United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
United States Department of the Interior
Fish and Wildlife Service

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NMFS Tracking No.:
2008/03598
FWS No.: 13410-2008-FWS # F-0209

June 30, 2008

Michelle Walker
Corps of Engineers, Seattle District
Regulatory Branch CENWS-OD-RG
Post Office Box 3755
Seattle, Washington 98124-3755

Re: Endangered Species Act Section 7 and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Washington State Fish Passage and Habitat Enhancement Restoration Programmatic.

Dear Ms. Walker:

This correspondence is in response to your request for consultation under the Endangered Species Act (ESA). Additionally, this letter serves to meet the requirements for consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Endangered Species Act

The National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS) have reviewed the Memorandum for the Services (MFS) received on June 10, 2008. In the MFS you request concurrence with the effect determinations of "may affect, but not likely to adversely affect" Hood Canal summer-run chum salmon (*O. keta*), Columbia River (CR) chum salmon, Brown Pelican (*Pelecanus occidentalis*), Columbian White-tailed deer (*Odocoileus virginianus leucurus*), Canada lynx (*Lynx canadensis*), gray wolf (*Canis lupus*), pygmy rabbit (*brachylagus idahoensis*), woodland caribou (*Rangifer tarandus caribou*), grizzly bear (*Ursus arctos = U.a. horribilis*), marbled murrelet (*Brachyramphus marmoratus*), northern spotted owl (*Strix occidentalis caurina*), Oregon silverspot butterfly (*Speyeria zerene hippolyta*), western snowy plover (*Charadrius alexandrinus nivosus*), golden paintbrush (*Castilleja levisecta*), water howellia (*Howellia aquatilis*), Nelson's checker-mallow (*Sidalcea nelsoniana*), Kincaid's lupine (*Lupinus sulphureus* ssp. *Kincaidii*), showy stickseed (*Hackelia venusta)*, Bradshaw's desert-parsley

(*Lomatium bradshawii)*, Spalding's silene/catchfly (*Silene spaldingii)*, Ute ladies'-tresses (*Spiranthes diluvialis*) and designated critical habitat for Hood Canal and Columbia River chum salmon, the northern spotted owl, and marbled murrelet. Also, in your MFS you request concurrence with the effect determinations of "may affect, but not likely to adversely affect" for one of the nine proposed actions (see below), forage fish spawning gravel restoration, for Coastal-Puget Sound bull trout interim recovery unit (*Salvelinus confluentus*), Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*), Puget Sound steelhead (*O. mykiss*), Hood Canal summer-run chum salmon and designated critical habitat.

The US Army Corps of Engineers (Corps) is proposing to permit nine categories of restoration actions: Fish passage, installation of instream structures, levee removal and modification, side channel/off-channel habitat restoration and reconnection, salmonid spawning gravel restoration, forage fish spawning gravel restoration, hardened fords for livestock crossings of streams and fencing, irrigation screen installation and replacement, and debris and structure removal.

All actions would be located in Washington State. The overall action area consists of the combined action areas for each project authorized under the Opinion (NMFS No.: 2008/03598; FWS No.: 13410-2008-FWS # F-0209). Individual action areas include upland areas, riparian areas, banks, and the stream channels including the area extending two thirds of the visible turbidity plume downstream from the project footprint, where aquatic habitat conditions will be temporarily degraded until site restoration is complete.

Species Determination

USFWS Species
Prior to implementation of activities which occur in locations where listed terrestrial species may be present, the site-specific conservation measures listed in the BE and SPIF will be applied. In many cases the conservation measures entail development of site specific conservation measures during individual project design with a qualified USFWS staff member. A qualified USFWS staff member has to approve the conservation measures as sufficient to assure that the effects on listed species are insignificant or discountable. Therefore, we concur that the proposed restoration actions "may effect, but are not likely to adversely affect" listed terrestrial species. Project-specific concurrence will be deferred until the site-specific conservation measures are reviewed.

Supplementation of forage fish spawning gravel restoration will adhere to five conservation measures including timing windows. These conservation measures eliminate the risk of adverse effects to listed species. Thus, we concur that the proposed forage fish spawning gravel restoration "may effect, but is not likely to adversely affect" bull trout.

NMFS Species
Columbia River and Hood Canal summer-run chum salmon
Puget Sound Chinook salmon
Puget Sound steelhead

Juvenile chum salmon exit the river shortly after emergence. Timing windows are set to totally avoid exposure. Because of their limited use of freshwater the likelihood of any of the restoration

projects encountering chum salmon is discountable. Long-term effects of any of the restoration actions are expected to be beneficial. Therefore, we concur that the proposed restoration actions "may effect, but are not likely to adversely affect" listed Hood Canal summer-run and CR chum salmon.

Supplementation of forage fish spawning gravel restoration will adhere to five conservation measures including timing windows and surveys for forage fish spawning on known spawning beaches. These conservation measures eliminate the risk of adverse effects to listed species. Thus, we concur that the proposed forage fish spawning gravel restoration "may effect, but is not likely to adversely affect" Puget Sound Chinook salmon, Puget Sound steelhead and Hood Canal summer-run chum salmon.

Critical Habitat Determination

USFWS
Northern Spotted Owl and Marbled Murrelet

All proposed restoration projects are designed to improve habitat for listed species. The only negative effects are construction-related and short-term. Loss of or impact to trees in marbled murrelet and northern spotted owl suitable habitat would be avoided and/or minimized by conservation measures such that no degradation of suitable habitat would occur. Prior to implementation of activities which occur in locations where suitable habitat is present, the site-specific conservation measures listed in the BE and SPIF will be applied. Some conservation measures entail the development of site specific conservation measures during individual project design with a qualified USFWS staff member. In any case, whether through review of the SPIF or development of individual, site specific conservation measures, a qualified USFWS staff member has to approve the conservation measures as sufficient to assure that effects of the action do not result in a loss of habitat or disturbance to listed terrestrial species. Therefore, the USFWS concurs with your determination of "may affect, not likely to adversely affect" designated critical habitat.

NMFS
Columbia River and Hood Canal summer-run chum salmon

NMFS published its final designation of critical habitat for 12 Evolutionary Significant Units (ESU) of West Coast salmon and steelhead on September 2, 2005 (70 FR 52630). This listing includes Hood Canal summer-run chum and CR chum salmon. The Primary Constituent Elements (PCE) for the critical habitat in the action area are:

1. Freshwater spawning sites
2. Freshwater rearing sites
3. Freshwater migration corridors
4. Estuarine areas fee of obstruction
5. Nearshore marine areas

NMFS has analyzed the potential impacts of the project on the PCEs, and has determined that potential effects on these PCEs would be insignificant for the following reasons:

All proposed restoration projects are designed to improve one or more PCEs. The only negative effects are construction related and short-term. These short-term construction related effects generally have subsided; for example, sediment has been flushed downstream/out, by the time chum enter the habitat. NMFS concurs with your determination of "may affect, not likely to adversely affect" for designated critical habitat.

NMFS and USFWS' concurrence with the effects determination for the proposed project is based on the description of the activities and conservation measures summarized above and included in the BE. This concludes informal consultation on these actions in accordance with 50 CFR 402.14(b)(1). The COE must reinitiate the ESA consultation: (1) if new information reveals effects on the actions that may affect listed species in a way not previously considered; (2) the actions are modified in a manner that causes an effect to the listed species that was not previously considered; or (3) a new species is listed, or critical habitat is designated, that may be affected by the proposed actions.

Magnuson-Stevens Fishery Conservation and Management Act

Federal agencies are required, under section 305(b)(2) of the MSA and its implementing regulations (50 CFR 600 Subpart K), to consult with NMFS regarding actions that are authorized, funded, or undertaken by that agency that may adversely affect Essential Fish Habitat (EFH). The MSA section 3 defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." If an action would adversely affect EFH, NMFS is required to provide the Federal action agency with EFH conservation recommendations (MSA section 305(b)(4)(A)). This consultation is based, in part, on information provided by the Federal action agency and descriptions of EFH for Pacific salmon contained in Appendix A to Amendment 14 to the Pacific Coast Salmon Plan (August 1999) developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce (September 27, 2000).

The proposed action and action area is described above and in the BE. The action areas include habitat that has been designated as EFH for various life stages of those species found in (Table 1. EFH Species). Conservation measures included as part of the project are described in the BE. They include a large suite of actions designed to minimize short-term and construction related negative impacts.

The *EFH Conservation Recommendations*: Because the habitat requirements (i.e., EFH) for the MSA-managed species in the action area are similar to that of the ESA-listed species, and because the conservation measures that the COE included as part of the proposed action to address ESA concerns are also adequate to avoid, minimize, or otherwise offset potential adverse effects to designated EFH, conservation recommendations pursuant to MSA section 305(b)(4)(A)) are not necessary. Since NMFS is not providing conservation recommendations at this time, no 30-day response from the COE is required (MSA section 305(b)(4)(B)).

This concludes consultation under the MSA. If the proposed action is modified in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations, the COE will need to reinitiate consultation in accordance with implementing regulations for EFH at 50 CFR 600.920(1).

NMFS appreciates your efforts to comply with requirements under the ESA and the MSA. If you have questions, please contact Stephanie Ehinger at the Washington State Habitat Office, (360) 534-9341, or email Stephanie.Ehinger@noaa.gov.

Sincerely,

D. Robert Lohn
Regional Administrator
NOAA Fisheries

Ken S. Berg, Manager
Western Washington Fish and Wildlife Office
U.S. Fish and Wildlife Service

cc: Suzanne Audet, USFWS
Chris Drivdahl, State of Washington

Table 1 EFH Species

Groundfish Species	redstripe rockfish *S. proriger*	Dover sole *Microstomus pacificus*
spiny dogfish *Squalus acanthias*	rosethorn rockfish *S. helvomaculatus*	English sole *Parophrys vetulus*
big skate *Raja binoculata*	rosy rockfish *S. rosaceus*	flathead sole *Hippoglossoides elassodon*
California skate *Raja inornata*	rougheye rockfish *S. aleutianus*	petrale sole *Eopsetta jordani*
longnose skate *Raja rhina*	sharpchin rockfish *S. zacentrus*	rex sole *Glyptocephalus zachirus*
Ratfish *Hydrolagus colliei*	splitnose rockfish *S. diploproa*	rock sole *Lepidopsetta bilineata*
Pacific cod *Gadus macrocephalus*	striptail rockfish *S. saxicola*	sand sole *Psettichthys melanostictus*
Pacific whiting (hake) *Merluccius productus*	tiger rockfish *S. nigrocinctus*	starry flounder *Platichthys stellatus*
black rockfish *Sebastes melanops*	vermilion rockfish *S. miniatus*	arrowtooth flounder *Atheresthes stomias*
Bocaccio *S. paucispinis*	yelloweye rockfish *S. ruberrimus*	
brown rockfish *S. auriculatus*	yellowtail rockfish *S. flavidus*	**Coastal Pelagic Species**
canary rockfish *S. pinniger*	shortspine thornyhead *Sebastolobus alascanus*	anchovy *Engraulis mordax*
China rockfish *S. nebulosus*	cabezon *Scorpaenichthys marmoratus*	Pacific sardine *Sardinops sagax*
copper rockfish *S. caurinus*	lingcod *Ophiodon elongatus*	Pacific mackerel *Scomber japonicus*
darkblotch rockfish *S. crameri*	kelp greenling *Hexagrammos decagrammus*	market squid *Loligo opalescens*
greenstriped rockfish *S. elongates*	sablefish *Anoplopoma fimbria*	**Pacific Salmon Species**
Pacific ocean perch *S. alutus*	Pacific sanddab *Citharichthys sordidus*	Chinook salmon *Oncorhynchus tshawytscha*
quillback rockfish *S. maliger*	butter sole *Isopsetta isolepis*	coho salmon *O. kisutch*
redbanded rockfish *S. babcocki*	curlfin sole *Pleuronichthys decurrens*	Puget Sound pink salmon *O. gorbuscha*