



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>

August 3, 2015

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(Sent via electronic mail)

Colonel Jason A. Kirk, Commander
U.S. Army Corps of Engineers, Jacksonville District
Palm Beach Gardens Permits Section
4400 PGA Boulevard, Suite 500
Palm Beach Gardens, Florida 33410

Attention: Samantha Rice

Dear Colonel Kirk:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2007-03976 (SP-SLR) dated July 6, 2015. William Swaim requests authorization from the Department of the Army to fill estuarine unconsolidated bottom, including seagrass, to construct a residence, bridge, and a new concrete seawall in waters within Lake Worth Lagoon adjacent to the Intracoastal Waterway (ICW) in the Town of Palm Beach, Palm Beach County. The Jacksonville District's initial determination is the proposed fill would have a substantial adverse effect on up to 2.75 acres of estuarine bottom, including seagrass habitat designated a Habitat Area of Particular Concern (HAPC) by the South Atlantic Fishery Management Council (SAFMC). 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).

Essential Fish Habitat within the Proposed Project Area

The fill area described in the public notice includes an area of open water with unvegetated soft bottom and muck sediments. A biological resource survey was provided with the notice showing paddle grass (*Halophila decipiens*) in the shallow portions of the project area, adjacent to a riprap shoreline. Aerial images and seagrass maps produced by the Florida Fish and Wildlife Conservation Commission¹ depict continuous seagrass beds in open water areas near the project. The SAFMC identifies seagrass as a HAPC for several species, including adult white grunt (*Haemulon plumieri*), juvenile and adult gray snapper (*Lutjanus griseus*), and juvenile mutton snapper (*Lutjanus analis*), and as EFH for larval and juvenile pink shrimp (*Farfantepenaeus duorarum*). HAPC's 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 of the Lake Worth Lagoon and adjacent estuarine waters by providing water quality benefits, foraging opportunities, and nursery habitat. Further, seagrass along with mangroves, unconsolidated bottom, hardbottom, and coral are part of a habitat complex that supports a diverse community of fish and invertebrates within estuarine and

¹ Seagrass maps can be accessed at: ocean.floridamarine.org/mrgis/Description_Layers_Marine.htm



marine waters. The SAFMC provides additional information on EFH and HAPCs and their support of managed federally fishery species in *Fishery Ecosystem Plan of the South Atlantic Region* (available at www.safmc.net).

Sequential Mitigation of Impacts to Essential Fish Habitat

Wetland impact avoidance and minimization are the first two steps in sequential mitigation and the third step is compensatory mitigation for unavoidable impacts. The public notice describes measures to avoid or minimize impacts to seagrass at the site by constructing a bridge and placing fill waterward of mapped seagrass at the project site. Based on the notice drawings, it appears the applicant proposes to impact the majority of the open waters on the site. In addition, the notice states the applicant believes compensatory mitigation is not necessary because no resources are being disturbed. However, the notice also states if mitigation is required, it would be through purchase of mitigation credits or through mitigation on other property the applicant controls.

The NMFS believes the proposed estuarine fill project 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 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 residence. Based on guidance provided by 40 CFR 230.10(a)(3), residential development does 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., seagrass and estuarine bottoms at the project site) are presumed to be available.

EFH Conservation Recommendation

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

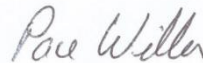
- The Jacksonville District should not authorize the project as currently proposed. The NMFS would reconsider this recommendation if the District concluded project plans reflect all practicable avoidance and minimization of impacts to seagrass and estuarine unconsolidated bottom and adequate compensatory mitigation were provided, as demonstrated through a functional assessment comparing impact and mitigation areas.

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. Please direct related correspondence should to the attention of Mr. Kurtis Gregg at our West Palm Beach office, 400 North Congress Avenue, Suite 110, 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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