



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

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

June 13, 2007

Colonel Kevin J. Wilson  
District Engineer  
U.S. Army Corps of Engineers  
P.O. Box 6898  
Anchorage, Alaska 99506-0898

Re: POA-2007-737-2  
Zimovia Strait

Attn: Ms. Mary Leykom

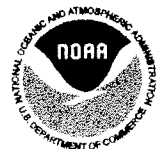
Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) reviewed the May 14, 2007, public notice of application for permit for the above referenced proposal by Mr. Roger Haverstock. The applicant proposes to place 3530 cubic yards of shot rock and riprap to construct a 14-foot wide by 440-foot driveway and 100-foot by 60-foot parking area with garage; and a 60-foot by 100-foot house foundation pad. The driveway would extend to minus fifteen mean low low water (MLLW) elevation. A sewer outfall line would be installed from the house pad to minus four MLLW elevation, buried a minimum of two feet. Total wetland impact above mean high water (MHW) would be 0.58 acre. The purpose of the fill is for single family lot development.

We offer the following comments specific to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). Section 305(b) of the MSFCMA (16 USC 1855 (b)) requires federal agencies to consult with NMFS when any activity proposed to be permitted, funded, or undertaken by a federal agency may have an adverse effect on designated Essential Fish Habitat (EFH).

The Alaska Department of Fish and Game (ADF&G) anadromous waters catalogue lists several catalogued anadromous fish streams in the vicinity of the proposed fill. Pat Creek is to the north of the proposed project, ADF&G stream number 108-10-10050 with coho, chum and pink salmon; ADF&G stream number 108-10-1011 is to the south of the proposed project with coho, chum and pink salmon; and ADF&G stream number 108-10-10200 is across the channel from the proposed project with coho salmon. Nearshore habitats are particularly important to juvenile salmon migrating as fry or smolts from fresh water to salt water in the spring and summer. Juvenile salmon use nearshore marine habitats in 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, Pacific Ocean perch, walleye pollock, dusky rockfish, shortraker rockfish, yelloweye rockfish, rougheyeye rockfish, sablefish, arrowtooth flounder, rex sole, skates, sculpins, and various forage fish. Marine species within the



project area may be adversely affected by increased turbidity created during construction and by permanent removal of intertidal habitat. Intertidal habitats are important to the marine ecosystem because they provide primary productivity, nutrient recycling functions, and rearing habitat for a variety of commercially and ecologically important species.

The proposed fill is for single family lot development. Single family housing is not a water dependent use as defined in Section 404 of the Clean Water Act. The 404(b)(1) Guidelines prohibit discharges into waters of the U.S. where “there is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem” [40 CFR 230.10(a)]. 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 applicant should demonstrate that he has evaluated practical alternatives to the proposed tideland fill, minimized the amount of fill, and mitigated adverse impacts.

NMFS offers the following EFH Conservation Recommendations pursuant to Section 305(b)(4)(A) of the MSFCMA:

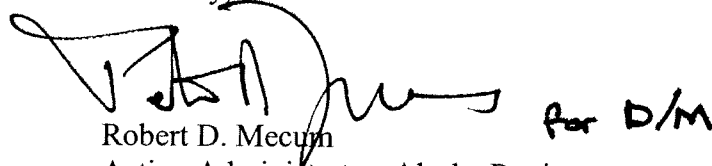
1. NMFS recommends that the Corps deny the applicants request to fill in the intertidal zone based on: the availability of less damaging alternatives to the proposed fill; the lack of water dependency; and failure to demonstrate proper sequencing (avoidance, minimization, mitigation) in developing project alternatives. Fill should not extend beyond twenty feet extreme high.
2. Alternatively, the Corps should defer its decision on the permit application pending the completion of a comprehensive alternatives analysis. The Corps should require the applicant to investigate alternatives that do not involve filling intertidal habitat, such as limiting fill to the upland area only or building a pile supported structure if needed.
3. If permitted, the Corps should require the applicant to demonstrate that the proposed fill to plus 15 MLLW is the least environmentally damaging practicable alternative and the Corps should require the applicant to propose suitable compensatory mitigation.
4. NMFS recommends avoiding the use of an outfall pipe for sewage. Development plans should be designed to accommodate a wastewater septic system. State regulations for drain fields require a separation distance of 100 feet from mean high water. For a three-bedroom home approximately, 400 - 450 square feet of land is needed for the drainage bed. A 10-foot by 40-foot absorption bed with the appropriate engineered fill slope would encompass approximately 28 by 68 feet on flat ground.

Under the Clean Water Act Section 404 (b)(1) Guidelines (40 CFR 230), the Corps can only permit the least environmentally damaging practicable alternative for a proposed discharge of fill into jurisdictional wetlands or waterways. A septic system may be less damaging than the proposed outfall, and is practicable in most situations.

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.

We look forward to working with you to address the issues discussed above to minimize the effects of this project on living marine resources, including EFH. Cindy Hartmann is the contact for this project and can be reached at 907-586-7585.

Sincerely,



Robert D. Mecum for D/M  
Acting Administrator, Alaska Region

cc: Mr. Roger Haverstock, 5676 East Valeene Road, Marengo, Indiana 47140  
Mr. Greg Scheff and Associates, Box 1331, Wrangell, AK 99929  
\*Richard Enriquez, USFWS, Juneau  
\*Chris Meade, EPA, Juneau  
\*Jim Cariello, ADNR-OHMP, Petersburg  
\*Joe Donohue, ADNR, Juneau  
\*Sally Wanstall, ADEC, Water Division  
\*Tom Schumacher, ADF&G, Juneau  
\*Mary Leykom, COE, Anchorage  
\*Cindy Hartmann, NMFS, Juneau

\*e-mail