



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

August 2, 2004

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

Re: POA-2004-1017
NWP #13

Attn: Serena Sweet

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) has reviewed the above referenced application by Elizabeth Einset to place a total of 726 cubic yards of material below the high tide line for bank stabilization and to provide parking, storage, and a yard/garden.

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. Juvenile salmon use the inshore area of Tongass Narrows during spring and early summer for feeding and predator avoidance prior to migration out to sea. The inshore area of the project location also provides important habitat for several marine species including arrowtooth flounder, Pacific cod, sablefish, sculpins, walleye pollock, yelloweye rockfish, and Pacific Ocean perch.

The following are among the criteria that have been established for the use of Nationwide Permit (NWP) #13:

- No material is placed in excess of the minimum needed for bank stabilization
- The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line.

The project does not appear to meet either of these criteria. The proposed pad for the parking, storage and yard/garden is above the minimum fill required for bank stabilization. Moving the seawall farther inland would reduce or eliminate the need for the fill that would be used for the parking, storage and yard/garden. Furthermore, the applicant proposes to place 726 cubic yards of material along a 104-foot long area below the high tide line. This amounts to significantly more than one cubic yard of material per running foot.

The Corps has concluded that the proposed project will not adversely affect EFH. NMFS disagrees with this conclusion. The proposed project would permanently remove intertidal



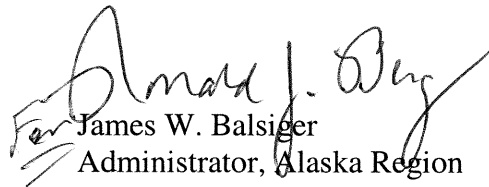
habitat that is used by commercially important fish species. The proposed fill, while also providing bank stabilization, appears to be primarily to create a pad for parking, storage and yard/garden. These are not water dependent uses under Section 404 of the Clean Water Act. The applicants have not demonstrated that they have evaluated options to avoid or minimize the extent of the fill, such as placing it farther inland out of the intertidal area where it would still provide the needed bank stabilization without requiring additional fill for the yard.

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

- The request to place fill in the intertidal zone for parking, storage and a yard/garden should be denied.
- The applicant should examine options for stabilizing the bank that meet the criteria for NWP #13, including utilizing the minimum fill necessary to achieve the needed stabilization. If the fill for the parking, storage and yard/garden is to be retained, an individual permit application should be required.

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, Jim Powell
ADNR, USFWS, Juneau