



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>

February 4, 2015

F/SER47:JK/pw

(Sent via electronic mail)

Colonel Alan Dodd, Commander
U.S. Army Corps of Engineers, Jacksonville District
Palm Beach Gardens Permits Section
4400 PGA Boulevard, Suite 500
Palm Beach Gardens, Florida 33410

Attention: Samantha Rice

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2013-02564 (SP-SLR) dated January 8, 2015. William B. Swaim requests authorization from the Department of the Army to fill mangrove wetlands and estuarine bottom to construct a residential development and a new concrete seawall in waters adjacent to the Intracoastal Waterway (ICW) in Boynton Beach, Palm Beach County. The Jacksonville District's initial determination is the proposed fill would have a substantial adverse effect on up to 5.74 acres of mangrove and seagrass habitat, 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 an area of open water adjacent to a tidally connected mangrove wetland dominated by red mangroves. A biological resource survey was not provided with the notice; however, aerial images and seagrass maps produced by Palm Beach County¹ depict forested mangrove wetlands on the site and continuous seagrass bed in the open water area between the mangroves and the ICW. SAFMC identifies mangrove habitat and seagrass as HAPC for several species, including adult white grunt (*Haemulon plumieri*), juvenile and adult gray snapper (*Lutjanus griseus*), and juvenile mutton snapper (*Lutjanus analis*), and as EFH for larval and juvenile pink shrimp (*Farfantepenaeus duorarum*). 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. Mangroves and seagrass directly benefit fishery resources of the ICW and adjacent estuarine waters by providing water quality benefits, foraging opportunities, and nursery habitat. Further, sand bottoms, hardbottoms, and coral are part of a habitat complex that includes mangroves and seagrass. This complex supports

¹ Seagrass maps can be accessed at: http://ocean.floridamarine.org/mrgis/Description_Layers_Marine.htm



a diverse community of fish and invertebrates within the ICW and adjacent estuarine waters. 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).

Sequential Mitigation of Impacts to Essential Fish Habitat

Wetland impact avoidance and minimization are the first two steps in sequential mitigation and the third step is compensatory mitigation for unavoidable impacts. The public notice does not describe any measures to avoid or minimize impacts to mangroves at the site. Based on the drawings provided with the notice, it appears that 100 percent of the wetlands, seagrass, and open waters on the site are proposed for impact. In addition, the notice states the applicant believes compensatory mitigation is not necessary because the property is damaged, however no information is provided to support this statement. The notice also states if mitigation is required, the applicant is willing to purchase credits at the Everglades Mitigation Bank or on other properties the applicant controls offsite.

NMFS believes the proposed mangrove fill is not consistent with the Environmental Protection Agency's Guidelines for Specification of Disposal Sites for Dredged or Fill Material. The fundamental precept stated in 40 CFR 230.1(c) that "dredged or fill material should not be discharged into the aquatic ecosystem unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern" would not be met by this project. The basic purpose of the project, as stated in the public notice is to construct a residential development. Based on guidance provided by 40 CFR 230.10(a)(3), residential developments do not require access or proximity to or siting within wetlands to fulfill their basic purpose (i.e., they are not water dependent). In discussing the water dependency requirement, the guidelines state that for non-water dependent projects, practicable alternatives that do not involve special aquatic sites (e.g., wetlands at the project site) are presumed to be available.

EFH Conservation Recommendation

NMFS concludes the proposed filling of mangrove and estuarine bottoms 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, provides the following:

EFH Conservation Recommendation

- The application shall be denied as proposed. NMFS would reconsider this recommendation if the District concluded project plans reflect all practicable avoidance and minimization of impacts to mangroves and estuarine bottoms and adequate compensatory mitigation were provided, as demonstrated through a functional assessment that compared impact and mitigation areas.

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.

Thank you for the opportunity to provide comments. Related correspondence should be directed to the attention of Ms. Jocelyn Karazsia at our West Palm Beach office, 400 North Congress Avenue, Suite 110, West Palm Beach, Florida, 33401. She may be reached by telephone at (561) 249-1925, or by e-mail at Jocelyn.Karazsia@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc:

COE, Samantha.L.Rice@usace.army.mil
FWS, Ashleigh_Blackford@fws.gov
EPA, Miedema.Ron@epa.gov
FWCC, Lisa.Gregg@MyFWC.com
FDEP ERP, Benny.Leudike@dep.state.fl.us
SAFMC, Roger.Pugliese@safmc.net
F/SER4, David.Dale@noaa.gov
F/SER47, Jocelyn.Karazsia@noaa.gov