



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

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

March 1, 2004

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

Re: 4-2003-0158
Three-mile Creek

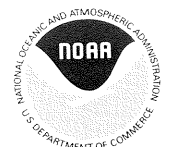
Attn: Mike Hanley

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) has reviewed the above application by the City of Klawock to discharge 355 cubic yards of shotrock into .176 acres of wetlands to install a water pipeline in an access road; and to discharge 115 cubic yards of 5-inch to 30-inch rocks, one 4-foot by 12-foot by 1-foot concrete slab and a gavel liner 2-feet in depth across a tributary of Three-mile Creek as a water intake gallery for a public water supply. The activities in the Corps of Engineers jurisdiction are integral components of a larger project with associated environmental impacts.

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 anadromous stream catalog lists Three-mile Creek (stream #103-60-14070-2015) as habitat for pink, coho, and sockeye salmon.

The Corps has concluded that the proposed activities will not adversely affect EFH. NMFS disagrees with this conclusion. The proposed activity would alter instream flow within an anadromous stream and could adversely impact anadromous species. Prior land management practices have resulted in degradation of the Three-mile Creek Sub-basin to the point where the majority of tributaries, including the one proposed for use under this application, have been designated as Functional At-risk (USFS, 2002). Additional impacts to this system could have deleterious impacts on remaining anadromous habitat and species. The larger project also



includes placement of a water pipe within a road that has numerous barriers to fish passage. This activity may not be the focus of this permit application, but meets the definition of a "connected action" under 40 CFR 1508.25(a)(1)(ii) of the National Environmental Policy Act (NEPA) because it cannot or will not proceed unless the proposed action is taken previously or simultaneously.

The permit application does not adequately address the potential impacts of the permitted activity, and the overall project, to EFH. The application does not address how the water intake and dam will be operated to assure sufficient instream flow for anadromous species. The application also does not discuss how the proposed intake will be maintained against sedimentation in a stream system characterized as having increased sediment loading as a result of past timber harvesting to the extent that "(e)xcess sediment from upstream reaches is rapidly burying the available LWD on the Three-mile Creek alluvial fan" (USFS, 2002). Both sedimentation and maintenance to address sedimentation have the potential to affect EFH within the tributary. The application does not evaluate the cumulative impacts of the proposed action with the impacts of past land management practices or the water pipe installation. The applicant offers no compensatory mitigation.

The applicant's agent has stated that the City of Klawock does not have funding to implement the project at this time. A feasibility study for the project prepared by R&M Engineering in August 2003 indicates that project funding will be secured through grants. These grants are likely to come from Federal funding sources. If Federal funding is used to finance the overall project, an Environmental Assessment (EA) should evaluate all associated direct and indirect impacts in accordance with NEPA.

Based on the above factors, NMFS offers the following EFH Conservation Recommendations:

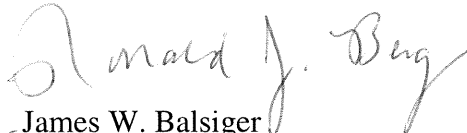
1. An EA should be prepared which evaluates the full range of actions, alternatives, and impacts associated with the Klawock Raw Water Intake Structure and Transmission Line Project. The potential adverse impact to EFH resulting from activities outside the scope of this application, including operational and maintenance activities, and the potential for Federal financing of the complete project, provide sufficient justification for expanding NEPA review beyond the limits of Corps jurisdiction in accordance with 33 CFR 325 Appendix B 7(b)(2).
2. An EFH assessment should be prepared in accordance with 50 CFR 600.920(e)(3).
3. Based on the results of the EA, appropriate mitigation, as defined in 33 CFR 320.4(r), should be incorporated into the project.

In the absence of the analysis and mitigation recommended above, the application should be denied.

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


For James W. Balsiger
Administrator, Alaska Region

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