



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

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

October 2, 2007

Colonel Kevin J. Wilson
District Engineer
U.S. Army Corps of Engineers
P.O. Box 6898
Anchorage, Alaska 99506-0898

Re: POA-1989-238-M
Mink Bay

Attn: Robin L. Leighty

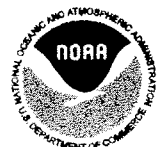
Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) has reviewed the above referenced application from Mr. Fred Monrean for Misty Fjord LLC, to install and attach a 16-foot by 55-foot wooden float secured by two new 16-inch steel piles and an existing 25-foot by 116-foot float to provide additional boat docking and float plane tie-up space. To install the pilings would require drilling and blasting of bedrock substrate resulting in an approximate discharge of 58 cubic yards of shot rock with the potential loss of approximately 158 square feet of habitat. The float would create an additional 880 square feet of shading. No mitigation has been proposed to offset the impact to the aquatic environment. The Corps further indicates that this project may affect both Essential Fish Habitat (EFH) and marine mammals falling under the Endangered Species Act (ESA) and Marine Mammals Protection Act (MMPA). NMFS concurs with this assessment.

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires federal agencies to consult with NMFS on all actions that may adversely affect EFH. NMFS is required to make EFH Conservation Recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects. The Alaska Department of Fish and Game's Anadromous Waters Catalog identifies that the property is located near the mouth of stream 101-30-10900 that support runs of chum, pink, and coho salmon and is in the vicinity of other identified streams that support steelhead trout, dolly varden trout and sockeye salmon. Juvenile salmon use nearshore habitat during spring and early summer for feeding and predator avoidance prior to migration out to sea. Although specific species data at Mink Bay is unknown the NMFS Fish Atlas indicates that important ground and forage fish including several species of sculpin, rockfish, gunnels, and sandfish utilize rocky intertidal habitat in southeast Alaskan waters.

In accordance with Section 305(b)(4)(A) of the MSA, NMFS makes the following EFH Conservation Recommendations:

1. No in-water work should be permitted from April 1 through June 15 of any year to protect out-migrating salmon.



2. If eelgrass is present, no docks, ramps, or other structures that block sunlight should be placed in or over eelgrass beds.
3. The use of any wood that has been surface or pressure-treated with creosote or treated with pentachlorophenol should be prohibited. If treated wood must be used, any wood that comes in contact with water should be treated with waterborne preservatives approved for use in aquatic and/or marine environments. These include, but are not limited to: Chromated Copper Arsenic (CCA) Type C, Ammoniacal Copper Zinc Arsenate (ACZA), Alkaline Copper Quat (ACQ), Copper Boron Azole (CBA) or Copper Azole (CA). Use wood treated with waterborne preservatives in accordance with Best Management Practices developed by the Western Wood Preservers Institute. Treated wood should be inspected before installation to ensure that no superficial deposits of preservative material remain on the wood.
4. Drive piles with a vibratory hammer. Pile driving can generate intense underwater sound pressure waves that can injure or kill fish. Vibratory hammers produce less intense sounds than impact hammers (NMFS 2005). Fish have been observed to avoid sounds similar to those produced by vibratory hammers and to remain within the field of harmful sound associated with an impact hammer (Dolat 1997). If an impact hammer is required because of substrate type or the need for seismic stability, piles should be driven as deep as possible with a vibratory hammer before the impact hammer is used.
5. Drive piles during low tide if they are located in intertidal areas. Potentially harmful sound pressure waves are attenuated more rapidly in shallow water than in deep water (Rogers and Cox 1988).
6. In-water blasting should be avoided unless it is the only practicable method for setting piles in bedrock. In-water blasting produces intense underwater sound pressure waves that can kill or injure fish (Keevin 1998). NMFS strongly encourages the use of drilling techniques or other mechanical means for setting piles in bedrock. If underwater blasting must be used, mitigative measures (e.g. stemming) should be employed to contain the explosive energy within the bedrock to the greatest extent possible. Because potentially harmful sound pressure waves are attenuated more rapidly in shallow water than in deep water, blasts should be conducted during the lowest tide level practical.
7. All excavated drilling material and shot rock should be removed from the intertidal area and disposed of in an approved upland location. If removing fill is not practicable, the Corps should require the applicant to develop and implement a suitable compensatory mitigation plan to offset any unavoidable impacts to waters of the U.S.

Under section 305(b)(4) of the Magnuson-Stevens Act, the Corps is required to respond to NMFS EFH Conservation 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.

The project is within the range of endangered humpback whales and threatened Steller sea lions, as well as harbor porpoises, harbor seals and killer whales, which are protected under the MMPA. The MMPA and the ESA prohibit the injury, harm or harassment of marine mammals.

To reduce the possibility for harassment or injury to marine mammals, blasting and pile driving should not occur if any marine mammals are observed within 200 meters of the platform. The operator should scan the area for the presence of marine mammals. If marine mammals are sighted within 200 meters of the sound source or are observed to be disturbed by the activity at any distance, pile driving should cease until the animals leave the immediate area.

If you have any questions regarding our recommendations for this project, please contact Tim Wilkins at 907-586-7643 or timothy.wilkins@noaa.gov.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

cc: Applicant: Misty Fjord LLC, 6805 Overseas Hwy, Marathon, Fl. 33050
Agent: Fred Monrean, P O Box 9343, Ketchikan, AK 99901
EPA Juneau, Chris Meade*
ADNR, Mark Minnillo*
USFWS Juneau, Richard Enriquez*
ADEC Juneau, Brenda Krauss*
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* e-mail PDF

Literature cited

Dolat, S.W. 1997. Acoustic measurements during the Baldwin Bridge Demolition (final, dated March 14, 1997). Prepared for White Oak Construction by Sonalysts, Inc., Waterford, CT/34 pp + appendices.

National Marine Fisheries Service. 2005. Final Environmental Impact Statement, Essential Fish Habitat Identification and Conservation in Alaska, Vol. 2, Appendix G; National Marine Fisheries Service, Department of Commerce. April, 2005.

Rogers, P.H. and M. Cox. 1988. Underwater sound as a biological stimulus. pp. 131-149. *In* Sensory biology of aquatic animals. Atema, J, R.R. Fay, A.N. Popper, and W.N. Tavolga, eds. Springer-Verlag. New York.

Keevin, T.M. 1998. A Review of Natural Resource Agency Recommendations for Mitigating the Impacts of Underwater Blasting. *Reviews of Fisheries Science*, 6(4): 281-313.