



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 31, 2015

F/SER47:KG/pw

Colonel Jason A. Kirk, Commander
U.S. Army Corps of Engineers, Jacksonville District
Miami Permits Section
9900 Southwest 107th Avenue, Suite 203
Miami, Florida 33176

Attention: Allyse Keel

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2015-02400 (SP-AMK) dated August 4, 2015. Matt Doebley and Lisa Zaccagnino request authorization from the Department of the Army to construct a residence in the salt marsh and mangrove wetlands adjacent to a canal connected to the Atlantic Ocean on Little Torch Key, Monroe County. Specifically, the applicants propose to fill a total of 5,600 square feet (0.13 acres) of saltwater wetlands. An unspecified amount of mitigation through the Keys Restoration Fund (KRF) is proposed, if the Jacksonville District determines mitigation is applicable. Mangrove habitat is designated a Habitat Area of Particular Concern (HAPC) by the South Atlantic Fishery Management Council (SAFMC). The Jacksonville District's initial determination is the proposed wetland fill would not have a substantial adverse effect on salt marsh and mangrove habitats. 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 within the Project Area

The project area described in the public notice includes disturbed salt marsh and buttonwood wetlands. The notice states the Jacksonville District has not verified the condition of the wetlands. The SAFMC designates salt marsh and mangrove habitats as EFH for several species, including juvenile and adult gray snapper (*Lutjanus griseus*); juvenile goliath grouper (*Epinephelus itijara*); and larval and juvenile pink shrimp (*Farfantepenaeus duorarum*). SAFMC also designates mangrove wetlands as a HAPC for species within the snapper/grouper complex. HAPCs are subsets of EFH that are rare, particularly susceptible to human-induced degradation, especially important ecologically, or located in an environmentally stressed area. Mangroves benefit fishery resources of the Atlantic Ocean by providing water quality benefits, foraging opportunities, and nursery habitat. SAFMC provides additional information on EFH and HAPCs and their support of federally managed 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 does not describe any measures to avoid impacts to salt marsh and mangroves. Based on the notice drawings, it appears the applicants are proposing to fill all of the wetlands at the site. In addition, the notice states the quality of the wetlands is presumed to be low, however this has not been verified. The notice also states if mitigation is required, the applicant is willing to contribute funds to the Keys Restoration Fund.

NMFS believes the proposed salt marsh and 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 residential development. Based on guidance provided by 40 CFR 230.10(a)(3), residential developments 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 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:

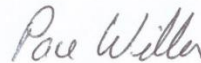
1. Project plans should reflect measures to avoid and minimize impacts to wetlands. Evaluations of the impact avoidance and minimization measures should be based on a wetland characterization and delineation report that characterizes the quality, composition, and extent of salt marsh, buttonwood, and mangrove wetlands.
2. The permit should require compensatory mitigation based on functional assessments reflecting the wetland characterization. The NMFS requests an opportunity to review mitigation plan and functional assessment prior to authorization of the work.
3. Best management practices should be incorporated into the project design to minimize indirect impacts and water quality degradation. These best management practices should include use of staked filter cloth around the project area, as described in the notice.

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. Related correspondence should be directed 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

cc: COE, Allyse.M.Keel@usace.army.mil
FWS, Ashleigh_Blackford@fws.gov
EPA, Miedema.Ron@epa.gov
FWCC, Lisa.Gregg@MyFWC.com
FDEP ERP, Gus.Rios@dep.state.fl.us
SAFMC, Roger.Pugliese@safmc.net
FKNMS, Joanne.Delaney@noaa.gov
F/SER4, David.Dale@noaa.gov
F/SER47, Jocelyn.Karazsia@noaa.gov, Kurtis.Gregg@noaa.gov