



**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
U.S. Army Corps of Engineers
P.O. Box 898
Anchorage, Alaska 99506-0898

Re: POA-2000-97-O
Passage Canal 32

Attn: John Klutz

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) has reviewed the request from Passage Canal Development LLC for modification of Department of the Army permit number 2-2000-0097, Passage Canal 32.

Background

The original permit was issued to Passage Canal Development (PCD) on September 6, 2000 for construction of a new harbor facility project on approximately 13 acres to include the construction of wave barriers/docks, mooring facilities, discharge of fill and dredging in Whittier, Alaska.

The permit was subsequently modified on April 25, 2003 (M-2000-0097) and on August 23, 2003 (N-2000-0097). These modifications authorized a time extension to the permit in order to complete the project, a change in the mooring float configuration and placement of additional dolphins and catwalks, and an extension of the timing window to drive pilings from August 22 through March 1.

On August 28, 2003, Passage Canal Development LLC and their representative Peratrovich, Nottingham, and Drage, Inc. (PN&D) were issued a notice of violation by the Corps for unauthorized fill into Passage Canal. On September 12, 2003 Passage Canal Development LLC and PN&D were again issued a notice of violation by the Corps for work in Whittier Creek.

NMFS did not provide a letter with specific conservation recommendations on the original permit because the proposed project was designed and the permit conditioned to avoid and minimize impacts to living marine resources. This was a direct result of pre-application coordination involving NMFS, including several meetings and review of a dive video and dive report for the proposed project site. Our comments on the subsequent modifications to the original permit were handled through telephone conversations with the Corps of Engineers.

The current request for modification of the permit would supersede the original permit and modifications and incorporate the work already completed on the project.



Essential Fish Habitat

The proposed project, including modifications, involves unavoidable disturbance to the marine waters of Passage Canal. The marine waters of Passage Canal have been designated as Essential Fish Habitat (EFH) for all species of Pacific salmon, as well as sculpin, sablefish, flathead sole, rock sole, yellowfin sole, Pacific cod, walleye pollock, and arrowtooth flounder. Anadromous fish streams in Passage Canal support runs of chum and pink salmon; these species are likely to occupy the proposed project site at various times of year for feeding and migration. In addition, the Alaska Department of Fish and Game has released coho salmon smolts into Whittier Creek and Cove Creek for a sport fishery. The most significant use of the project site by federally managed species is during the spring outmigration of juvenile salmonids.

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. The construction and operation of the proposed project would adversely affect EFH, and marine and anadromous fish, if necessary conservation measures are not followed. We offer the following recommendations pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act to minimize the impacts of the proposed project.

EFH Conservation Recommendations (as related to the specific modifications proposed)

Proposed Modification Number 6 (Dredging), Bullet 6

Extend dredging window from March 31 to April 30

Conservation Recommendation

NMFS recommends denial of an extension. Considerable numbers of juvenile fish, both salmonid and marine species, are present in the nearshore waters of the project area during April. All dredging activities should be accomplished between October 1 and March 31 as stated in the original permit. Dredging activities can contribute sediment to the marine environment, potentially decreasing the feeding efficiency of fish and smothering benthic organisms. Prohibiting dredging from April 1 to September 30 will prevent adverse effects on outmigrating salmonids.

Proposed Modification Number 6 (Dredging), Bullet 8

Sampling and analysis of sediments in the proposed dredge area - This is a condition of the original authorization.

Conservation Recommendation

Until the testing of sediments in the proposed dredge area have been completed to the satisfaction of the Corps, the Environmental Protection Agency, and the Alaska Department of Environmental Conservation, and a final decision can be made regarding the use and handling of dredge materials, dredging should not begin. If results show sediments are contaminated, the Corps should re-initiate consultation with NMFS,

because dredging activities have the potential to re-suspend contaminants into the water column where federally managed species could be adversely affected.

Proposed Modification Number 7 (Pile Driving)

Change the timing window for use of vibratory hammer for pile-driving from September 1 through March 31, to August 1 through March 31.

Conservation Recommendation

NMFS recommends denial of an extension. All pile-driving activities should be accomplished between October 1 and March 31, and the applicant already had a month longer than this typical pile driving window to complete the work during the 2003-2004 season. Fish are sensitive to underwater sound pressure waves. Juvenile fish in particular, can be injured or killed by the sound pressure waves generated from pile driving. The most effective measure to avoid injury is to conduct pile driving activities when fish are not present.

Proposed Modification Number 8 (Discharge of Fill), Bullet 1

The applicant proposes to construct a temporary access road along the south edge of the dredge area and 12 spur roads off this main road. These roads would serve as a platform for dredging operations.

Conservation Recommendation

NMFS recommends denial and instead recommends use of clam-shell method from a barge platform as described in the original permit. This shallow marine water habitat includes extensive eelgrass beds which provide productive EFH. Much of the eelgrass habitat will be destroyed during dredge operations. Temporary fill roads would further degrade this habitat. Less damaging practicable alternatives exist (i.e. clam-shell method) and should be employed.

Proposed Modification Number 8 (Discharge of Fill), Bullet 2

During dredging operations the applicant requests to discharge approximately 15,000 cy of materials by side-casting dredged materials into an approximate area of one acre in deeper waters along the leading edge of the west port area.

Conservation Recommendation

Less damaging practicable alternatives exist to this proposal. NMFS recommends that the dredged materials be disposed of at an upland site or deep water disposal site (water 600 feet or deeper) as listed in the original permit, to avoid impacts to EFH for several federally managed species.

Proposed Modification Number 8 (Discharge of Fill), Bullet 3

To construct the dredging access roads and side-cast material, the applicant requests a variance of the fill timing window of June 15 to July 15

Conservation Recommendation

NMFS recommends denial of the construction of access roads and side-casting of dredged materials [see above under Proposed Modification Number 8 (Discharge of Fill), Bullet 1 and Proposed Modification Number 8 (Discharge of Fill), Bullet 2] In-water work for the project should only be permitted from October 1 through March 31. Dredging and fill activities can contribute sediment to the marine environment, potentially decreasing the efficiency of fish feeding and smothering benthic organisms. Prohibiting dredging and fill from April 1 to September 30 will prevent adverse effects on outmigrating salmonids. Considerable numbers of juvenile fish, both salmonid and marine species, are present in near shore waters from April through September.

Conservation Recommendation

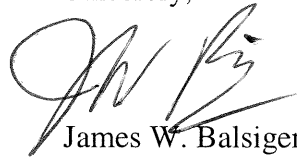
The applicant should provide compensation for the alteration of 4.3 acres of EFH. Compensation could involve restoration of a disturbed site (e.g., transplanting of eelgrass), reconstruction of poorly performing fish passage structures, preservation of shoreline or wetlands, or direct cash payment to a mitigation bank or land trust. Selection should be discussed with resource agency personnel.

Please note that under section 305(b)(4) of the Magnuson-Stevens Act, the Corps is required to respond in writing within 30 days to NMFS recommendations. If the Corps does not make a decision within 30 days of receiving NMFS EFH Conservation Recommendations, the Corps should provide NMFS with a letter to that effect, and indicate when a full response will be provided.

Conclusion

The proposed permit modifications, including fill for dredging access roads and changing the seasonal restrictions on in-water work, would increase the impacts of this project substantially. Pursuant to Part IV, Paragraph 3(b) of the 1992 404(q) Memorandum of Agreement between our agencies, NMFS concludes that this project will have a substantial and unacceptable impact on aquatic resources of national importance. 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. Brian Lance is the NMFS contact for this project, and can be reached at (907)271-1301.

Sincerely,



James W. Balsiger
Administrator, Alaska Region

cc: USFWS, EPA, ADGC, ADNOR-OHMP, ADEC,- Anchorage

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