



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

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

October 2, 2003

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

Re: 2-2003-0999
Tongass Narrows 560

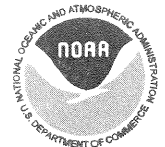
Attn: Randal P. Vigil

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) has reviewed the above referenced proposal by Mr. Eric Johnson to 1) construct a dock consisting of a 160 foot by 8 foot wood/steel pile supported float connected to a 60 foot by 8 foot aluminum gangway connected to shore by a 60 foot by 12 foot wood/steel approach; and 2) discharge 432 cubic yards of riprap, 1850 cubic yards of shot rock, and 1250 yards of organic overburden into .26 acre of waters of the U.S. below the high tide line for construction of a yard/parking area, house and wastewater outfall.

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 has cataloged several anadromous fish streams in the vicinity of the project area. The nearshore area is likely used by juvenile salmonids during spring migration for feeding, resting, and predator avoidance. The inshore area of the project location also provides important habitat for several marine species including arrowtooth flounder, Pacific cod, sablefish, sculpins, walleye pollock, yellow rockfish, and Pacific ocean perch.

The lot on which the applicant proposes to build extends below the high tide line, and the applicant proposes to fill between the high tide line and the end of his property for the purpose of constructing a residence on this fill. The Clean Water Act Section 404(b)(1) guidelines at 40 CFR 230.10(a) prohibit the discharge of fill material into waters of the U.S. a practicable alternative exists that would have less impact on the aquatic environment. An alternative is considered practical if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Additionally, the



guidelines direct the Corps to consider the need and water dependency of a proposed action establishing a rebuttable presumption that upland alternatives are available unless clearly demonstrated otherwise.

The proposed intertidal fill does not comply with the 404(b)(1) guidelines. The proposed residence and yard/parking area are not water dependent uses. In addition, the lot on which the house is to be built contains sufficient upland area for construction of the house and yard/parking area without requiring intertidal fill.

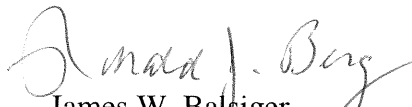
NMFS offers the following EFH Conservation Recommendation:

NMFS recommends that this permit be denied by the Corps. The applicant should resubmit the application with revised plans for locating the house and yard/parking area upland of the intertidal zone.

Under section 305(b)(4) of the Magnuson-Stevens Act, the Corps is required to respond to NMFS EFH 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.

If you have any further questions, please contact Katharine Miller at 907-586-7643.

Sincerely,


James W. Balsiger
Administrator, Alaska Region

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