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

March 30, 2015 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 107th Avenue, Suite 203
Miami, Florida 33176

Attention: Albert Gonzalez

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2013-01691 (LP-AG), dated March 16, 2015. Bay Harbor Residences, LLC (KAI Residences), requests authorization to install a docking facility with a marginal dock (5 feet by 195 feet), seven finger piers (3 feet by 10 feet), and 19 mooring piles. In addition, the applicant proposes to dredge 3,656 square feet of Biscayne Bay bottom to a depth of -4.0 feet Mean Low Water (MLW) in Miami-Dade County. The public notice includes a biological assessment, performed by the applicant's agents on May 17, 2013. The assessment indicates the dredging and proposed structure would impact 3,101 square feet (0.07 acres) of seagrass habitat. The initial determination by the Jacksonville District is the proposed impacts to seagrass 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), would 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 biological assessment indicates seagrass present within and adjacent to the footprint of the dredging and the proposed structure is composed of sparse to moderate (<5% to 15% density) paddle grass (*Halophila decipiens*), manatee grass (*Syringodium filiforme*), and shoal grass (*Halodule wrightii*). SAFMC identifies seagrass habitat as EFH for several species, including adult white grunt (*Haemulon plumieri*); juvenile and adult gray snapper (*Lutjanus griseus*) and Lane snapper (*Lutjanus synagris*); juvenile mutton snapper (*Lutjanus analis*), schoolmaster (*Lutjanus apodus*), and dog snapper (*Lutjanus jocu*); goliath grouper (*Epinephilus itijara*); and larval and juvenile pink shrimp (*Farfantepenaeus duorarum*). SAFMC also identifies seagrass or all of Biscayne Bay as a HAPC under the fishery management plans for spiny lobsters and 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. Seagrass directly benefit fishery resources by providing nursery habitat. Seagrass is part of a habitat complex that includes mangrove and hardbottom, 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*.

Impacts to Essential Fish Habitat
The benthic survey was not done during the time of year optimal for mapping seagrass (June 1 through September 30). Seagrass habitats in Florida experience seasonal fluctuations in temperature and light that affect seagrass distribution and abundance. NMFS is concerned some areas shown as unvegetated in the maps, in particular unshaded portions of bay bottom with sediments suitable for seagrass, would be vegetated by seagrass later in the year. Because dredging may permanently disturb the seafloor, NMFS recommends the applicant provide an updated survey or, alternatively, update the impact estimate to include all unshaded portions of bay bottom with substrate suitable for seagrass colonization.

NMFS agrees the applicant has demonstrated impact minimization. Specifically, a document dated March 6, 2015, provided by the District outlines the avoidance and minimization measures that resulted from coordination with Miami Dade County and the South Florida Water Management District. Notably, the applicant agreed to eliminate three access walkways, build over bay bottom previously impacted by riprap installation, and shorten the marginal dock and finger piers. These project changes represent approximately 1,212 square feet (0.03 acres) of impact minimization.

Additional impact minimization is reflected in the dock design by the relative height of the structure (5.0 feet above Mean High Water), which follows the recommendations in *Dock 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. However, it is not clear from the drawings if the proposed minimum between the deck boards is ½ inch, as recommended in the Guidelines.

Compensatory Mitigation
The applicant proposes to remove derelict vessels and restore seagrass habitat in Biscayne Bay as compensatory mitigation. By email dated March 24, 2015, the applicant's agent supplied NMFS with a mitigation plan and worksheets from an analysis using the Uniform Mitigation Assessment Method (UMAM). NMFS agrees with the mitigation approach, including the monitoring, performance criteria, and UMAM scoring convention; however, permit should identify the vessels to be removed or provide criteria to guide their selection. NMFS recommends selecting vessels that do have an identifiable responsible party, vessels in close proximity to the seagrass impact site, and vessels posing a threat to seagrass habitat (e.g., vessels currently grounded in seagrass habitat).

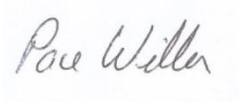
EFH Conservation Recommendations
NMFS concludes the proposed docking facility and dredging would adversely impact EFH. Section 305(b)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH conservation recommendations when an activity is expected to adversely impact EFH. In consideration of this requirement, NMFS recommends:

1. Updating the impact estimate for the mitigation plan to reflect all unshaded portions of the nearshore seagrass habitat exhibiting suitable substrate for seagrass growth or, alternatively, updating the impacts with a survey completed during the seagrass growing season (June 1 to September 30).
2. The permit require ½-inch spacing between the deckboards.
3. The permit identify either the derelict vessels to be removed or the criteria used for selecting the vessels.

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, Albert.Gonzalez@usace.army.mil
FWS, Ashleigh_Blackford@fws.gov
EPA, Miedema.Ron@epa.gov
FDEP, Benny.Leudike@dep.fl.state.us
SAFMC, Roger.Pugliese@safmc.net
F/SER4, David.Dale@noaa.gov
F/SER47, Jocelyn.Karazsia@noaa.gov