



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

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

June 12, 2006

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

Re: POA-1990-114-R  
Zimovia Strait 90

Attn: Ms. Nicole Hayes

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) reviewed the May 15, 2006, public notice of application for a permit for the above referenced proposal by the City of Wrangell. The applicant proposes to discharge approximately 191,310 cubic yards of clean shot rock or granular fill and 4,500 cubic yards of riprap in 4.7 acres below the high tide line. The stated purpose is to increase the City of Wrangell's port staging area.

We offer the following comments specific to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). 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. Nearshore 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/rougeye 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 determined that the proposed project may adversely affect EFH. NMFS agrees with this conclusion. The proposed project would permanently remove one of the last remaining low gradient intertidal areas along the city waterfront. 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. In general, the intertidal areas in the vicinity of the project support a variety of mollusks, crustaceans, and benthic invertebrates. Photos taken at the site in May 2006, show a variety of seaweeds in the



intertidal area including brown algae and kelp (*Aleria* spp., *Desmarestia* spp., and *Fucus* spp.), red algae (*Palmeria* spp. and *Porphyra* spp.), and green algae (*Ulva* spp. and *Enteromorpha* spp.). *Aleria* and *Palmeria* are indicators of a stable classic intertidal community. In a July 22, 1993, State of Alaska Memorandum, regarding an earlier phase of this permit, Don Cornelius describes the site as:

*Seaward of the riprap, portions of the site are covered with a variety of habitats. These include sand in an area near the existing barge ramp; mud flats partially covered with sea lettuce and containing shellfish beds; areas with bull kelp beds; a small area of eel grass plus the impacted area seaward of the estuary.*

Vegetated shallows (areas with rooted vegetation such as eelgrass) and mudflats are considered special aquatic sites under the 404(b)(1) Guidelines. A portion of the proposed fill is a mudflat. According to the 404 (b)(1) Guidelines, no discharge of fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem [40 C.F. R. 230.10 (a)].

There is insufficient information in the public notice to allow evaluation of the proposed project for compliance with the 404(b)(1) Guidelines. Information is insufficient to conclude that there does not exist a “practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem”, and that the proposed discharge includes “all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem”. In addition, the lack of any proposed mitigation is untenable given the likely impact of the project on marine resources.

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

1. The Corps should deny a permit for the project as proposed because the applicant has not demonstrated that a solid fill pad is the least environmentally damaging practicable alternative. Alternatively, the Corps should defer its decision on the permit application pending the completion of a comprehensive alternatives analysis (see # 2 below).
2. The Corps should require the applicant to investigate alternatives that do not involve filling intertidal habitat, such as using an existing industrial site with marine access or building a pile supported port staging area.
3. If intertidal fill is unavoidable, the City should conduct a thorough habitat investigation at the proposed fill sites and develop alternatives that would avoid filling the most valuable intertidal habitats.
4. Compensatory mitigation should be required for habitat loss that cannot be avoided or minimized.

5. No in-water work should be permitted from March 15 through June 15 of any year to protect out migrating salmon and spawning herring.

NMFS concludes that the project as proposed will result in substantial and unacceptable impacts to aquatic resources of national significance as defined in Part IV of the 1992 Memorandum of Agreement between the Department of Commerce and the Department of the Army under Section 404(q) of the Clean Water Act. This letter fulfills the procedural requirements under Part IV, paragraph 3(b) of this Agreement. Please notify our office of the Corps decision regarding this permit application in accordance with Part IV, paragraph 3(c) of this Agreement.

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.

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. Cindy Hartmann is the contact for this project and can be reached at 907-586-7585.

Sincerely,



*rd* Robert D. Mecum  
Acting Administrator, Alaska Region

cc: Greg Meissner, Harbormaster, City of Wrangell, P.O. Box 531, Wrangell, Alaska 99929  
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