



**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 18, 2015

F/SER47:JK/pw

(Sent via Electronic Mail)

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

Attention: Maria I. Bezanilla

Dear Colonel Kirk:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAJ-2015-02682 (LP-MIB), dated August 26, 2015. Michael and Denise Flanagan request authorization to remove an existing dock and to construct a new dock with an access walkway (four feet by 42 feet) and a terminal platform (seven feet by 64 feet) with a covered gazebo (seven feet by 11 feet) on Duck Key in waters connecting to the Atlantic Ocean, Monroe County. In addition, the applicants request authorization to install one boatlift, one personal watercraft lift, two guide piles, and one mooring pile. The initial determination by the Jacksonville District is the proposed impacts to 816 square feet (0.02 acres) of seagrass and coral habitats, each 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 public notice does not characterize submerged bottom at the site, however the notice states the proposed work would not affect 420 square feet of mangrove shoreline. By email dated September 16, 2015, the Jacksonville District provided the NMFS with results from a site visit. The narrative and photos confirm presence of seagrass and corals at the site. The District describes the seagrass as moderate density *Thalassia testudinum*. Additionally, seagrass maps and aerial imagery depict the entire site as continuous seagrass habitat. The SAFMC identifies seagrass and coral 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 (*Epinephelus itajara*); and larval and juvenile pink



shrimp (*Farfantepenaeus duorarum*). The SAFMC also identifies seagrass and coral as HAPCs under the fishery management plan for 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 and coral directly benefit fishery resources by providing nursery habitat. Seagrass and coral are part of a habitat complex that includes mangrove and hardbottom. This habitat complex is abundant in the Florida Keys and supports a diverse community of fish and invertebrates. 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 their support of federally managed fishery species in *Fishery Ecosystem Plan of the South Atlantic Region*, which is available at [www.safmc.net](http://www.safmc.net).

#### *Minimization of Impacts to Essential Fish Habitat*

The NMFS agrees with recommendations provided by the NOAA Florida Keys National Marine Sanctuary by email dated August 26, 2015, for the applicant to provide a biological assessment of the site and for the dock to be re-designed. The NMFS recommends the dock be re-designed to 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*. The access walkway dimensions adhere to the Guidelines, however the dock height should be at least 5.0 feet above Mean High Water (MHW), and the size of the terminal platform not exceed 120 square feet, if sited over seagrass and wood planks are used. The Guidelines also do not allow for covered structures, and the NMFS recommends the covered gazebo be eliminated from the project design.

#### **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:

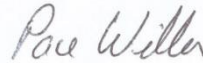
1. The permitted dock alignment should avoid intersection with seagrass and coral, and the locations of these resources should be based on a benthic habitat survey conducted during the time of year optimal for detecting seagrass (June 1 to September 30).
2. The permit should require the locations of coral and seagrass adjacent to the project to be marked with stakes or floats and for construction operations to avoid these areas.
3. 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 MHW and the size of the terminal platform not exceed 120 square feet, if sited over seagrass and wood planks are used.
4. The covered gazebo should be eliminated from the dock. No covered structures should be authorized over seagrass or coral habitat.
5. The permit should require best management practices, such as staked turbidity curtains, to minimize indirect impacts and water quality degradation.

6. The permit should require compensatory mitigation based on functional assessments reflecting the seagrass survey and minimization recommended above. The NMFS requests an opportunity to review the mitigation plan and functional assessment prior to authorization of the work.

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.

NMFS appreciates the opportunity to provide these comments. Please direct related questions to the attention of Ms. Jocelyn Karazsia at our Palm Beach Office, 400 N Congress Ave, Suite 110, West Palm Beach, Florida 33401, at 561-249-1925, or [Jocelyn.Karazsia@noaa.gov](mailto:Jocelyn.Karazsia@noaa.gov).

Sincerely,



/ for

Virginia M. Fay  
Assistant Regional Administrator  
Habitat Conservation Division

cc: COE, [Maria.I.Bezanilla@usace.army.mil](mailto:Maria.I.Bezanilla@usace.army.mil)  
FWS, [Ashleigh\\_Blackford@fws.gov](mailto:Ashleigh_Blackford@fws.gov)  
EPA, [Miedema.Ron@epa.gov](mailto:Miedema.Ron@epa.gov)  
FDEP, [Gus.Rios@dep.state.fl.us](mailto:Gus.Rios@dep.state.fl.us)  
FKNMS, [Joanne.Delaney@noaa.gov](mailto:Joanne.Delaney@noaa.gov)  
SAFMC, [Roger.Pugliese@safmc.net](mailto:Roger.Pugliese@safmc.net)  
F/SER4, [David.Dale@noaa.gov](mailto:David.Dale@noaa.gov)  
F/SER47, [Jocelyn.Karazsia@noaa.gov](mailto:Jocelyn.Karazsia@noaa.gov)