



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

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

*March 4, 2004*

Colonel Timothy J. Gallagher  
District Engineer, Alaska District  
U. S. Army Corps of Engineers  
Post Office Box 6898  
Anchorage, Alaska 99506-6898

Re: Japanese Creek 1  
M-2000-0052

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) has reviewed the Corps of Engineers (COE) public notice that describes a proposal by the City of Seward to construct a levee and access road along Japanese Creek. The primary purpose of the project is to protect North Forest Acres Subdivision from flood damage. The secondary purpose is to eliminate large truck traffic from neighborhood streets. As part of the project, approximately 900 feet of Japanese Creek would be realigned. The proposed project would result in direct impacts to 2.06 acres of wetlands, and construction related impacts to 0.91 acres of wetlands. Additionally, 6.7 acres of wetlands would be isolated from the Japanese Creek and Resurrection River floodplains. In total, the proposed work may affect approximately 10 acres of essential fish habitat (EFH).

COE has determined that the project may adversely affect EFH. The adverse effect is principally due to the realignment of Japanese Creek, and the filling and isolation of associated wetlands. NMFS agrees with this determination. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires NMFS to make conservation recommendations regarding any federal action that would adversely affect EFH.

NMFS previously provided comments on this project to the Natural Resources Conservation Service (letter dated June 30, 2003; see enclosure) including information on EFH in the project area, as well as substantial comments on the draft environmental assessment (EA). Our primary concern has been the relocation of Japanese Creek and potential adverse impacts to anadromous fish, their habitat, and wetlands. We have also stated that less environmentally damaging practicable alternatives to the proposed project exist.

The current COE permit application is not substantially different from the project we reviewed in the draft EA. NMFS concerns regarding practicable alternatives, avoidance, minimization, and compensation for impacts to our trust resources have not been resolved, and our position on this project remains unchanged. In addition, we believe that the project as currently proposed does not comply with the Clean Water Act



section 404(b)(1) guidelines. Therefore, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act, we recommend that the COE not issue a Department of the Army permit until NMFS concerns have been resolved, and we reiterate the EFH Conservation Recommendations we offered in the enclosed letter to NRCS.

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

Pursuant to Part IV, Paragraph 3(a) of the 1992 404(q) Memorandum of Agreement between our agencies, NMFS concludes that this project may have a substantial and unacceptable impact on aquatic resources of national importance. We look forward to working with you to address the issues discussed above to minimize the effects of this project on living marine resources, including EFH. Brian Lance is the NMFS contact for this project, and can be reached at (907) 271-1301.

Sincerely,

James W. Balsiger  
Administrator, Alaska Region

Enclosure

Cc: Ms. Shirley Gammon  
State Conservationist  
Natural Resource Conservation Service  
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