



**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668*

July 6, 2004

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

Re: POA-2003-1596-4  
Herring Cove

Attn: Dr. Jan Stuart

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) has reviewed the above referenced application by Mr. Frank Steiner to place 500 cubic yards of fill below the high tide line of 0.11 acre of vegetated tidally influenced coastline to create a pad for a residence.

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.

The Corps has concluded that the proposed project may adversely affect EFH. NMFS concurs with this conclusion. The proposed project is located in a vegetated intertidal area adjacent to an anadromous stream. The area is inundated at high tides. The area provides important habitat for burrowing infauna, crustaceans and fish that are prey to species of commercial importance such as flatfish, rockfish and salmon. This area also plays a critical role in the primary productivity of Herring Cove estuary.

The applicant has indicated that placement of the proposed house pad in the original location would put the structure too close to the road, and that placing the structure on pilings would make the house susceptible to storm events. Staff from NMFS visited the site on June 28 and 29, 2004. Although the original piling supported house, which was built in 1952, was destroyed by a storm, other piling supported structures in the vicinity of the property are still standing. Pile supported structures are located in many locations that are more exposed than the subject property and there is no evidence that a properly designed and maintained pile-supported structure could not be rebuilt at the proposed site. Furthermore, housing is not a water-dependent use under Section 404 of the Clean Water Act.

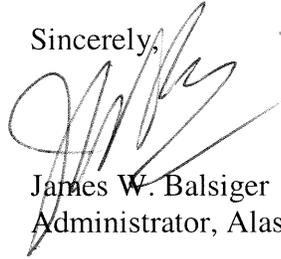


In accordance with Section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS offers the following conservation recommendation:

The request to place fill in the intertidal zone for a house pad should be denied. The applicant should further examine other options for rebuilding the house, including building a pile supported structure.

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

Sincerely,



James W. Balsiger  
Administrator, Alaska Region

cc: Applicant  
EPA Juneau, Chris Meade  
ADF&G, Janet Schempf  
ADEC, ADNR, USFWS, Juneau