



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

*National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668*

November 23, 2004

Colonel Timothy J. Gallagher  
District Engineer  
U.S. Army Corps of Engineers  
P.O. Box 698  
Anchorage, Alaska 99506-0898

Re: POA-2004-1363  
Favorite Channel

Attn: Randy Vigil

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) has received a copy of the October 27 Public Notice of Application for Permit from Rudy and Lois Belardi presenting a plan to fill about 3600 square feet below the high tide line and mean high water elevations and retain a buried six and 8 inch marine wastewater outfall installed below mean high water elevation. The purposes of this project are to provide shoreline erosion protection, create an area for beach access and recreation and to protect wastewater treatment facilities. NMFS staff participated in a multiagency site visit on November 16, 2004.

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. The Alaska Department of Fish and Game's Anadromous Streams Catalog indicates that Picnic Creek, 111-50-1310 and Lena Creek, 111-50-1300 (Juneau Quad B-3) are used by all species of Pacific salmon except Chinook. Juvenile salmon use the inshore area of Favorite Channel during spring and early summer for feeding and predator avoidance prior to migration out to sea. The inshore area of the project location also provides important habitat for several marine species including arrowtooth flounder, Pacific cod, sablefish, sculpins, walleye pollock, yellow rockfish, and Pacific Ocean perch.

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 that is used by commercially important fish species. Purposes for the proposed fill include an area for beach access and recreation, which are not water dependent uses under Section 404 of the Clean Water Act. The applicants have not demonstrated that they have evaluated options to avoid or minimize the extent of the fill, such as minimizing the amount of fill to that necessary to prevent erosion of the fill material surrounding the septic treatment tank.



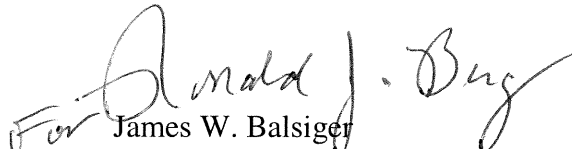
In accordance with Section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS offers the following conservation recommendation:

The Corps should require the applicants to demonstrate whether less damaging options for building a yard or recreational area have been fully considered. NMFS recommends that the fill for this project be minimized to that necessary to protect the septic treatment tank from continued erosion.

Under the Clean Water Act Section 404 (b)(1) Guidelines (40 CFR 230), the Corps can only permit the least environmentally damaging practicable alternative for a proposed discharge of fill into jurisdictional wetlands or waterways. In accordance with the sequencing requirements of the Clean Water Act, NMFS recommends that compensatory mitigation be required for any unavoidable the portion of the fill that will extend below the high tide line.

Please contact Susan Walker at 907-586-7646 or [susan.walker@noaa.gov](mailto:susan.walker@noaa.gov) if you have any questions or for further coordination.

Sincerely,

  
James W. Balsiger  
Administrator, Alaska Region

cc: Applicant  
EPA Juneau, Chris Meade  
ADF&G, Janet Schempf  
ADEC, Jim Powell  
ADNR, USFWS, Juneau