



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

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

January 16, 2007

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

Re: POA-2006-1850-2
Wrangell Narrows

Attn: Mary Leykom

Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) has reviewed the above referenced application by Dr. Alan Gross to place fill material in 0.29 acres of wetland including 750 square feet below Mean High Water to create a pad for a single-family residence near Petersburg, Alaska.

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act requires Federal agencies to consult with NMFS on all actions that may adversely affect Essential Fish Habitat (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's Anadromous Streams Catalog indicates that several anadromous streams are located within a mile of the property. Falls Creek (106-44-10061) is the anadromous stream that is closest to the property and it is also the largest anadromous stream in the vicinity. Falls Creek has coho, sockeye, pink and chum salmon; steelhead and cutthroat trout and Dolly varden char. Juvenile salmon use the inshore area of Wrangell Narrows 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 habitat for several marine species including Pacific cod, arrowtooth flounder, walleye pollock, dusky rockfish, shortraker/ rougheye rockfish, yelloweye rockfish, Pacific Ocean perch, skates, and sculpins.

The Corps has concluded that the proposed project will not adversely affect EFH. NMFS disagrees with this conclusion. The proposed project would permanently remove intertidal habitat that is used by commercially important fish species. The Clean Water Act Section 404(b)(1) guidelines at 40 CFR 230.10(a) prohibit the discharge of fill material into waters of the U.S. if a practicable alternative exists that would have less impact on the aquatic environment. An alternative is considered practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Additionally, the guidelines direct the Corps to consider the need and water dependency of a proposed action, establishing a rebuttable presumption that upland alternatives are available unless clearly demonstrated otherwise. The guidelines at 40 CFR 230.1(c) state: "Fundamental to these Guidelines is the precept that dredged or fill material should not be discharged into the



aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.”

The proposed fill is for a residence, which is not a water dependent use under Section 404 of the Clean Water Act. The applicant must demonstrate that he has evaluated options to avoid or minimize the extent of the fill, including building a pile supported structure, and mitigated adverse impacts.

In accordance with Section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS offers the following conservation recommendation:

NMFS recommends that the Corps deny the request to place fill in the intertidal zone for a house pad based on: the availability of less damaging alternatives to the proposed fill; the lack of water dependency; and failure to demonstrate proper sequencing (avoidance, minimization, compensatory mitigation) in developing project alternatives.

If you have any questions regarding our comments and conservation recommendations for this project, please contact Cindy Hartmann (907-586-7585, cindy.hartmann@noaa.gov).

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

cc: Dr. Alan Gross, 524 Main Street, Juneau, AK 99801
Richard Enrriquez and Bill Hanson, USFWS, Juneau
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