UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

April 3, 2009

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

Re: POA-2009-0264
Portage Bay

Attn: Randall P. Vigil

Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) reviewed the general permit agency coordination letter for the dock maintenance proposal by the City of Kake. The applicant proposes to renovate the Portage Cove Harbor. Planned maintenance includes replacing existing timber floats with new timber floats and replacing four creosote treated piles with galvanized steel piles. The work will be preformed under Nationwide Permit 3 – Maintenance.

We offer the following comments specific to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA).

Essential Fish Habitat
Section 305(b) of the Magnuson-Stevens Act requires federal agencies to consult with NMFS on all actions that may adversely affect Essential Fish Habitat (EFH). NMFS is required to make EFH Conservation Recommendations for such actions. EFH Conservation Recommendations may include measures to avoid, minimize, mitigate or otherwise offset adverse effects to EFH.

In Alaska, EFH has been designated for salmon and marine species of groundfish, crab, and scallops under NMFS' jurisdiction. Several anadromous fish streams occur in the Kake area, including the Gunnuk, Little Gunnuk, Sitkum, Jenny, and SloDuc Creeks. Pink, chum, and coho salmon are species with designated EFH, which utilize marine waters and substrate at various life stages. Salmon fry use nearshore areas, near the City of Kake, in the spring and summer. Near shore habitats are particularly important to juvenile salmon migrating as fry or smolts from fresh water to salt water. Juvenile salmon use near shore habitats for feeding and predator avoidance prior to migration out to sea. Additionally, the inshore area of the project location provides habitat for Pacific cod, arrowtooth flounder, walleye pollock, dusky rockfish, shortraker/rougheye rockfish, yelloweye rockfish, Pacific Ocean Perch, skates, and sculpins.

NMFS offers the following EFH Conservation Recommendations pursuant to Section 305(b)(4)(A) of the Magnuson-Stevens Act:

1. Prohibit the use of any wood that has been surface or pressure-treated with creosote or treated with pentachlorophenol. If treated wood must be used in dock construction, then require wood that comes in contact with water be treated with waterborne preservatives approved for use in aquatic and/or marine environments. These include, but are not limited to: Chromated Copper Arsenic (CCA) Type C, Ammoniacal Copper Zinc Arsenate (ACZA), Alkaline Copper Quat (ACQ), Copper Boron Azole (CBA) or Copper Azole (CA). Use wood treated with waterborne preservatives in accordance with Best Management Practices developed by the Western Wood Preservers Institute. Inspect treated wood before installation to ensure that no superficial deposits of preservative material remain on the wood.

2. Require piles be driven with a vibratory hammer to the extent practicable. Pile driving can generate intense underwater sound pressure waves that can disrupt migration and injure or kill fish. Vibratory hammers produce less intense sounds than impact hammers (NMFS 2005). Fish have been observed to avoid sounds similar to those produced by vibratory hammers and to remain within the field of harmful sound associated with an impact hammer (Dolat 1997). If an impact hammer is required because of substrate type or the need for seismic stability, then drive piles as deep as possible with a vibratory hammer before the impact hammer is used.

3. Dispose of creosote treated pilings and treated timber removed from the site in an approved upland site.

4. Limit work below the high tide line to low tidal stages to reduce turbidity.

5. Prohibit in-water work from March 15 through June 15 each year to protect outmigrating salmon and spawning herring.

Under section 305(b)(4) of the Magnuson-Stevens Act, the Corps is required to respond to NMFS EFH Conservation Recommendations in writing within 30 days. If the Corps will not make a decision within 30 days of receiving NMFS EFH Conservation Recommendations, the Corps should provide NMFS with a letter within 30 days to that effect, and indicate when a full response will be provided.

Threatened and Endangered Species/ Marine Mammals

Section 7(a)(2) of the ESA directs federal interagency cooperation "to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species" or result in the destruction or adverse modification of critical habitat. NMFS is responsible for the administration of the ESA as it applies to listed cetaceans, pinnipeds, fish, and reptiles (sea turtles) In southeast Alaska, endangered marine mammal species include the Steller sea lion (western stock, west of 144

degrees West longitude), fin whales and humpback whales. The endangered leatherback turtle has also been documented in southeast Alaska. The threatened eastern population of Steller sea lion (eastern stock, east of 144 degrees West longitude) is also present in southeast Alaska. Salmon from several ESA-listed Evolutionarily Significant Units along the west coast may occur in Alaska waters.

Marine mammal species that are not listed under the ESA are afforded protection by the MMPA. In southeast Alaska, these species include harbor seals, harbor porpoise, Dall's porpoise, minke and killer whales. All of the aforementioned species may swim and forage in marine waters near the proposed project at any time of year on an opportunistic basis. We do not have detailed information on the frequency or magnitude of occurrence of ESA or MMPA-protected species in Portage Bay near the proposed project area. General information on ESA species and MMPA species under NMFS jurisdiction can be found at: http://www.fakr.noaa.gov/protectedresources.

The MMPA and the ESA prohibit the injury, harm or harassment of marine mammals. Pile driving introduces high levels of impulsive noise into the water column, with the potential to harass or injure marine mammals. Sound pressure levels (SPLs) in the range of 130-135 dB re: 1*u*Pa have been measured up to one kilometer from an active pile driver (Johnson et. al., 1986). Humpback whales have been observed to react to SPLs greater than 115-129 dB re: 1*u*Pa within 200 meters of a sound source. Reyff (2003) measured SPLs of 159 dB re: 1*u*Pa about 200 meters from a pile driver driving 14-inch diameter hollow steel piles. NMFS normally considers harassment takes to begin at received levels of 160 dB.

NMFS recommends that pile driving not occur if any marine mammals are observed within 200 meters of the platform to reduce the possibility for harassment or injury to marine mammals. The operator should scan the area for the presence of marine mammals. If marine mammals are sighted within 200 meters of the sound source or are observed to be disturbed by the activity at any distance, pile driving should cease until the animals leave the immediate area.

If you have any questions regarding our habitat recommendations for this project, please contact Cindy Hartmann Moore at 907-586-7585. Please direct any questions regarding marine mammals and endangered species to Kate Savage at (907) 586-7312.

Sincerely,

Robert D. Mecum
Acting Administrator, Alaska Region

cc: Ms. Kate Mickelson, PND Engineers, Inc., 9360 Glacier Highway, Suite 100, Juneau, Alaska, 99801
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References

Dolat, S.W. 1997. Acoustic measurements during the Baldwin Bridge Demolition (final, dated March 14, 1997). Prepared for White Oak Construction by Sonalysts, Inc., Waterford, CT. 34 pp plus appendices.

Johnson, S.R., C.R. Greene, R.A. Davis, and W.J. Richardson. 1986. Bowhead whales and underwater noise near the Sandpiper Island drillsite, Alaskan Beaufort Sea, autumn 1985, Reprinted by LGL Limited Environmental Research Associates, King City, Ontario, and Greeneridge Sciences, Inc., Santa Barbara, CA, for Shell Western Exploration & Production Inc., Anchorage, AK. 130p.

National Marine Fisheries Service. 2005. Final Environmental Impact Statement, Essential Fish Habitat Identification and Conservation in Alaska, Vol. 2, Appendix G; National Marine Fisheries Service, Department of Commerce. April, 2005.

Reyff, J.A. 2003. Underwater sound levels associated with seismic retrofit construction of the Richmond-San Rafel Bridge. Document in support of Biological Assessment for the Richmond-San Rafael Bridge Seismic Safety Project. January 31, 2003. 18pp.

Rogers, P.H. and M. Cox. 1988. Underwater sound as a biological stimulus. pp. 131-149. *In* Sensory biology of aquatic animals. Atema, J, R.R. Fay, A.N. Popper, and W.N. Tavolga, eds. Springer-Verlag. New York.