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 11, 2015 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-2014-01595 (SP-MIB) dated January 23, 2015. Pierre and Holly Boumerhi request authorization from the Department of the Army to fill wetlands and construct recreational facilities in an existing canal adjacent to the Atlantic Ocean on Ramrod Key, Monroe County. Specifically, the applicants propose to place fill in 7,440 square feet (0.17 acres) of red mangrove and disturbed salt marsh, buttonwood wetlands for a single-family residence with related infrastructure. The applicants also propose to construct a concrete marginal dock (8 feet by 40 feet) and to install 240 square feet of riprap under the dock. An unspecified amount of mitigation through the Keys Restoration Fund (KRF) is proposed. The Jacksonville District's initial determination is the proposed fill and dock construction would not have a substantial adverse effect on mangroves, which are designated a Habitat Area 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 shoreline with salt marsh and buttonwood along the landward side of the fringing mangrove shoreline. Based on a review of aerial imagery, it appears all of the wetland vegetation has been cleared, except the fringing mangrove wetland. The notice did not include a benthic resource survey. Based on our familiarity with the area, in addition to the red mangroves and unconsolidated sediment, the submerged habitats impacted by the dock and riprap may include coral, hardbottom, and seagrass habitats. SAFMC identifies mangrove, coral, hardbottom, and seagrass habitats as EFH for several species, including adult white grunt (*Haemulon plumieri*), juvenile and adult gray snapper (*Lutjanus griseus*), juvenile mutton snapper (*Lutjanus analis*), juvenile Schoolmaster (*Lutjanus adipous*), and juvenile dog snapper (*Lutjanus jocu*). Unconsolidated habitats are EFH for larval and juvenile pink shrimp (*Farfantepenaeus duorarum*).

SAFMC also designates mangrove, coral, hardbottom, and seagrass as a HAPC for several species within the snapper/grouper complex. HAPCs are subsets of EFH that are rare, particularly susceptible to human-induced degradation, especially important ecologically, or located in an environmentally stressed area. These HAPCs benefit fishery resources of the Atlantic Ocean by providing water quality benefits, foraging opportunities, and nursery habitat. SAFMC provides additional information on EFH and HAPCs and their support of 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. The applicant has proposed on-site preservation of 160 square feet of red mangrove wetlands as an impact avoidance measure, which constitutes 20% of the shoreline.

Impacts to Essential Fish Habitat
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. Furthermore, 40 CFR 230.10(d) states that "no discharge of fill material shall be permitted unless appropriate and practical steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem." In this regard, NMFS notes 80% of the shoreline wetlands are proposed for impact and the current dock design may not reflect the least damaging practicable alternative.

EFH Conservation Recommendations
NMFS finds the proposed mangrove filling and dock construction 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

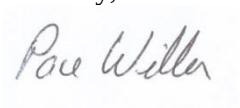
1. The fill placement in mangroves shall be denied as proposed. NMFS would reconsider this recommendation if the District concluded project plans reflect all practicable avoidance and minimization of impacts to mangroves and adequate compensatory mitigation were provided, as demonstrated through a functional assessment that compared impact and mitigation areas.
2. A benthic habitat survey of the project area shall be conducted between June 1 to September 30, and the marginal dock shall be aligned to minimize intersection with mangroves, as well as any seagrass, coral, or hardbottom observed in the survey.

3. 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.

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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