



**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>

May 4, 2015

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(Sent via electronic mail)

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

Attention: Linda C. Knoeck

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-1991-02773 (SP-LCK) dated March 20, 2015. Bonnet House, Inc., requests authorization from the Department of the Army to clear or fill 1.08 acres of mangroves and to constructing a docking facility that spans seagrass adjacent to the Intracoastal Waterway in Broward County. The Jacksonville District concludes the proposed impacts to mangrove, which is designated a Habitat Area of Particular Concern (HAPC) by the South Atlantic Fishery Management Council, would have a substantial adverse effect on federally managed fisheries or essential fish habitat (EFH). 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 facility proposed by the applicants requires:

1. Filling 1.06 acres of mangrove wetlands for a restaurant, driveway expansion, and associated amenities and clearing 0.02 acres of mangroves for building maintenance areas.
2. Installing a culvert under the proposed driveway expansion area.
3. Installing a four-slip docking facility (1,000 square feet).
4. Installing an elevated walkway, 14 feet by 98 feet (1,372 square feet), that includes a covered portion 15 feet by 20 feet (300 square feet).
5. Installing an elevated walkway, 8 feet by 155 feet (1,240 square feet).

*Essential Fish Habitat*

The public notice indicates the project area consists of 13.47 acres of mixed uplands and wetlands containing red (*Rhizophora mangle*), black (*Avicennia germinans*) and white (*Laguncularia racemosa*) mangroves and non-native vegetation. Information in the public notice suggests the mangroves are influenced by tidal action.



The South Atlantic Fishery Management Council (SAFMC) designates mangrove habitats as EFH for several species, including juvenile and adult gray snapper (*Lutjanus griseus*); juvenile goliath grouper (*Epinephelus itijara*); and larval and juvenile pink shrimp (*Farfantepenaeus duorarum*). SAFMC also designates mangrove wetlands as a HAPC for species within the snapper/grouper complex. SAFMC identifies seagrass habitat as EFH and HAPC 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 (*Epinephelus itijara*). HAPCs are subsets of EFH that are rare, particularly susceptible to human-induced degradation, especially important ecologically, or located in an environmentally stressed area. Mangrove wetlands directly benefit the fishery resources by providing water quality benefits, foraging opportunities, and nursery habitat. Mangroves are part of a habitat complex that includes sand bottom, seagrass, and coral reefs. This complex supports a diverse community of fish and invertebrates within southeast Florida. Mangroves help maintain water quality by filtering pollutants, stabilize shorelines, 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](http://www.safmc.net).

#### *Impacts to Essential Fish Habitat*

NMFS believes the proposed clearing and filling of 1.08 acres of mangrove wetlands is not consistent with the U.S. Environmental Protection Agency (EPA) 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 restaurant concession and associated infrastructure. Based on guidance provided by 40 CFR 230.10(a)(3), restaurants and parking areas 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.

#### *Avoidance and Minimization Measures*

The public notice describes measures (i.e. turbidity curtains) planned to minimize water quality degradation. Impacts to seagrasses have been minimized by designing the dock to meet *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh, or Mangrove Habitat*, where the docking structure is located over seagrass. Project drawings show the access walkway is proposed to be elevated a minimum of 5.0 feet above mean high water<sup>1</sup> and grated decking is proposed where

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<sup>1</sup> The public notice indicates the proposed elevation is 5.0 feet above mean low water. Project drawings indicate the proposed elevation is a minimum of 5.0 feet above mean high water. NMFS clarified this with the project manager via email on April 2, 2015.

the structure intersects with mapped seagrass. The proposed floating dock is located in depths that exceed the light penetration depths that support seagrasses at the project location.

The public notice indicates impacts to mangroves from the project have been minimized by locating the restaurant to overlap existing uplands and the proposed footprint is reduced by 47 percent from the original proposed project area. While NMFS agrees the design reflects substantial minimization, additional minimization measures, such as a reduction of the width of the elevated walkways, are practicable. If the Jacksonville District concludes there are no practicable alternatives to constructing a restaurant, parking and docking facilities at this site, NMFS recommends the applicant reduce the footprint of the proposed elevated walkways to further minimize impacts to mangroves.

#### *Compensatory Mitigation*

Under U.S. Army Corps of Engineers and EPA regulations, compensatory mitigation is evaluated only after selection of a project design that reflects all practicable avoidance and minimization of wetland impacts. As noted above, NMFS does not believe proposed facility meets this requirement; hence, the following comments on compensatory mitigation are preliminary. The public notice indicates mitigation would be proposed under separate cover. The public notice does not include functional assessments or indicate the amount or type of mitigation. NMFS recommends the Jacksonville District use a functional assessment methodology to determine the amount of appropriate compensatory mitigation needed to replace the ecological functions lost from filling the mangrove wetlands. NMFS also recommends the applicant evaluate mangrove wetland mitigation options in proximity to the project area.

#### **EFH Conservation Recommendations**

NMFS finds the proposed mangrove wetland fill 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, recommends:

1. The applicants provide an analysis showing all appropriate uses of the site require filling mangrove wetlands. Assuming this is demonstrated, the applicants provide an analysis of alternative designs for the restaurant and associated facilities showing the selected design is the least damaging practicable alternative.
2. The permit require implementation of a compensatory mitigation plan developed in consultation with NMFS for the unavoidable impacts to mangrove wetlands. The mitigation plan should include functional assessments and evaluation of mangrove mitigation options in proximity to the project area.
3. The permit require use of Best Management Practices to minimize impacts to adjacent mangrove habitats, including use of staked silt fence around fill areas and staked floating turbidity barriers around in-water work.

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 the NOAA, NMFS West Palm Beach office, 400 North Congress Avenue, Suite 120, 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

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