



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>

November 4, 2014

F/SER47:JK/pw

(Sent via Electronic Mail)

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

Attention: Albert Gonzalez

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2014-02654 (LP-AG), dated October 28, 2014. Lost and Found Productions, LLC, requests authorization to construct a 106-foot concrete seawall with a riprap base and a 324-square-foot dock with a walkway (4 feet by 21 feet) and terminal platform (40 feet by 6 feet) within Biscayne Bay, Miami-Dade County. The public notice summarizes results from a seagrass survey conducted September 18, 2014, by the Miami-Dade County Department of Environmental Resources Management documenting sparse turtle grass, macroalgae, sponges, soft corals, and one knobby brain coral at the site. Credits from the Florida Power and Light Everglades Mitigation Bank are proposed as compensatory mitigation. The initial determination by the Jacksonville District is the proposed impacts to benthic habitat in the Biscayne Bay Aquatic Preserve, which is designated a Habitat Area of Particular Concern (HAPC) by the South Atlantic Fishery Management Council (SAFMC), and to seagrass and coral, also designated a HAPC by SAFMC, would not have a substantial adverse impact on essential fish habitat (EFH) or federally managed fishery species. As the nation's federal trustee for the conservation and management of marine, estuarine, and anadromous fishery resources, the following comments and recommendations are made 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*

SAFMC identifies seagrass habitat as EFH for several species, including adult white grunt (*Haemulon plumieri*), juvenile and adult gray snapper (*Lutjanus griseus*), juvenile mutton snapper (*Lutjanus analis*), juvenile goliath grouper (*Epinephelus itajara*), and larval and juvenile pink shrimp (*Farfantepenaeus duorarum*). SAFMC also identifies seagrass a HAPC under the fishery management plans for the snapper/grouper complex and all of the Biscayne Bay Aquatic Preserve as and HAPC under the fishery management plans for spiny lobster and coral, coral reef and live/hardbottom habitat. HAPCs 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 the fishery resources by providing nursery habitat.



Seagrass is part of a habitat complex that includes mangroves and hardbottoms, and this habitat complex is abundant in Biscayne Bay and supports a diverse community of fish and invertebrates within the area. Seagrass also provide important water quality maintenance functions (such as pollution uptake), stabilize sediments, attenuate wave action, and produce and export detritus (decaying organic material), which is an important component of marine and estuarine food chains. 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*, which is available at [www.safmc.net](http://www.safmc.net).

#### *Impacts to Essential Fish Habitat*

The applicant proposes to impact seagrass and coral habitat by shading. The relative height of the dock (4.1 feet above MHW) and size of the terminal platform (240 square feet) do not follow the recommendations in *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat* developed by the Jacksonville District and NMFS. Consequently the dock does not reflect all practicable avoidance and minimization of impacts to seagrass habitat. Rather than encroaching into tidal waters, the proposed seawall should be built in the same footprint as the existing seawall.

#### *Conservation Recommendations*

NMFS concludes the proposed dock and seawall would adversely impact 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. In consideration of this requirement, NMFS provides the following:

#### **EFH Conservation Recommendations**

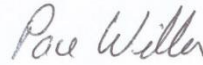
- The permitted dock design shall reflect the height and terminal platform size recommended in *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat*; i.e., the height shall be at least 5 feet above Mean High Water and the maximum size of the terminal platform shall be 160 square feet.
- The permitted seawall and riprap shall be within or landward of the footprint of the existing seawall.
- In the case either of the above recommendations is not met, the Jacksonville District shall require an alternate compensatory mitigation. The Florida Power and Light Everglades Mitigation Bank is not an appropriate source of mitigation because it does not provide credits for seagrass habitat. The Mitigation Rule Section 332.3(b)(2) [§ 230.93(b)(2)] (2008) establishes a preference for the use of mitigation bank credits if the mitigation bank has the ***appropriate*** number and resource type of credits available (emphasis added).

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.

NMFS appreciates the opportunity to provide these comments. Please direct related questions to the attention of Ms. Jocelyn Karazsia at our Palm Beach Office, 400 N Congress Ave, Suite 110, West Palm Beach, Florida 33401, at 561-249-1925, or at [Jocelyn.Karazsia@noaa.gov](mailto:Jocelyn.Karazsia@noaa.gov).

Sincerely,



/ for

Virginia M. Fay  
Assistant Regional Administrator  
Habitat Conservation Division

cc:

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