



**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 26, 2015

F/SER47:BH/pw

(Sent via Electronic Mail)

Colonel Jason A. Kirk, Commander  
Jacksonville District Corps of Engineers  
Cocoa Regulatory Office  
400 High Point Drive, Suite 600  
Cocoa, Florida 32926

Attention: James Carr

Dear Colonel Kirk:

NOAA's National Marine Fisheries Service (NMFS) reviewed the letter from the Jacksonville District dated July 29, 2015, regarding SAJ-2010-02651(RGP-JSC). The City of Cape Canaveral requests authorization from the Department of the Army to construct a 462-square-foot dock adjacent to the Banana River in Brevard County. The District indicates the proposed access pier would impact 200 square feet of seagrass designated a Habitat Area of Particular Concern (HAPC) by the South Atlantic Fishery Management Council (SAFMC). No compensatory mitigation is proposed. The Jacksonville District determined the project would have a substantial adverse impact on essential fish habitat (EFH) within the Banana River. 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 Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fish and Wildlife Coordination Act.

The proposed dock includes an access pier (six feet by 45 feet) and a terminal platform (eight feet by 24 feet). The access pier would be elevated to 3.0 feet and 3.75 feet above mean high water (MHW). The seagrass species affected is shoal grass (*Halodule wrightii*) based on a survey performed by Atlantic Environmental Solutions. While the survey date is not given, the NMFS accepts the results for this particular EFH consultation based on our experience with the area. Sand and shell bottom is also present.

The SAFMC designates seagrass an HAPC for species within the snapper/grouper complex that have inshore life stages, including gray snapper (*Lutjanus griseus*); goliath grouper (*Epinephelus itajara*); and gag grouper (*Mycteroperca microlepis*). SAFMC also designates all of the Banana River Aquatic preserve as an HAPC for penaeid shrimp. 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 and shell and sand bottom also are EFH for pink shrimp (*Farfantepenaeus duorarum*), white shrimp (*Litopenaeus setiferus*), and brown shrimp (*Farfantepenaeus aztecus*). Information about these habitats and how they support fishery species is available in the *Fishery Ecosystem Plan of the South Atlantic Region* (available at [www.safmc.net](http://www.safmc.net)).

The proposed dock does not comply with *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat*. The NMFS understands the American's with Disabilities Act requires the access pier to be six feet wide. However, the elevation of such access piers should be 5.0 feet MHW over seagrass, gradual downward ramp west of the seagrass would accomplish this goal.



### EFH Conservation Recommendations

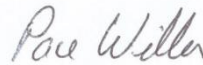
Section 305(B)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH Conservation Recommendations for any federal action or permit which may result in adverse impacts to EFH. Therefore, NMFS recommends the following to ensure the conservation of EFH and associated fishery resources:

- The permit require the height of the access pier should be in accordance with *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 of the access pier should be 5.0 feet MHW.

Section 305(b)(4)(B) of the Magnuson-Stevens Act and its 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, 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 Jacksonville District's response is inconsistent with the EFH conservation recommendation, the District must provide a substantive discussion justifying the reasons for not following the recommendation.

Thank you for the opportunity to provide comments. Please direct related correspondence to the attention of Mr. Brandon Howard at 400 North Congress Avenue, Suite 110, West Palm Beach, Florida, 33401. He also 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

cc: CESAJ, James.L.Carr@usace.army.mil  
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