



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

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

September 16, 2004

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

Re: POA-1976-124-1  
Chatham Straight

Attn: Ms. Valanne Glooschenko

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) reviewed the above referenced proposal by Mr. Richard Powers for an after-the-fact permit for: a dock that extends beyond the boundary of the current tidelands lease by approximately 90 feet; a 60 foot finger float; a 80 foot finger float; a 16 foot by 32 foot float-plane dock; a fish house; and a cleaning table. In addition, NMFS reviewed Mr. Powers' proposal for additional installations including: a 246 foot by 12 foot wide dock; a 596 foot by 10 foot wide dock; a 16 foot by 32 foot extension to the existing float plane dock; a 20 foot by 50 foot building; and a 34 foot by 122 foot float. We offer the following comments specific to the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA).

#### Essential Fish Habitat

Section 305(b) of the MSFCMA requires Federal agencies to consult with NMFS on all actions that may adversely affect EFH. NMFS is required to make conservation recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects.

The Alaska Department of Fish and Game has cataloged several streams within approximately five miles of the project site that support runs of pink, chum and coho salmon and Dolly Varden char. Consequently, juvenile salmon use the inshore area of Killisnoo Harbor during spring and early summer for feeding and predator avoidance prior to migration out to sea. The inshore area of the project location also provides important habitat for several marine species including Pacific cod, arrowtooth flounder, walleye pollock, dusky rockfish, shortrake/ roughey rockfish, yelloweye rockfish, skates, and sculpins.

The notice of application for a permit states that approximately 20 more piling will be needed to accommodate the new dock system; these will be 1 foot diameter by 45 foot – 60 foot in length and be either steel or pressure-treated wood. No information is provided on the materials



planned for the floats or the materials used in the existing structures. We offer the following EFH Conservation Recommendations pursuant to Section 305(b)(4)(A) of the Magnuson-Stevens Act.

1. The use of any wood that has been surface or pressure-treated with creosote or treated with pentachlorophenol should be prohibited. Creosote contains numerous constituents that are toxic to aquatic organisms including polycyclic aromatic hydrocarbons (PAHs), phenolic compounds, and nitrogen- sulfur- or oxygenated heterocyclics (Poston, 2001). Leaching of these constituents continues throughout the life of the wood and has been associated with the development of tumors, immune system suppression, decreased fecundity and abnormal embryonic development. Pentachlorophenol has high chronic toxicity to aquatic life.
2. Alternatives to treated wood that have no or reduced toxicity should be used wherever practicable.
3. If treated wood must be used, any wood that comes in contact with marine or aquatic environments should be treated with waterborne preservatives approved for use in aquatic and/or marine environments. These include: Chromated Copper Arsenic (CCA) Type C, Ammoniacal Copper Zinc Arsenate (ACZA), Alkaline Copper Quat (ACQ), Copper Boron Azole (CBA) or Copper Azole (CA). The applicant should only use wood that has been treated in accordance with best management practices developed by the Western Wood Preservers Institute. Treated wood should be inspected before installation to ensure that there are no superficial deposits of preservative material on the wood.
4. Over-water structures should be designed to prevent abrasion and splintering of wood.
5. All cutting and boring of treated wood should take place in upland areas; all waste materials should be kept out of the aquatic environment and be properly disposed of upland. Treated wood materials should not be stored in-water. Any cut wood, chips or sawdust from treated wood should be collected promptly and disposed of at an acceptable upland site.
6. No docks, ramps or other structures should be placed in or over eelgrass or kelp beds.
7. All work below the high tide line should be limited to low tide stages to reduce turbidity.
8. No in-water work should be permitted from March 15 through June 15 of any year to protect out migrating salmon.
9. The docks, floats and structures should not ground at any tidal stage.
10. Permit only the docks and floats that are necessary and have water-dependent uses. There was no use specified for the 20' x 50' building. Is there a feasible upland alternative for this building?

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.

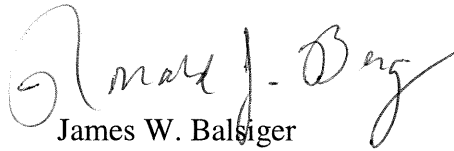
Threatened and Endangered Species / Marine Mammals

The 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 MMPA. The MMPA and the ESA prohibit the injury, harm or harassment of marine mammals.

Pile driving introduces high levels of noise into the water column, with the potential to harass or injure marine mammals. Received sound levels in the range of 130-135 decibels have been measured up to one kilometer from a pile driver (Johnson et. al., 1986). Humpback whales, killer whales, Steller sea lions, harbor seals, and harbor porpoises may occur in the project area and could be affected by this work. To reduce the possibility for harassment or injury to marine mammals, NMFS recommends that pile driving not occur if any marine mammals are observed within 200 meters of the platform. The operator must scan the area for the presence of marine mammals. If marine mammals are sighted within 200 meters of the sound source pile driving must cease until the animals leave the immediate area.

If you have any questions regarding our comments and conservation recommendations for this project, please contact Cindy Hartmann (586-7585, [cindy.hartmann@noaa.gov](mailto:cindy.hartmann@noaa.gov) ).

Sincerely,

  
For  
James W. Balsiger  
Administrator, Alaska Region

cc: Applicant  
EPA Juneau, Chris Meade  
ADF&G, Janet Schempf  
ADNR, OHMP, Jim Cariello, Petersburg  
ADEC, AADGC, ADNR, USFWS, Juneau

References:

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.

Poston, Ted. 2001. *Treated Wood Issues Associated with Overwater Structures in Marine and Freshwater Environments*. White Paper, Washington Department of Fish and Wildlife.  
<http://wdfw.wa.gov/hab/ahg/overwatr.htm>