



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

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

February 8, 2007

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

Re: POA-1983-20-N
Lemon Creek

Attn: Garth Zimbelman

Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) has reviewed the Corps letter dated January 24, 2007 proposing to modify a Department of the Army application for the above referenced application from Mr. Ralph Horecny to construct a temporary berm and access haul-ramp in Lemon Creek for the purpose of mining sand and gravel from the streambed. The applicant originally proposed to mine 200,000 cubic yards of sand and gravel from 9.55 acres below the OHW mark. Construction of the ramp and dike would entail the placement of approximately 1,575 cubic yards of fill material obtained on-site into waters of the U.S., including wetlands. The dike will divert Lemon Creek around the proposed mining operation during mining activities. Gravel and sand from the site will be processed off-site at an upland location. Upon completion of mining activities, the haul ramp and a small portion of the berm will be removed; the remaining portion of the berm will be washed away by Lemon Creek.

The proposal has been modified to change the time frame and sequence of gravel extraction to avoid potential impacts on migrating and spawning fish, juvenile fish and [incubating] fish eggs. The proposed modifications include changing the project into a multi-year project and increasing the amounts of fill by creating eight small individual berms to contain the waters of Lemon Creek and prevent inundation of the sections of streambed being actively mined. Significant to the NMFS, the modifications include placement of up to 100 cubic yards woody debris at hard points to facilitate gravel bar reformation and natural restoration of the site post-mining.

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires federal agencies to consult with NMFS on all actions that may adversely affect Essential Fish Habitat (EFH). The Corps has determined that the project as described may adversely affect EFH. The Public Notice (PN) initiates EFH consultation and states: "The proposed fill placement work may affect approximately 0.5 acres of EFH for juvenile/adult salmon." The Corps estimate of 0.5 acres of EFH impact includes only the temporary fill associated with footprint of the berm, and does not include the impact to EFH from gravel extraction or indirect



project effects. NMFS estimates the extent of direct impacts to EFH at 9.55 acres, with additional indirect effects of uncertain extent.

NMFS review of the project has included site visits and two project planning meetings with the applicant's attorney and agent, Mr. Jan Van Dort. The project as proposed will affect a large area of the confined floodplain in lower Lemon Creek. The applicant's agent estimates extraction of 110,000 to 200,000 yd³ of gravel from this site will be likely. Information from the City and Borough of Juneau's Engineering Director, Roger Healy, indicates this gravel volume estimate may be double the actual amount of material within the site. In-stream gravel extraction will result in altered flows, simplification of the floodplain, and loss or degradation of fish habitat in the immediate project area and indirect effects both up and downstream resulting from this project and past gravel mining, channelization, bank armoring and wetland fill.

Given the certainty that this project will result in the loss of a significant amount of EFH, NMFS requests again that an EFH assessment be completed for this project. Mandatory contents of the EFH assessment are: a thorough written description of the proposed action; an analysis of the potential adverse effects of that action on EFH and the managed species; the Federal action agency's conclusions regarding the effects of the action on EFH; and proposed mitigation, if applicable (50 CFR 600.920(e)). For this project, the EFH assessment should include a written mining and reclamation plan, Best Management Practices to minimize discharge of fine sediments during winter low-flow periods, description of the order of operations, and sediment and turbidity controls. To minimize adverse impacts to EFH, the proposed restoration plan should be specific and should include drawings of the proposed restored habitat, lists of species that will be used for revegetation, and numbers of each plant type that will be planted. The plans should specify the size and amount of large wood that will be collected prior to mining each section of riverbed, and this wood should be placed in the mined sections as mining of each sub-site is completed. Any damaged or degraded instream or riparian habitat shall be effectively revegetated with adequate numbers of native species of trees, sedges and forbs, and the success of such plantings should be monitored and augmented with additional plantings if the original plantings fail to survive and grow.

Specifically, the EFH assessment and PN needs to include engineering plan and section views both pre- and post-extraction that define project boundaries, identify in-stream habitat features, and describe the operational plan for gravel mining operations. These plans should be evaluated by a engineer licensed in Alaska. Drawings and specifications should be stamped and signed by this engineer. A basic hydrologic analysis of the flows to be contained by the berm should be completed to determine the effectiveness of the diversion channel at containing the range of expected flows. This fundamental analysis can be completed based on available USGS stream gage data for Lemon Creek.

NMFS has provided Mr. Van Dort with the National Gravel Extraction Guidance [http://www.nmfs.noaa.gov/habitat/habitatprotection/pdf/anadfish/\(05-06-10\)%20FINAL%20GRAVEL%20GUIDANCE.pdf](http://www.nmfs.noaa.gov/habitat/habitatprotection/pdf/anadfish/(05-06-10)%20FINAL%20GRAVEL%20GUIDANCE.pdf) document for his client's use in planning the project to minimize impacts to migrating, spawning, and rearing salmon and salmon habitat.

An example of an abbreviated EFH assessment can be found on our website at: http://www.nmfs.noaa.gov/habitat/habitatprotection/pdf/efh/consult_guidance/EFH%20Assessment%20Example%20No%201.pdf. Upon review of the completed EFH assessment, NMFS will make conservation recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects. There is not sufficient description of the project in the PN for NMFS to adequately develop EFH Conservation Recommendations to avoid, minimize, mitigate or otherwise offset adverse effects.

NMFS continues to recommend that the Corps not issue a permit for the proposed project until the information requested is available and a completed permit application with detailed, interpretable plan views for the project, operations and post-project mitigation is provided for our final review and recommendations. Please contact Susan Walker at (907) 586-7646 if you have any questions.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

cc: Applicant
ADNR, Jackie Timothy, Kristin Dunlap*
USFWS Juneau, Neil Stichert*
CBJ Community Planning, Teri Camry*
CBJ Wetland Review Board*
ACMP, Joe Donohue*

* e-mail PDF

Wetland Review Board e-mail addresses:

admiralty@alaska.net
macfish@gci.net
frue@tnc.org
kkoski@tnc.org
lisa.hoferkamp@uas.alaska.edu
stevezimmerman@gci.net
marshalk@gci.net