



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

November 19, 2002

Richard Hannan
Ecological Field Office Supervisor
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503

Re: Draft Memorandum of Agreement

Dear Mr. Hannan:

The National Marine Fisheries Service (NMFS) appreciates the U.S. Fish and Wildlife Service's (USFWS) recent invitation to participate in discussions on a proposed Memorandum of Agreement (MOA) among the Federal Aviation Administration (FAA), the U.S. Army Corps of Engineers (Corps), the Alaska Department of Fish and Game (ADF&G) and the USFWS. The purpose of the MOA is to streamline and expedite the permitting process for airport improvement projects involving wetland impacts. NMFS has reviewed the draft MOA and offers the following comments.

General Comments

NMFS recognizes that air travel is an essential mode of transportation in Alaska, and that minimum safety standards must be met in order to protect the safety and reliability of air travel. NMFS supports the concept of an agreement that would streamline the permitting process while maintaining procedures to conserve living marine resources and their habitats. For example, NMFS recently completed a finding with the FAA so that our Essential Fish Habitat (EFH) consultation requirements can be met using existing National Environmental Policy Act review procedures.

Unfortunately, the proposed MOA would not allow sufficient opportunity to protect resources of concern to NMFS. NMFS suggests adding a better description of how the streamlined process would work, and suggests that rather than invent a new process, the MOA build on the existing Corps permitting process as much as possible.



Inclusion of the concepts developed in the Federal Interagency Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation would also be important in establishing fundamental objectives for compensatory mitigation. The current draft does not incorporate broader mitigation policies, nor procedures to assure ecological success of mitigation measures.

Specific Comments

Background

The information provided on wetlands should be expanded to include data on abundance, existing losses and projected losses of different wetland types. While the forested wetlands of southeast Alaska and the tundra of the interior may be very abundant and not in danger of local depletion due to airport safety projects, other, rarer and very ecologically important wetland types have been heavily impacted. To protect coastal wetlands and other NMFS trust resources, an MOA of this type would have to exclude these sensitive wetlands, and project-by-project review would still be appropriate.

For example, emergent estuarine wetlands are an example of a rare, ecologically important wetland type at particular risk from airport expansion projects. Of Alaska's 175 million acres of wetlands, only about 11 million acres are estuarine, and only 500,000 of those estuarine acres are considered prime estuarine habitats. This rare wetland type is highly productive habitat for primary consumers in the food web, supporting spawning and rearing functions critical to anadromous and marine fish life histories.

In southeast Alaska, many airports are located on these high value, rare, emergent prime estuary habitats. Existing airport development has already impacted these resources significantly. A comparison of the regional abundance and ecological importance of each wetland type would seem essential prior to implementing the MOA.

It is critical to the health and future functioning of these valuable habitats that future airport projects are given full scrutiny and protection under the Clean Water Act (CWA), the Fish and Wildlife Coordination Act, the National Environmental Policy Act (NEPA), Executive Order 11990 and the EFH provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).

Specific Obligations of the Parties, USFWS

The streamlined approach described in the MOA would apply to all FAA airport safety upgrades and relocations that would be authorized under a Categorical Exclusion or Environmental Assessment (EA). The MOA states in the paragraph just before this section, that all involved agencies will continue to comply with NEPA, the CWA and other relevant laws, yet it provides no mechanism for ensuring compliance with applicable laws, regulations, and policies. A specific example is the first bullet in this section which states that the USFWS "will no longer review and comment on individual FAA sponsored airport safety improvement projects when published as a Public Notice by the Corps."

Given this statement, the USFWS will be giving up their elevation rights under Section 404(q) of the CWA. It also gives rise to questions regarding the appropriate implementation of NEPA. Without appropriate scoping it would be difficult for the FAA or the Corps to justify that a full public interest review was completed. How will the USFWS provide relevant information and recommendations regarding their resources to assist the action agency in determining whether or not the proposed project could have a significant impact on the human environment, given the approach presented in the MOA?

The sequence of the obligations outlined in the MOA is out of step. It would seem that the second bullet describing the development of the Best Management Practices (BMP) should be completed first. Likewise, any consultations or information to be provided as described in bullets three, four, five, and seven would need to occur either simultaneously or beforehand

to ensure the appropriate BMPs were being applied to the project. NMFS suggests establishing an interagency team to review upcoming projects and identify those that may be controversial, and working within this team to provide input on which BMPs would be appropriate.

The first and the sixth bullets seem to be saying much the same thing - that the USFWS will not object to any FAA sponsored airport safety improvement project and will not comment on the Corps' Public Notice associated with a project. It is not clear how this process would accommodate interagency coordination.

Without the benefit of review by the USFWS, it is entirely possible that wetlands with high functions and values would be adversely impacted resulting in significant impacts on the human environment. NMFS suggests that the MOA have a dispute resolution process, and have "kickout clauses" if a high value resource or habitat is identified at a particular project site, so these projects are reviewed on an individual basis. The MOA states that the USFWS will "be available upon request" from the FAA or Corps to develop wetlands avoidance or minimization measures and apply BMPs - yet the established mechanism for becoming notified and participating in such project review has been eliminated.

NMFS suggests that the language in this section mirror the language in the section pertaining to the Corps' obligations which appropriately encourages wetlands avoidance, minimization and where practicable, compensation for wetland impacts. Delegating this task to the FAA, which lacks expertise in natural resource management, would be impractical and inappropriate given the mandates of the various agencies.

Specific Obligations of the Parties, Corps

The third bullet states that the Corps will "encourage FAA and its agents to fully integrate appropriate BMPs into all FAA sponsored airport improvement projects to avoid, minimize, and where practicable compensate for wetland impacts." How will the Corps provide this encouragement? Rather, the Corps should insure that this occurs in accordance with the 404 (B)(1) Guidelines and other applicable requirements, such as NEPA.

Specific Obligations of the Parties, FAA

The precise area of wetlands to be filled or dredged does not always represent the area of wetlands which may be impaired due construction of these projects. NMFS suggests that in addition to calculating the area to be filled or dredged, the delineation information provided should be expanded to include wetland classifications with estimates of the total area and type of wetland to be affected by a given project.

The FAA is not the agency recognized for expertise in wetland delineation or classification, both of which are critical tasks in determining the size and functional values of wetlands at risk from loss due to airport safety projects. NMFS suggests that this work should be done by the agency with expertise in these tasks, and should be included under the section of the MOA for specific obligations of the Corps.

The fourth bullet states that "Compensation for all wetland losses will be based on a 1:1 ratio and the dollar amount calculated using an average statewide fair market value wetland price of \$500.00 per acre." There is no discussion or reference as to how this price was derived. Since not all wetlands are equal in value, this amount, even to the casual observer, seems shockingly low. Adequate compensation for wetland losses from a proposed project should be established by a thorough functional analysis of the particular type of wetlands on a project-by-project basis. In some instances, the wetlands in question could be worth more than \$100,000 per acre (prime intertidal waterfronts) in other cases, the value may be less than \$500.00 per acre. There is abundant data on mitigation ratios for various wetland types available from wetland mitigation banks nationwide. The ratios change depending on the type of wetland in question. Establishing a blanket figure for losses of all wetland types in all locations throughout Alaska is inappropriate and should not be attempted.

Additional Comments

Pursuant to the MSFCMA, Federal agencies are required to consult with the NMFS on any action that may result in adverse effects to EFH. The EFH regulations at 50 CFR 600.920(f) enable NMFS to make a finding that an existing consultation or

environmental review procedure can be used to satisfy the MSFCMA consultation requirements if the procedure meets the following criteria: 1) the existing process must provide NMFS with timely notification of actions that may adversely affect EFH; 2) notification must include an assessment of the impacts of the proposed action on EFH that meets the requirements for EFH Assessments discussed in section 600.920(e); and 3) NMFS must make a finding pursuant to 50 CFR 600.920(f)(3) that the process satisfies the requirements.

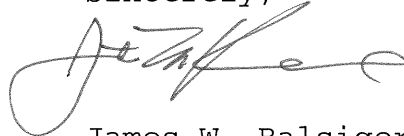
NMFS recently made such a finding for airport projects. In order to streamline environmental review requirements, FAA, ADOT, and NMFS staff worked cooperatively to incorporate EFH consultation into the NEPA process within the FAA environmental review procedure. NMFS found that the existing environmental review procedures under NEPA, for state-sponsored aviation projects in Alaska, can be used to satisfy the EFH consultation requirements of the MSFCMA. Any additional efforts to streamline the environmental review process, such as this MOA, would need to incorporate the requirements of the MSFCMA and allow opportunities for NMFS to provide EFH Conservation Recommendations should a proposed project adversely affect EFH. In addition, pursuant to section 305(b)(4)(B) of the MSFCMA and 50 CFR 600.920(k), FAA as the Federal action agency must then provide a detailed response to NMFS in writing within 30 days after receiving EFH Conservation Recommendations.

Conclusion

NMFS supports efforts to streamline environmental review processes. NMFS is also aware that in many cases in Alaska, in-lieu-fee arrangements may be the only effective and useful approach to satisfy compensatory mitigation requirements. However, NMFS is unable to sign the proposed MOA as drafted. We remain interested in your efforts to streamline the environmental review process, and we are open to discussion to address issues of concern.

Please contact Ms. Jeanne L. Hanson of my staff at (907) 271-3029 should you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Balsiger', with a large, sweeping flourish at the end.

for James W. Balsiger
Administrator, Alaska Region

cc: FAA, Corps, ADF&G - Anchorage
EPA - Seattle (Garret Voerman, U.S. EPA, Region 10, MS-
ECO083, 1200 6th Avenue, Seattle, WA 98101)