



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

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

September 19, 2008

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

Re: POA-2007-1492  
Zimovia Straits

Attn: John R. Klutz

Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) has reviewed the above referenced application by Mr. Robin Taylor and his agent Mr. George Woodbury to discharge 3,600 cubic yards (CY) of material, to include 3,300 CY of clean rock and 300 CY of riprap materials. The base width of fill material waterward of the High Tide Line (HTL) is 20 feet by approximately 160 feet long (0.073 acre). The purpose of the fill is to expand two lots to provide buildable areas. On Lot 18B a 40 by 40 foot shop would be built. On lot 18A a 30 by 60 foot home would be constructed. The applicant plans to sell his 24 by 60 foot home on lot 19 and live in the home he plans to construct on lot 18A.

This project was previously reviewed in December 2007. NMFS provided written comments in a letter dated December 31, 2007. The previous proposed fill was 3,400 CY.

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.

Significant anadromous fish streams occur in the Wrangell area, including the Stikine River, Crittenden Creek and Mill Creek/Virginia Lake. Salmon fry and herring use nearshore areas, near the City of Wrangell, in the spring and summer. Near shore habitats are particularly important to juvenile salmon migrating as fry or smolts from fresh water to salt water. Juvenile salmon use near shore habitats for feeding and predator avoidance prior to migration out to sea. Additionally, the inshore area of the project location 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. The proposed fill is for a house, 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. The second public notice for this project requests discharge of 3,600 CY of material which is more fill material than in the first public notice. The applicant proposes to replace a 30 by 30 foot garage with a 40 by 40 foot shop and replace a 24 by 60 foot home with a 30 by 60 foot home. It is unclear how this is minimizing the fill. It seems that the applicant plans to build larger structures than the existing structures. Since the applicant owns both lots 18A and 18B, have alternative building plans been evaluated that would maximize the existing land and minimize the necessary fill? Have alternative shapes and locations of these structures been evaluated? Has the applicant considered a pile supported structure?

The mitigation section of the public notice states “The applicant has indicated they have minimized the fill to minimum necessary to construct their proposed home (not extending to the property line), and are proposing to maintain a natural beach area, to minimize impacts to the aquatic environment.” NMFS considers these actions as partial minimization but not as mitigation. Compensatory mitigation should be required for unavoidable impacts.

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

The request to place fill in the intertidal zone for a house pad as proposed should be denied. The applicant should examine less damaging options for building the proposed house and shop, and compensatory mitigation should be required for unavoidable impacts.

Please contact Cindy Hartmann at 907-586-7585 if you have any questions or for further coordination.

Sincerely,



Robert D. Mecum  
Acting Administrator, Alaska Region

cc: Mr. Robin Taylor, 535 North Waugh Road, Mount Vernon, WA  
Mr. George Woodbury, P.O. Box 1934, Wrangell, AK  
ACOE, Anchorage, John R. Klutz  
EPA Juneau, Chris Meade  
ADF&G, Juneau, Jackie Timothy  
ADF&G, Petersburg, Jim Cariello  
ADNR, Juneau, Carrie Bohan  
USFWS, Juneau, Richard Enriquez  
NMFS, AKR, Records

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Cindy Hartmann

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