UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd Boulevard, Suite 1100
PORTLAND, OR 97232-1274

Refer to NMFS No:
WCRO-2020-02505

January 5, 2021

William Abadie
Chief, Regulatory Branch
US Army Corps of Engineers, Portland District
333 SW 1st Avenue
Portland, Oregon 97204

Re: Endangered Species Act Section 7 Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Foss Maritime Company South Dock Replacement Project (HUC 1709001202), Multnomah County, Oregon

Dear Mr. Abadie:

This letter responds to your September 9, 2020, request for initiation of consultation with the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) on the effects of the U.S. Army Corps of Engineers, Portland District (Corps) permitting the above named action as authorized under Section 10 of the Rivers and Harbors Act, and Section 404 of the Clean Water Act.

Your request qualified for our expedited review and analysis because it met our screening criteria and contained all required information on, and analysis of, your proposed action and its potential effects to listed species and designated critical habitat.

We reviewed the Corps' consultation request and related initiation package, including a Biological Assessment (BA) prepared by Grette and Associates (2020), which is available on file at the NMFS Oregon Washington Coastal Office in Portland, Oregon. Where relevant, we adopted the information and analyses provided in the BA, but only after our independent, science-based evaluation confirmed they meet our regulatory and scientific standards. We adopt by reference here the following sections of the BA:

- Section 2 for the description of the proposed action, including the purpose and need;
- Section 3 for the description of the action area and environmental baseline;
- Section 4 for the status of species and critical habitat; and,
- Section 5 for the effects of the proposed action and cumulative effects.

On September 9, 2020, the Corps submitted a request for initiation of ESA consultation with the BA. NMFS reviewed the BA and considered the information sufficient to initiate consultation on September 9, 2020.

The Corps is proposing to permit Foss Maritime Company, LLC, to replace and relocate a damaged float at their tug terminal in Portland, Oregon (Willamette River Mile 5.5). A tug collided with the South Dock in November 2019, causing irreparable damage.

"Action area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). The action area in this case is determined by the maximum extent of underwater pile driving sound, as it is the farthest-reaching route of effect for ESA species. Based on the underwater noise generation analysis in section 5.1.1 of the BA, this area generally extends approximately 3.1 miles downriver and 5.3 miles upriver from the project site (BA, Figure 3-1). All other potential project effects in aquatic areas would be localized well within this action area.

Upper Willamette River (UWR) Chinook salmon, Lower Columbia River (LCR) Chinook salmon, LCR coho salmon, UWR steelhead, and LCR steelhead all occur in the action area (BA, Table 1). Moreover, those species are also likely to be adversely affected by effects of the proposed action (BA, Table 2) that will include a short-term reduction in water quality from increased suspended sediments and associated contaminants, and short-term hydroacoustic impacts from pile driving (BA, Section 5). Our information confirms the presence of those species in the action area, and that the proposed action is likely to adversely affect them as described.

Each of the affected species also has designated critical habitat in the action area (BA, Table 1) and, according to the BA (Table 2), those critical habitats are not likely to be adversely affected by the proposed action because those effects have a low likelihood of causing long-term habitat changes. However, the effects of an action on species or critical habitat often depend on the duration of those effects, and even a short-term event whose effects are relaxed almost immediately (i.e., pulse effect) can still be adverse, provided those effects are reasonably likely to occur, and can be meaningfully measured, detected, or evaluated.

In this case, we expect to be able to measure the effects of the action as physical changes in water quality and underwater sound that will be sufficient to reduce the capability of designated critical habitat to meet the biological requirements of listed species. Thus, our information confirms the presence of critical habitat in the action area but, contrary to the BA, we conclude that the effects of the proposed action are likely to adversely affect critical habitat, even if those effects may be unlikely to bring about a long term or permanent modification of those critical habitats.

We used information in BA Sections 1 and 4, to examine the status of each species and the condition of critical habitat throughout the designated area, as described in 50 CFR 402.02, including the function of the physical or biological features (PBFs) essential to the conservation of the species that create the conservation value of that habitat. We also considered information in the UWR Conservation and Recovery Plan for Chinook salmon and steelhead (NMFS 2011) describing the presence, abundance, density or periodic occurrence of listed species and the condition and location of the species' habitat, including critical habitat [50 CFR 402.14(c)(1)(iii)].

We used information in BA Section 3 to examine the "environmental baseline," including the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal actions in the action area that have already undergone formal or early section 7 consultations, and the impact of State or private actions which are contemporaneous with the consultation in process (50 CFR 402.02). The consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify are also part of the environmental baseline

Under the ESA, "effects of the action" are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action (see 50 CFR 402.17). In our analysis, which describes the effects of the proposed action, we considered 50 CFR 402.17(a) and (b).

Sections 5 and 6 of the BA provide a detailed discussion and comprehensive assessment of the effects of the proposed action, and are adopted here pursuant to 50 CFR 402.14(h)(3)(i). NMFS evaluated these sections of the BA and after our independent, science-based evaluation determined that it meets our regulatory and scientific standards. We also considered the April 18, 2018, memorandum, "West Coast Region's Guidance on Assessing the Effects of Structures in ESA Section 7 Consultation" (NMFS 2018). Therefore, in addition to the construction impacts presented by the applicant in the BA, NMFS supplements this condensed Opinion with a brief discussion of the ongoing effects of the continued existence of the overwater structure, which the proposed action would facilitate.

UWR Chinook salmon, LCR Chinook salmon, LCR coho salmon, UWR steelhead, and LCR steelhead will be affected by the proposed action, as discussed in Section 5 of the BA. The effects of pile driving with a vibratory hammer will be temporary and will not affect more than two cohorts of the affected populations. Use of an impact hammer is not likely to be necessary for the project. Each of the affected species also has designated critical habitat located in the affected area, which would also be adversely affected by temporarily reduced water quality due to resuspension of sediments, and noise during construction. These effects, as described in Section 6 of the BA, will be minor, have a short duration, and are not expected to result in a substantial reduction in the conservation value of critical habitat.

In addition to the construction impacts presented in the BA, the project will also perpetuate the current effects of the structure on ESA species and critical habitat by facilitating its continued existence. Replacing the structure will perpetuate the degraded condition of shallow water habitat in the project area by continuing to preclude the development of quality rearing and foraging areas for salmonid species. However, NMFS recognizes the project area is heavily impacted by human use and anthropogenic modification; as a result, the effects of continuing the baseline conditions are considered lower than if a new structure were being constructed in a more pristine habitat. Additionally, submerged aquatic vegetation is likely to be absent from the site and cover area for predatory fish is not likely to be modified because of the proposed action. The proposed action also includes an overwater footprint that was downsized by 320 square feet,

which is likely to offset some of the adverse effects of the continued existence of the overwater structure. The proposed action also includes pilings with conical toppers to deter avian predation of ESA fish species, and will reduce the overall number and size of pilings used for the project. Based on the effects of proposed action presented in the BA, and the supplemental existing structures considerations, NMFS agrees that no long-term effects beyond the continuation of the baseline condition are likely to accrue from the replaced structure.

"Cumulative effects" are those effects of future state or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation (50 CFR 402.02 and 402.17(a)). Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the ESA. Section 5.2 of the BA discusses cumulative effects and identifies no non-federal actions occurring or likely to occur within the affected area other than this proposed action.

Integration and synthesis of information for the status of species, environmental baseline, effects of the action, and cumulative effects is the final step in our assessment of the risk posed to species and critical habitat as a result of implementing the proposed action. Here, we add the effects of the action to the environmental baseline and the cumulative effects, taking into account the status of the species and critical habitat, to formulate our biological opinion as to whether the proposed action is likely to: (1) Reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing its numbers, reproduction, or distribution; or (2) appreciably diminish the value of designated or proposed critical habitat as a whole for the conservation of the species.

As described in Section 4 of the BA and information cited therein, individual UWR Chinook salmon, LCR Chinook salmon, LCR coho salmon, UWR steelhead, and LCR steelhead use the action area to complete part of their life history requirements. Some salmon and steelhead migrate and rear in the action area, while others only migrate through, once as out-migrating juveniles and then again as adult fish on upstream spawning migration.

The status of each salmon and steelhead species addressed by this consultation varies considerably from very high risk of extinction (UWR and LCR Chinook salmon), moderate to high risk (LCR coho salmon) to moderate risk (UWR and LCR steelhead). Similarly, the many individual populations affected by the proposed program vary considerably in their biological status. The species addressed in this opinion have declined due to numerous factors. The one factor for decline that all these species share is degradation of freshwater and estuarine habitat. Human development of the Pacific Northwest has caused significant negative changes to stream and estuary habitat across the range of these species.

As described in Section 3 of the BA, the environmental baseline within the action area is severely degraded, and climate change is likely to exacerbate several of the ongoing habitat issues, in particular, increased summer temperatures, and decreased summer flows in the freshwater environment, ocean acidification, and sea level rise in the marine environment. The replacement of the dock will continue the baseline condition for the functional life of the structure, and some of those ongoing impacts are likely to be amplified with the additional environmental stressors of climate change.

As described in Section 2 of the BA, the construction activities associated with the dock replacement can be offset, to some degree, through implementation of appropriate best management practices (BMPs). The BMPs that will be applied were carefully chosen based on timing, impact area reduction, pile driving and removal method, and sediment and noise containment. These actions are likely to minimize exposure of ESA listed fish species to the adverse effects of construction noise, turbidity, and general disturbance.

As described in Section 5 of the BA, the effects caused by the pile driving and piling removal, removal of the old north and south docks, and placement of the new and existing floats will be brief (intermittent over two weeks) during a time when relatively few fish are present, local, and relatively minor. Aquatic and riparian habitat at the project site and within the action area are not expected to realize any long-term impacts beyond those previously discussed by virtue of prolonging the existence of the structure with a 320 square foot reduction of over water coverage. Additionally, the proposed action is not likely to significantly contribute to cumulative effects of upstream activities that collectively result in diminished baseline conditions of the project area.

In summary, the proposed dock replacement will affect far too few individual fish to influence the VSP parameters of any population, and will not reduce the likelihood of survival and recovery of any the listed species addressed in this biological opinion.

Regarding critical habitat, the action area is designated as critical habitat for the five species of ESA-listed salmon and steelhead that occur there. Those habitats were determined to have a high conservation value, based largely on their migratory and restoration potential. Baseline conditions for the individual PBFs that comprise those critical habitats vary widely, from poor (e.g., floodplain connectivity, riparian conditions) to fair (e.g., fish passage, water quantity). Climate change and human development have and continue to adversely impact critical habitat creating limiting factors and threats to the recovery of the ESA listed species. Climate change will likely result in a generally negative effects on stream flow and temperature. Information in Section 3.4 described the environmental baseline in the action area as poor, and NMFS assumes that the environmental baseline is not meeting all biological requirements of individual fish of listed species. This is due to one or more impaired aquatic habitat functions related to any of the habitat factors limiting the recovery of the species in that area. As described in Sections 6.1 and 6.2, the cumulative effects are not likely to have an adverse impact on critical habitat PBFs because any future project that entails in-water work will require appropriate Federal and ESA review.

In the analysis of the effects of the action on critical habitat PBFs (Section 6 of the BA), we found that the effects of the dock replacement construction will be short term. On balance, we expect critical habitat quality be unchanged as a result of the overwater structure, which will have a slightly reduced coverage area; therefore, the construction phase of the proposed action is not likely to result in appreciable reduction in the value of designated critical habitat for the conservation of the species addressed but this biological opinion. Additionally, the effects of the continued existence of the dock structure for its serviceable life are likely to be similar to those described as environmental baseline conditions, including benthic area cover and avian predation potential. These effects may be slightly reduced due to structural modifications that will reduce

avian predation and reduce the amount of covered shallow water habitat by approximately 320 square feet.

Cumulative effects will include watershed council activities, the State of Oregon projects, and other entities that are likely to continue to undertake projects to improve habitat for listed anadromous species in the lower Willamette River and Portland Harbor Superfund Site. These projects are likely to have beneficial effects on listed species and their critical habitats. Conversely, as the human population grows, new residential and industrial growth will likely occur in the action area.

After reviewing and analyzing the current status of the listed species and critical habitat, the environmental baseline within the action area, the effects of the proposed action, the effects of other activities caused by the proposed action, and cumulative effects, it is NMFS' biological opinion that the proposed action is not likely to jeopardize the continued existence of LCR Chinook salmon, LCR steelhead, UWR Chinook salmon, and UWR steelhead, and LCR coho salmon or destroy or adversely modify their designated critical habitats.

INCIDENTAL TAKE STATEMENT

Section 9 of the ESA and Federal regulations pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without a special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm" is further defined by regulation to include significant habitat modification or degradation that actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering (50 CFR 222.102). "Incidental take" is defined by regulation as takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant (50 CFR 402.02). Section 7(b)(4) and section 7(o)(2) provide that taking that is incidental to an otherwise lawful agency action is not considered to be prohibited taking under the ESA if that action is performed in compliance with the terms and conditions of this ITS.

Amount or Extent of Take

In the biological opinion, NMFS determined that incidental take is reasonably certain to occur as follows:

- Harm to juveniles and adults of all ESA-listed salmon and steelhead considered in this opinion due to hydroacoustic impacts from pile driving with a vibratory or impact hammer, construction noise and dust, potential construction debris entering the waterway, and overall disturbance generated by removal and placement of in water structures.
- Harm to juveniles and adults of all ESA-listed salmon and steelhead considered in this opinion due to a temporary increase in suspended sediment and associated contaminants during pile replacement.

- Adverse effects associated with the presence of the replacement dock in the environment, separate from effects caused by its construction, including, but not limited to, the impact of continued shade cover of shallow water habitat and ongoing avian predation potential.

The distribution and abundance of fish that occur within an action area are affected by habitat quality, competition, predation, and the interaction of processes that influence genetic, population, and environmental characteristics. These biotic and environmental processes interact in ways that may be random or directional, and may operate across far broader temporal and spatial scales than are affected by the proposed action. Thus, the distribution and abundance of fish within the action area cannot be attributed entirely to habitat conditions, nor can NMFS precisely predict the number of fish that are reasonably certain to be injured or killed if their habitat is modified or degraded by the proposed action. In such circumstances, NMFS cannot provide an amount of take that would be caused by the proposed action.

The best available indicators for the extent of take are:

1. For harm associated with hydroacoustic, impacts and other construction related noise the best indicator of take is impact hammer strikes. In the event that piles cannot be driven to the target depth with a vibratory hammer, and to be conservative, limited impact pile driving was be assumed for all piles in the BA.

   Each pile could require up to 400 strikes to embed and up to 3 piles could be driven in a single day. Based on this, there could be up to a total of 1,200 strikes in a given day. Therefore, the anticipated take will be exceeded if impact hammer use exceeds 1,200 strikes in one day.

2. For harm associated with impaired feeding, resting, and refuge from predators caused by decreased water quality and increased dust, noise, light, and human presence during construction of the replacement dock, is the extent of suspended sediment plumes.

   Specifically, the anticipated take will be exceeded if increased suspended sediment from pile replacement causes suspended sediment plumes 300 feet from the downstream boundary of construction activities to exceed 5 NTU over the background level for two consecutive monitoring intervals.

3. The best available indicator for harm associated with the continuing presence of the Foss Maritime dock in the environment is the as-built footprint for construction actions related to: (a) the total area of coverage by the floats and gangway; and (b) the total number of treated timber pilings to be removed and the number of new steel pilings to be installed.

   Specifically, the anticipated take for harm associated with the continued existence of the dock structure will be exceeded if the proposed action is completed in a way that results in an as-built footprint for any action described in 1 through 3 above that does not concur with plans and specifications described in Section 2.3, 2.4, and 2.5 of the BA.

These take indicators act as effective reinitiation triggers because these features best integrate the likely take pathways associated with this action, are proportional to the anticipated amount of take, and are the most practical and feasible indicators to measure. Exceeding any of the indicators for extent of take will trigger the reinitiation provisions of this opinion.

Effect of the Take

In the biological opinion, NMFS determined that the amount or extent of anticipated take, coupled with other effects of the proposed action, is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

Reasonable and Prudent Measures

"Reasonable and prudent measures" are nondiscretionary measures that are necessary or appropriate to minimize the impact of the amount or extent of incidental take (50 CFR 402.02).

The Corps and Foss Maritime shall:

1. Minimize incidental take from proposed action-related activities by applying conditions to the proposed action that avoid or minimize adverse effects of noise generation and sediment suspension on water quality.

2. Ensure completion of a monitoring and reporting program to confirm that the take exemption for the proposed action is not exceeded, and that the terms and conditions in this incidental take statement are effective in minimizing incidental take. The report will be submitted to NMFS no later than 60 days after the close of the work window.

Terms and Conditions

The terms and conditions described below are non-discretionary, and the Corps or any applicant must comply with them in order to implement the RPMs (50 CFR 402.14). The Corps or any applicant has a continuing duty to monitor the impacts of incidental take and must report the progress of the action and its impact on the species as specified in this ITS (50 CFR 402.14). If the entity to whom a term and condition is directed does not comply with the following terms and conditions, protective coverage for the proposed action would likely lapse.

1. The following term and condition implements reasonable and prudent measure 1:
    a. Work Window. To minimize effects to juvenile salmonids, the applicant must limit all activities conducted below ordinary high water to the in-water work window of July 1-October 31.
    b. Notice to Contractors. Before beginning work, the applicant must provide all contractors working on site with a complete list of permit special conditions, reasonable and prudent measures, and terms and conditions intended to minimize the amount and extent of take resulting from in-water work.

c. Minimize Impact Area and Duration. The applicant must confine construction impacts to the minimum area and duration necessary to complete the proposed action.

d. Conservation Measures. The applicant must carry out all relevant conservation measures from the proposed action section of this opinion as described.

e. Pile Driving. When possible, the applicant must use a vibratory hammer for pile installation. If an impact hammer is used to help proof or set the piles, a bubble curtain must be utilized during impact hammer strikes.
   i. If water velocity is 1.6 feet per second or less, surround the pile being driven by a confined or unconfined bubble curtain that will distribute small air bubbles around 100% of the pile perimeter for the full depth of the water column.
   ii. If water velocity is greater than 1.6 feet per second, surround the pile being driven by a confined bubble curtain (e.g. a bubble ring surrounded by fabric or a non-metallic sleeve) that will distribute air bubbles around 100% of the pile perimeter for the full depth of the water column.

f. Pile Removal. The applicant must use the following steps to minimize contaminant release, sediment disturbance and suspended sediment:
   i. Keep all equipment out of the water, grip piles above the waterline, and complete all work during low water and low current conditions.
   ii. Dislodge the pile with a vibratory hammer, whenever feasible; never intentionally break a pile by twisting or bending.
   iii. Slowly lift the pile from the sediment and through the water column.
   iv. Place the pile in a containment basin on a barge deck, pier, or shoreline without attempting to clean or remove any adhering sediment. A containment basin for the removed piles and any adhering sediment may be constructed of durable plastic sheeting with sidewalls supported by hay bales or another support structure to contain all sediment and return flow which may otherwise be directed back to the waterway.
   v. Dispose of all floating surface debris, any sediment spilled on work surfaces, and all containment supplies at a permitted upland disposal site.

g. Turbidity. The applicant must conduct monitoring and reporting as described below. Monitoring must occur each day during daylight hours when in-water work is being conducted.
   i. Representative background point. An observation must be taken every 2 hours at a relatively undisturbed area at least 600 feet upcurrent from in-water disturbance to establish background turbidity levels for each monitoring cycle. Background turbidity, location, time, and tidal stage must be recorded prior to monitoring downcurrent.
   ii. Compliance point. Monitoring must occur every 2 hours approximately 300 feet down current from the point of disturbance and be compared against the background observation. The turbidity, location, time, and tidal stage must be recorded for each sample.
   iii. Compliance. Results from the compliance points must be compared to the background levels taken during that monitoring interval. Turbidity may

not exceed an increase of 5 NTU above background at the compliance point during work.

iv. Exceedence. If an exceedence occurs, the applicant must modify the activity and continue to monitor every 2 hours. If an exceedence over the background level continues after the second monitoring interval, then work must stop and NMFS must be notified so that revisions to the BMPs can be evaluated.

v. If the weather conditions are unsuitable for monitoring (heavy fog, ice/snow, excessive winds, rough water, *etc*.), then operations must cease until conditions are suitable for monitoring.

vi. Copies of daily logs for turbidity monitoring must be available to NMFS upon request.

h. The applicant must maintain an absorptive boom during all in-water activities to capture contaminants that may be floating on the water surface as a consequence of construction activities.

2. The following term and condition implements reasonable and prudent measure 2: Ensure completion of a monitoring and reporting program to confirm that the take exemption for the proposed action is not exceeded, and that the terms and conditions in this incidental take statement are effective in minimizing incidental take.

a. Turbidity. The Corps must record all turbidity monitoring required by subsection 1.g. above in daily logs. The daily logs must include calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; location; date; time; and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. The applicant must make available copies of daily logs for turbidity monitoring to DEQ, NMFS, USFWS, and ODFW upon request.

b. Project completion report. The Corps/Foss Maritime must provide a report with the following information within 60 days of the closing of the in water work window:

i. Total number of pile impacts strikes for each day driving takes place.

ii. A summary of all turbidity monitoring, including a copy of daily monitoring logs and a discussion of any exceedances.

iii. Total as-built area for all float and gangway surfaces.

iv. Total number and type of piles removed and installed.

c. The applicant must submit monitoring reports to:

National Marine Fisheries Service
Oregon Washington Coastal Office
Attn: WCRO-2020-02505
1201 NE Lloyd Boulevard, Suite 1100
Portland, OR 97232-2778

Conservation Recommendations

Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of the threatened and endangered species. Specifically, conservation recommendations are suggestions regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information (50 CFR 402.02).

Identify and implement habitat enhancement or restoration activities in the LWR that:

- Increase the amount of non-contaminated shallow-water habitat in the reach to benefit ESA-listed salmonids
- Remove old in-water structures such as docks and piles that are no longer in use
- Protect and restore riparian areas to improve water quality through appropriate handling of contaminated sediment and debris
- Improve or regrade and revegetate streambanks as shoreline remediation activities are carried out in the Superfund Site.

Please notify NMFS if the Corps or the applicant carries out this recommendation so that we will be kept informed of actions that are intended to improve the conservation of listed species or their designated critical habitats.

Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by the Corps or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) The amount or extent of incidental taking specified in the ITS is exceeded, (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this biological opinion; or if (4) a new species is listed or critical habitat designated that may be affected by the identified action.

NMFS also reviewed the proposed action for potential effects on essential fish habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), including conservation measures and any determination you made regarding the potential effects of the action. This review was conducted pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation. The proposed action and action area for this consultation are described in the Introduction to this document. The action area includes areas designated as EFH for various life-history stages of Chinook and coho salmon as identified in the Fishery Management Plan for Pacific coast salmon (Pacific Fishery Management Council 2014). Based on information provided by the action agency and the analysis of effects presented in the ESA portion of this document, NMFS concludes that proposed action will have adverse effects on EFH designated for Chinook and coho salmon. These effects include a temporary reduction in water quality from increased suspended sediment and associated contaminants, as well as

hydroacoustic impacts from pile installation and removal, and ongoing effects of the continued presence of the overwater structure in shallow water habitat.

EFH conservation recommendations include:

1. In-water Work: The Corps should recommend that the applicant follow terms and conditions 1(c) – 1(h) as presented in the ESA portion of this document.

2. Monitoring and Reporting: The Corps should recommend that the applicant follow terms and conditions 2(a) and 2(b) as presented in the ESA portion of this document.

3. Aquatic Habitat Restoration: The Corps should recommend that the applicant identify and implement habitat enhancement or restoration activities in the LWR that:

    a. Increase the amount of shallow-water habitat in the reach to benefit ESA-listed salmonids
    b. Restore or create off-channel habitat or access to off-channel habitat, side channels, alcoves, wetlands, and floodplains
    c. Remove old docks and piles that are no longer in use
    d. Protect and restore riparian areas to improve water quality, provide long-term supply of large wood to streams, and reduce impacts that alter other natural processes
    e. Improve or regrade and revegetate streambanks
    f. Restore instream habitat complexity, including large wood placement
    g. Remove invasive plant species from upland vegetation and plant native species

Fully implementing these EFH conservation recommendations would protect, by avoiding or minimizing the adverse effects described previously, designated EFH for Pacific Coast salmon.

As required by section 305(b)(4)(B) of the MSA, the Corps must provide a detailed response in writing to NMFS within 30 days after receiving an EFH Conservation Recommendation. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH Conservation Recommendations unless NMFS and the Federal agency have agreed to use alternative time frames for the Federal agency response. The response must include a description of measures proposed by the agency for avoiding, minimizing, mitigating, or otherwise offsetting the impact of the activity on EFH.

In the case of a response that is inconsistent with the Conservation Recommendations, the Federal agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects (50 CFR 600.920(k)(1)).

In response to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each EFH consultation and how many are adopted by the action agency. Therefore, we ask that in your statutory reply to the EFH

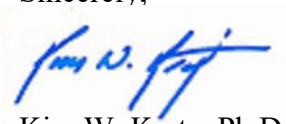
portion of this consultation, you clearly identify the number of conservation recommendations accepted.

The Corps must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH Conservation Recommendations (50 CFR 600.920(l)).

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The biological opinion will be available through NOAA Institutional Repository https://repository.library.noaa.gov/. A complete record of this consultation is on file at the Oregon Washington Coastal Office, Portland, Oregon.

Please direct questions regarding this letter to Kate Wells, at Kathleen.Wells@NOAA.gov or (503) 230-5437.

Sincerely,



Kim W. Kratz, Ph.D
Assistant Regional Administrator
Oregon Washington Coastal Office

cc: Melody White, Corps of Engineers, Portland District, Regulatory Branch
Sydney Gebers, Grette Associates

REFERENCES

Grett Associates. (2020). Foss Maritime Company, South Dock Replacement Project, Biological Assessment. September 8, 2020.

NMFS. 2011. Upper Willamette River conservation and recovery plan for Chinook salmon and Steelhead. https://repository.library.noaa.gov/view/noaa/15981

NMFS. 2018. West Coast Region's Guidance on Assessing the Effects of Structures in Endangered Species Act Section 7 Consultation.

NMFS. 2019. Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Phillips 66 Fender Pile Replacement on the Willamette River, River Mile 7.8 (HUC 1709001202), Multnomah County, Oregon (Corps No.: NWP-2007-92-8). August

Pacific Fishery Management Council. 2014. Appendix A to the Pacific Coast Salmon Fishery Management Plan, as modified by Amendment 18 to the Pacific Coast Salmon Plan: Identification and description of essential fish habitat, adverse impacts, and recommended conservation measures for salmon. Pacific Fishery Management Council, Portland, OR. September 2014. 196 p. + appendices.