



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

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

July 16, 2008

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

Re: POA-1926-6
Icy Strait, Gustavus Dock

Attn: Mr. Randall Vigil

Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) reviewed the June 3, 2008, public notice for the permit proposal by Alaska Department of Transportation and Public Facilities (ADOT&PF). ADOT&PF proposes to replace the timber dock in Gustavus, Alaska, with a new marine facility capable of handling marine freight and accommodating Alaska marine Highway System (AMHS) ferries. The existing creosote piling dock and dock approach would be removed and replaced with a steel pile dock approach and dock, requiring 1.6 acres of tidelands to be filled. The project is located in Section 18 of Township 40 S., Range 58 E., USGS Quadrangle Juneau B-6, Copper River Meridian, Latitude 58.391 N., Longitude 135.730 W.

We offer the following comments specific to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA).

Essential Fish Habitat

Section 305(b) of the MSFCMA 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.

NMFS Habitat Conservation Division completed consultation with Mr. Carl Schrader of ADOT&PF on this project. We concur with the mitigation measures that ADOT&PF plans to implement (please reference the enclosed March 26, 2008 EFH Assessment). ADOT&PF's conservation measures are described below.

The following EFH Conservation Recommendations (developed in coordination with ADOT&PF), are made pursuant to Section 305(b)(4)(A) of the Magnuson-Stevens Act. NMFS



requests these recommendations be adopted as permit conditions should the Corps decide to issue a permit for this project.

1. To minimize the effects of pile driving, a vibratory hammer will be used for all piles installed, with impact-driving used only for final proofing. A pile cushion will be used between impact hammer and the piling to attenuate sound. 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).
2. Steel pilings will be used, and existing creosote-treated wood pilings and deck of existing structure will be removed to eliminate the toxic effects from PAH leaching. Treated wood will be disposed of at an approved upland site in an approved manner.
3. Habitat diversity will be enhanced by adding rocky intertidal habitat to the existing sandy/silty tideflats. This new habitat is being created by the use of clean shot rock riprap as exterior armor around the 1.6 acres of fill.
4. Habitat diversity will be enhanced by reducing shading of benthic habitat as existing solid wood decks will be replaced with open steel grating.
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.

Please note that ADOT&PF and NMFS have agreed not to recommend an April 1 to May 31 timing window for salmon migration in consideration of two conservation recommendations which ADOT&PF has committed to implement. These are:

6. Replacement of Rink Creek Road culverts that limit upstream fish passage on nearby salmon stream #114-23-10199
7. Monitoring of marine habitat function provided by the offshore filled staging area. The National Park Service will conduct the habitat monitoring, and will collaborate with NMFS to develop the monitoring program.

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.

Threatened and Endangered Species/ Marine Mammals

The Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA) prohibit the take of marine mammal species, which includes injury, harm or harassment. Section 7(a)(2) of the ESA directs federal interagency cooperation “to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species” or result in the destruction or adverse modification of critical habitat. NMFS is responsible for the administration of the ESA as it applies to listed cetaceans, pinnipeds, fish, and reptiles (sea turtles).

In southeast Alaska, endangered marine mammal species include the Steller sea lion western Distinct Population Segment (DPS), fin whales and humpback whales. The endangered leatherback turtle has also been documented in southeast Alaska. The threatened eastern population of Steller sea lion (eastern stock, east of 144 degrees West longitude) is also present in southeast Alaska. Salmon from several ESA-listed Evolutionarily Significant Units along the west coast may occur in Alaska waters.

Marine mammal species that are not listed under the ESA are afforded protection by the MMPA. In southeast Alaska, these species include harbor seals, harbor porpoise, Dall’s porpoise, minke and killer whales. General information on ESA species and MMPA species under NMFS jurisdiction can be found at: <http://www.fakr.noaa.gov/protectedresources>.

The Protected Resources Division of NMFS informally discussed this project with ADOT&P. The only threatened or endangered marine mammal species likely to be found in the general project area are the endangered humpback whale (*Megaptera novaeangliae*) and threatened eastern population of Stellar sea lion (*Eumetopias jubatus*). ADOT&PF determined that the project “will not affect” ESA-listed species.

ADOT&PF has offered to employ the following conservation measures to minimize disturbance and avoid take of marine mammals during construction of the project:

1. Pile driving introduces high levels of impulsive noise into the water column, with the potential to harass or injure marine mammals. Sound pressure levels (SPLs) in the range of 130-135 dB re: 1 μ Pa have been measured up to one kilometer from an active pile driver (Johnson et. al., 1986). Humpback whales have been observed to react to SPLs greater than 115-129 dB re: 1 μ Pa within 200 meters of a sound source. Reyff (2003) measured SPLs of 159 dB re: 1 μ Pa about 200 meters from a pile driver driving 14-inch diameter hollow steel piles. NMFS normally considers harassment takes to begin at received levels of 160 dB. To minimize the effects of pile driving, a vibratory hammer will be used for all piles installed, with impact-driving used only for final proofing. A pile cushion will be used between impact hammer and the piling to attenuate sound. Pile driving can generate intense underwater sound pressure waves that can disrupt migration and injure or kill marine mammals.

2. A marine mammal monitor will be assigned to the project during pile driving operations. The observer will begin to observe 15 minutes before pile driving and throughout each pile driving event. If the marine mammals are observed within a 200 meter radius of the pile being driven, driving will cease until the animal is clear of the zone. If marine mammals are observed during pile driving and thought to be disturbed by the noise/activity, pile driving will be discontinued. Pile driving will not resume until the mammal is no longer seen.

If you have any questions regarding our habitat recommendations for this project, please contact Chiska Derr at 907-586-7345. Please direct any questions regarding marine mammals and endangered species to Aleria Jensen at (907) 586-7248.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

cc: ADOT&PF, Juneau, Carl Schrader
COE, Anchorage, Randal Vigil*
ADF&G, Juneau, Sheila Cameron*
USFWS, Juneau, Richard Enriquez*
ADF&G, Juneau, Tom Schumacher*
NMFS, HCD, Juneau, Chiska Derr*
NMFS, PRD, Juneau, Aleria Jensen*
NMFS, AKR, Records
* electronic copy

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.R., C.R. Greene, R.A. Davis, and W.J. Richardson. 1986. Bowhead whales and underwater noise near the Sandpiper Island drillsite, Alaskan Beaufort Sea, autumn 1985, Reprinted by LGL Limited Environmental Research Associates, King City, Ontario, and Greeneridge Sciences, Inc., Santa Barbara, CA, for Shell Western Exploration & Production Inc., Anchorage, AK. 130p.

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.

Reyff, J.A. 2003. Underwater sound levels associated with seismic retrofit construction of the Richmond-San Rafael Bridge. Document in support of Biological Assessment for the Richmond-San Rafael Bridge Seismic Safety Project. January 31, 2003. 18pp.