



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 26, 2015

F/SER47:BH/pw

(Sent via Electronic Mail)

Colonel Alan M. Dodd, Commander
Jacksonville District Corps of Engineers
Cocoa Permits Section
400 High Point Drive, Suite 600
Cocoa, Florida 32926

Attention: Tamy S. Dabu

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2015-01255 (SP-TSD) dated June 11, 2015. The Moorings Yacht and Country Club, the applicant, requests authorization from the Department of the Army to fill 0.16 acre of mature mangrove forest associated with the Indian River in order to construct a croquet court in Indian River County. The initial determination by the Jacksonville District is the proposed loss of 0.16 acre of mangrove forest, designated essential fish habitat (EFH) and a Habitat Area of Particular Concern (HAPC) by the South Atlantic Fishery Management Council (SAFMC), would not have a substantial adverse impact on 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 NMFS provides the following comments and recommendations 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 in the Project Area

The proposed project would result in the loss of 0.16 acre of high quality, mature mangrove forest comprised of white mangrove (*Laguncularia racemosa*), red mangrove (*Rhizophora mangle*), and black mangrove (*Avicennia germinans*). The SAFMC designates mangroves as an HAPC. Federally managed species associated with mangrove habitat include various life stages of gray, lane, mutton, and schoolmaster snapper; Goliath grouper; and white grunt. The Indian River-Vero Beach to Ft. Pierce Aquatic Preserve, which abuts the site of the proposed fill area, also is an HAPC. HAPCs are subsets of EFH warranting special protection due to rarity, susceptibility to human-induced degradation, ecological importance, or location in an environmentally stressed area. More information on the ecological services of mangroves and their connections with seagrass and coral habitats are available in amendments to fishery management plans and in *Fishery Ecosystem Plan of the South Atlantic Region*, which is available at www.safmc.net.

Impacts to Essential Fish Habitat

The NMFS believes the proposed 0.16 acre of mangrove fill is not consistent with the Environmental Protection Agency's Guidelines for Specification of Disposal Sites for Dredged or Fill Material. The fundamental precept stated in 40 CFR230.1(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 croquet court. Based on guidance provided by 40



CFR 230.10(a)(3), croquet courts 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.

EFH Conservation Recommendation

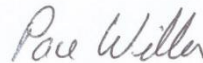
Section 305(B)(4)(A) of the Magnuson-Stevens Act requires the NMFS to provide EFH Conservation Recommendations for any federal action or permit which may result in adverse impacts to EFH. Therefore, the NMFS recommends the following to ensure the conservation of EFH and associated fishery resources:

- The Jacksonville District should not authorize the project as currently proposed. NMFS would reevaluate this recommendation after examining additional information demonstrating there is no practicable alternative to placing the croquet court within mangrove habitat.

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 the 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 and the facilitation of the interagency site visit. Related questions or comments should be directed to the attention of Brandon Howard at 400 N Congress Avenue, Suite 110, West Palm Beach, Florida 33401. He may be reached by telephone at 561-249-1652 or by e-mail at Brandon.Howard@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

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