



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>

April 13, 2015

F/SER47:JD/pw

(Sent via Electronic Mail)

Lt. Col. John Litz, Commander
Charleston District, Corps of Engineers
69A Hagood Avenue
Charleston, South Carolina 29403-5107

Attention: Chelsea Bowman

Dear Colonel Litz:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice 2015-00280-1C, dated March 16, 2015. Richard Corbin requests authorization from the Department of the Army to construct a dock and to armor 175 linear feet of Oyster House Creek, Charleston County. The purpose of the project is not provided in the public notice; however, NMFS assumes it is for water access and erosion control. The applicant is not proposing compensatory mitigation for impacts to tidal wetlands. The public notice indicates the proposed impacts to estuarine habitat are 1,400 square feet. The Charleston District's initial determination is the proposed filling would not have substantial individual or cumulative adverse impacts 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 provided pursuant to authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Description of the Proposed Project

The proposed work includes constructing a private dock and installing a sheetpile bulkhead with rip-rap toe protection. The dock would consist of a fixed pier (4 feet by 40 feet) leading to a covered pier head (12 feet by 24 feet). A gangway (4 feet by 25 feet) would extend from the pierhead to a floating dock (10 feet by 40 feet). Adjacent to this dock, the applicant would construct a four-pile boatlift (12.5 feet by 15 feet) connected to the dock by a fixed access pier (3 feet by 35 feet). The applicant would also install 175 feet of sheetpile bulkhead along the property line and place approximately 105 cubic yards of rip rap in front of the bulkhead for toe protection. The rip rap would extend below the mean low water line.

Essential Fish Habitat in the Project Area

A NMFS biologist examined the site on April 1, 2015. Oyster House Creek flows into the Wadmalaw River, which the State of South Carolina designates an Outstanding Resource Water because of its value as nursery habitat. The site of the proposed project includes a tidal creek and mud bank containing dense clusters of oysters. The South Atlantic Fishery Management Council (SAFMC) designates these habitats as EFH for estuarine-dependent species of the



snapper-grouper complex. Oysters are further classified as a Habitat Area of Particular Concern (HAPC), a subset of EFH that is either rare, particularly susceptible to human-induced degradation, especially important ecologically, or located in an environmentally stressed area. Outside of the project footprint, salt marsh is present. The SAFMC identifies salt marsh as EFH for penaeid shrimp, including white shrimp (*Litopenaeus setiferus*) and brown shrimp (*Farfantepenaeus aztecus*), because larvae and juveniles concentrate and feed extensively and shelter within these habitats. As a consequence, growth rates are high and predation rates are low, which makes these habitats effective nursery areas. The SAFMC provides additional information on EFH and its support of federally managed fishery species in Volume IV of the *Fishery Ecosystem Plan of the South Atlantic Region*¹.

The waters of the Oyster House Creek, the tidal creeks connected to it, and the surrounding coastal marsh also serve as nursery and forage habitat for other species, such as red drum (*Sciaenops ocellatus*), black drum (*Pogonias cromis*), Atlantic menhaden (*Brevoortia tyrannus*), and blue crab (*Callinectes sapidus*). Many of these species are prey for fish managed under the Magnuson-Stevens Act, such as mackerels, snappers, groupers, billfish, and sharks. Red drum is an important state-managed fishery, and estuarine wetlands within the project area provide habitat for all life stages of red drum.

Impacts to EFH

The public notice may understate the impacts to EFH. The notice states the proposed project would impact 1,400 square feet. Shading from the dock constitutes 1,240.5 square feet leaving 159.5 square feet of impact for the rip rap fill. However, if the rip rap extended five feet into the creek, approximately 875 square feet of EFH would be permanently filled.

The impacts of shading from the dock are discountable because no vegetation is present in the project footprint; NMFS offers no objection to this component of the project. However, installation of rip rap and a timber bulkhead is concerning because the creek bank is a muddy substrate with dense clusters of oysters. While the apparent purpose of the bulkhead and rip rap is erosion control; NMFS did not observe evidence of erosion during the site visit (e.g., there was no bank undercutting and there was a shelf-like feature mid-way up the bank). Further, concrete rip rap is already present at the top of the bank at or near the mean high water line. In summary, the need for the bulkhead and rip rap was not evident.

EFH Conservation Recommendation

NMFS finds the proposed bulkhead and rip rap would adversely affect 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 affect EFH. Based on this requirement, NMFS recommends:

- The permit not authorize installation of the bulkhead and riprap. If the Charleston District concludes erosion protection measures are needed, NMFS recommends a living shoreline measure, such as oyster bags, be taken in lieu of rip rap and a bulkhead. The South Carolina Department of Natural Resources has successfully used oyster bags nearby to stem erosion from boat wakes².

¹ Available at <http://safmc.net/EcosystemLibrary/FEPVolumeIV>


² For a description of this effort, please see www.atlanticfishhabitat.org/Documents/ACFHPprojectsFY11SC_000.pdf

Section 305(b)(4)(B) of the Magnuson-Stevens Act and implementing regulation at 50 CFR Section 600.920(k) require the Charleston 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, an interim response should be provided to NMFS. A detailed response then must be provided 10 days prior to final approval of the action. The detailed response must include a description of measures proposed by the Charleston District to avoid, mitigate, or offset the adverse impacts of the activity. If the response is inconsistent with an EFH conservation recommendation, a substantive discussion justifying the reasons for not following the recommendation must be provided.

In accordance with section 7 of the Endangered Species Act of 1973, as amended, it is the responsibility of the Charleston District to review and identify any proposed activity that may affect endangered or threatened species and their designated critical habitat. Determinations involving species under NMFS jurisdiction should be reported to the NMFS Protected Resources Division at the letterhead address.

NMFS appreciates the opportunity to provide these comments. Please direct related correspondence to the attention of Ms. Jaclyn Daly-Fuchs at our Charleston Area Office. She may be reached at (843) 762-8610 or by e-mail at Jaclyn.Daly@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc:

COE, Chelsea.B.Bowman@usace.army.mil
DHEC, trumbumt@dhec.sc.gov
SCDNR, DavisS@dnr.sc.gov
SAFMC, Roger.Pugliese@safmc.net
EPA, Laycock.Kelly@epa.gov
FWS, Karen_Mcgee@fws.gov
F/SER4, David.Dale@noaa.gov
F/SER47, Jaclyn.Daly@noaa.gov