



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

May 17, 2004

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

Attention: Mr. Larry Reeder

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) has reviewed the Corps of Engineers' response to our Essential Fish Habitat (EFH) Conservation Recommendations for the following permit applications: POA-1987-332, POA-2001-608, POA-2004-287, POA-2004-288, POA-2004-433, and POA-2004-434. Staff from both our agencies discussed unresolved issues associated with these projects on May 10, 2004. This letter summarizes the results of that conference call.

NMFS' recent EFH Conservation Recommendations regarding marine use of creosote treated wood have been more protective than our previous recommendations. The change stems from our review of recent scientific studies documenting leaching of toxic polycyclic aromatic hydrocarbons (PAHs) from creosote treated wood into marine waters and sediments, including wood treated in compliance with the Western Wood Preservers Institute 1997 Best Management Practices (BMPs). This scientific information about the adverse effects of treated wood on fish habitat led to a position paper by the NMFS Northwest Region in 1998 on the use of treated wood in the marine environment (Enclosure 1) and a guidance document for projects that propose the use of treated wood by the NMFS Northwest Region Habitat Conservation Division in 2001 (Enclosure 2). The same concerns have led the Corps' Seattle District to regulate more strictly the use of creosote treated wood in marine structures (Enclosure 3).

The Corps' primary concerns with NMFS' recommendation to prohibit the use of creosote treated wood, as stated in the April 29, 2004 letter and during the conference call, are as follows:

- (1) Use of creosote-treated wood in marine waters is sanctioned by the U.S. Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA);
- (2) Past practice by the Corps' Alaska District has been to prohibit the use of creosote treated wood in fresh water but to allow its use in marine applications with the stipulation that the wood must have been pressure treated using 1997 Western Wood Preservers Institute BMPs; and
- (3) The Corps perceives the use of creosote treated wood to be primarily a water quality issue and as



such defers to EPA and the Alaska Department of Environmental Conservation (DEC), which do not prohibit the use of such materials.

Under FIFRA, creosote is registered for use in wooden floats and pilings without regard to whether they are placed in fresh or marine waters. The standard prohibition on the use of creosote in freshwaters in Alaska, to which the Corps refers, derives from management measures in the Alaska Coastal Clean Water Plan, which was developed in response to the 1990 Coastal Zone Management Act reauthorization. This plan received conditional approval from EPA and NOAA in 1998 and is implemented by the Alaska Department of Natural Resources. EPA also has established water quality criteria for many of the constituents of creosote, and both EPA and NOAA have developed sediment guidelines for many of these constituents. NMFS' concern for the use of creosote treated wood relates to the potential for accumulation of constituent PAHs in sediments and/or the direct uptake of PAHs by benthic organisms. Therefore, the constituent water quality standards and sediment guidelines are more appropriate to evaluate against NMFS' EFH Conservation Recommendations than the FIFRA registration of creosote.

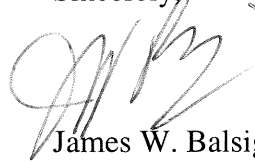
We understand the Corps' concern with balancing our recommendations against the absence of a DEC or EPA prohibition on creosote treated wood. However, to fulfill our mandate under the Magnuson-Stevens Act to protect EFH, NMFS must use the best available scientific information. We find the current research results sufficiently compelling that we will continue to advise against the use of creosote treated wood in marine environments. At the same time, NMFS will pursue discussions with the Corps, DEC, EPA, the Alaska Department of Natural Resources, and the Alaska Department of Fish & Game regarding the applicability of these research results in Alaska and the opportunities to develop a consistent interagency position.

A second issue discussed during the conference call related to concerns by the Corps that NMFS was making recommendations for actions that an applicant had not specifically proposed (e.g., cutting and boring wood over open water, or placing structures over eelgrass beds). NMFS noted the general lack of information provided in most permit applications regarding benthic habitat in the vicinity of proposed projects, which requires us either to obtain this information directly from the applicant or to make recommendations based on inferences of habitat in the general area of the project. Similarly, we often need to make inferences about how proposed projects will be constructed, because permit applications do not always contain those details. When information is limited, NMFS will include recommendations based on the best available information, including our knowledge of the project site, surrounding areas, and typical methods of construction. We believe that we reached consensus during the conference call that unless the Corps has specific knowledge that NMFS' recommendations are not applicable, the Corps will not reject the recommendations based solely on the limited information contained in the permit application. If other factors argue against accepting our recommendations (e.g., cost or technical feasibility), we understand that the Corps may reject our recommendations on that basis.

Another issue discussed was NMFS' recommended seasonal restriction on in-water work. The Corps appeared to be concerned either that NMFS had not been consistent in our timing window recommendations, or that our timing windows conflicted with timing windows being recommended the Alaska Department of Fish & Game or other agencies. NMFS recommends timing windows based on the most recent migration and spawning information for local anadromous and marine fish stocks, as well as the type of construction proposed. We agreed during the conference call that NMFS will continue to coordinate with other resource agencies in an effort to develop consistent timing recommendations. Where a conflict arises between NMFS' recommendations and those of another agency, the Corps will contact NMFS so that we can work together to determine the appropriate timing window. For the six projects that were the subject of the Corps' April 29, 2004 letter, our understanding is that the Corps agreed to accept our recommendation for no in-water work from March 1 through June 15 of any year to protect out migrating salmon.

We appreciate your willingness to work with us to resolve these issues. In particular, we would like to echo your support for greater communication between the Corps and NMFS on issues where there may be disagreement so we can attempt to resolve potential conflicts informally.

Sincerely,



James W. Balsiger
Administrator, Alaska Region

Enclosures (3)

cc: EPA Juneau, Chris Meade
ADF&G, Janet Schempf
ADEC, AADGC, ADNRR, USFWS, Juneau