UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

April 30, 2003

Colonel Steven T. Perrenot, District Engineer
U. S. Army Corps of Engineers, Alaska District
Post Office Box 898
Anchorage, Alaska 99506-0898

Re: Richard and Leslee Baker
Pasagshak River- Violation
V-2002-0157

Dear Colonel Perrenot:

The National Marine Fisheries Service (NMFS) has reviewed information provided by the Corps of Engineers (Corps) regarding the above referenced Notice of Violation (NOV) for the unauthorized discharge of fill material into waters of the United States near the mouth of the Pasagshak River. According to the information provided in the NOV the responsible party is Mr. Rick Baker, Trailblazer Construction. The NOV states that Mr. Baker was previously provided a jurisdictional determination by the Corps in February 2002. At this time the Corps informed Mr. Baker that the project would not require a Department of the Army permit from the Corps, provided no fill material was placed below the High Tide Line (HTL).

Subsequent to the February, 2002 jurisdictional determination the Corps has received information including on-site photographs. These photographs clearly show that the fill material has been placed below the HTL. The Corps is currently conducting an investigation to determine the appropriate course of action to be taken to resolve this violation and has requested additional information from Mr. Blazer. Additionally, the Corps has requested that NMFS provide input concerning resolution of this violation.

The Magnuson-Stevens Fishery Conservation and Management Act and the Fish and Wildlife Coordination Act require NMFS to consult with Federal action agencies and provide conservation recommendations on projects that could adversely affect living marine resources, including Essential Fish Habitat (EFH). In addition, Section 230.10(c) of the Clean Water Act's 404(b)(1) Guidelines prohibits discharges that would "cause or contribute to significant degradation of the waters of the United States." Included as examples of such degradation are significant adverse effects on: 1) fish, shellfish, wildlife, and special aquatic sites; 2) life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical, and chemical

processes; 3) aquatic ecosystem diversity, productivity, and stability, including the loss of fish and wildlife habitat; or 4) recreational, aesthetic, and economic values.

The Pasagshak River has been specified as important for the migration, spawning, or rearing of anadromous fish by the Alaska Department of Fish & Game. It supports coho, pink, sockeye, and chinook salmon, and Dolly Varden char. The Pasagshak River drainage supports one of the four largest sport fisheries on the Kodiak road system. Additionally, Pasagshak Bay supports Atka mackerel, flathead sole, rock sole, walleye pollock, weathervane scallop, and yellowfin sole.

NMFS recommends that the Corps submit an EFH Assessment to NMFS once you have obtained the requested information from Mr. Baker. This will allow NMFS to provide appropriate site specific EFH Conservation Recommendations. In the interim we make the following preliminary Conservation Recommendations based on the information provided.

- Fill material placed in waters of the United States should be removed. The area under the unauthorized fill should be restored to pre-project contours and re-vegetated with species of vegetation native to the local area and previously found on the site.

  Rationale - This condition is necessary to restore the habitat functions which support living marine resources including EFH.

- The remaining fill slopes should be stabilized using vegetation native to the local area to prevent erosion. In addition, silt fences should be placed and maintained along the toe of all fill areas adjacent to waters of the United States, including wetlands, to prevent the introduction of sediments until the remaining fill is stabilized and re-vegetated.

  Rationale - This is necessary to limit the continuing introduction of sediments and subsequent turbidity into the aquatic ecosystem.

We look forward to receiving your EFH assessment for the proposed project. Jeanne Hanson and Matt Eagleton are the NMFS contacts for this project. They can be reached by telephone at 271-5006.

Sincerely,

James W. Balsiger
Administrator, Alaska Region

cc: USFWS, ADFG, ADEC, ADGC, EPA - Anchorage, Applicant.