



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 6, 2015

F/SER47:BH/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: Nicole Liette

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2014-02696 (LP-NML), dated March 24, 2015. Ahmad Lee Khamsi requests authorization to construct an L-shaped dock within Biscayne Bay, Miami-Dade County. A benthic resource survey provided with the public notice documents seagrass and macroalgae within the footprint of the dock. The applicant proposes to provide compensatory mitigation via a mitigation bank. 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 not 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 benthic survey indicates seagrass is present within and adjacent to the footprint of the proposed structure include *Halophila decipiens*, *Halodule wrightii*, and *Thalassia testudinum*. 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 (*Epinephelus itajara*); and larval and juvenile pink shrimp (*Farfantepenaeus duorarum*). SAFMC also identifies seagrass or all of the Biscayne Bay Aquatic Preserve 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 the 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 is not dated and it is unclear if the survey was done during the time of year optimal for mapping seagrass (June 1 through September 30). However, NMFS agrees with densities presented based on past experiences, and the information presented is adequate for this particular EFH consultation. The applicant proposes to impact seagrass habitat by shading and installing pilings. The relative height of the structure (up to 1.7 feet above MHW), and the size of the terminal platform do not follow 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. Consequently the dock does not reflect all practicable avoidance and minimization of impacts to seagrass habitat.

EFH Conservation Recommendations

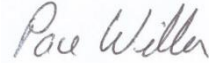
NMFS concludes the proposed structures would adversely impact EFH. Section 305(b)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH conservation recommendations when an activity is expected to adversely impact EFH. In consideration of this requirement, NMFS recommends:

- The permitted dock structures reflect the recommendations in *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat*; i.e., the height be at least 5 feet above Mean High Water, and the terminal platform not exceed 120 square feet if wood planks are used.
- If the above recommendation is not met, the Jacksonville District require alternate compensatory mitigation. NMFS is not aware of a mitigation bank servicing the area with seagrass mitigation credits. The Mitigation Rule Section 332.3(b)(2) [§ 230.93(b)(2)] (2008) establishes a preference for the use of mitigation bank credits if the mitigation bank has the *appropriate* number and resource type of credits available (emphasis added).

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 Mr. Brandon Howard at our Palm Beach Office, 400 N Congress Ave, Suite 120, West Palm Beach, Florida 33401, at 561-249-1652, or at Brandon.Howard@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc:

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