



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

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

February 29, 2008

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

Re: North Forest Acres Levee/  
Access Road Project  
POA-2000-52-M, Japanese Creek

Attn: Jack Hewitt

Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) has reviewed the Corps of Engineers (Corps) 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. A secondary project purpose is to eliminate large truck traffic, destined for the Seward waste transfer facility and a commercial borrow pit operation, from neighborhood streets in North Forest Acres Subdivision. The Corps 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.

### Background

In December of 2003, the Natural Resource Conservation Service (NRCS) prepared an Environmental Assessment (EA) and a Finding of No Significant Impact for the above referenced project. NMFS provided comments on this project to the NRCS (letter dated June 30, 2003). Subsequently, the Corps issued a Public Notice for the proposed project and we provided comments outlining the impacts to our trust resources and our objections to the project as proposed (letter dated March 4, 2004). As a result on May 21, 2004, NMFS attended a meeting of concerned resource agencies, the Corps, HDR, and representatives of the City of Seward regarding the project. The alternative agreed upon was not the applicant's preferred alternative (previously designated as the "red alternative"), which placed the alignment of the road/levee the furthest out in the floodplain; nor was it the resource agencies' preferred alternative (known as the "blue alternative"), which pushed the alignment to the west. Rather, the result of this meeting was a compromise alternative designated as the "green alternative" which everyone accepted, including representatives of the City of Seward. Importantly, the green alternative did not require relocation of Japanese Creek.



In September, 2004, NMFS learned that City of Seward Council Members voted to reject the compromise alternative. Since that date, the proposed action (preferred alternative road alignment) has changed. The NRCS and the City of Seward subsequently prepared a draft Supplemental Environmental Assessment (SEA, October 18, 2007) to reflect those changes and to fulfill the requirements of the National Environmental Policy Act. NMFS reviewed the draft SEA and provided comments (letter dated December 6, 2007). The preferred alternative, as presented in the draft SEA, as well as the current Public Notice modification, is not substantially different from the project we reviewed in the original EA; requiring the relocation of Japanese Creek and placing the road/levee the farthest out into the floodplain of all the alternatives.

### Resource Impacts

The applicant's proposed alternative realigns Japanese Creek dangerously close to the Resurrection River. The physiography of the project area, including the Resurrection River, is described as an alluvial fan. Flooding on alluvial fans is characterized by sufficient energy to carry coarse sediment at shallow flow depths. The abrupt deposition of this sediment or debris strongly influences hydraulic conditions during a flood and may allow higher flows to initiate new, distinct flow paths of uncertain direction. Also, during a flood event erosion strongly influences hydraulic conditions by undermining channel banks or eroding new paths across the unconsolidated sediments of the alluvial fan.

Due to the alluvial fan character of the area, channels of the Resurrection River are highly migratory, and a very real danger exists for the Resurrection River channel to avulse Japanese Creek. Avulsion of Japanese Creek, where a channel of the Resurrection River captures or entrains the channel of Japanese Creek, would permanently destroy the spawning and rearing habitat in Japanese Creek, including the constructed rearing channels suggested by the applicant as mitigation.

NMFS has participated in numerous meetings and site visits with the City of Seward to assist in attaining project objectives while minimizing impacts to our trust resources. Our primary concern has been, and remains, the relocation of Japanese Creek and the potential adverse impacts to anadromous fish, their habitat, and wetlands from locating the project within the floodplain of the Resurrection River, as less environmentally damaging practicable alternatives to the proposed project exist.

The project as currently proposed does not appear to comply with the Clean Water Act's section 404(b)(1) guidelines. Furthermore, our understanding is that NRCS policy directs the agency to prepare an EIS for projects that require stream realignment ([ftp://ftp-fc.sc.egov.usda.gov/OR/Planning\\_Worksheets/OREVT1CM.doc](ftp://ftp-fc.sc.egov.usda.gov/OR/Planning_Worksheets/OREVT1CM.doc)):

*An EA is required for projects that include restoring stream channel meander bends or other similar activities. An EIS is required for projects that include stream channel realignment (channelization) or work to modify channel capacity by deepening or widening where significant aquatic or wildlife habitat exists. The Environmental Evaluation (EE) will determine if the*

*channel supports significant aquatic or wildlife habitat (GM Part 410.7). Channel realignment is defined in the General Manual 410.27 (c)(2)(i) as actions including the construction of a new channel or a new alignment and may include the clearing, snagging, widening, and/or deepening of the existing channel. Channelization will not be considered if a practical alternative exists. A practical alternative is defined as one that: 1) is consistent with the Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (WRCEEPG), 2) makes a significant contribution to project objectives, and 3) results in less damage to fish and wildlife habitat.*

Lastly, it seems counterintuitive for a flood control project to place the road/levee alignment so far into the floodplain given the availability of practicable alternatives that do not encroach on the floodplain. Executive Order 11988 -- Floodplain Management, Section 2 a. 2 states: "If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplain." For example, the West 1 alternative (blue) alignment achieves the goal of flood protection and routes truck traffic off Dimond Blvd. meeting the second goal of public safety. Noise reduction for residents of North Forest acres subdivision could be achieved by use of noise fencing. This type of fencing has been used successfully on highway projects (e.g. New Seward Highway in Anchorage) as a sound buffer for residential housing.

#### Conservation Recommendations, including EFH

The proposed project would have substantial negative impacts on water quality, important wetlands, the floodplain, and the riparian zone of Japanese Creek and the Resurrection River, ultimately affecting EFH and the long-term health of these streams. NMFS recommends the project avoid filling wetlands, be relocated outside the floodplain, and retain a wide riparian zone. Alternatives exist (e.g. blue alternative) that meet these conservation measures, as well as the goals of flood prevention and neighborhood safety. NMFS encourages the applicant to seek solutions to the neighborhood safety issue that do not require moving the road/levee alignment out into the floodplain, requiring a relocation of Japanese Creek

#### Conclusion

NMFS recognizes the importance of this project to the community of Seward and we are available to work with the applicant in achieving their project's goals while minimizing impacts to EFH and our trust resources. NMFS recommended (letter dated December 6, 2007) a meeting of the Corps, NRCS, resource agencies, HDR, and representatives of the city of Seward with a goal of reaching an agreement on the road/levee alignment, prior to releasing another Public Notice. NMFS again suggests dialog to avoid complications during permitting, which could ultimately delay a much needed project for the community of Seward.

In summary, NMFS opposes issuance of a permit for the applicant's preferred alternative of 3.1 acres of wetland fill, filling in 0.35 acre of Japanese Creek, and realignment of 2,590 linear feet of Japanese Creek, because the information we have reviewed does not demonstrate that this is

the least damaging practicable alternative. The project as proposed will have a substantial and unacceptable impact on aquatic resources of national importance, as defined in Part IV, Paragraph 3(b) of the Clean Water Act section 404(q) Memorandum of Agreement between our agencies. If you decide to issue the permit over our objections we may seek higher level review of your decision pursuant to the 404(q) Memorandum of Agreement. We hope that this matter can be resolved at the field level instead. Brian Lance is the contact for this project and can be reached at 907-271-1301 or by e-mail: [brian.lance@noaa.gov](mailto:brian.lance@noaa.gov).

Sincerely,



Robert D. Mecum  
Acting Administrator, Alaska Region

Cc:

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