



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

March 15, 2004

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

Re: Port St. Nicholas 40

Attn: John Leeds

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) was contacted by Mr. Steven Stumpf regarding his ACOE permit application for construction of a wooden walkway and float in Port St. Nicholas. In his original permit application, Mr. Stumpf indicated that he planned to use pressure-treated creosote for construction of the walkway. NMFS made a conservation recommendations against the use of creosote pressure-treated wood for any structures that would come into contact with the marine environment. According to Mr. Stumpf, he received a preliminary authorization letter from the Corps for his permit that prohibited the use of surface-applied creosote and specified that any creosote used should be pressure injected. Based on the preliminary authorization from the Corps, Mr. Stumpf purchased pressure-treated creosote wood for his walkway pilings. However, in the final permit authorization, the ACOE revised its conditions to include NMFS' conservation recommendation against the use of any creosote treated wood. At the recommendation of Mr. Leeds, Mr. Stumpf contacted NMFS to request a waiver of our conservation recommendation to avoid economic hardship. The following factors are also relevant to this case:

- Mr. Stumpf has reduced the total number of pressure treated pilings in his project from twelve (12) to ten (10).
- Only four (4) pilings will be placed below mean high water (MHW)
- The dock has been reduced in size from 30 by 60 feet to approximately 24 x 30 feet.
- The wood used on the dock has not been treated with creosote.

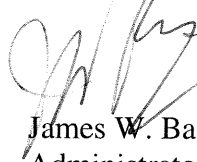
NMFS agrees to a waiver of its conservation recommendation against the use of creosote pressure-treated wood in this circumstance. Although the Corps' preliminary authorization contained the caveat that work should not be commenced prior to receipt of the final permit, Mr. Stumpf based his purchase of wood on the fact that the preliminary authorization specified that the use of pressure-injected creosote treated wood was allowed. By the time Mr. Stumpf received the final permit with NMFS' recommendations, he had already incurred a significant



expense. In making its decision to waive its conservation recommendation, NMFS has also taken into account the reduction in the size of the original project.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Balsiger', written over a faint, illegible typed name.

James W. Balsiger
Administrator, Alaska Region

cc: EPA Juneau, Chris Meade
ADEC, ADF&G, AADGC, ADNR, USFWS, Juneau
Applicant: Steven Stumpf
P.O. Box 1240
Craig, AK 99921