



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>

September 4, 2015

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(Sent via Electronic Mail)

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: Albert Gonzalez

Dear Colonel Kirk:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2015-01571 (LP-AG), dated August 19, 2015. Edmund Irvine requests authorization to remove an existing dock, mooring piles, and boatlift; install a new seawall with king piles and batter piles that would be armored with 148 cubic yards of limestone riprap boulders; and construct a new T-shaped, wood dock, within Biscayne Bay, Miami-Dade County. A biological assessment, performed by the Miami-Dade County Department of Environmental Resources Management on October 15, 2014, was provided with the public notice. The assessment indicates the proposed structure would impact 497 square feet of seagrass habitat, and the riprap fill would affect 1,036 square feet of estuarine bottom colonized by macroalgae. The initial determination by the Jacksonville District is the proposed impacts to seagrass habitat and estuarine bottom in the Biscayne Bay Aquatic Preserve, which is designated a Habitat Area of Particular Concern (HAPC) by the South Atlantic Fishery Management Council (SAFMC), would not have a substantial adverse impact on essential fish habitat (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 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

The biological assessment indicates macroalgae is observed adjacent to the seawall and seagrass is present within and adjacent to the footprint of the proposed structure, which is composed of sparse (less than 5 percent density) paddle grass (*Halophila decipiens*) and sparse (less than 1 percent density) manatee grass (*Syringodium filiforme*). The SAFMC identifies estuarine bottom as EFH for cobia (*Rachycentron canadum*), black seabass (*Centropristis striata*), king mackerel (*Scomberomorus cavalla*), Spanish mackerel (*S. maculatus*), spiny lobster (*Panulirus argus*), and pink shrimp, and seagrass habitat as EFH for several species, including adult white grunt (*Haemulon plumieri*), juvenile and adult gray snapper (*Lutjanus griseus*) and lane snapper (*Lutjanus synagris*), juvenile mutton snapper (*Lutjanus analis*),



schoolmaster (*Lutjanus apodus*), and dog snapper (*Lutjanus jocu*); goliath grouper (*Epinephilus itijara*); and larval and juvenile pink shrimp (*Farfantepenaeus duorarum*).

The SAFMC also identifies seagrass or all of the Biscayne Bay Aquatic Preserve as a HAPC under the fishery management plans for spiny lobsters and 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. Seagrass directly benefit fishery resources by providing nursery habitat. Seagrass is part of a habitat complex that includes mangrove and hardbottom, and this habitat complex is abundant in Biscayne Bay and supports a diverse community of fish and invertebrates within the area. Seagrass also provide important water quality maintenance functions (such as pollution uptake), stabilize sediments, attenuate wave action, and produce and export detritus (decaying organic material), which is an important component of marine and estuarine food chains. The 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*, which is available at www.safmc.net.

Impacts to Essential Fish Habitat

While the benthic survey was not done during the time of year optimal for mapping seagrass (June 1 through September 30), NMFS agrees with the findings based on experience with the area. The NMFS concludes the seagrass information presented is adequate for this particular EFH consultation (i.e., in this case essentially all the estuarine bottom located between five and 32 feet waterward of the seawall are depicted as seagrass habitat). The applicant proposes to impact seagrass habitat by shading and installing pilings. The relative height of the structure (approximately three feet above Mean High Water), width of the access walkway (7.5 feet) and the size of the terminal platform (seven feet by 56 feet) do not follow the recommendations in *Dock Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat* developed by the Jacksonville District and NMFS. Consequently the dock does not reflect all practicable avoidance and minimization of impacts to seagrass habitat.

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:

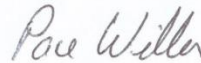
- Grated decking should be used for all portions of the proposed structure located over seagrass.
- The dock design should adhere to the dimensions in *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat*; i.e., the height be at least 5.0 feet above Mean High Water, width of the access walkway not exceed 4.0 feet and the size of the terminal platform not exceed 120 square feet, if sited over seagrass and wood planks are used.

- In the case the above recommendation is not met, compensatory mitigation should be required. The Florida Power and Light Everglades Mitigation Bank is not an appropriate source of mitigation because it does not provide credits for seagrass habitat. The Mitigation Rule Section 332.3(b)(2) [§ 230.93(b)(2)] (2008) establishes a preference for the use of mitigation bank credits if the mitigation bank has the *appropriate* number and resource type of credits available (emphasis added).

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.

The NMFS appreciates the opportunity to provide these comments. Please direct related questions to the attention of Mr. Kurtis Gregg at our West Palm Beach Office, 400 N Congress Ave, Suite 110, West Palm Beach, Florida 33401, at 561-249-1627, or at Kurtis.Gregg@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

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