



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

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

August 3, 2004

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

Re: POA-1997-245-2, Berners Bay 4
and
POA-1990-592-N, Lynn Canal 21

Attn: John C. Leeds, III

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) is reviewing two public notices of permit applications for Department of the Army permits for proposed projects related to development of the Kensington Mine located north of Juneau and for safe tour vessel moorage. NMFS requests a two-week extension of the review period for these public notices. These inter-related projects involve placing 5,451,700 cubic yards of fill, including 4,800,000 cubic yards of mine tailings into 91.7 acres of waters of the U.S. (Lynn Canal 31) and placing 23,000 cubic yards of fill into 1.75 acres of waters of the U.S. (Berners Bay 4) to construct new mine facilities and infrastructure and to accommodate a miner's ferry across the waters of Berners Bay.

These projects are likely to adversely effect Essential Fish Habitat (EFH) within Berners Bay and have the potential to harm Steller sea lions and humpback whales, which are listed as threatened and endangered species, respectively, under the Endangered Species Act. Berners Bay is an aquatic resource of national importance and these proposed projects may pose unacceptable adverse effects to these resources.

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 to EFH. Section 7(a)(2) of the ESA requires Federal agencies to consult with NMFS to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or to adversely modify or destroy their designated critical habitats.



The U.S. Forest Service (USFS) is in the process of developing a Supplemental Environmental Impact Statement (SEIS) for the Kensington Mine and its associated actions in Berners Bay. NMFS is reviewing recently received draft chapters of the SEIS pertaining to marine resources and direct and cumulative effects. We are also reviewing other recently received information on forage fish in Berners Bay. NMFS must complete review of this scientific information prior to commenting on these proposed projects and before developing Conservation Recommendations that will avoid, minimize or mitigate any adverse effects on EFH if implemented.

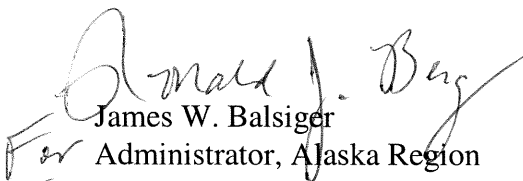
The proposed projects also may affect Steller sea lions and/or humpback whales in Berners Bay. NMFS has entered into consultation with the U.S. Forest Service under Section 7 of the ESA regarding the proposed projects. Our preliminary review of a draft Biological Assessment indicates the need for formal consultation to ensure that these actions are not likely to jeopardize the continued existence of endangered or threatened species or to adversely modify or destroy their designated critical habitats. Formal consultation will be initiated after the USFS has selected a preferred alternative and may result in changes in project design and operations.

The public notice for this action indicates that a draft environmental impact (DEIS) statement for the Kensington Mine project has been published. NMFS has reviewed this DEIS and recommended that the applicant select Alternative C for marine terminals at Echo Cove and Slate Creek Cove to avoid or minimize adverse effects to EFH especially to spawning Pacific herring and eulachon. The public notice apparently indicates that the marine terminal for Alternative B has been selected.

The public notice states that the Department of Army permit will not be issued until after publication of the final EIS and of all available information has been evaluated. NMFS cannot adequately review the potential impacts of the proposed actions in the Corps permit application until we have reviewed the recently received information on marine resource and forage fish and completed an EFH assessment.

We hereby request a two-week extension of the public comment period so that we may adequately review the available information. We will provide final comments and any Conservation Recommendations by August 19, 2004. Sue Walker is the NMFS contact for this project, and can be reached at (907) 586-7646 or susan.walker@noaa.gov.

Sincerely,


James W. Balsiger
For Administrator, Alaska Region

cc: Applicant, USFWS, EPA, ADGC, ADFG, ADEC - Juneau