



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

F/SER47:BH/pw

(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: Carolyn Farmer

Dear Colonel Kirk:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2013-03469 (SP-CF) dated July 13, 2015. Adnan Alghita requests authorization from the Department of the Army to fill mangrove wetlands and shade seagrass to construct a commercial and residential development and 64-slip marina adjacent to the Indian River on Hutchinson Island, St. Lucie County. The public notice refers to the projects as "Island Willow." The Jacksonville District's initial determination is the proposed fill would have a substantial adverse effect on 2.0 acres of seagrass and 3.0 acres of mangrove habitat; each 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 is within a tidally connected mangrove forest dominated by red mangroves. The public notice does not include a seagrass survey; however, the notice states the marina west of the fill site is vegetated with patchy seagrass. The SAFMC identifies seagrass as essential fish habitat (EFH) for larval and juvenile pink shrimp (*Farfantepenaeus duorarum*); postlarval, juvenile and subadult white shrimp (*Litopenaeus setiferus*); and postlarval and juvenile brown shrimp (*Farfantepenaeus aztecus*). The SAFMC identifies mangrove and seagrass habitat as an HAPC for several species, including adult white grunt (*Haemulon plumieri*), juvenile and adult gray snapper (*Lutjanus griseus*), and juvenile mutton snapper (*Lutjanus analis*). SAFMC also identifies the Indian River Aquatic Preserve as a HAPC under the fishery management plans for penaeid shrimp and the snapper/grouper complex. 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. Mangroves and seagrass directly benefit fishery resources of the Indian River Lagoon by providing water quality benefits, foraging opportunities, and nursery habitat. Further, mangroves and seagrass are part of a habitat complex that includes hardbottom and sandy bottom, and this



complex supports a diverse community of fish and invertebrates within the Indian River Lagoon. 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* (available at [www.safmc.net](http://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 does not adequately describe measures the applicant has taken to avoid or minimize impacts to mangroves and seagrass at the site. The public notice states patch seagrass exists at the project site but does not display the location. A scaled drawing overlapping the marina with results from a seagrass survey conducted during the growing season (June 1 to September 30). Dock dimensions on the drawings are not legible. With the lack of dimensions and seagrass survey, it is impossible to ascertain if the marina avoids and minimizes impacts to seagrass. The applicant proposes to avoid mangrove impact by locating the development close to State Road A1A. The NMFS appreciates the applicant's efforts to avoid impacts to mangroves; however, opportunities to construct a multilevel parking garage or placing a garage on the bottom floors of the condominiums would reduce the fill footprint. These options should be explored. The proposed mitigation is to purchase mitigation bank credits or donate a portion of the property to the Avalon State Park. While it is premature to review compensatory mitigation for this project because the applicant has not demonstrated adequate avoidance and minimization of impacts, the NMFS notes purchase of bank credits to offset mangrove functional loss is often acceptable. However, mitigation for seagrass impacts must be in-kind, and the NMFS is not aware of a federally approved mitigation bank servicing the area that provides seagrass credits.

#### **EFH Conservation Recommendation**

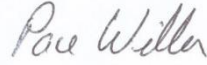
Section 305(B)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH Conservation Recommendations for any federal action or permit which may result in adverse impacts to EFH. Therefore, NMFS recommends the following to ensure the conservation of EFH and associated fishery resources:

- 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 mangroves and estuarine bottoms 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 to the attention of Mr. Brandon Howard 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) 249-1652, or by e-mail at Brandon.Howard@noaa.gov.

Sincerely,



/ for

Virginia M. Fay  
Assistant Regional Administrator  
Habitat Conservation Division

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