UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

August 10, 2007

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

Re: POA-2003-502-N
Ship Creek

Dear Col. Wilson:

The National Marine Fisheries Service (NMFS) has reviewed your notice of intent to issue a permit over our objections for the applicant's preferred alternative for the Port of Anchorage expansion project. The project as proposed involves filling approximately 135 acres of intertidal and shallow subtidal habitat in Knik Arm, including habitat areas used preferentially by Chinook and coho salmon and also used by Cook Inlet beluga whales. NMFS continues to oppose the applicant's preferred alternative because a less damaging partially pile-supported design appears to be a viable option, albeit more expensive to build and maintain. We are disappointed that our efforts over the past three years to engage the applicant, the Maritime Administration, and the Corps in discussions to reduce the impacts of the project have been unsuccessful.

The port expansion project is large, controversial, and will have substantial environmental impacts that have not received adequate attention in the permitting process. The Environmental Assessment prepared by the Maritime Administration and the decision document prepared by the Corps do not contain sufficient data, analysis, or explanations to demonstrate convincingly that the action agencies have taken a hard look at the potential impacts of the project and opportunities to reduce those impacts. In the draft decision document the Corps acknowledges that a partially pile-supported wharf design would be less damaging than solid fill, but unfortunately the Corps provides no information to explain why such a design is used at numerous other profitable ports yet somehow would be cost prohibitive at the Port of Anchorage. The draft decision document also provides little information to substantiate the stated acreage requirements for the proposed port expansion, reinforcing our view that a design that fills less fish habitat may be practicable.

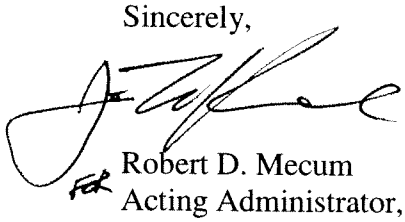
We are also concerned that the draft decision document understates the value of the fish habitat that would be filled by the project, and thus conflicts with information and analysis NMFS has provided in our comment letters. As we noted in our March 22, 2006, letter, while there is little site specific data on the use of the nearshore coastal areas in upper Cook Inlet, studies completed for this project and the proposed Knik Arm bridge, as well as other studies in the vicinity, document that shallow waters in the project area provide migrating, rearing, and foraging habitat for salmon and prey species. Chinook and coho use the inshore habitat at the project site preferentially compared to other sampled habitats, possibly because it provides shallow water refuge from high tidal velocities found in deeper areas of Knik Arm. We disagree with the implication in your decision document that Ship Creek is not a functional estuary, that the project area provides no unique benefit to osmoregulating salmon smolts when compared to waters

elsewhere in Knik Arm, and thus by inference filling this habitat would be no loss to the aquatic ecosystem. NMFS continues to recommend using a project alternative that reduces the amount of fill and incorporates a relatively shallow margin along the shore to retain a sheltered migratory corridor for salmon and prey species.

Attachment B to the decision document is a Memorandum of Agreement between the Corps and the Municipality of Anchorage for the administration and management of a compensatory mitigation fund for the proposed project. The fund and the Special Conditions to the permit are meant to avoid, minimize, and compensate for the impacts of the proposed project. Although the proposed mitigation fund is sizeable, the Corps should recognize that any resulting mitigation projects will be out-of-kind habitat enhancements that will not replace the habitat functions that will be lost. Most notably, the project will cause the permanent loss of the shallow water migration and refuge corridor for salmon transitioning from fresh to marine waters to the east of Ship Creek. We anticipate that will result in decreased survival rates for salmon smolts (Magnusson and Hilborn 2003), potentially reducing adult salmon returns to the popular Ship Creek sport fishery, which currently contributes an average of $7.3 million annually to the Alaskan economy (Northern Economics 2004). Our specific comments on the proposed Special Conditions and MOA are enclosed.

NMFS appreciates the Corps' efforts to coordinate with us on Special Conditions and mitigation for this project. We disagree with your proposed permit decision, but we have decided not to seek review of your decision by the Assistant Secretary of the Army for Civil Works under the Clean Water Act section 404(q) Memorandum of Agreement between the Department of Commerce and the Department of the Army.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

Enclosure

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REFERENCES

Magnusson, A., and R. Hilborn. 2003. Estuarine Influence on Survival Rates of Coho (Oncorhynchus kisutch) and Chinook Salmon (Oncorhynchus tshawytscha) Released from Hatcheries on the U.S. Pacific Coast. *Estuaries* Vol. 26, No. 4B, pp.1094–1103, August 2003.

Northern Economics Inc. 2004. Hatchery Valuation Analysis – Final Memo. 19p.

ENCLOSURE

NMFS comments on the Special Conditions for Department of the Army Permit Number POA-2003-502-N and the Memorandum of Agreement between the Corps and the Municipality of Anchorage concerning the administration and management of compensatory mitigation funds for the Port of Anchorage expansion project

Special Conditions

IV. Beluga Whales (1)(B)(c) - *The POA will employ a marine mammal observation team separate from the construction contractor observer activities.*

This permit condition should clarify that the marine mammal observation team must be used for the duration of all construction activities.

IV. Beluga Whales (1) (I) - *The POA shall establish a long-term, formalized marine-mammal sighting and notification procedure for all Port users, visitors, tenants, or contractors during and after construction. The notification procedure shall clearly identify roles and responsibilities for reporting all marine mammal sightings. The POA will forward documentation of all reported marine mammal sightings to the NMFS.*

This permit condition should specify that the marine mammal sighting and notification procedure must be implemented beginning at the start of the first construction activities authorized under this permit.

Memorandum of Agreement

Section 1.1, line 5 - "subsequent modifications"-- This wording is too vague and broad.

Section 1.2, line 3 - "if issued"-- If the permit is not issued, what becomes of this MOA? If an alternative design is permitted, how is the MOA affected?

Section 2.2, line 1 - "the municipality"-- Is this the office of economic and community development?

Section 4.1, line 4 – "practicable, respective losses"-- Both practicable and respective losses need to be defined and agreed upon.

Section 4.2, line 4 – "Projects will be prioritized based on their availability, their respective locations and aquatic function gains relative to the authorized project impacts, and comparative cost to benefit ratios." The MOA needs to define "function gains" as well as a method for measuring the benefit of a particular mitigation project. All projects should be required to demonstrate success or failure of project objectives. Again, the word practicable needs

definition. The MOA describes "on site" mitigation as a first priority. While NMFS understands the on site rationale, we suggest priority be a given to those mitigation projects that have the greatest probability of success, directly benefit salmon and beluga whale habitat, and can be completed within five years, even if the location is not strictly on site. Estuarine habitat should be given priority over fresh water habitat. However, it should be noted that the habitat impacted from the project, intertidal and subtidal estuary, cannot be restored or created; it is gone forever and opportunities for directly mitigating lost estuarine habitat in Knik Arm do not exist. NMFS suggests priority be given to projects that protect existing functional estuarine habitat, including off site (e.g. Campbell Creek Estuary purchase for conservation easement).

Section 4.3 and 4.4 - The MOA prioritizes Ship Creek and Chester Creek due to their juxtaposition to the POA, with Campbell Creek last on the list. NMFS disagrees with this prioritization based solely on location. Both Ship and Chester creeks are highly impacted, while Campbell Creek is relatively functional, and purchasing Campbell Creek estuary as a conservation easement may have greater overall benefit based on cost-benefit ratio, probability of completing the project successfully, and completing the project in a reasonable time frame. Projects from all three creeks should be evaluated on their merits.

Section 4.5 – NMFS agrees that mitigation funds should not be spent on studies and assessments unless directly related to the success of a project. An exception should be made for monitoring that addresses specific mitigation project goals.

Section 4.6 – Preliminary Mitigation Projects

Chester Creek – The Chester Creek Aquatic Ecosystem Restoration project has a long history of design and budget problems and has consequently drifted substantially in scope from the original proposed project. Further, Chester Creek historically never had large runs, the upper reaches have other fish passage problems, the stream has water quality issues (fecal coliform), as well as in-stream habitat issues (cementing of spawning gravel and reduction in invertebrate abundance and diversity as a result of sediment runoff from inadequate riparian wetland buffers in the upper watershed). NMFS has reservations about the use of mitigation funds on this project.

Lower Ship Creek – Is the Ship Creek mitigation feasibility study considered mitigation for the POA project? There have been a number of studies of the Ship Creek watershed, particularly regarding dam removal and riparian buffers, and NMFS questions the need for another. The only exception may be in estuary enhancement/expansion.

- Estuary enhancement/expansion – NMFS supports this mitigation, as this is the habitat directly affected by the project. However, restoration of estuarine habitat in the Ship Creek area of Knik Arm is not feasible at the scale needed to have any beneficial effect. As such, this type of mitigation could be very expensive with a high risk of failure.

- Dam Removal – This is a highly contentious subject. There is a great amount of disagreement amongst the various stakeholders regarding removal of the KAPP dam and other upstream dams, and how these actions would affect the hatchery operations and the existing Chinook and coho fishery.

- Conservation Easements – NMFS supports this action, particularly for properties bordering the estuary.

- Riparian Buffers – The lower reaches of Ship Creek are used as a migratory corridor by both adults and smolt. This is not rearing habitat, and while allowing for better public access, would do little for the resources impacted by the POA project.

Section 4.8 – Monetary value of the mitigation fund is based on the Anchorage Debit-Credit methodology for the applicant's preferred alternative. NMFS would like to review how the debits and resultant monetary mitigation figure were calculated. In particular were impacts beyond the footprint of fill included in the calculations? If so how were they included, specifically, the 9000 linear feet of sheet pile wall and resultant loss of a functional migration corridor for salmon passing through the project area en route to/from streams in upper Knik Arm, as well as smolt exiting Ship Creek? The impacts to federally managed species including salmon from the loss/diminished ecological function should be addressed separately in the compensatory mitigation calculation. This loss of a functional migration corridor through low velocity water was the crux of NMFS recommendation for an alternative design based on partial pile.

Section 5.6 – The MOA should specify that interest earned on the funds for mitigation should accrue to the principal, and not to the applicant.

Section 6.1 – "the compensatory mitigation requirements associated with the POA project permit will be completed over a 5-year period…if practicable." What is considered practicable?