



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

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

April 5, 2006

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

Re: POA-2006-381-2  
Wrangell Narrows

Attn: Ms. Serena Sweet

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) reviewed the March 13, 2006, public notice of application for permit for the above referenced proposal by Mr. Randy Easterly. The proposed work includes the following: extending the parking area 10-feet eastward with fill and rip-rap placement; restacking the existing rip rap wall on the northern edge of the property to measure 3 feet wide by 70 feet long; dredging 50 cubic yards of material from 0.015 acres located at the edge of the Inner Harbor dredged slope; constructing a 4 foot high by 20 foot wide by 40 foot long rock wall at approximately the 0.0 Mean Lower Low water elevation; placing three 33 feet long by six feet wide wire wrapped floats with 8 inch by 8 inch landing blocks between +10 and -5 elevation; placing an L-shaped wire wrapped float consisting of a 6 foot wide by 37 foot long portion with an 8 foot wide by 10 foot long landing area at approximately -4 elevation; placing two 4 foot wide aluminum ramps (one 20 feet long and one 25 feet long); driving 5 steel piles to anchor the floating dock. The logs and wood used in constructing the floats will be natural wood and not treated lumber. The stated purpose of the project is to support commercial fishing operations.

We offer the following comments specific to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA).

#### Essential Fish Habitat

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.

Significant anadromous fish streams occur in the Wrangell area, including the Stikine River, Crittenden Creek and Mill Creek/Virginia Lake. Salmon fry and herring use nearshore areas, near the City of Wrangell, in the spring and summer. Near shore habitats are particularly important to juvenile salmon migrating as fry or smolts from fresh water to salt water. Juvenile



salmon use near shore habitats for feeding and predator avoidance prior to migration out to sea. Additionally, the inshore area of the project location provides habitat for several marine species including Pacific cod, arrowtooth flounder, walleye pollock, dusky rockfish, shortraker/rougheye rockfish, yelloweye rockfish, Pacific Ocean Perch, skates, and sculpins. Wrangell Harbor provides habitat for transient populations of Pacific herring, smelt, and juvenile salmon.

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. Intertidal habitats are important to the marine ecosystem because they provide primary productivity, nutrient recycling functions, and rearing habitat for a variety of commercially and ecologically important species.

The proposed fill would be used for off-street parking, and to support log floats and aluminum ramps. Parking is not a water dependent use as defined in the Clean Water Act Section 404(b) guidelines. The Clean Water Act Section 404(b)(1) guidelines at 40 CFR 230.10(a) prohibit the discharge of fill material into waters of the U.S. if a practicable alternative exists that would have less impact on the aquatic environment. An alternative is considered practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Additionally, the guidelines direct the Corps to consider the need and water dependency of a proposed action, establishing a rebuttable presumption that upland alternatives are available unless clearly demonstrated otherwise. Section 404(A)(23.1)(c) states: "Fundamental to these Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern." Mr. Easterly must demonstrate that he has evaluated practical alternatives to the proposed tideland fill, minimized the amount of fill, and mitigated adverse impacts.

NMFS offers the following EFH Conservation Recommendations pursuant to Section 305(b)(4)(A) of the Magnuson-Stevens Act:

1. NMFS recommends that the Corps deny the portion of this permit that would authorize intertidal fill for the off-street parking based on: the availability of less damaging alternatives to the proposed fill; the lack of water dependency; and failure to demonstrate proper sequencing (avoidance, minimization, mitigation) in developing project alternatives.
2. For the proposed private float and access to the float NMFS recommends that the Corps and the applicant investigate lower impact alternatives to dredging and fill such as utilizing a public dock or building a pile supported structure that will not ground. The Corps should require the applicant to demonstrate that he has evaluated and fully considered options to avoid or minimize the proposed fill. The Corps of Engineers (Corps) can only permit the least environmentally damaging practicable alternative for a proposed discharge of fill into jurisdictional wetlands or waterways.

If the Corps finds the float as proposed to be the only practicable alternative then:

3. All work below the extreme high water line should be limited to low tide stages to reduce turbidity and other construction related impacts to juvenile salmonids and herring;
4. Five steel piles are planned to support the float. Pile-driving can disrupt migration and cause physical damage to fish. To the extent possible, drive piles during low tide periods in intertidal and shallow subtidal areas to prevent injuries to fish. We recommend use of a vibratory hammer to drive the steel piles and only using an impact hammer to proof each piling at bearing depth. Under those conditions where impact hammers are required for reasons of seismic stability or substrate type, we recommend that the piles be driven as deep as possible with a vibratory hammer prior to the use of the impact hammer. If peak sound pressure levels from deepwater pile driving exceed the 180 dB re  $\mu$ Pa threshold for injury to fish or are anticipated to exceed acceptable limits implement appropriate mitigation measures when practicable (Appendix G, NMFS 2005). Measures to reduce sound pressure include: surrounding the pile with an air bubble curtain system or air-filled coffer dam; using a smaller hammer to reduce the sound pressure (because the sound produced has a direct relationship to the force used to drive the pile); or using a hydraulic hammer if impact driving cannot be avoided. The force of the hammer blow can be controlled with hydraulic hammers; reducing the impact force will reduce the intensity of the resulting sound.
5. No in-water work should be permitted from March 15 through June 15 of any year to protect salmon smolts and herring.
6. The float should not ground at any tidal stage.
7. Reasonable precautions should be taken to prevent incidental and accidental discharge of petroleum products and other contaminants. An emergency oil spill response kit or other appropriate equipment such as absorbent pads should be available on site to allow fast response to small oil spills and accidental discharge of hydrocarbon contaminated bilge waters.

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

#### Threatened and Endangered Species/Marine Mammals

The project is within the range of the endangered humpback whale and the threatened Steller sea lion, as well as harbor and Dall's porpoises, harbor seals, and minke and killer whales, which are protected under the MMPA. All of these species may occur in the marine waters near Wrangell at any time of year on an opportunistic basis.

The MMPA and the ESA prohibit the injury, harm or harassment of marine mammals. Pile driving introduces high levels of impulsive noise into the water column, with the potential to harass or injure marine mammals. Sound pressure levels (SPLs) in the range of 130-135 dB re: 1 $\mu$ Pa have been measured up to one kilometer from an active pile driver (Johnson et. al., 1986). Humpback whales have been observed to react to SPLs greater than 115-129 dB re: 1 $\mu$ Pa within 200 meters of a sound source. Reyff (2003) measured SPLs of 159 dB re: 1 $\mu$ Pa about 200 meters from a pile driver driving 14-inch diameter hollow steel piles. NMFS normally considers harassment takes to begin at received levels of 160 dB.

The likelihood that marine mammals frequent waters within Wrangell Harbor is low, however, to reduce the possibility for harassment or injury to marine mammals, NMFS recommends that pile driving not occur if any marine mammals are observed within 200 meters of the platform. The operator must scan the area for the presence of marine mammals. If marine mammals are sighted within 200 meters of the sound source or are observed to be disturbed by the activity at any distance, pile driving must cease until the animals leave the immediate area.

If you have any questions regarding our comments and conservation recommendations for this project, please contact Cindy Hartmann (907-586-7585, [cindy.hartmann@noaa.gov](mailto:cindy.hartmann@noaa.gov) ).

Sincerely,



Robert D. Mecum  
Acting Administrator, Alaska Region

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References:

Johnson, S.R., C.R. Greene, R.A. Davis, and W.J. Richardson. 1986. Bowhead whales and underwater noise near the Sandpiper Island drillsite, Alaskan Beaufort Sea, autumn 1985, Reprinted by LGL Limited Environmental Research Associates, King City, Ontario, and Greeneridge Sciences, Inc., Santa Barbara, CA, for Shell Western Exploration & Production Inc., Anchorage, AK. 130p.

NMFS. (2005). "Final Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska." USDOC, NOAA, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802.