a significant amount of the habitat on the southwest side of Herring Cove. This habitat consists of estuarine intertidal substrates and vegetated cobble. This habitat is important for juvenile salmon for smolting, feeding and predator avoidance during the spring and summer prior to their migration out to sea. This area also provides important nursery habitat for the juvenile stages of such commercially important species as rockfish, sole, and flounder as well as



for many important forage fish, such as herring, that are eaten by birds, mammals, and other fishes. The proposed fill could alter circulation patterns in the estuary with concomitant impacts to estuarine processes including primary productivity, nutrient cycling and organic decomposition.

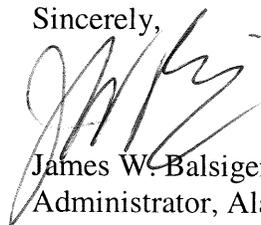
Staff from NMFS visited the site during a 3.9-foot tide on June 28, 2004 and during a -0.4-foot tide on June 29, 2004. At neither of these tidal cycles was water sufficient in Herring Cove or Herring Cove Creek to support boat launching activities. In fact, a relatively high tide apparently would be required to provide sufficient water depth for boat launching. Thus, the proposed ramp would be useable only a portion of the time. Vessels returning to the ramp during moderate tides could ground in the estuary, or disrupt the substrate from propeller scour in shallow water further damaging EFH in the Cove. The shallow gradient of the beach makes this a poor location for a boat launch facility. An existing launch ramp that was operable at both of the tidal cycles we observed is located approximately 3 miles south of the proposed project site. Although the applicant states that one purpose of the application is to "relocate" an existing ramp, an existing operable ramp located on the property is not in evidence.. The area identified on the permit as the location of the existing ramp is filled with wood debris and does not appear to have been used in several years.

Even if the boat launch ramp were feasible, NMFS objects to the intertidal fill associated with the ramp that would be used for boat/trailer storage and parking. Parking and storage are not water dependent uses as defined in the Clean Water Act Section 404(b) guidelines. The lack of any proposed mitigation is also untenable given the likely impact of the project on marine resources.

In accordance with Section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS recommends that the permit for the proposed project be denied. Additionally, NMFS has concluded that the project will result in substantial and unacceptable impacts to aquatic resources of national significance as defined in Part IV of the 1992 Memorandum of Agreement between the Department of Commerce and the Department of the Army under Section 404(q) of the Clean Water Act. This letter fulfills the procedural requirements under Part IV, paragraph 3(b) of this Agreement. Please notify our office of the Corps decision regarding this permit application in accordance with Part IV, paragraph 3(c) of this Agreement.

Pease contact Katharine Miller at 907-586-7643 if you have any questions or for further coordination.

Sincerely,



James W. Balsiger  
Administrator, Alaska Region

Enclosure

cc: Applicant

EPA Juneau, Chris Meade

ADF&G, Janet Schempf

ADEC, AADGC, ADNR, USFWS, Juneau