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

June 15, 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: Stephen Fleming

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2014-01737 (LP-SJF), dated May 14, 2015. The applicant, CLPF – NBV GP, LLC, requests authorization to construct a marginal dock measuring 6 feet by 235 feet with ten finger piers measuring 5 feet by 8 feet and to install thirteen mooring piles within Biscayne Bay, Miami-Dade County. The public notice summarizes findings from a benthic resource survey indicating seagrass and coral occur within the footprint of the proposed docking facility. The applicant proposes to provide compensatory mitigation via a financial contribution to the Biscayne Bay Environmental Trust Fund. The initial determination by the Jacksonville District is the proposed impacts to seagrass habitat and coral in the Biscayne Bay Aquatic Preserve, which are 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 public notice describes results from a benthic survey conducted on July 1, 2014, by the Miami-Dade Department of Environmental Resources Management. A copy of the survey report was not provided with the notice, but the Jacksonville District indicates the report documents seagrass and coral within and adjacent to the footprint of the proposed structure. Species present include Cuban shoal grass (*Halodule wrightii*) and lesser starlet coral (*Siderastrea radians*).

The SAFMC identifies coral and seagrass habitats as EFH for several species, including adult white grunt (*Haemulon plumieri*), juvenile and adult gray snapper (*Lutjanus griseus*), juvenile mutton snapper (*Lutjanus analis*), juvenile Schoolmaster (*Lutjanus adipous*), and juvenile dog snapper (*Lutjanus jocu*). The SAFMC also identifies seagrass, coral, and all of the Biscayne Bay Aquatic Preserve as a HAPC under the fishery management plans for spiny lobsters, the snapper/grouper complex, or coral, coral reef, and hardbottom. 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 and coral are 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. The 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 applicant proposes to impact seagrass habitat by shading and installing pilings. The relative height of the structure (3.25 feet above mean high water) does not adhere to the *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. Although these Guidelines were developed with a focus on single-family residential docks, many of the specifications to minimize impacts to seagrass are applicable to multi-family docks. In this case, the applicant could further minimize impacts to seagrass by elevating dock structures to no less than 5.0 feet above Mean High Water and reducing the width of the access walkway and finger piers to 4.0 feet. Consequently, the dock does not reflect all practicable avoidance and minimization of impacts to seagrass habitat. Additionally, the applicant could minimize impacts to corals by relocating the corals to a safe location outside the project footprint.

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

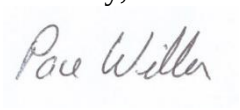
- The permitted dock structures reflect the recommendations in *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat*; i.e., the height be at least 5.0 feet above Mean High Water and the width of the access walkways and finger piers be no more than 4.0 feet.
- The permit require corals within impact areas to be relocated to a safe location outside the project area.
- If the above recommendations are not met, the permit require alternate compensatory mitigation to provide in-kind mitigation. The Biscayne Bay Environmental Trust Fund is not an approved mitigation bank or in-lieu fee program with seagrass and coral mitigation credits.

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

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