



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 17, 2015

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(Sent via Electronic Mail)

Colonel Kevin P. Landers, Sr., Commander
U.S. Army Corps of Engineers Wilmington District
69 Darlington Avenue
Wilmington, North Carolina 28403-1398

Attention: Tyler Crumbley

Dear Colonel Landers:

NOAA's National Marine Fisheries Service (NMFS) reviewed Public Notice Action ID No. SAW-2015-00524 dated March 19, 2015. The applicant (Paxon Holz) proposes to construct a pier 200 feet long by 5 feet wide with an L-shaped platform 10 feet by 16 feet at the end with a boatlift 13 feet by 13 feet in Bogue Sound, Carteret County. The water depths at the end of the proposed platform are approximately -2 feet Normal Low Water (NLW). The Wilmington District's initial determination is the proposed pier will likely adversely impact essential fish habitat (EFH) or associated fisheries managed by the South Atlantic Fishery Management Council (SAFMC), Mid-Atlantic Fishery Management Council (MAFMC), or NMFS. The District indicates their determination is based on the pier shading submerged aquatic vegetation (SAV), which SAFMC designates a Habitat Area of Particular Concern (HAPC). As the nation's federal trustee for the conservation and management of marine, estuarine, and diadromous fishery resources, the following comments and recommendations are provided pursuant to the authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Impacts to Essential Fish Habitat

The project would shade and incorporate about 100 square feet of shallow-bottom with SAV, shade 660 square feet and incorporate 829 square feet of open water, and shade 480 square feet of salt marsh. SAFMC identifies salt marsh, shallow sub-tidal bottom, and SAV in estuarine waters as EFH for brown shrimp, pink shrimp, and white shrimp. SAFMC also identifies SAV as an HAPC for gag and gray snapper. HAPCs are a subset of EFH that are rare, particularly susceptible to human-induced degradation, especially important ecologically, or located in an environmentally stressed area. SAFMC identifies these areas as EFH because fish and shrimp concentrate in these habitats for feeding and refuge and experience high growth and survival rates when located in these habitats. SAFMC provides detailed information on the EFH requirements of species it manages in amendments to fishery management plans and in *Fishery Ecosystem Plan of the South Atlantic Region*¹. The MAFMC designates tidal creeks and estuarine waters as EFH for summer flounder and bluefish. Detailed information about the EFH

¹ Available at www.safmc.net/ecosystem/Home/EcosystemHome/tabid/435/Default.aspx



requirements of species managed by MAFMC are included in amendments to individual fishery management plans and in technical reports available at www.nefsc.noaa.gov/nefsc/habitat/efh/.

Other species of commercial or recreational importance found in the project area include red drum, Atlantic croaker, spot, Atlantic menhaden, bay anchovy, striped mullet, weakfish, blue crab, and eastern oyster. A number of these species serve as prey for fish that are managed by SAFMC (e.g., king mackerel, Spanish mackerel, and cobia) or for highly migratory fish managed by NMFS (e.g., billfishes and sharks). The waters at site of the proposed pier are not designated as a Primary Nursery Area (PNA); however, this area provides nursery services. The high value of the waters at the site of the proposed pier is supported by the water classification, which is SA-ORW, which is intended to protect waters rated excellent based on biological, physical, and chemical characteristics through monitoring or special studies by the North Carolina Division of Water Resources.

NMFS finds the project, as proposed, does not reflect all practicable avoidance and minimization of impacts to EFH. Shading of SAV habitat should be reduced by decreasing the width of the walkway to 4.0 feet and having the elevation of the walkway at or above +5.0 feet Normal High Water. These dimensions are supported by a U.S. Army Corps of Engineers study in Florida that NMFS believes is applicable to the applicant's proposal². Other best management practices for the pier would be spacing the pilings at least 10 feet apart; driving the pilings into the sediment rather than jetting; and requiring the deck boards to have a spacing of at least one-half of an inch. NMFS recognizes that the applicant is already proposing to drive the pilings.

EFH Conservation Recommendations

NMFS finds the proposed pier 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 recommends:

- The platform is reduced to 10 feet by 10 feet and repositioned to reduce or eliminate shading of SAV.
- The width of the pier is reduced to 4.0 feet, elevation raised to at least +5.0 feet Normal High Water, the pilings supporting the walkway be at least 10 feet apart, and the spacing of the deck boards be at least one-half of an inch.

Section 305(b)(4)(B) of the Magnuson-Stevens Act and its implementing regulations at 50 CFR 600.920(k), requires the Wilmington District to provide a written response to the EFH recommendations within 30 days of receipt. If it is not possible to provide a substantive response within 30 days, in accordance with the "findings" between NMFS and the Wilmington District, an interim response should be provided to NMFS. A detail response must then be provided prior to final approval of the action. The detailed response must include a description of measures proposed by the Wilmington District to avoid, mitigate, or offset the adverse impacts of the activity. If the Wilmington District's response is inconsistent with the EFH conservation recommendations, the District must provide a substantive discussion justifying the

² Shafer, D., J. Karazsia, L. Carrubba, and C. Martin. 2008. Evaluation of Regulatory Guidelines to Minimize Impacts to Seagrasses from Single-family Residential Dock Structures in Florida and Puerto Rico. U.S. Army Engineer Research and Development Center, Vicksburg MS, ERDC/EL TR-08-41. 46 pages

reasons for not following the recommendation. The detail response should be received by the NMFS at least ten days prior to final approval of the action.

Thank you for the opportunity to provide these comments. Please direct related questions or comments to the attention of Mr. Fritz Rohde at our Beaufort Field Office, 101 Pivers Island Road, Beaufort, North Carolina 28516-9722, at (252) 838-0828, or at Fritz.Rohde@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc:

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