



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>

January 7, 2015

F/SER47:JK/pw

(Sent via Electronic Mail)

Colonel Alan Dodd, Commander
U.S. Army Corps of Engineers, Jacksonville District
Miami Regulatory Office
9900 SW 107th Ave, Suite 203
Miami, Florida 33165

Attention: Stephen Flemming

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2014-1869 (LP-SJF), dated December 23, 2014. Bart Reines requests authorization to install: a new marginal dock (5 feet by 40 feet), a new "L" shaped dock with an access walkway (4 feet by 21 feet) and terminal platform (48 feet by 6.5 feet), a new wood deck over an existing concrete cap with approximately 375 square feet of overhang (150 feet by 2.3 feet), and a boat lift and jet ski lift adjacent to the existing seawall within Biscayne Bay, Miami-Dade County. All of the overwater decking would be constructed less than 4 feet above mean high water (MHW). The initial determination by the Jacksonville District is the proposed impacts to 0.01 acres of seagrass habitat in the Biscayne Bay Aquatic Preserve, both designated a Habitat Area of Particular Concern (HAPC) by the South Atlantic Fishery Management Council (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

The public notice includes results from an in-water survey performed on July 28, 2014, by staff from Miami-Dade County Department of Environmental Resources Management (DERM). The survey documented two species of seagrass, paddle grass (*Halophila decipiens*) and shoal grass (*Halodule wrightii*), ranging in density from 5 to 10 percent and 5 to 40 percent, respectively.

SAFMC identifies seagrass habitat as EFH or an HAPC 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 the Biscayne Bay Aquatic Preserve as a HAPC under the fishery management plans for spiny lobster, penaeid shrimp, and the snapper/grouper complex, Miami-Dade County. 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 provides 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.

Impacts to Essential Fish Habitat

The applicant proposes to impact seagrass habitat by dock construction and shading. The notice from the Jacksonville District describes how the applicant has minimized the overwater footprint by approximately 17 percent (from 598 to 496 square feet). Even with this minimization, the project does not reflect all practicable avoidance and minimization of impacts to seagrass habitat. Specifically, NMFS recommends eliminating the marginal dock and dock overhang from the project design. Alternatively, these structures should be constructed to the seagrass specifications for dock height contained within *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. Specifically, the marginal dock, dock overhang, and new “L” shaped dock should be elevated no less than 5 feet above MHW. In addition, the terminal platform dimensions exceed the dimensions recommended in the Guidelines for platforms sited over seagrass. Therefore NMFS recommends reducing the dimensions of the terminal platform to 160 square feet (a recommended reduction of 152 square feet).

Conservation Recommendations

NMFS concludes the proposed dock construction and shading 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 dock overhang and marginal dock shall be eliminated from the project design. Alternatively, these structures shall be redesigned to be elevated no less than 5 feet above Mean High Water.
- All dock structures permitted under this authorization shall reflect the height and width specifications 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 dimensions of the terminal platform shall be no more than 160 square feet.

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.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc:

COE, Stephen.J.Flemming@usace.army.mil
FWS, Ashleigh_Blackford@fws.gov
EPA, Miedema.Ron@epa.gov
FDEP, Benny.Luedike@dep.state.fl.us
SAFMC, Roger.Pugliese@safmc.net
F/SER4, David.Dale@noaa.gov, Jocelyn.Karazsia@noaa.gov