



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

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

August 28, 2008

Bruce R. Jones, CPM
General Manager
Inter-Island Ferry Authority
P.O. Box 495
Craig, AK 99921

Dear Mr. Jones:

The National Marine Fisheries Service (NMFS) reviewed your July 29, 2008, letter requesting a consultation on the Magnuson-Stevens Fisheries Conservation and Management Act (MSFCMA) and on the Endangered Species Act (ESA) for your proposed ferry terminal in Wrangell. You attached the Army Corps of Engineers (COE) permit for fill and a photo with a conceptual drawing of the ferry terminal. There were no other details of your proposed project provided. NMFS provided comments to the COE on the proposed fill in June 2006 (letter enclosed). In order to provide specific comments on your proposed ferry terminal we would need construction details. However, we can provide you with general information on the EFH and ESA consultation process

EFH Consultation Process

The EFH provisions of the MSFCMA pertain to Federal actions that may adversely affect EFH. If a Federal permit is needed for your proposed work then that action agency will consult with NMFS on EFH. The action agencies environmental analysis for the project must address the EFH requirements of the MSFCMA. Section 305 (b) of the MSFCMA requires federal agencies to consult with NMFS on all actions that may adversely affect EFH. Adverse effect means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effect to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. For such actions, a written EFH Assessment must contain:

1. A description of the proposed action;
2. An analysis of the potential adverse effects of the action on EFH and the managed species;
3. The federal agency's conclusions regarding the effects of the action on EFH; and.
4. Proposed mitigation, if applicable.

Significant anadromous fish streams occur in the Wrangell area, including the Stikine River, Crittenden Creek, and Mill Creek/Virginia Lake. Salmon fry and herring use



nearshore areas near the City of Wrangell in the spring and summer. Nearshore habitats are particularly important to juvenile salmon migrating as fry or smolts from fresh water to salt water. Juvenile salmon use near shore habitats for feeding and predator avoidance prior to migration out to sea. Additionally, the inshore area of the project location provides habitat for several marine species including Pacific cod, arrowtooth flounder, walleye pollock, dusky rockfish, shortraker/ rougheye rockfish, yelloweye rockfish, Pacific Ocean Perch, skates, and sculpins. Wrangell Harbor provides habitat for transient populations of Pacific herring, smelt, and juvenile salmon. Wrangell Harbor provides habitat for transient populations of Pacific herring, smelt, and juvenile salmon migrating from fresh water to salt water in the late spring and early summer.

Habitat Investigations

NMFS scientists have conducted fish sampling work in various near shore locations in SE Alaska. In the three sampling sites closest to Wrangell (Kah Sheets Bay, Anita Bay, and Steamer Bay) NMFS collected the following species using beach seines: Pacific sand lance; shiner perch; Pacific sandfish; threespine stickleback; crescent gunnel; bay pipefish; snake prickleback; coho salmon; tubesnout; tubenose poacher; copper rockfish; surf smelt; rock sole; Dolly Varden; kelp greenling; blackeye goby; starry flounder; Pacific sanddab; cutthroat trout; and northern, silverspotted, Pacific staghorn, great, and buffalo sculpin (Johnson, et al. 2005). This information can be accessed on line using the nearshore fish atlas found at: <http://www.fakr.noaa.gov/habitat/fishatlas/>.

Recommendations

NMFS offers the following EFH recommendations:

1. 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.
2. Piles should be driven with a vibratory hammer to the extent practicable. Pile driving can generate intense underwater sound pressure waves that can disrupt migration and 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.

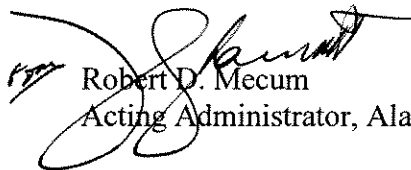
3. In-water blasting should be avoided unless it is the only practicable method for setting piles in bedrock. In-water blasting produces intense underwater sound pressure waves that can kill or injure fish. NMFS strongly encourages the use of drilling techniques or other mechanical means for setting 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 (Rogers and Cox 1988), blasts should be conducted during the lowest tide level practical.
4. No in-water work should be permitted from April 1 through June 15 of any year to protect out migrating salmon and spawning herring.
5. NMFS recommends that reasonable precautions be taken to prevent incidental and accidental discharge of petroleum products and other contaminants. An emergency oil spill response kit or other appropriate equipment such as absorbent pads should be available on site to allow fast response to small oil spills and accidental discharge of hydrocarbon contaminated bilge waters.

ESA/MMPA

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 Marine Mammal Protection Act (MMPA). Consultation under section 7 of the ESA is necessary if the proposed action may affect listed species. Aleria Jensen with NMFS Protected Resources Division will contact you with additional information on the ESA consultation process.

NMFS may offer additional recommendations as more detailed project information becomes available. If you have any questions regarding our EFH comments for this project, please contact Cindy Hartmann at (907) 586-7585. If you have questions regarding our ESA and MMPA comments contact Aleria Jensen at (907) 586-7248.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

Enclosure

cc: ADNR, Jim Cariello
USFWS, Juneau, Richard Enriquez
EPA, Juneau, Chris Meade
NMFS, HCD, Cindy Hartmann
NMFS, PRD, Aleria Jensen
COE, Anchorage, Nicole Hays

References

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.

Johnson, S.W., A. Darcie Neff and John F. Thedinga. 2005. An atlas on the distribution and habitat of common fishes in shallow nearshore waters of southeastern Alaska, 89p. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-AFSC-157.

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.



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

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

June 12, 2006

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

Re: POA-1990-114-R
Zimovia Strait 90

Attn: Ms. Nicole Hayes

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) reviewed the May 15, 2006, public notice of application for a permit for the above referenced proposal by the City of Wrangell. The applicant proposes to discharge approximately 191,310 cubic yards of clean shot rock or granular fill and 4,500 cubic yards of riprap in 4.7 acres below the high tide line. The stated purpose is to increase the City of Wrangell's port staging area.

We offer the following comments specific to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). 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.

Significant anadromous fish streams occur in the Wrangell area, including the Stikine River, Crittenden Creek, and Mill Creek/Virginia Lake. Salmon fry and herring use nearshore areas near the City of Wrangell in the spring and summer. Nearshore habitats are particularly important to juvenile salmon migrating as fry or smolts from fresh water to salt water. Juvenile salmon use near shore habitats for feeding and predator avoidance prior to migration out to sea. Additionally, the inshore area of the project location provides habitat for several marine species including Pacific cod, arrowtooth flounder, walleye pollock, dusky rockfish, shortraker/rougeye rockfish, yelloweye rockfish, Pacific Ocean Perch, skates, and sculpins. Wrangell Harbor provides habitat for transient populations of Pacific herring, smelt, and juvenile salmon.

The Corps determined that the proposed project may adversely affect EFH. NMFS agrees with this conclusion. The proposed project would permanently remove one of the last remaining low gradient intertidal areas along the city waterfront. Intertidal habitats are important to the marine ecosystem because they provide primary productivity, nutrient recycling functions, and rearing habitat for a variety of commercially and ecologically important species. In general, the intertidal areas in the vicinity of the project support a variety of mollusks, crustaceans, and benthic invertebrates. Photos taken at the site in May 2006, show a variety of seaweeds in the



intertidal area including brown algae and kelp (*Aleria* spp., *Desmarestia* spp., and *Fucus* spp.), red algae (*Palmeria* spp. and *Porphyra* spp.), and green algae (*Ulva* spp. and *Enteromorpha* spp.). *Aleria* and *Palmeria* are indicators of a stable classic intertidal community. In a July 22, 1993, State of Alaska Memorandum, regarding an earlier phase of this permit, Don Cornelius describes the site as:

Seaward of the riprap, portions of the site are covered with a variety of habitats. These include sand in an area near the existing barge ramp; mud flats partially covered with sea lettuce and containing shellfish beds; areas with bull kelp beds; a small area of eel grass plus the impacted area seaward of the estuary.

Vegetated shallows (areas with rooted vegetation such as eelgrass) and mudflats are considered special aquatic sites under the 404(b)(1) Guidelines. A portion of the proposed fill is a mudflat. According to the 404 (b)(1) Guidelines, no discharge of fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem [40 C.F. R. 230.10 (a)].

There is insufficient information in the public notice to allow evaluation of the proposed project for compliance with the 404(b)(1) Guidelines. Information is insufficient to conclude that there does not exist a "practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem", and that the proposed discharge includes "all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem". In addition, the lack of any proposed mitigation is untenable given the likely impact of the project on marine resources.

NMFS offers the following EFH Conservation Recommendations pursuant to Section 305(b)(4)(A) of the Magnuson-Stevens Act:

1. The Corps should deny a permit for the project as proposed because the applicant has not demonstrated that a solid fill pad is the least environmentally damaging practicable alternative. Alternatively, the Corps should defer its decision on the permit application pending the completion of a comprehensive alternatives analysis (see # 2 below).
2. The Corps should require the applicant to investigate alternatives that do not involve filling intertidal habitat, such as using an existing industrial site with marine access or building a pile supported port staging area.
3. If intertidal fill is unavoidable, the City should conduct a thorough habitat investigation at the proposed fill sites and develop alternatives that would avoid filling the most valuable intertidal habitats.
4. Compensatory mitigation should be required for habitat loss that cannot be avoided or minimized.

5. No in-water work should be permitted from March 15 through June 15 of any year to protect out migrating salmon and spawning herring.

NMFS concludes that the project as proposed will result in substantial and unacceptable impacts to aquatic resources of national significance as defined in Part IV of the 1992 Memorandum of Agreement between the Department of Commerce and the Department of the Army under Section 404(q) of the Clean Water Act. This letter fulfills the procedural requirements under Part IV, paragraph 3(b) of this Agreement. Please notify our office of the Corps decision regarding this permit application in accordance with Part IV, paragraph 3(c) of this Agreement.

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

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. Cindy Hartmann is the contact for this project and can be reached at 907-586-7585.

Sincerely,



RD Robert D. Mecum
Acting Administrator, Alaska Region

cc: Greg Meissner, Harbormaster, City of Wrangell, P.O. Box 531, Wrangell, Alaska 99929
*Richard Enriquez, Bill Hanson, Steve Brockmann, USFWS, Juneau
*Chris Meade, EPA, Juneau
* Jim Cariello, ADNR-OHMP, Petersburg
*Tom Schumacher, ADF&G, Juneau
*Nicole Hayes, ACOE, Anchorage
*Cindy Hartmann, NMFS, Juneau

*e-mail