



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

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

March 11, 2009

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

Re: POA-2009-73
Wrangell Harbor

Attn: Heather Martinez

Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) reviewed the above referenced application by Mr. Mike Lang and his agent Mr. George Woodbury to fill 0.45 acre of tidelands and construct two decks to make his property usable for receiving and transporting live seafood to market. The applicant proposes to discharge 13,800 cubic yards of clean shot rock fill. The fill would be contained by an additional 1,200 cubic yards of stacked rock. The proposed fill area includes 0.17 acres of previously disturbed tidelands, which have a 50 foot by 150 foot grid (pilings and beams). In addition, eight wood piles would be placed for a 14 foot by 50 foot permanent dock and 4 wood piles would be placed for a 14 foot by 100 foot floating dock. All of this material would be placed seaward of mean high water (MHW). The applicant proposes to pay an in-lieu fee of \$4,200 for the 0.28 acre area that has not been previously disturbed. The applicant based this fee on the value of the land after consideration of the cost of fill to make the land usable. The net value is estimated to be \$15,000 per acre.

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires federal agencies to consult with NMFS on all actions that may adversely affect Essential Fish Habitat (EFH). In Alaska, EFH has been designated for salmon and marine species of groundfish, crab, and scallops under NMFS' jurisdiction. NMFS is required to make EFH Conservation Recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects to EFH.

Significant anadromous fish streams occur in the Wrangell area, including the Stikine River, Crittenden Creek and Mill Creek/Virginia Lake. Pink, chum, coho, sockeye, and king 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 Wrangell, 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, shorttraker/rougheye rockfish, yelloweye rockfish, Pacific Ocean Perch, skates, and sculpins. Additional marine species which



are known to utilize Wrangell Harbor (personal communication with Jim Cariello, Habitat Biologist with the Alaska Department of Fish and Game) include Dungeness crab and smelt.

The project as proposed would permanently eliminate intertidal habitat. The habitat proposed for fill is composed of fine sediments with green algae and rockweed (*Fucus gardneri*) present (See attached photos se08_mm_01427 and se08_mm_01428 taken during the May 2008 ShoreZone survey. They are also found at: <http://mapping.fakr.noaa.gov/Website/ShoreZone/viewer.htm>). Habitats in the harbor have been modified by man, but are not severely disturbed. NMFS considers habitat values in the proposed fill area to be low to moderate. Habitat value is considered low for the 0.17 acres with the grid and moderate for the non-previously disturbed habitat.

The Clean Water Act Section 404(b)(1) guidelines at 40 CFR 230.10(a) prohibit the discharge of fill material into U.S. waters if a practicable alternative exists that would have less impact on the aquatic environment. An alternative is considered practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Section 404(A)(23.1)(c) states: "Fundamental to these Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern." The guidelines require applicants to follow proper sequencing (avoidance, minimization, mitigation) in developing project alternatives.

NMFS has determined the project as proposed would adversely affect EFH. The public notice does not contain enough information to determine whether the applicant avoided and minimized proposed impacts to the extent practicable; for example by utilizing an existing facility for fish transport, building a piling supported structure instead of filling tidelands at the proposed location, or building at an alternative location that would have less negative impacts. There are currently three seafood transport/seafood processing businesses in town (Breakwater Seafoods, Wrangell Seafoods Inc., and Sealevel Seafoods) and four dock side cranes that are owned by the City of Wrangell, maintained by the Harbor Department, and available for use.

NMFS is concerned with the amount of proposed fill and the impact of the proposed fill on sediment transport in the immediate vicinity. The proposed fill extends significantly beyond existing fill pads in the vicinity. The fill could impact a water course developed from water draining from a culvert on a nearby property, and the sediment transported from the culvert. The fill pad could cause sediment to be pushed further into the harbor, potentially impacting existing floats and subtidal habitat.

Also, NMFS is concerned with the method the applicant used to determine the in-lieu fee. All wetlands have some worth whether they are pristine or previously disturbed. The proposed in-lieu fee of \$4,200 for 0.28 acres is not consistent with the federal rule on compensatory mitigation or with the Alaska District Regulatory Guidance Letter, RGL ID No. 09-01. The Corps RGL ID No. 09-01 recommends a preservation ratio of 1.5:1 for low value Waters of the

U.S. and a ratio of 2:1 for moderate value Waters of the U.S. Based on this guidance, the in-lieu fee should be significantly higher than the applicant's proposed fee of \$4,200.

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

1. Deny a permit for the project as proposed or, alternatively, defer a decision on the permit application pending the completion of a comprehensive alternatives analysis and documentation that the project design avoids and minimizes impacts to the extent practicable. Such an analysis should consider the cumulative impact of filling additional shoreline within Wrangell Harbor and analyze the impact of additional fill on sediment transport before fill is approved.
2. If intertidal fill is unavoidable, require the applicant to propose suitable compensatory mitigation. Compensatory mitigation should be required for all acres that will be impacted by fill based on the value of the habitat and should be consistent with the federal rule on compensatory mitigation and RGL ID No. 09-01. The in-lieu fee should be recalculated to mitigate the effects of adversely impacting both low and moderate value habitat based on this guidance and on current real estate values.
3. 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.
4. 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.
5. Prohibit floats from grounding at any tidal stage.
6. Condition the permit to limit all work below the high tide line to low tidal stages to reduce turbidity.

7. Condition the permit to prohibit in-water work from March 15 through June 15 of any year to protect salmon smolts, smelt, and herring.
8. Require the applicant to keep an emergency oil spill response kit or other appropriate equipment such as absorbent pads on site to allow fast response to small oil spills and accidental discharge of hydrocarbon contaminated bilge waters.

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.

Please contact Cindy Hartmann at 907-586-7585 if you have any questions or for further coordination.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

Enclosures (2)

cc: Mr. Mike Lang, P.O. Box 192, Montesano, WA 98563
Mr. George Woodbury, P.O. Box 1934, Wrangell, AK 99929, woodbury@aptalaska.net
ACOE, Anchorage, Heather L. Martinez*
EPA Juneau, Chris Meade*
ADNR, Petersburg, Jim Cariello*
ADNR, Juneau, Carrie Bohan*
USFWS, Juneau, Richard Enriquez*
Southeast Alaska Land Trust, setrust@ptialaska.net
NMFS, AKR, HCD, Cindy Hartmann*

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.

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.