UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
http://sero.nmfs.noaa.gov

December 19, 2014 F/SER47:KG/pw

Colonel Alan Dodd, Commander
U.S. Army Corps of Engineers, Jacksonville District
Miami Permits Section
9900 Southwest 107th Avenue, Suite 203
Miami, Florida 33176

Attention: Maria Bezanilla

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2013-02848 (SP-MIB) dated December 2, 2014. Jeffery Norman requests authorization from the Department of the Army to fill wetlands and construct recreational facilities adjacent to the Atlantic Ocean in the City of Marathon, Monroe County. Specifically, the applicant proposes to place fill in 66,217 square feet (1.52 acres) of mangrove and buttonwood-dominated wetlands for a driveway, two residential lots, and related infrastructure. In addition, the applicant proposes to construct two fishing piers through mangrove wetlands. The two piers are 4 feet by 275 feet (1,100 square feet) and 4 feet by 261 feet (1,044 square feet). The Jacksonville District's initial determination is the proposed fill and pier construction would not have a substantial adverse effect on mangrove, coral, and seagrass, which are designated Habitat Areas of Particular Concern (HAPC) by the South Atlantic Fishery Management Council (SAFMC). As the nation's Federal trustee for the conservation and management of marine, estuarine, and anadromous fishery resources, the following comments and recommendations are provided pursuant to authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Essential Fish Habitat within the Project Area
The fill area described in the public notice includes a tidally connected wetland consisting of red mangrove and buttonwood with seaside mahoe and Brazilian pepper on the onshore portions of the project area. A biological resource survey was not provided with the notice; however, aerial images depict seagrass in the vicinity of the proposed fishing piers. Based on our familiarity with the area, it is likely the submerged habitat that would be shaded or impacted by pier contains sandy bottom, seagrass, hardbottom, and coral. SAFMC identifies these habitats as EFH for several species, including adult white grunt (*Haemulon plumieri*), juvenile and adult gray snapper (*Lutjanus griseus*), juvenile mutton snapper (*Lutjanus analis*), and larval and juvenile pink shrimp (*Farfantepenaeus duorarum*). SAFMC also designates coral, hardbottom, and seagrass as a HAPC for several species within the snapper/grouper complex. HAPC's are subsets of EFH that are rare, particularly susceptible to human-induced degradation, especially important ecologically, or located in an environmentally stressed area. Seagrass directly benefit fishery resources of the Atlantic Ocean by providing water quality benefits, foraging

opportunities, and nursery habitat. Further, seagrass, sand bottoms, hardbottoms, and coral are part of a habitat complex that includes sand mangroves and coral reefs. This complex supports a diverse community of fish and invertebrates within the Atlantic Ocean. SAFMC provides additional information on EFH and HAPCs and how they support federally managed fishery species in *Fishery Ecosystem Plan of the South Atlantic Region* (available at *www.safmc.net*).

Avoidance and Minimization Measures

The public notice describes measures (i.e., turbidity curtains) planned to minimize water quality degradation. In addition, impacts to mangrove and buttonwood wetlands are minimized by the two parcels sharing a driveway along one side of the wetland area. The applicant has proposed on-site enhancement and preservation of mangrove and buttonwood wetlands as mitigation for unavoidable impacts; however NMFS has not been provided with Uniform Mitigation Assessment Method (UMAM) worksheets and a mitigation plan describing how the mitigation would offset the impacts. NMFS agrees impacts to mangrove and buttonwood wetlands have been minimized to the extent practicable by the two parcels sharing a driveway and by the project design. While NMFS notes the two fishing piers are designed to meet the *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over SAV, Marsh or Mangrove Habitat*, additional impact minimization measures that could be taken include reducing the length of the proposed fishing piers over water or constructing one fishing pier to be shared by the two properties.

EFH Conservation Recommendations

NMFS finds the proposed mangrove filling and fishing piers would have an adverse impact on EFH. Section 305(b)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH conservation recommendations when an activity is expected to adversely impact EFH. Based on this requirement, NMFS provides the following:

EFH Conservation Recommendations

1. A seagrass habitat survey of the project area shall be conducted between June 1 to September 30, and pier construction shall be aligned to minimize intersection with seagrass, coral, and hardbottom.
2. The length of the two fishing piers shall be reduced or only a single pier shall be authorized.
3. A compensatory mitigation plan shall be developed to offset unavoidable impacts to mangrove, coral, and seagrass. This plan shall be coordinated with NMFS for approval prior to authorization of the work. The plan shall be based on functional assessments that describe how the proposed mitigation would offset direct and indirect impacts.
4. Best management practices shall be incorporated into the project design to minimize indirect impacts and water quality degradation. These best management practices shall include use of staked turbidity curtains around the project area, as described in the notice.

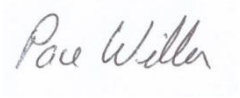
Section 305(b)(4)(B) of the Magnuson-Stevens Act and implementing regulation at 50 CFR Section 600.920(k) require the Jacksonville District to provide a written response to this letter within 30 days of its receipt. If it is not possible to provide a substantive response within 30 days, in accordance with the "findings" with the Jacksonville District, an interim response should be provided to NMFS. A detailed response then must be provided prior to final approval of the

action. The detailed response must include a description of measures proposed by the Jacksonville District to avoid, mitigate, or offset the adverse impacts of the activity. If the response is inconsistent with the EFH conservation recommendations, the Jacksonville District must provide a substantive discussion justifying the reasons for not following the recommendations.

Please note, if the applicants' benthic survey shows corals protected under the endangered Species Act (e.g., *Orbicella faveolata and O. annularis*) within and near the project footprint, the Jacksonville District should contact the NMFS Southeast Region, Protected Resources Division. The NMFS Southeast Region, Protected Resources Division can be contacted at the letterhead address.

Thank you for the opportunity to provide comments. Related correspondence should be directed to the attention of Mr. Kurtis Gregg at our West Palm Beach office, 400 North Congress Avenue, Suite 110, West Palm Beach, Florida, 33401. He may be reached by telephone at (561) 249-1627, or by e-mail at Kurtis.Gregg@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc:

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