



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

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

December 6, 2002

Colonel Steven T. Perrenot
District Engineer, Alaska District
Army Corps of Engineers
Regulatory Branch (1145b)
P.O. Box 898
Anchorage, Alaska 99506-0898

RE: Ref # 1-2002-1048
Waterway: Whaletail Cove 3

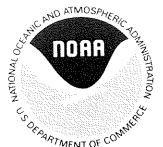
Attn: Dr. Jan Stuart

Dear Colonel Perrenot:

The National Marine Fisheries Service (NMFS) has reviewed the proposal by Mr. John W. Clark to moor a 70' by 80' float house in Whaletail Cove. Two sites are proposed by the applicant for permitting. The applicant proposes to move the float house between these sites as weather conditions dictate. The float house would be anchored with two 1,000 pound anchors and one 400 pound anchor.

Several anadromous fish streams are located in Whaletail Cove that support runs of coho salmon and Dolly Varden char (USGS Quad, Petersburg A-1, stream #s 107-30-10650 and -10660). Essential fish habitat (EFH) for all five species of Pacific salmon and several species of groundfish are present in the marine waters of Whaletail Cove. The public notice indicates that the bottom substrate at "Site 1" is mud and silt. Mudflats, whether vegetated or unvegetated, are considered a special aquatic site by the Clean Water Act 404(b) (1) guidelines. This classification recognizes the numerous chemical and biological processes which occur in these habitats that support environmental productivity. Upland alternatives are presumed when projects are proposed in special aquatic sites, giving a higher level of scrutiny to impacts that may occur there.

The proposed use of Site 1 would include grounding of the floathouse for 4 to 6 hours per day. Grounding is prohibited by the Corps General Permit for floathouses (in condition #6). The condition recognizes the damage daily grounding would have to habitat values of all substrates, including mudflats. The condition also acknowledges that



when floathouse proposals include grounding, consideration should be given to extreme low tides. However, for this permit an alternative location is available, and the proposed area of grounding is a special aquatic site.

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), NMFS is required to make conservation recommendations to the Corps regarding permit issuance if we believe the project would adversely affect EFH. NMFS believes that this project would adversely affect EFH by direct loss of intertidal habitat through grounding of the floathouse at proposed Site #1.

NMFS recommends the following **EFH Conservation Recommendations** pursuant to section 305(b)(4)(A) of the MSFCMA.

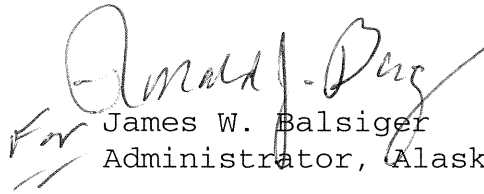
- 1. The Corps should deny the permitting of Site #1 for mooring of the floathouse in favor of Site #2.**
- 2. All conditions that apply to the Corps General Permit for Floathouses (89-4) should also be applied to this permit.**

Please note that under section 305 (b)(4) of the MSFCMA, 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.

We believe that the project as proposed will result in substantial and unacceptable impacts on aquatic resources of national importance, in accordance with Part IV, paragraph 3(b) 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. Please notify our office of the Corps' decision regarding this project in accordance with Part IV, paragraph 3(c) of the 1992 Memorandum of Agreement.

Please contact Linda Shaw for further coordination regarding this project (907-586-7510, linda.shaw@noaa.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "James W. Balsiger". The signature is written in dark ink and is positioned above the typed name.

James W. Balsiger
Administrator, Alaska Region

cc: EPA Anchorage (Mark Jen)
ADEC, AADGC, ADNR, USFWS, Juneau
ADF&G, Wrangell