



**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-2020-02166

April 12, 2022

Jacalen Printz  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers, Seattle District  
Regulatory Branch CENSW-OD-RG  
Seattle, Washington 98124-3755

Re: Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Mercerwood Shore Club Pier Repair Project in Seattle, Washington (Corps No. NWS-2019-972)

Dear Ms. Printz:

Thank you for your letter of June 12, 2020, requesting initiation of consultation with NOAA's National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) for the Mercerwood Shore Club Pier Repair Project. This consultation was conducted in accordance with the 2019 revised regulations that implement section 7 of the ESA (50 CFR 402, 84 FR 45016).

NMFS also reviewed the likely effects of the proposed action on essential fish habitat (EFH), pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(b)), and concluded that the action would adversely affect the EFH of Pacific Salmon essential fish habitat (EFH). Therefore, we have included the results of that review in Section 3 of this document.

The enclosed document contains the biological opinion (opinion) prepared by the NMFS pursuant to section 7 of the ESA on the effects of the proposed action. In this opinion, the NMFS concludes that the proposed action would adversely affect but is not likely to jeopardize the continued existence of Puget Sound (PS) Chinook salmon and PS Sound steelhead. The NMFS also concludes that the proposed action is likely to adversely affect designated critical habitat for PS Chinook salmon but is not likely to result in the destruction or adverse modification of that designated critical habitat. This opinion also documents our conclusion that the proposed action may affect, but is not likely to adversely affect southern resident (SR) killer whales and their designated critical habitat.

This opinion includes an incidental take statement (ITS) that describes reasonable and prudent measures (RPMs) the NMFS considers necessary or appropriate to minimize the incidental take associated with this action, and sets forth nondiscretionary terms and conditions that the USACE must comply with to meet those measures. Incidental take from actions that meet these terms and conditions will be exempt from the ESA's prohibition against the take of listed species.

WCRO-2020-02166



Section 3 of this document includes our analysis of the action's likely effects on EFH pursuant to Section 305(b) of the MSA. Based on that analysis, the NMFS concluded that the action would adversely affect designated freshwater EFH for Pacific Coast Salmon. However, as described at Subsection 3.3, the NMFS knows of no reasonable measures that the applicant could take, beyond those already proposed, that would reduce the project's minor effects on the attributes of Pacific Coast salmon EFH. Therefore, the NMFS has made no conservation recommendations pursuant to MSA (§305(b)(4)(A)).

Please contact David Price in the North Puget Sound Branch of the Oregon Washington Coastal Office at 253-317-1498, or by email at [David.Price@noaa.gov](mailto:David.Price@noaa.gov) if you have any questions concerning this consultation, or if you require additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kim W. Kratz".

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

cc: Daisy Douglas, USACE

**Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens  
Fishery Conservation and Management Act Essential Fish Habitat Response for the**

Mercerwood Shore Club Pier Repair Project, Seattle, Washington  
(USACE Number: NWS-2019-972)

**NMFS Consultation Number:** WCRO-2020-02166

**Action Agency:** U.S. Army Corps of Engineers

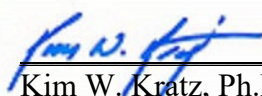
**Affected Species and NMFS' Determinations:**

ESA-Listed Species	Status	Is Action Likely to Adversely Affect Species?	Is Action Likely To Jeopardize the Species?	Is Action	Is Action Likely
Puget Sound steelhead ( <i>Oncorhynchus mykiss</i> )	Threatened	Yes	No	N/A	N/A
Puget Sound Chinook ( <i>O. tshawytscha</i> )	Threatened	Yes	No	Yes	No
Killer Whale (Orcinus orca) Southern Resident (SR)	Endangered	No	No	N/A	N/A

Fishery Management Plan That Identifies EFH in the Project Area	Does Action Have an Adverse Effect on EFH?	Are EFH Conservation Recommendations Provided?
Pacific Coast Salmon	Yes	Yes

**Consultation Conducted By:** National Marine Fisheries Service  
West Coast Region

**Issued By:**

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

**Date:** April 12, 2022

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## 1. INTRODUCTION

This Introduction section provides information relevant to the other sections of this document and is incorporated by reference into Sections 2 and 3, below.

### 1.1 Background

The National Marine Fisheries Service (NMFS) prepared the biological opinion (opinion) and incidental take statement (ITS) portions of this document in accordance with section 7(b) of the Endangered Species Act (ESA) of 1973 (16 USC 1531 et seq.), and implementing regulations at 50 CFR 402, as amended.

We also completed an essential fish habitat (EFH) consultation on the proposed action, in accordance with section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 et seq.) and implementing regulations at 50 CFR 600.

We completed pre-dissemination review of this document using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (DQA) (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The document will be available within two weeks at the NOAA Library Institutional Repository (<https://repository.library.noaa.gov/welcome>). A complete record of this consultation is on file at the Oregon Washington Coastal Office.

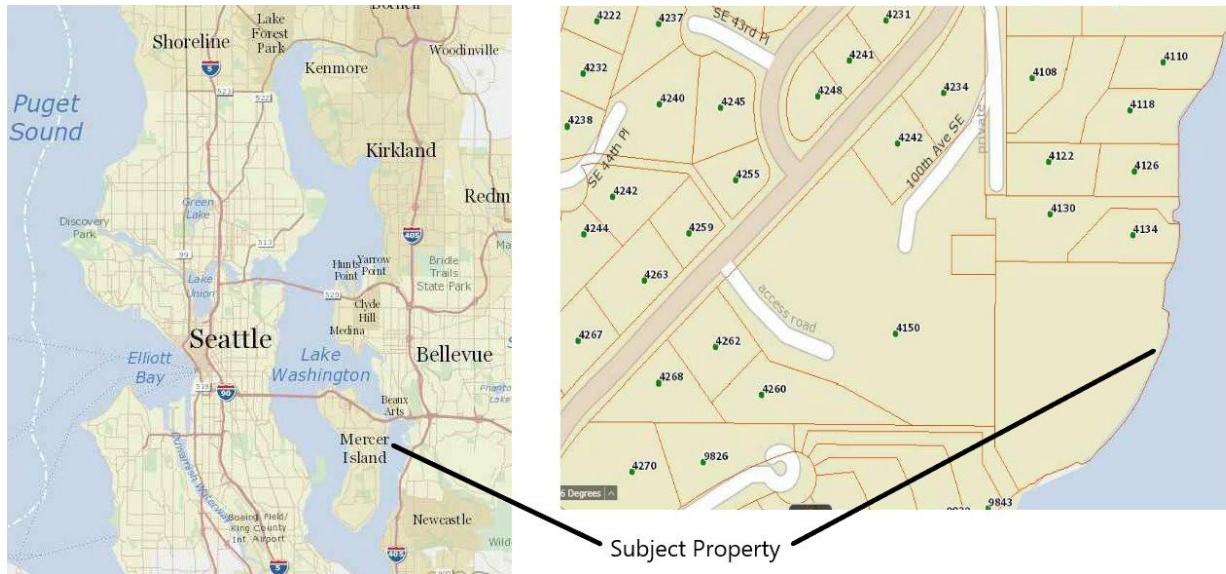
### 1.2 Consultation History

NMFS received a consultation request from the Corps on August 11, 2020, which included a MFS request letter, project drawings, and BA (Northwest Environmental Consulting 2019), which is incorporated here by reference. NMFS delayed initiation of consultation while the applicant reviewed the process of proceeding under the RAP programmatic consultation. NMFS has no record of subsequent communication from the applicant necessary to initiate the programmatic consultation. Thus, NMFS initiated informal consultation on June 11, 2021 when materials and information received were considered complete and sufficient to initiate the formal consultation process.

### 1.3 Proposed Federal Action

“Action” means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies (50 CFR 402.02). For EFH consultation, federal action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a Federal Agency (50 CFR 600.910).

The Corps is proposing to authorize the Mercerwood Shore Club Pier Repair Project in Lake Washington (Figure 1) located at 4150 East Mercer Way, Mercer Island, Washington 98040; (47.57123 N latitude, -122.20616 longitude). The vessels that moor at the existing piers are primarily recreational (i.e., pleasure craft).



**Figure 1.** Mercerwood Shore Club pier repair project location.

The project will repair two piers (north and south) and one boat launch. The northern pier is an 867-square-foot pier with three boatlifts. During the project, 12 pilings will be repaired using the pile stub method, 30 feet of the walkway close to shore will be reduced from 8 feet wide to 5 feet wide, and all solid decking will be replaced with ThruFlow grated decking. Existing skirting will be removed. The pier will be 766 square feet after the project (a reduction of 101 square feet).

The southern pier is a 4,018-square-foot pier with two walkways connecting it to shore. It has three boatlifts and boats are sometimes moored outside of the slips. During the project, 48 pilings and 3 mooring pilings will be repaired using the pile stub method. The walkways connecting the pier to shore will be reduced from 6 feet wide to 5 feet wide, and the long shoreward ell paralleling the shoreline will be reduced from 6 feet wide to 5 feet wide. Existing skirting along the pier will also be removed. One Jet Ski lift will be added close to shore and one waterslide will be added on the waterward southern corner. All existing solid decking will be replaced with ThruFlow grated decking. The pier will be 3,765 square feet after the project (a reduction of 253 square feet).

The project also includes repairing a portion of the existing boat ramp north of the northern pier, by placing concrete slabs over 252 square feet of shoreline excavated from the existing riprap rock (in a 12-foot by 12-foot section).

In-water work will occur July 16 through July 31 and/or November 16 through December 31, and will take about 3 weeks to complete. No pile driving, pile extraction, or ground disturbance will occur during the work. No additional boat slips are proposed and one Jet Ski lift is proposed; thus, a small additional increase in recreational vessel traffic is anticipated.

A containment boom will be used around the work area that will contain floating debris and oil and grease to the work area. The barge will contain a perimeter containment sock to keep silt and

debris from reentering the lake from the deck. Any floating debris will be removed from the work area daily. The barge will not come in contact with the lake bottom.

## 2. ENDANGERED SPECIES ACT: BIOLOGICAL OPINION AND INCIDENTAL TAKE STATEMENT

The ESA establishes a national program for conserving threatened and endangered species of fish, wildlife, plants, and the habitat upon which they depend. As required by section 7(a)(2) of the ESA, each Federal agency must ensure that its actions are not likely to jeopardize the continued existence of endangered or threatened species, or adversely modify or destroy their designated critical habitat. Per the requirements of the ESA, Federal action agencies consult with NMFS and section 7(b)(3) requires that, at the conclusion of consultation, NMFS provide an opinion stating how the agency’s actions would affect listed species and their critical habitats. If incidental take is reasonably certain to occur, section 7(b)(4) requires NMFS to provide an ITS that specifies the impact of any incidental taking and includes non-discretionary reasonable and prudent measures (RPMs) and terms and conditions to minimize such impacts.

The USACE determined that the proposed action is likely to adversely affect PS Chinook salmon and their designated critical habitat, is not likely to adversely affect PS steelhead, and would have no effect on designated critical habitat for PS steelhead. The USACE did not address Southern Resident (SR) killer whale effects.

Because the NMFS has concluded that the proposed action is likely to adversely affect PS Chinook salmon, PS steelhead, and designated critical habitat for PS Chinook salmon (Table 1), the NMFS has proceeded with formal consultation. Additionally, because of the trophic relationship between PS Chinook salmon and SR killer whales, NMFS analyzed the action’s potential effects on SR killer whales in the "Not Likely to Adversely Affect" Determinations section (2.12) of this opinion.

**Table 1.** ESA-listed species and critical habitat that may be affected by the proposed action.

<b>ESA-listed species and critical habitat likely to be adversely affected (LAA)</b>				
Species	Status	Species	Critical Habitat	Listed / CH Designated
Chinook salmon ( <i>Oncorhynchus tshawytscha</i> ) Puget Sound	Threatened	LAA	LAA	06/28/05 (70 FR 37160) / 09/02/05 (70 FR 52630)
steelhead ( <i>O. mykiss</i> ) Puget Sound	Threatened	LAA	N/A	05/11/07 (72 FR 26722) / 02/24/16 (81 FR 9252)
<b>ESA-listed species and critical habitat not likely to be adversely affected (NLAA)</b>				
Species	Status	Species	Critical Habitat	Listed / CH Designated
Killer whales ( <i>Orcinus orca</i> ) Southern resident (SR)	Endangered	NLAA	NLAA	11/18/05 (70 FR 57565) / 11/29/06 (71 FR 69054)

LAA = likely to adversely affect      NLAA = not likely to adversely affect  
 N/A = not applicable. The action area is outside designated critical habitat, or critical habitat has not been designated.

## 2.1 Analytical Approach

This biological opinion includes both a jeopardy analysis and an adverse modification analysis. The jeopardy analysis relies upon the regulatory definition of “jeopardize the continued existence of” a listed species, which is “to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species” (50 CFR 402.02). Therefore, the jeopardy analysis considers both survival and recovery of the species.

This biological opinion relies on the regulatory definition of "destruction or adverse modification," which “means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species” (50 CFR 402.02).

The designations of critical habitat for PS Chinook salmon and SR killer whales use the term primary constituent element (PCE). The 2016 final rule (81 FR 7414; February 11, 2016) that revised the critical habitat regulations (50 CFR 424.12) replaced this term with physical or biological features (PBFs). The shift in terminology does not change the approach used in conducting a “destruction or adverse modification” analysis, which is the same regardless of whether the original designation identified PCEs, PBFs, or essential features. In this biological opinion, we use the term PBF to mean PCE the specific critical habitats.

The ESA Section 7 implementing regulations define effects of the action using the term “consequences” (50 CFR 402.02). As explained in the preamble to the final rule revising the definition and adding this term (84 FR 44976, 44977; August 27, 2019), that revision does not change the scope of our analysis, and in this opinion we use the terms “effects” and “consequences” interchangeably.

We use the following approach to determine whether a proposed action is likely to jeopardize listed species or destroy or adversely modify critical habitat:

- Evaluate the rangewide status of the species and critical habitat expected to be adversely affected by the proposed action.
- Evaluate the environmental baseline of the species and critical habitat.
- Evaluate the effects of the proposed action on species and their habitat using an exposure-response approach.
- Evaluate cumulative effects.
- In the integration and synthesis, add the effects of the action and cumulative effects to the environmental baseline, and, in light of the status of the species and critical habitat, analyze whether the proposed action is likely to: (1) directly or indirectly reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species, or (2) directly or indirectly result in an alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.
- If necessary, suggest a reasonable and prudent alternative to the proposed action.



## 2.2 Rangewide Status of the Species and Critical Habitat

This opinion examines the status of each species that is likely to be adversely affected by the proposed action. The status is determined by the level of extinction risk that the listed species face, based on parameters considered in documents such as recovery plans, status reviews, and listing decisions. This informs the description of the species' likelihood of both survival and recovery. The species status section also helps to inform the description of the species' "reproduction, numbers, or distribution" for the jeopardy analysis. The opinion also examines the condition of critical habitat throughout the designated area, evaluates the conservation value of the various watersheds and coastal and marine environments that make up the designated area, and discusses the function of the PBFs that are essential for the conservation of the species.

The summaries that follow describe the status of the ESA-listed species, and their designated critical habitats, that occur within the action area and are considered in this opinion. More detailed information on the biology, habitat, and conservation status and trend of these listed resources can be found in the listing regulations and critical habitat designations published in the Federal Register and in the recovery plans and other sources at:

<https://www.fisheries.noaa.gov/species-directory/threatened-endangered>, and are incorporated here by reference.

### **Listed Species**

Viable Salmonid Population (VSP) Criteria: For Pacific salmonids, we commonly use four VSP criteria (McElhany et al. 2000) to assess the viability of the populations that constitute the species. These four criteria (spatial structure, diversity, abundance, and productivity) encompass the species' "reproduction, numbers, or distribution" as described in 50 CFR 402.02. When these parameters are collectively at appropriate levels, they maintain a population's capacity to adapt to various environmental conditions and allow it to sustain itself in the natural environment.

"Spatial structure" refers both to the spatial distributions of individuals in the population and the processes that generate that distribution. A population's spatial structure depends on habitat quality and spatial configuration, and the dynamics and dispersal characteristics of individuals in the population.

"Diversity" refers to the distribution of traits within and among populations. These range in scale from DNA sequence variation in single genes to complex life history traits.

"Abundance" generally refers to the number of naturally-produced adults that return to their natal spawning grounds.

"Productivity" refers to the number of naturally-spawning adults produced per parent. When progeny replace or exceed the number of parents, a population is stable or increasing. When progeny fail to replace the number of parents, the population is in decline.

For species with multiple populations, we assess the status of the entire species based on the biological status of the constituent populations, using criteria for groups of populations, as

described in recovery plans and guidance documents from technical recovery teams. Considerations for species viability include having multiple populations that are viable, ensuring that populations with unique life histories and phenotypes are viable, and that some viable populations are both widespread to avoid concurrent extinctions from mass catastrophes and spatially close to allow functioning as metapopulations (McElhany et al. 2000).

The summaries that follow describe the status of the ESA-listed species, and their designated critical habitats, that occur within the geographic area of this proposed action and are considered in this opinion. More detailed information on the status and trends of these listed resources, and their biology and ecology, are in the listing regulations and critical habitat designations published in the Federal Register.

Puget Sound (PS) Chinook Salmon: The PS Chinook salmon evolutionarily significant unit (ESU) was listed as threatened on June 28, 2005 (70 FR 37160). We adopted the recovery plan for this ESU in January 2007. The recovery plan consists of two documents: the Puget Sound salmon recovery plan (SSPS 2007) and the final supplement to the Shared Strategy's Puget Sound salmon recovery plan (NMFS 2006). The recovery plan adopts ESU and population level viability criteria recommended by the Puget Sound Technical Recovery Team (PSTRT) (Ruckelshaus et al. 2002). The PSTRT's biological recovery criteria will be met when all of the following conditions are achieved:

- The viability status of all populations in the ESU is improved from current conditions, and when considered in the aggregate, persistence of the ESU is assured;
- Two to four Chinook salmon populations in each of the five biogeographical regions of the ESU achieve viability, depending on the historical biological characteristics and acceptable risk levels for populations within each region;
- At least one population from each major genetic and life history group historically present within each of the five biogeographical regions is viable;
- Tributaries to Puget Sound not identified as primary freshwater habitat for any of the 22 identified populations are functioning in a manner that is sufficient to support an ESU-wide recovery scenario; Production of Chinook salmon from tributaries to Puget Sound not identified as primary freshwater habitat for any of the 22 identified populations occurs in a manner consistent with ESU recovery; and
- Populations that do not meet all the Viable Salmon Population (VSP) parameters are sustained to provide ecological functions and preserve options for ESU recovery.

General Life History: Chinook salmon are anadromous fish that require well-oxygenated water that is typically less than 63° F (17° C), but some tolerance to higher temperatures is documented with acclimation. Adult Chinook salmon spawn in freshwater streams, depositing fertilized eggs in gravel "nests" called redds. The eggs incubate for three to five months before juveniles hatch and emerge from the gravel. Juveniles spend from three months to two years in freshwater before migrating to the ocean to feed and mature. Chinook salmon spend from one to six years in the ocean before returning to their natal freshwater streams where they spawn and then die.

Chinook salmon are divided into two races, stream-types and ocean-types, based on the major juvenile development strategies. Stream-type Chinook salmon tend to rear in freshwater for a

year or more before entering marine waters. Conversely, ocean-type juveniles tend to leave their natal streams early during their first year of life, and rear in estuarine waters as they transition into their marine life stage. Both stream- and ocean-type Chinook salmon are present, but ocean-type Chinook salmon predominate in Puget Sound populations.

Chinook salmon are further grouped into “runs” that are based on the timing of adults that return to freshwater. Early- or spring-run chinook salmon tend to enter freshwater as immature fish, migrate far upriver, and finally spawn in the late summer and early autumn. Late- or fall-run Chinook salmon enter freshwater at an advanced stage of maturity, move rapidly to their spawning areas, and spawn within a few days or weeks. Summer-run fish show intermediate characteristics of spring and fall runs, without the extensive delay in maturation exhibited by spring-run Chinook salmon. In Puget Sound, spring-run Chinook salmon tend to enter their natal rivers as early as March, but do not spawn until mid-August through September. Returning summer- and fall-run fish tend to enter the rivers early-June through early-September, with spawning occurring between early August and late-October.

Yearling stream-type fish tend to leave their natal rivers late winter through spring, and move relatively directly to nearshore marine areas and pocket estuaries. Out-migrating ocean-type fry tend to migrate out of their natal streams beginning in early-March. Those fish rear in the tidal delta estuaries of their natal stream for about two weeks to two months before migrating to marine nearshore areas and pocket estuaries in late May to June. Out-migrating young of the year parr tend to move relatively directly into marine nearshore areas and pocket estuaries after leaving their natal streams between late spring and the end of summer.

Spatial Structure and Diversity: The PS Sound Chinook salmon ESU includes all naturally spawning populations of Chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington. The ESU also includes the progeny of numerous artificial propagation programs (NWFSC 2015, Ford 2022). The PSTRT identified 22 extant populations, grouped into five major geographic regions, based on consideration of historical distribution, geographic isolation, dispersal rates, genetic data, life history information, population dynamics, and environmental and ecological diversity. The PSTRT distributed the 22 populations among five major biogeographical regions, or major population groups (MPGs), that are based on similarities in hydrographic, biogeographic, and geologic characteristics (Table 2).

**Table 2.** Extant PS Chinook salmon populations in each biogeographic region (Ruckelshaus et al. 2002, NWFSC 2015).

<b>Biogeographic Region</b>	<b>Population (Watershed)</b>
Strait of Georgia	North Fork Nooksack River
	South Fork Nooksack River
Strait of Juan de Fuca	Elwha River
	Dungeness River
Hood Canal	Skokomish River
	Mid Hood Canal River
Whidbey Basin	Skykomish River
	Snoqualmie River
	North Fork Stillaguamish River
	South Fork Stillaguamish River
	Upper Skagit River
	Lower Skagit River
	Upper Sauk River
	Lower Sauk River
	Suiattle River
	Upper Cascade River
Central/South Puget Sound Basin	Cedar River
	North Lake Washington/ Sammamish River
	Green/Duwamish River
	Puyallup River
	White River
	Nisqually River

Hatchery-origin spawners are present in high fractions in most populations within the ESU, with the Whidbey Basin the only MPG with consistently high fractions of natural-origin spawners. Between 1990 and 2019, the fraction of natural-origin spawners has declined in many of the populations outside of the Skagit watershed (NWFSC 2015, Ford 2022).

Abundance and Productivity: Available data on total abundance since 1980 indicate that abundance trends have fluctuated between positive and negative for individual populations, but productivity remains low in most populations, and hatchery-origin spawners are present in high fractions in most populations outside of the Skagit watershed. Available data now show that most populations have declined in abundance over the past 7 to 10 years. Further, escapement levels for all populations remain well below the PSTRT planning ranges for recovery, and most populations are consistently below the spawner-recruit levels identified by the PSTRT as consistent with recovery (NWFSC 2015, Ford 2022). The current information on abundance, productivity, spatial structure and diversity suggest that the Whidbey Basin MPG is at relatively low risk of extinction. The other four MPGs are considered to be at high risk of extinction due to

low abundance and productivity (NWFSC 2015, Ford 2022). The most recent 5-year status review concluded that the ESU should remain listed as threatened (NMFS 2017).

Limiting Factors: Factors limiting recovery for PS Chinook salmon include:

- Degraded floodplain and in-river channel structure
- Degraded estuarine conditions and loss of estuarine habitat
- Riparian area degradation and loss of in-river large woody debris
- Excessive fine-grained sediment in spawning gravel
- Degraded water quality and temperature
- Degraded nearshore conditions
- Impaired passage for migrating fish
- Severely altered flow regime

PS Chinook Salmon within the Action Area: The PS Chinook salmon that are likely to occur in the action area would be fall-run Chinook salmon from the Cedar River population and from the North Lake Washington / Sammamish River population (NWFSC 2015; WDFW 2021b). Both stream- and ocean-type Chinook salmon are present in these populations, with the majority being ocean-types.

The Cedar River population is relatively small, with a total annual abundance fluctuating at close to 1,000 fish (Ford 2022; WDFW 2021c). Between 1965 and 2019, the total abundance for PS Chinook salmon in the basin has fluctuated between about 133 and 2,451 individuals, with the average trend being slightly negative (Ford 2022). The 2015 status review reported that the 2010 through 2014 5-year geometric mean for natural-origin spawner abundance had shown a positive change since the 2010 status review, with natural-origin spawners accounting for about 82% of the population. WDFW data suggest that natural-origin spawners accounted for about 71% of a combined total return of 855 fish in 2019 (WDFW 2021c).

The North Lake Washington / Sammamish River population is also small, with a total abundance that has fluctuated between about 33 and 2,223 individuals from 1983 through 2019. Natural-origin spawners make up a small proportion of the total population, accounting for about 30% of the 365 total return in 2019, and the trend is rather flat to slightly negative (Ford 2022; WDFW 2021c).

All returning adults and out-migrating juveniles of these two populations, as well as individuals that spawn in the numerous smaller streams across the basin, must pass the action area to complete their life cycles. Adult Chinook salmon pass through Chittenden Locks (aka Ballard Locks) between mid-June through September, with peak migration occurring in mid-August (City of Seattle 2008). Spawning occurs well upstream of the action area between early August and late October. Juvenile Chinook salmon are found in Lake Washington and Lake Sammamish between January and July, primarily in the littoral zone (Tabor et al. 2006). Outmigration through the ship canal and past the action area to the locks occurs between late-May and early-July, with the peak in June (City of Seattle 2008).

Puget Sound (PS) steelhead: The PS steelhead distinct population segment (DPS) was listed as threatened on May 11, 2007 (72 FR 26722). The NMFS adopted the recovery plan for this DPS in December 2019. In 2015, the Puget Sound Steelhead Technical Recovery Team (PSSTRT) identified 32 demographically independent populations (DIPs) within the DPS, based on genetic, environmental, and life history characteristics. Those DIPs are distributed among three geographically-based major population groups (MPGs); Northern Cascades, Central and South Puget Sound; and Hood Canal and Strait de Fuca (Myers et al. 2015) (Table 3).

In 2015, the PSSTRT concluded that the DPS is at “very low” viability; with most of the 32 DIPs and all three MPGs at “low” viability based on widespread diminished abundance, productivity, diversity, and spatial structure when compared with available historical evidence (Hard et al. 2015). Based on the PSSTRT viability criteria and as modified by the Puget Sound steelhead recovery plan (NMFS 2019), the DPS would be considered viable when all three component MPG are considered viable. A given MPG would be considered viable when: 1) 50 percent or more of its component DIP are viable; 2) mean DIP viability within the MPG exceeds the threshold for viability; and 3) 50 percent or more of the historic life history strategies (i.e., summer runs and winter runs) within the MPG are viable. For a given DIP to be considered viable, its probability of persistence must exceed 85 percent, as calculated by Hard et al. (2015), based on abundance, productivity, diversity, and spatial structure within the DIP.

General Life History: PS steelhead exhibit two major life history strategies. Ocean-maturing, or winter-run fish typically enter freshwater from November to April at an advanced stage of maturation, and then spawn from February through June. Stream-maturing, or summer-run fish typically enter freshwater from May to October at an early stage of maturation, migrate to headwater areas, and hold for several months prior to spawning in the following spring. After hatching, juveniles rear in freshwater from one to three years prior to migrating to marine habitats (two years is typical). Smoltification and seaward migration typically occurs from April to mid-May. Smolt lengths vary between watersheds, but typically range from 4.3 to 9.2 inches (109 to 235 mm) (Myers et al. 2015). Juvenile steelhead are generally independent of shallow nearshore areas soon after entering marine water (Bax et al. 1978, Brennan et al. 2004, Schreiner et al. 1977), and are not commonly caught in beach seine surveys. Recent acoustic tagging studies (Moore et al. 2010) have shown that smolts migrate from rivers to the Strait of Juan de Fuca from one to three weeks. PS steelhead feed in the ocean waters for one to three years (two years is again typical), before returning to their natal streams to spawn. Unlike Chinook salmon, most female steelhead, and some males, return to marine waters following spawning (Myers et al. 2015).

**Table 3.** PS steelhead Major Population Groups (MPGs), Demographically Independent Populations (DIPs), and DIP Viability Estimates (Modified from Figure 58 in Hard *et al.* 2015).

<b>Geographic Region (MPG)</b>	<b>Demographically Independent Population (DIP)</b>	<b>Viability</b>	
Northern Cascades	Drayton Harbor Tributaries Winter Run	Moderate	
	Nooksack River Winter Run	Moderate	
	South Fork Nooksack River Summer Run	Moderate	
	Samish River/Bellingham Bay Tributaries Winter Run	Moderate	
	Skagit River Summer Run and Winter Run	Moderate	
	Nookachamps Creek Winter Run	Moderate	
	Baker River Summer Run and Winter Run	Moderate	
	Sauk River Summer Run and Winter Run	Moderate	
	Stillaguamish River Winter Run	Low	
	Deer Creek Summer Run	Moderate	
	Canyon Creek Summer Run	Moderate	
	Snohomish/Skykomish Rivers Winter Run	Moderate	
	Pilchuck River Winter Run	Low	
	North Fork Skykomish River Summer Run	Moderate	
	Snoqualmie River Winter Run	Moderate	
	Tolt River Summer Run	Moderate	
	Central and South Puget Sound	Cedar River Summer Run and Winter Run	Low
		North Lake Washington and Lake Sammamish Winter Run	Moderate
Green River Winter Run		Low	
Puyallup River Winter Run		Low	
White River Winter Run		Low	
Nisqually River Winter Run		Low	
South Sound Tributaries Winter Run		Moderate	
East Kitsap Peninsula Tributaries Winter Run		Moderate	
Hood Canal and Strait de Fuca	East Hood Canal Winter Run	Low	
	South Hood Canal Tributaries Winter Run	Low	
	Skokomish River Winter Run	Low	
	West Hood Canal Tributaries Winter Run	Moderate	
	Sequim/Discovery Bay Tributaries Winter Run	Low	
	Dungeness River Summer Run and Winter Run	Moderate	
	Strait of Juan de Fuca Tributaries Winter Run	Low	
	Elwha River Summer Run and Winter Run	Low	

Spatial Structure and Diversity: The PS steelhead DPS includes all naturally spawned anadromous steelhead populations in streams in the river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, Washington, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive). The DPS also includes six hatchery stocks that are considered no more than moderately diverged from their associated natural-origin counterparts (USDC 2014). PS steelhead are the anadromous form of *O. mykiss* that occur below natural barriers to migration in northwestern Washington State (NWFSC 2015). Non-anadromous “resident” *O. mykiss* (a.k.a. rainbow trout) occur within the range of PS steelhead but are not part of the DPS due to marked differences in physical, physiological, ecological, and behavioral characteristics (Hard et al. 2015). As stated above, the DPS consists of 32 DIP that are distributed among three geographically-based MPG. An individual DIP may

consist of winter-run only, summer-run only, or a combination of both life history types. Winter-run is the predominant life history type in the DPS (Hard et al. 2015).

Abundance and Productivity: Available data on total abundance since the late 1970s and early 1980s indicate that abundance trends have fluctuated between positive and negative for individual DIP. However, low productivity persists throughout the 32 DIP, with most showing downward trends, and a few showing sharply downward trends (Hard et al. 2015, NWFSC 2015). Since the mid-1980s, trends in natural spawning abundance have also been temporally variable for most DIP but remain predominantly negative, and well below replacement for at least 8 of the DIP (NWFSC 2015). Smoothed abundance trends since 2009 show modest increases for 13 DIP. However, those trends are similar to variability seen across the DPS, where brief periods of increase are followed by decades of decline. Further, several of the upward trends are not statistically different from neutral, and most populations remain small. Nine of the evaluated DIP had geometric mean abundances of fewer than 250 adults, and 12 had fewer than 500 adults (NWFSC 2015). Over the time series examined, the over-all abundance trends, especially for natural spawners, remain predominantly negative or flat across the DPS, and general steelhead abundance across the DPS remains well below the level needed to sustain natural production into the future (NWFSC 2015). The PSSTRT recently concluded that the PS steelhead DPS is currently not viable (Hard et al. 2015). The DPS's current abundance and productivity are considered to be well below the targets needed to achieve delisting and recovery. Growth rates are currently declining at 3 to 10% annually for all but a few DIPs, and the extinction risk for most populations is estimated to be moderate to high. The most recent 5-year status review concluded that the DPS should remain listed as threatened (NMFS 2017).

Limiting Factors: Factors limiting recovery for PS steelhead include:

- The continued destruction and modification of steelhead habitat
- Widespread declines in adult abundance (total run size), despite significant reductions in harvest in recent years
- Threats to diversity posed by use of two hatchery steelhead stocks (Chambers Creek and Skamania)
- Declining diversity in the DPS, including the uncertain but weak status of summer run fish
- A reduction in spatial structure
- Reduced habitat quality through changes in river hydrology, temperature profile, downstream gravel recruitment, and reduced movement of large woody debris
- In the lower reaches of many rivers and their tributaries in Puget Sound where urban development has occurred, increased flood frequency and peak flows during storms and reduced groundwater-driven summer flows, with resultant gravel scour, bank erosion, and sediment deposition
- Dikes, hardening of banks with riprap, and channelization, which have reduced river braiding and sinuosity, increasing the likelihood of gravel scour and dislocation of rearing juveniles

PS Steelhead within the Action Area: The PS steelhead populations that occur in the action area consist of winter-runs from the Cedar River and North Lake Washington / Lake Sammamish DIPs (NWFSC 2015; WDFW 2021b). Both DIPs are among the smallest within the DPS. WDFW reports that the total PS steelhead abundance in the Cedar River basin has fluctuated



between 0 and 900 individuals between 1984 and 2019, with a strong negative trend. Since 2000, the total annual abundance has remained under 50 fish (WDFW 2021d). NWFSC (2015) suggests that the returns may have been above 1,000 individuals during the 1980s, but agrees with the steep decline to less than 100 fish since 2000. It is unclear what proportion of the returns are natural-origin spawners, if any. A total of only 4 adults are thought to have returned in 2018, and no adults are thought to have returned in 2019 (WDFW 2021d). The Sammamish River population is even smaller. WDFW reports that the total abundance for PS steelhead in the North Lake Washington / Lake Sammamish basin fluctuated between 0 and 916 individuals between 1984 and the last survey in 1999, with a strong negative trend. Abundance never exceeded 45 fish after 1992, and was only 4 in 1999 (WDFW 2021d). NWFSC (2015) disagrees with WDFW in that returns may have been above 1,500 individuals during the mid-1980s, but NWFSC agrees with the steep decline to virtually no steelhead in the basin since 2000.

All returning adults and out-migrating juveniles of these two populations must pass the action area to complete their life cycles. Adult steelhead pass through Chittenden Locks (aka Ballard Locks) and the Lake Washington Ship Canal between January and May, and may remain within Lake Washington through June (City of Seattle 2008). The timing of steelhead spawning in the basin is uncertain, but occurs well upstream of the action area. Juvenile steelhead enter Lake Washington in April, and typically migrate through the ship canal and past the action area to the locks between April and May (City of Seattle 2008).

### **Critical Habitat**

This section describes the status of designated critical habitat that would be affected by the proposed action by examining the condition and trends of physical or biological features (PBFs) that are essential to the conservation of the listed species throughout the designated areas. The PBFs are essential because they support one or more of the species' life stages (e.g., sites with conditions that support spawning, rearing, migration and foraging). The proposed project would affect critical habitat for PS Chinook salmon.

The NMFS designated critical habitat for PS Chinook salmon on September 2, 2005 (70 FR 52630). That critical habitat is located in 16 freshwater subbasins and watersheds between the Dungeness/Elwha Watershed and the Nooksack Subbasin, inclusively, as well as in nearshore marine waters of the Puget Sound that are south of the US-Canada border and east of the Elwha River, and out to a depth of 30 meters. Although offshore marine is an area type identified in the final rule, it was not designated as critical habitat for PS Chinook salmon.

The PBFs of salmonid critical habitat include: (1) Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, incubation and larval development; (2) Freshwater rearing sites with: (i) Water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and mobility; (ii) Water quality and forage supporting juvenile development; and (iii) Natural cover such as shade, submerged and overhanging large wood, log jams and beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks; (3) Freshwater migration corridors free of obstruction and excessive predation with water quantity and quality conditions and natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders,

side channels, and undercut banks supporting juvenile and adult mobility and survival; (4) Estuarine areas free of obstruction and excessive predation with: (i) Water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater; (ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels; and (iii) Juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation; (5) Nearshore marine areas free of obstruction and excessive predation with: (i) Water quality and quantity conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation; and (ii) Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, and side channels; and (6) Offshore marine areas with water quality conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation. The PBF for PS Chinook salmon CH are listed in Table 4.

**Table 4.** Physical or biological features (PBFs) of designated critical habitat for PS Chinook salmon, and corresponding life history events.

Physical or Biological Features		Life History Event
Site Type	Site Attribute	
Freshwater spawning	Water quantity Water quality Substrate	Adult spawning Embryo incubation Alevin growth and development
Freshwater rearing	Water quantity and Floodplain connectivity Water quality and Forage Natural cover	Fry emergence from gravel Fry/parr/smolt growth and development
Freshwater migration	(Free of obstruction and excessive predation) Water quantity and quality Natural cover	Adult sexual maturation Adult upstream migration and holding Kelt (steelhead) seaward migration Fry/parr/smolt growth, development, and seaward migration
Estuarine	(Free of obstruction and excessive predation) Water quality, quantity, and salinity Natural cover Forage	Adult sexual maturation and “reverse smoltification” Adult upstream migration and holding Kelt (steelhead) seaward migration Fry/parr/smolt growth, development, and seaward migration
Nearshore marine	(Free of obstruction and excessive predation) Water quality, quantity, and forage Natural cover	Adult growth and sexual maturation Adult spawning migration Nearshore juvenile rearing
Offshore marine	Water quality and forage	Adult growth and sexual maturation Adult spawning migration Subadult rearing

Major tributary river basins in the Puget Sound basin include the Nooksack, Samish, Skagit, Sauk, Stillaguamish, Snohomish, Lake Washington, Cedar, Sammamish, Green, Duwamish, Puyallup, White, Carbon, Nisqually, Deschutes, Skokomish, Duckabush, Dosewallips, Big Quilcene, Elwha, and Dungeness rivers and Soos Creek. Critical habitat throughout the Puget Sound basin has been degraded by numerous activities, including hydropower development, loss

of mature riparian forests, increased sediment inputs, removal of large wood from the waterways, intense urbanization, agriculture, alteration of floodplain and stream morphology (i.e., channel modifications and diking), riparian vegetation disturbance, wetland draining and conversion, dredging, armoring of shorelines, marina and port development, road and railroad construction and maintenance, logging, and mining. Changes in habitat quantity, availability, and diversity, and flow, temperature, sediment load and channel instability are common limiting factors of critical habitat throughout the basin.

Land use practices have likely accelerated the frequency of landslides delivering sediment to streams. Fine sediment from unpaved roads also contributes to stream sedimentation. Unpaved roads are widespread on forested lands in the Puget Sound basin, and to a lesser extent, in rural residential areas. Historical logging removed most of the riparian trees near stream channels. Subsequent agricultural and urban conversion permanently altered riparian vegetation in the river valleys, leaving either no trees, or a thin band of trees. The riparian zones along many agricultural areas are now dominated by alder, invasive canary grass and blackberries, and provide substantially reduced stream shade and large wood recruitment (SSPS 2007).

Diking, agriculture, revetments, railroads and roads in lower stream reaches have caused significant loss of secondary channels in major valley floodplains in this region. Confined main channels create high-energy peak flows that remove smaller substrate particles and large wood. The loss of side-channels, oxbow lakes, and backwater habitats has resulted in a significant loss of juvenile salmonid rearing and refuge habitat. When the water level of Lake Washington was lowered 9 feet in the 1910s, thousands of acres of wetlands along the shoreline of Lake Washington, Lake Sammamish and the Sammamish River corridor were drained and converted to agricultural and urban uses. Wetlands play an important role in hydrologic processes, as they store water which ameliorates high and low flows. The interchange of surface and groundwater in complex stream and wetland systems helps to moderate stream temperatures. Thousands of acres of lowland wetlands across the region have been drained and converted to agricultural and urban uses, and forest wetlands are estimated to have diminished by one-third in Washington State (FEMAT 1993; Spence et al. 1996; SSPS 2007).

Loss of riparian habitat, elevated water temperatures, elevated levels of nutrients, increased nitrogen and phosphorus, and higher levels of suspended sediment, presumably from urban and highway runoff, wastewater treatment, failing septic systems, and agriculture or livestock impacts, have been documented in many Puget Sound tributaries (SSPS 2007).

Peak stream flows have increased over time due to paving (roads and parking areas), reduced percolation through surface soils on residential and agricultural lands, simplified and extended drainage networks, loss of wetlands, and rain-on-snow events in higher elevation clear cuts (SSPS 2007). In urbanized Puget Sound, there is a strong association between land use and land cover attributes and rates of coho spawner mortality likely due to runoff containing contaminants emitted from motor vehicles (Feist et al. 2011).

Dams constructed for hydropower generation, irrigation, or flood control have substantially affected PS Chinook salmon populations in a number of river systems. The construction and operation of dams have blocked access to spawning and rearing habitat, changed flow patterns,

resulted in elevated temperatures and stranding of juvenile migrants, and degraded downstream spawning and rearing habitat by reducing recruitment of spawning gravel and large wood to downstream areas (SSPS 2007). These actions tend to promote downstream channel incision and simplification (Kondolf 1997), limiting fish habitat. Water withdrawals reduce available fish habitat and alter sediment transport. Hydropower projects often change flow rates, stranding and killing fish, and reducing aquatic invertebrate (food source) productivity (Hunter 1992).

Juvenile mortality occurs in unscreened or inadequately screened diversions. Water diversion ditches resemble side channels in which juvenile salmonids normally find refuge. When diversion headgates are shut, access back to the main channel is cut off and the channel goes dry. Mortality can also occur with inadequately screened diversions from impingement on the screen, or mutilation in pumps where gaps or oversized screen openings allow juveniles to get into the system. Blockages by dams, water diversions, and shifts in flow regime due to hydroelectric development and flood control projects are major habitat problems in many Puget Sound tributary basins (SSPS 2007).

The nearshore marine habitat has been extensively altered and armored by industrial and residential development near the mouths of many of Puget Sound's tributaries. A railroad runs along large portions of the eastern shoreline of Puget Sound, eliminating natural cover along the shore and natural recruitment of beach sand (SSPS 2007).

Degradation of the near-shore environment has occurred in the southeastern areas of Hood Canal in recent years, resulting in late summer marine oxygen depletion and significant fish kills. Circulation of marine waters is naturally limited, and partially driven by freshwater runoff, which is often low in the late summer. However, human development has increased nutrient loads from failing septic systems along the shoreline, and from use of nitrate and phosphate fertilizers on lawns and farms. Shoreline residential development is widespread and dense in many places. The combination of highways and dense residential development has degraded certain physical and chemical characteristics of the near-shore environment (HCCC 2005; SSPS 2007).

Critical Habitat within the Action Area: Critical habitat has been designated for PS Chinook salmon along the entire length of the Lake Washington about 950 yards upstream into in the Sammamish River, and well upstream into the Cedar River watershed. The critical habitat in Lake Washington provides the Freshwater Migration PBF for PS Chinook (NOAA 2021; WDFW 2021b).

### **2.3 Action Area**

“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 project site is located in King County, Washington, on the eastern side of Mercer Island, Lake Washington (Figure 1). As described in section 2.5, construction-related turbidity would be the stressor with the greatest range of effects on fish. Detectable effects would be limited to the waters and substrates within about 300 feet around the project site. However, trophic

connectivity between PS Chinook salmon and the SR killer whales that feed on them extends the action area to the marine waters of Puget Sound. The described area overlaps with the geographic ranges of the ESA-listed species and the boundaries of designated critical habitats identified in Table 1. The action area also overlaps with areas that have been designated, under the MSA, as EFH for Pacific Coast salmon, Pacific Coast groundfish, and coastal pelagic species.

## 2.4 Environmental Baseline

The “environmental baseline” refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes 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 projects 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. 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 part of the environmental baseline (50 CFR 402.02).

Environmental conditions at the project sites and the surrounding area: The project site is located in King County, Washington, on the eastern side of Mercer Island, Lake Washington (Figure 1). Although the action area includes the marine waters of Puget Sound, all detectable effects of the action would be limited to within about 300 feet of the project site (Sections 2.5 & 2.12). Therefore this section focuses on habitat conditions in Lake Washington, and does not discuss Puget Sound habitat conditions.

The geography and ecosystems in and adjacent to the project area have been dramatically altered by human activity since European settlers first arrived in the 1800s. Historically, a small stream flowed from Lake Union to Shilshole Bay, with no surface water connection between Lake Union and Lake Washington. The waters of Lake Washington flowed south to the Duwamish River via the now absent Black River. The ship canal was created by intense dredging and excavation that began in the 1880s to provide a navigable passage between Lake Washington and the marine waters of Shilshole Bay. The canal was completed in 1916. As part of the project, the Hiram M. Chittenden Locks (aka Ballard Locks) were constructed west of Salmon Bay to maintain navigable water levels in the canal and lakes. This permanently converted Salmon Bay from an estuary to freshwater.

Since 1979, water temperatures in the lake have increased an average of 1° Celsius (C) per decade, with temperatures that can reach 20 to 22° C during the summer and early fall, and the number of days that temperatures are in that range is increasing (City of Seattle 2010). Temperatures of 23 to 25° C can be lethal for salmon. Saltwater intrusion through the locks creates a wedge of high-density saltwater that can extend into and past Lake Union during low flow periods, and often becomes anoxic early in the summer as bacteria consume organics in the sediment. Dissolved oxygen concentrations range from 9.5 to 12.6 mg/L during the winter and spring, but can decrease to as low as 1 mg/L during the summer months.

The past and ongoing anthropogenic impacts described above have reduced the project area's ability to support migrating PS Chinook salmon and PS steelhead. However, the project area continues to provide migratory habitat for adults and juveniles of both species, and the area has been designated as critical habitat for PS Chinook salmon.

Climate Change: Climate change has affected the environmental baseline of aquatic habitats across the region and within the action area. However, the effects of climate change have not been homogeneous across the region, nor are they likely to be in the future. During the last century, average air temperatures in the Pacific Northwest have increased by 1 to 1.4° F (0.6 to 0.8° C), and up to 2° F (1.1° C) in some seasons (based on average linear increase per decade; Abatzoglou et al. 2014; Kunkel et al. 2013). Recent temperatures in all but two years since 1998 ranked above the 20th century average (Mote et al. 2013). Warming is likely to continue during the next century as average temperatures are projected to increase another 3 to 10° F (1.7 to 5.6° C), with the largest increases predicted to occur in the summer (Mote et al. 2014).

Decreases in summer precipitation of as much as 30% by the end of the century are consistently predicted across climate models (Mote et al. 2014). Precipitation is more likely to occur during October through March, less during summer months, and more winter precipitation will be rain than snow (ISAB 2007; Mote et al. 2013 and 2014). Earlier snowmelt will cause lower stream flows in late spring, summer, and fall, and water temperatures will be warmer (ISAB 2007; Mote et al. 2014). Models consistently predict increases in the frequency of severe winter precipitation events (i.e., 20-year and 50-year events), in the western United States (Dominguez et al. 2012). The largest increases in winter flood frequency and magnitude are predicted in mixed rain-snow watersheds (Mote et al. 2014).

The combined effects of increasing air temperatures and decreasing spring through fall flows are expected to cause increasing stream temperatures; in 2015, this resulted in 3.5-5.3°C increases in Columbia Basin streams and a peak temperature of 26°C in the Willamette (NWFSC 2015). Overall, about one-third of the current cold-water salmonid habitat in the Pacific Northwest is likely to exceed key water temperature thresholds by the end of this century (Mantua et al. 2009).

Higher temperatures will reduce the quality of available salmonid habitat for most freshwater life stages (ISAB 2007). Reduced flows will make it more difficult for migrating fish to pass physical and thermal obstructions, limiting their access to available habitat (Isaak et al. 2012; Mantua et al. 2010). Temperature increases shift timing of key life cycle events for salmonids and species forming the base of their aquatic food webs (Crozier et al. 2011; Tillmann and Siemann 2011; Winder and Schindler 2004). Higher stream temperatures will also cause decreases in dissolved oxygen and may also cause earlier onset of stratification and reduced mixing between layers in lakes and reservoirs, which can also result in reduced oxygen (Meyer et al. 1999; Raymondi et al. 2013; Winder and Schindler 2004). Higher temperatures are likely to cause several species to become more susceptible to parasites, disease, and higher predation rates (Crozier et al. 2008; Raymondi et al. 2013; Wainwright and Weitkamp 2013).

As more basins become rain-dominated and prone to more severe winter storms, higher winter stream flows may increase the risk that winter or spring floods in sensitive watersheds will damage spawning redds and wash away incubating eggs (Goode et al. 2013). Earlier peak stream

flows will also alter migration timing for salmon smolts, and may flush some young salmon and steelhead from rivers to estuaries before they are physically mature, increasing stress and reducing smolt survival (Lawson et al. 2004; McMahon and Hartman 1989).

The adaptive ability of these threatened and endangered species is depressed due to reductions in population size, habitat quantity and diversity, and loss of behavioral and genetic variation. Without these natural sources of resilience, systematic changes in local and regional climatic conditions due to anthropogenic global climate change will likely reduce long-term viability and sustainability of populations in many of these ESUs (NWFSC 2015). New stressors generated by climate change, or existing stressors with effects that have been amplified by climate change, may also have synergistic impacts on species and ecosystems (Doney et al. 2012). These conditions will possibly intensify the climate change stressors inhibiting recovery of ESA-listed species in the future.

## **2.5 Effects of the Action**

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).

The USACE proposes to authorize the applicant to repair two piers (north and south) and one boat launch. The northern pier is an 867-square-foot pier with three boatlifts. During the project, 12 pilings will be repaired using the pile stub method, 30 feet of the walkway close to shore will be reduced from 8 feet wide to 5 feet wide, and all solid decking will be replaced with ThruFlow grated decking. Existing skirting is proposed to be removed. The pier will be 766 square feet after the project (a reduction of 101 square feet).

The southern pier is a 4,018-square-foot pier with two walkways connecting it to shore. It has three boatlifts and boats are sometimes moored outside of the slips. During the project, 48 pilings and 3 mooring pilings are proposed to be repaired using the pile stub method. The walkways connecting the pier to shore would be reduced from 6 feet wide to 5 feet wide. Existing skirting along the pier would also be removed. One Jet Ski lift would be added close to shore and one waterslide would be added on the waterward southern corner. All existing solid decking would be replaced with ThruFlow grated decking. The pier will be 3,765 square feet after the project (a reduction of 253 square feet).

The project also includes repairing a portion of the existing boat ramp north of the northern pier, by placing concrete slabs over 252 square feet of shoreline excavated from the existing riprap rock (in a 12-foot by 12-foot section).

In-water work would occur July 16 through July 31 and/or November 16 through December 31, and will take about 3 weeks to complete. No pile driving, pile extraction, or ground disturbance

would occur during the work. No additional boat slips are proposed and one Jet Ski lift is proposed; thus, a small additional increase in recreational vessel traffic is anticipated.

A containment boom will be used around the work area that will contain floating debris and oil and grease to the work area. The barge will contain a perimeter containment sock to keep silt and debris from reentering the lake from the deck. Any floating debris will be removed from the work area daily. The barge will not come in contact with the lake bottom.

The proposed repair and replacement work would cause direct effects on the fish and habitat resources that are present during the in-water work through exposure to construction-related elevated noise, turbidity, artificial lighting, and propeller wash. The proposed construction would also cause indirect effects on fish and habitat resources through construction-related forage contamination. The USACE's authorization of the construction would also have the additional effect of extending the operational life of the marina by several decades beyond their existing functional life. Over that time, the marina's presence and normal operations would cause effects on fish and habitat resources through marina-related altered lighting, elevated noise, and propeller wash.

### **2.5.1 Effects to Listed Species**

#### *Underwater Noise*

NMFS established the injury thresholds for impulsive sound at 206 dB peak, 187 dB cumulative sound exposure level (SEL<sub>cum</sub>) for fish more than 2 grams, and 183 dB SEL<sub>cum</sub> for fish less than 2 grams (Fisheries Hydroacoustic Working Group 2008). The behavioral disturbance threshold is 150 dB root mean square (RMS). Any received level below 150 dB sound exposure level (SEL) is considered "Effective Quiet" (Stadler and Woodbury 2009).

The action area includes distances that construction noise will travel above and below the water. The loudest piece of equipment to be used would be the barge-mounted crane that may reach up to 85 dBA. Ambient conditions in a suburban residential area are typically 45 to 50 dBA (EPA 1978, as reported in WSDOT 2016), and may be higher at this site due to the addition of boat traffic and road noise from I-90, which passes over Lake Washington on floating bridges. There are no pile installations or removals proposed for this project. Although pile repairs are proposed, the applicant is proposing to stub steel pile onto existing wood piles. Thus noise effects are expected to be minor. The placement of concrete slabs for the boat launch is not anticipated to increase sound levels. Also, the installation of the new PWC lift will be conducted using hand tools. The most likely effect of exposure to non-injurious construction-related vessel noise levels would be temporary avoidance of the project site, which would cause no measurable effects on adult or juvenile PS steelhead or Chinook salmon.

#### *Turbidity*

The effects of turbidity on fish are species and size dependent. In general, severity typically increases with sediment concentration and duration of exposure, and decreases with the increasing size of the fish. Newcombe and Jensen (1996) reported minor physiological stress in juvenile salmon only after about three hours of continuous exposure to concentration levels of about 700 to 1,100 mg/L. Turbidity sources for the project are likely limited to barge traffic. A



floating containment boom will be used around the pier work area that will contain floating debris and oil and grease to the work area. Any floating debris will be removed from the work area daily. When barges are used, they will not come in contact with the lake bottom; however, construction on the pier will occur at depths less than 8 ft. deep and some sediment is reasonably likely to occur. Construction-related turbidity would be very short-lived and at concentrations too low to cause more than temporary, non-injurious behavioral effects (e.g., alarm reaction and avoidance of the plume), physiological effects (e.g., gill flaring and coughing), and temporary reduced feeding rates (Newcombe and Jensen 1996). Additionally, the work is timed to greatly reduce the likelihood of juvenile salmonids in the action area.

#### *Dissolved Oxygen*

Mobilization of anaerobic sediments can decrease dissolved oxygen (DO) levels (Hicks et al. 1991; Morton 1976). However, as described above, only a small amount of sediment will be mobilized by construction and structure-related vessels. This suggests that any impacts on DO will be too small and short-lived to cause detectable effects in exposed fish.

#### *Shade*

Numerous studies demonstrate that juvenile salmon, in both marine and freshwater habitats, are more likely to avoid the shadow of an overwater structure than to pass through the shadow (Celedonia et al. 2008a; Celedonia et al. 2008b; Kemp et al. 2005; Moore et al. 2013; Munsch et al. 2014; Nightingale and Simenstad 2001; Ono et al. 2010; Southard et al. 2006). One implication of juvenile salmon avoiding overwater structures is that some of them will swim around the structure (Nightingale and Simenstad 2001). This behavioral modification will cause them to temporarily utilize deeper habitat, thereby exposing them to increased piscivorous predation. This has been shown in the marine environment where juvenile salmonid consumption by piscivorous predators increased fivefold when juvenile pink salmon were forced to leave the shallow nearshore (Willette 2001). Further, swimming around overwater structures lengthens the salmonid migration route, which is correlated with increased mortality (Anderson et al. 2005).

The applicant is proposing to increase light penetration below the structure by replacing the existing solid decking with grated decking, reducing the size of the walkway and pier, and by removing skirting from the existing pier. The pier repair will remove about 354 square feet of shading over the nearshore, where three pier walkways are being reduced from 6 or 8 feet wide to 5 feet wide within 30 feet of shore. Although DNR (2014) found that only about 15% of light could be transmitted through a grated deck with 60% open space and the functional life of the structure and associated effects on juvenile PS Chinook salmon will be extended with the repaired pier, the shade impairments of the structure on juvenile salmon and steelhead will be reduced as a result of the project.

The probability of mortality would be extremely low for any individual fish as a result of shade impacts because shade is likely to be greatly reduced from the existing project footprint. Therefore, the numbers of fish that may be annually exposed to increased predation and longer migration distances will be extremely low, and no detectable effects at the population level are expected.

### *Artificial Lighting*

No project work would occur outside of daylight hours. However, the construction barges and vessels that will moor at the new floating piers may be illuminated after dark. The type, intensity, and duration of vessel lighting would be variable, but most of the boat illumination would likely be limited to low-intensity navigation lights that would be on only for short periods (minutes) just before leaving the floating piers, or after arriving.

The available literature demonstrates that artificial lighting can attract fish (positive phototaxis) and may shift nocturnal behaviors toward more daylight-like behaviors. It may also affect light-mediated behaviors such as migration timing. In lacustrine environments, subyearling Chinook, coho, and sockeye salmon exhibit strong nocturnal phototactic behavior toward light from 60-watt incandescent bulbs held about 6 feet above the water, with phototaxis positively correlated with light intensity (Tabor et al. 2017). Becker et al. (2013) found that the abundance of small shoaling fish and larger predatory fish increased in artificially illuminated estuarine waters. Celedonia and Tabor (2015) reported that attraction to artificial lights may delay the onset of early morning migration by up to 25 minutes for some juvenile Chinook salmon in the Lake Washington Ship Canal, but it was unlikely to alter migration timing in the evening. The available information to describe the effects of artificial lighting on predator/prey relationships suggests that light-based predatory success in piscivorous fish is probably offset by similar improvements in predator avoidance by juvenile salmonids (Mazur and Beauchamp 2003; Tabor et al. 1998).

There are no planned increases in artificial lighting on the pier and no additional vessel traffic is anticipated as a result of the project. The additional lighting that may occur from construction activities is anticipated to be nominal and the effects on juvenile PS Chinook salmon and PS steelhead are insignificant.

### *Propeller Wash*

The project is not anticipated to increase vessel traffic with propellers. However, construction activities may temporarily increase vessel traffic. Killgore et al. (2011) report that fish are killed by spinning boat propellers. Propeller-related turbulence has also been documented to kill small aquatic organisms like copepods (Bickel et al. 2011). Small fish that are exposed to propeller wash may also be displaced by the fast-moving turbulent water. Propeller wash is unlikely to affect adult PS Chinook salmon and PS steelhead, because they are unlikely to approach close enough to operating vessels to be exposed. In the unlikely event of adult exposure, their increased size and swimming ability suggest that they will swim away from the propeller wash with no detectable effects other than a very brief avoidance behavior. Construction activities are timed to occur when juvenile Chinook salmon and steelhead are least likely to be present, the numbers of exposed fish will be too low to cause detectable population-level effects.

## **2.5.2 Effects on Critical Habitat**

This assessment considers the intensity of expected effects in terms of the change they would cause in affected Primary Biological Features (PBFs) from their baseline conditions, and the severity of each effect, considered in terms of the time required to recover from the effect.

Ephemeral effects are those that are likely to last for hours or days, short-term effects would likely last for weeks, and long-term effects are likely to last for months, years or decades.

Puget Sound Chinook Salmon Critical Habitat: The proposed action, including full application of the planned conservation measures and BMPs, is likely to adversely affect designated critical habitat for PS Chinook salmon as described below.

1. Freshwater spawning sites – None in the action area.
2. Freshwater rearing sites – None in the action area.
3. Freshwater migration corridors free of obstruction and excessive predation:
  - a. Obstruction and excessive predation – The proposed project would cause minor long-term adverse effects on this attribute. The altered light and in-water noise levels related to the continued presence of the marina’s overwater structures and the moored vessels would maintain conditions at the sites that prevent normal migration behaviors, and increase the risk of predation for juvenile Chinook salmon and steelhead that approach the marina.
  - b. Water quantity – The proposed project would cause no effect on this attribute.
  - c. Water quality – The proposed action would cause minor short- and long-term adverse and beneficial effects on this attribute. Demolition and construction would cause short-term adverse effects on water quality that would be mostly contained and would persist no more than a low number of hours after work stops. ACZA-treated timber and continued vessel operations at the marinas would maintain persistent low level inputs of contaminants at the marinas. Detectable water quality impacts are expected to be limited to the areas within 300 feet around the project sites. The action would cause no measurable changes in water temperature or salinity.
  - d. Natural Cover – The proposed action would cause minor long-term adverse effects on this attribute. Extending the useful life of the marinas’ overwater piers and floats would perpetuate conditions that act to limit the growth of SAV. However, the conversion of solid plank decking to full or 50/50 grated decking, combined with the removal and/or relocation of some mooring structures farther from shore would act to increase light penetration under the affected structures.
4. Estuarine areas free of obstruction and excessive predation – None in the action area.
5. Nearshore marine areas free of obstruction and excessive predation – None in the action area.
6. Offshore marine areas – None in the action area.

## **2.6 Cumulative Effects**

“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.

Some continuing non-Federal activities are reasonably certain to contribute to climate effects within the action area. However, it is difficult if not impossible to distinguish between the action area's future environmental conditions caused by global climate change that are properly part of the environmental baseline *vs.* cumulative effects. Therefore, all relevant future climate-related environmental conditions in the action area are described in the environmental baseline (Section 2.4).

The current condition of ESA-listed species and designated critical habitat within the action area are described in the Status of the Species and Critical Habitat and the Environmental Baseline sections above. The contribution of non-federal activities to those conditions include past and on-going shoreline development, vessel activities, and upland urbanization. Those actions were driven by a combination of economic conditions that characterized traditional natural resource-based industries, general resource demands associated with settlement of local and regional population centers, and the efforts of social groups dedicated to restoration and use of natural amenities, such as cultural inspiration and recreational experiences.

NMFS is unaware of any specific future non-federal activities that are reasonably certain to affect the action area. However, NMFS is reasonably certain that future non-federal actions such as the previously mentioned vessel activities are all likely to continue and increase in the future as the human population continues to grow across the region. Continued habitat loss and degradation of water quality from development and chronic low-level inputs of non-point source pollutants will likely continue into the future. Recreational and commercial use of waters within the action area is also likely to increase as the human population grows.

The intensity of these influences depends on many social and economic factors, and therefore is difficult to predict. Further, the adoption of more environmentally acceptable practices and standards may gradually reduce some negative environmental impacts over time. Interest in restoration activities has increased as environmental awareness rises among the public. State, tribal, and local governments have developed plans and initiatives to benefit ESA-listed species in the action area. However, the implementation of plans, initiatives, and specific restoration projects are often subject to political, legislative, and fiscal challenges that increase the uncertainty of their success.

## **2.7 Integration and Synthesis**

The Integration and Synthesis section is the final step in our assessment of the risk posed to species and critical habitat as a result of implementing the proposed action. In this section, we add the effects of the action (Section 2.5) to the environmental baseline (Section 2.4) and the cumulative effects (Section 2.6), taking into account the status of the species and critical habitat (Section 2.2), to formulate the agency's 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 more detail above in Section 2.4, climate change is likely to increasingly affect the abundance and distribution of the ESA-listed species considered in the opinion. It is also likely to increasingly affect the PBF of designated critical habitats. The exact effects of climate change are both uncertain, and unlikely to be spatially homogeneous. However, climate change is reasonably likely to cause reduced instream flows in some systems, and may impact water quality through elevated in-stream water temperatures and reduced dissolved oxygen, as well as by causing more frequent and more intense flooding events.

Climate change may also impact coastal waters through elevated surface water temperature, increased and variable acidity, increasing storm frequency and magnitude, and rising sea levels. The adaptive ability of listed-species is uncertain, but is likely reduced due to reductions in population size, habitat quantity and diversity, and loss of behavioral and genetic variation.

The proposed action will cause direct and indirect effects on the ESA-listed species and critical habitats considered in the opinion well into the foreseeable future. However, the action's effects on water quality, substrate, and the biological environment are expected to be of such a small scale that no detectable effects on ESA-listed species or critical habitat through synergistic interactions with the impacts of climate change are expected.

### **2.7.1 ESA Listed Species**

PS Chinook salmon and PS steelhead are both listed as threatened, based on declines from historic levels of abundance and productivity, loss of spatial structure and diversity, and an array of limiting factors as a baseline habitat condition. Both species will be affected over time by cumulative effects, some positive – as recovery plan implementation and regulatory revisions increase habitat protections and restoration, and some negative – as climate change and unregulated or difficult to regulate sources of environmental degradation persist or increase. Overall, to the degree that habitat trends are negative, the effects on viability parameters of each species are also likely to be negative. In this context we consider how the proposed action's impacts on individuals would affect the listed species at the population and ESU/DPS scales.

#### PS Chinook salmon

The long-term abundance trend of the PS Chinook salmon ESU is slightly negative. Reduced or eliminated accessibility to historically important habitat, combined with degraded conditions in available habitat due to land use activities appear to be the greatest threats to the recovery of PS Chinook salmon. Commercial and recreational fisheries also continue to impact this species.

The PS Chinook salmon most likely to occur at the project site would be fall-run Chinook salmon from the Cedar River and the North Lake Washington/Sammamish River populations, and part of the South Puget Sound MPG. Both populations are considered at high risk of extinction due to low abundance and productivity.

The project site is located in King County, Washington, on the eastern side of Mercer Island, Lake Washington (Figure 1), which serves as a freshwater migration route to and from marine waters for adult and juvenile PS Chinook salmon from both affected populations. The

environmental baseline at and adjacent to the project site has been degraded by the effects of nearby intense bankside development and maritime activities, and by nearby and upstream industry, urbanization, agriculture, forestry, water diversion, and road building and maintenance.

The timing of the proposed work avoids the migration seasons for PS Chinook salmon. However, low numbers of out-migrating juveniles that pass through the project area over the next several decades would be exposed to low levels of contaminated forage and other altered habitat conditions, that both individually and collectively, would cause some combination of altered behaviors, reduced fitness, and mortality in some of the exposed individuals. However, the annual numbers of individuals that would be detectably affected by action-related stressors would be extremely low.

Based on the best available information, the scale of the direct and indirect effects of the proposed action, when considered in combination with the degraded baseline, cumulative effects, and the impacts of climate change, would be too small to cause detectable effects on any of the characteristics of a viable salmon population (abundance, productivity, distribution, or genetic diversity) for the affected PS Chinook salmon populations. Therefore, the proposed action would not appreciably reduce the likelihood of survival and recovery of this listed species.

#### PS Steelhead

The long-term abundance trend of the PS steelhead DPS is negative, especially for natural spawners. Growth rates are currently declining at 3 to 10% annually for all but a few DIPs. The extinction risk for most DIPs is estimated to be moderate to high, and the DPS is currently considered “not viable”. Reduced or eliminated accessibility to historically important habitat, combined with degraded conditions in available habitat due to land use activities appear to be the greatest threats to the recovery of PS steelhead. Fisheries activities also continue to impact this species.

The PS steelhead most likely to occur at the project site would be winter-run fish from the Cedar River and North Lake Washington/Lake Sammamish DIPs. The abundance trends between 1984 and 2016 was strongly negative for both DIPs, and ten or fewer adult natural-spawners are estimated to return to the DIPs annually.

The project site is located in King County, Washington, on the eastern side of Mercer Island, Lake Washington (Figure 1), which serves as a freshwater migration route to and from marine waters for adult and juvenile PS steelhead from both affected DIPs. The environmental baseline at and adjacent to the project site has been degraded by the effects of nearby intense bankside development and maritime activities, and by nearby and upstream industry, urbanization, agriculture, forestry, water diversion, and road building and maintenance.

It is extremely unlikely that any PS steelhead would be directly exposed to the proposed work. However, low numbers of out-migrating juveniles that pass through the project area over the next several decades would be exposed to low levels of turbidity, noise and other altered habitat conditions, that both individually and collectively, would cause some combination of altered behaviors, reduced fitness, and mortality in some of the exposed individuals. The annual

numbers of individuals that would be detectably affected by action-related stressors would be extremely low.

Based on the best available information, the scale of the direct and indirect effects of the proposed action, when considered in combination with the degraded baseline, cumulative effects, and the impacts of climate change, would be too small to cause detectable effects on any of the characteristics of a viable salmon population (abundance, productivity, distribution, or genetic diversity) for the affected PS steelhead DIPs. Therefore, the proposed action would not appreciably reduce the likelihood of survival and recovery of this listed species.

### **2.7.2 Critical Habitat**

Critical habitat was designated for PS Chinook salmon to ensure that specific areas with PBFs that are essential to the conservation of that listed species are appropriately managed or protected. The critical habitat for PS Chinook salmon will be affected over time by cumulative effects, some positive – as restoration efforts and regulatory revisions increase habitat protections and restoration, and some negative – as climate change and unregulated or difficult to regulate sources of environmental degradation persist or increase. Overall, to the degree that trends are negative, the effects on the PBFs of critical habitat for PS Chinook salmon are also likely to be negative. In this context we consider how the proposed action’s impacts on the attributes of the action area’s PBFs would affect the designated critical habitat’s ability to support the conservation of PS Chinook salmon as a whole.

Past and ongoing land and water use practices have degraded salmonid critical habitat throughout the Puget Sound basin. Hydropower and water management activities have reduced or eliminated access to significant portions of historic spawning habitat. Timber harvests, agriculture, industry, urbanization, and shoreline development have adversely altered floodplain and stream morphology in many watersheds, diminished the availability and quality of estuarine and nearshore marine habitats, and reduced water quality across the region.

Global climate change is expected to increase in-stream water temperatures and alter stream flows, possibly exacerbating impacts on baseline conditions in freshwater habitats across the region. Rising sea levels are expected to increase coastal erosion and alter the composition of nearshore habitats, which could further reduce the availability and quality of estuarine habitats. Increased ocean acidification may also reduce the quality of estuarine habitats.

In the future, non-federal land and water use practices and climate change are likely to increase. The intensity of those influences on salmonid critical habitat is uncertain, as is the degree to which those impacts may be tempered by adoption of more environmentally acceptable land use practices, by the implementation of non-federal plans that are intended to benefit salmonids, and by efforts to address the effects of climate change.

The PBF for PS Chinook salmon critical habitat at and adjacent to the project site is limited to freshwater migration corridors free of obstruction and excessive predation. The site attributes of that PBF that would be affected by the action are obstruction and excessive predation, water quality, and natural cover. As described above, the project site is located along a heavily

impacted waterway, and all three of these site attributes currently function at reduced levels as compared to undisturbed freshwater migratory corridors. The proposed project would increase light penetration under the replacement float. However, over the extended life of the applicant's replacement float, the float and float-related vessel operations would cause minor long term adverse effects on the identified site attributes.

Based on the best available information, the scale of the proposed action's effects, when considered in combination with the degraded baseline, cumulative effects, and the impacts of climate change, would be too small to cause any detectable long-term negative changes in the quality or functionality of the freshwater migration corridors PBF in the action area. Therefore, this critical habitat will maintain its current level of functionality, and retain its current ability for PBFs to become functionally established, to serve the intended conservation role for PS Chinook salmon.

## **2.8 Conclusion**

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 the NMFS' biological opinion that the proposed action is not likely to jeopardize the continued existence of PS Chinook salmon and PS steelhead, nor is it likely to destroy or adversely modify designated critical habitat for PS Chinook salmon.

## **2.9 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). "Harass" is further defined by interim guidance as to "create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering." "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 incidental take statement (ITS).

### **2.9.1 Amount or Extent of Take**

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



Harm of PS Chinook salmon from exposure to

- structure-related noise,
- operational propeller wash,
- operationally-related reduced forage,
- operationally-related altered migratory behaviors, and
- operationally -related predation.

Harm of PS steelhead from

- construction-related propeller wash.

The NMFS cannot predict with meaningful accuracy the number of PS Chinook salmon and PS steelhead that are reasonably certain to be injured or killed annually by exposure to any of these stressors. The distribution and abundance of the 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 the 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. Additionally, the NMFS knows of no device or practicable technique that would yield reliable counts of individuals that may experience these impacts. In such circumstances, the NMFS uses the causal link established between the activity and the likely extent and duration of changes in habitat conditions to describe the extent of take as a numerical level of habitat disturbance. The most appropriate surrogates for take are action-related parameters that are directly related to the magnitude of the expected take.

For this action, the timing of in-water work is applicable because the proposed in-water work window avoids the expected presence of PS Chinook salmon in the project area. Therefore, working outside of the proposed work window would increase the potential that PS Chinook salmon would be exposed to work-related stressors for which they would not otherwise be exposed.

#### ***Construction-Related Propeller Wash***

For this action, the timing and duration of work are the best available surrogates for the extent of take of listed species from exposure to construction-related propeller wash. Timing and duration of work are applicable because the planned work windows were selected to reduce the potential for fish presence at the project site. Therefore, working outside of the planned work window and/or working for longer than planned would increase the number of fish likely to be exposed to construction-related impacts that are likely to cause injury or reduce fitness.

#### ***Structure-Related Reduced Forage, Altered Migratory Behaviors, and Increased Predation***

The area of grated overwater cover is the best available surrogate for the extent of take of juvenile PS Chinook salmon from exposure to structure-related altered lighting. This is because the size of the shaded area is positively correlated with area of overwater cover, and the intensity of the shadow is correlated with how much light penetrates through the overwater structure. As

the size and intensity of the shadow increases, the amount of productive habitat and available forage decreases. This reduces available shelter and forage, which increases risk of predation, increases energetic costs, and reduces fitness in exposed individuals.

In summary, the extent of take for this action is defined as:

PS Chinook salmon:

1. Spatial and temporal extent of visible turbidity.
2. Area of the structure

PS steelhead:

3. Spatial and temporal extent of visible turbidity.

Exceedance of any of the exposure limits described above would constitute an exceedance of authorized take that would trigger the need to reinitiate consultation.

### **2.9.2 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.

### **2.9.3 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 applicant shall:

1. Implement monitoring and reporting to confirm that the take exemption for the proposed action is not exceeded.

### **2.9.4 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 terms and conditions implement reasonable and prudent measure 1:
  - a. The USACE shall require the applicant to maintain and submit construction logs to verify that all take indicators are monitored and reported. The logs shall indicate:

- b. Documentation of the timing and duration of in- and over-water work is accomplished between July 16 to July 31 and November 16 to December 31;
- c. A visible turbidity plume not to exceed 300 feet from the project site during any portion of the project; and
- d. A maximum of 4,531 square feet of overwater cover is replaced.
- e. Submit an electronic post-construction report to NMFS within six months of project completion. Send the report to: [projectreports.wcr@noaa.gov](mailto:projectreports.wcr@noaa.gov). Be sure to include the NMFS Tracking number for this project in the subject line: Attn: WCRO-2020-02166.

## **2.10 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).

The proposed project includes design features that reduce its impacts on aquatic resources. It also includes a comprehensive set of BMPs to minimize construction-related effects. The NMFS knows of no other reasonable measures that the applicant could include to further reduce the project’s effects on PS Chinook salmon, PS steelhead, and the attributes of designated critical habitat for PS Chinook salmon. Therefore, the NMFS makes no conservation recommendations pursuant to Section 7(a)(1) of the ESA.

## **2.11 Reinitiation of Consultation**

This concludes formal consultation for the U.S. Army Corps of Engineers’ authorization of the Mercerwood Shore Club Pier Repair Project in King County, Washington.

Under 50 CFR 402.16(a): “Reinitiation of consultation is required and shall be requested by the Federal agency or by the Service where discretionary Federal agency involvement or control over the action has been retained or is authorized by law and: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) If new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) If 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 the biological opinion or written concurrence; or (4) If a new species is listed or critical habitat designated that may be affected by the identified action.”

## **2.12 “Not Likely to Adversely Affect” Determinations**

This assessment was prepared pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402 and agency guidance for preparation of letters of concurrence.

As stated in Section 1.2 and described below, the NMFS has concluded that the proposed action is not likely to adversely affect southern resident (SR) killer whales and their designated critical habitat. Detailed information about the biology, habitat, and conservation status and trends of SR killer whales can be found in the listing regulations and critical habitat designations published in the Federal Register, as well as in the recovery plans and other sources at: <https://www.fisheries.noaa.gov/species-directory/threatened-endangered>, and are incorporated here by reference.

The applicable standard to find that a proposed action is not likely to adversely affect listed species or critical habitat is that all of the effects of the action are expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. The effects analysis in this section relies heavily on the descriptions of the proposed action and project site conditions discussed in Sections 1.3 and 2.4, and on the effects analyses presented in Section 2.5.

### **2.12.1 Effects on Listed Species**

The proposed action will have no direct effects on SR killer whales or their critical habitat because all construction and its impacts would take place in freshwater, and SR killer whales and their designated critical habitat are limited to marine waters.

However, the project may indirectly affect SR killer whales through the trophic web by affecting the quantity and quality of prey available to SR killer whales. We therefore analyze that potential here but conclude that the effects on SR killer whales will be insignificant for at least two reasons.

First, as described in Section 2.5, the action would annually affect an extremely low number of juvenile Chinook salmon. The project's detectable effects on fish would be limited to an area no more than 300 feet around the project site, where small subsets of each year's juvenile PS Chinook salmon cohorts from the Cedar River and North Lake Washington populations could be briefly exposed to project-related impacts during the final portion their freshwater migration life stage, and only very small subsets of the individuals that pass through the area are likely to be detectably affected by the exposure.

The exact Chinook salmon smolt to adult ratios are not known. However, even under natural conditions, individual juvenile Chinook salmon have a very low probability of surviving to adulthood (Bradford 1995). We note that human-caused habitat degradation and other factors such as hatcheries and harvest exacerbate natural causes of low survival such as natural variability in stream and ocean conditions, predator-prey interactions, and natural climate variability (Adams 1980, Quinones et al., 2014). However, based on the best available information, the annual numbers of project-affected juveniles would be too low to influence any VSP parameters for either population, or to cause any detectable reduction in adult Chinook salmon availability to SR killer whales in marine waters.

Second, as described in Sections 1.3, 2.2, and 2.5, the only PS Chinook populations that would be affected by the project would be the two Lake Washington populations that migrate through the Lake Washington ship canal, and both populations are small. Adult returns in 2019 for the Cedar River and North Lake Washington populations were 855 and 365 individuals, respectively (WDFW 2021c; 2021d). Consequently, the two populations, combined, make up a very small portion of the adult Chinook that are available to SR killer whales in marine waters. Therefore, based on the best available information, the proposed action is not likely to adversely affect SR killer whales.

### **2.12.2 Effects on Critical Habitat**

This assessment considers the intensity of expected effects in terms of the change they would cause in affected physical or biological features (PBFs) from their baseline conditions, and the severity of each effect, considered in terms of the time required to recover from the effect. Ephemeral effects are those that are likely to last for hours or days, short-term effects would likely to last for weeks, and long-term effects are likely to last for months, years or decades.

SR killer whale Critical Habitat: Designated critical habitat for SR killer whales includes marine waters of the Puget Sound that are at least 20 feet deep. The expected effects on SR killer whale critical habitat from completion of the proposed action, including full application of the conservation measures and BMP, would be limited to the impacts on the PBFs as described below.

1. Water quality to support growth and development

The proposed action would cause no detectable effects on marine water quality.

2. Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth

The proposed action would cause long-term undetectable effects on prey availability and quality. Action-related impacts would annually injure or kill extremely low numbers of individual juvenile Chinook salmon (primary prey), during the final portion their freshwater migration lifestage. However, the numbers of affected juvenile Chinook salmon would be too small to cause detectable effects on the numbers of available adult Chinook salmon in marine waters. Therefore, it would cause no detectable reduction in prey availability and quality.

3. Passage conditions to allow for migration, resting, and foraging

The proposed action would cause no detectable effects on passage conditions.

For the reasons expressed immediately above, the NMFS has concluded that the proposed action is not likely to adversely affect ESA-listed SR killer whales and their designated critical habitat.

### **3. MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT ESSENTIAL FISH HABITAT RESPONSE**

Section 305(b) of the MSA directs Federal agencies to consult with NMFS on all actions or proposed actions that may adversely affect EFH. The MSA (section 3) defines EFH as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” Adverse effect means any impact that reduces quality or quantity of EFH, and may include direct or indirect physical, chemical, or biological alteration of the waters or substrate and loss of (or injury to) benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality or quantity of EFH. Adverse effects on EFH may result from actions occurring within EFH or outside of it and may include site-specific or EFH-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810). Section 305(b) also requires NMFS to recommend measures that can be taken by the action agency to conserve EFH.

This analysis is based, in part, on the EFH assessment provided by the Corps and descriptions of EFH for Pacific Coast salmon (PFMC 2014) contained in the fishery management plans developed by the PFMC and approved by the Secretary of Commerce.

#### **3.1 Essential Fish Habitat Affected By the Project**

The project site is located in Seattle, Washington, on the southern bank of the Lake Washington Ship Canal, at the west end of Portage Bay (Figure 1). The waters and substrate of Portage Bay are designated as freshwater EFH for various life-history stages of Pacific Coast Salmon, which within the Lake Washington watershed include Chinook and coho salmon. Due to trophic links between PS Chinook salmon and SR killer whales, the project’s action area also overlaps with marine waters that have been designated, under the MSA, as EFH for Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagic Species. However, the action would cause no detectable effects on any components of marine EFH. Therefore, the action’s effects on EFH would be limited to impacts on freshwater EFH for Pacific Coast Salmon, and it would not adversely affect marine EFH for Pacific Coast Salmon, or EFH for Pacific Coast groundfish and coastal pelagic species.

Freshwater EFH for Pacific salmon is identified and described in Appendix A to the Pacific Coast salmon fishery management plan, and consists of four major components: (1) spawning and incubation; (2) juvenile rearing; (3) juvenile migration corridors; and (4) adult migration corridors and holding habitat.

Those components of freshwater EFH for Pacific Coast Salmon depend on habitat conditions for spawning, rearing, and migration that include: (1) water quality (e.g., dissolved oxygen, nutrients, temperature, etc.); (2) water quantity, depth, and velocity; (3) riparian-stream-marine energy exchanges; (4) channel gradient and stability; (5) prey availability; (6) cover and habitat complexity (e.g., large woody debris, pools, aquatic and terrestrial vegetation, etc.); (7) space; (8) habitat connectivity from headwaters to the ocean (e.g., dispersal corridors); (9) groundwater-stream interactions; and (10) substrate composition.

As part of Pacific Coast Salmon EFH, five Habitat Areas of Particular Concern (HAPCs) have been defined: 1) complex channels and floodplain habitats; 2) thermal refugia; 3) spawning habitat; 4) estuaries; and 5) marine and estuarine submerged aquatic vegetation. The action area provides no known HAPC habitat features.

### **3.2 Adverse Effects on Essential Fish Habitat**

The ESA portion of this document (Sections 1 and 2) describes the proposed action and its adverse effects on ESA-listed species and critical habitat, and is relevant to the effects on EFH for Pacific Coast Salmon. Based on the analysis of effects presented in Section 2.5 the proposed action will cause minor short- and long-term adverse effects on EFH for Pacific Coast Salmon as summarized below.

1. Water quality: The proposed action would cause short-term and decades-long minor adverse effects on this attribute. Demolition and construction would cause short-term adverse effects on water quality that would persist no more than a low number of hours after work stops. ACZA-treated timber and episodic vessel operations would maintain persistent low level inputs of contaminants at the applicant's replacement float. Detectable water quality impacts would be limited to the area within 300 feet around the float. The action would cause no measurable changes in water temperature or salinity.
2. Water quantity, depth, and velocity: No changes expected.
3. Riparian-stream-marine energy exchanges: No changes expected.
4. Channel gradient and stability: No changes expected.
5. Prey availability: The proposed action would cause decades-long minor adverse effects on this attribute. Despite the increase light penetration under the replacement float from conversion of solid plank decking to fully-grated decking, the replacement float would cast over-water shade that would limit SAV growth and reduce the density and diversity of the benthic and planktonic communities under the float, such as amphipods, copepods, and larvae of benthic species that are important prey resources for juvenile salmonids. Also, any contaminants that are mobilized during pile extraction, combined with low-level input of contaminants from the float and related vessel operations would contaminate some of the available prey. Detectable effects would be limited to the area within about 300 feet around the float.
6. Cover and habitat complexity: The proposed action would cause decades-long-minor adverse effects on this attribute. Over its decades-long life, the replacement float would perpetuate conditions that act to limit the growth of SAV despite the conversion of solid plank decking to fully-grated decking that would increase light penetration as compared to the existing pier.
7. Water quantity: No changes expected.

8. Space: No changes expected.
9. Habitat connectivity from headwaters to the ocean: No changes expected.
10. Groundwater-stream interactions: No changes expected.
11. Connectivity with terrestrial ecosystems: No changes expected.
12. Substrate composition: No changes expected.

### **3.3 Essential Fish Habitat Conservation Recommendations**

The proposed project includes design features that reduce its impacts on the quantity and quality of Pacific Coast salmon EFH. It also includes a comprehensive set of BMPs to minimize construction-related effects. The NMFS knows of no other reasonable measures that the applicant could include to further reduce the project's effects on the attributes of Pacific Coast salmon EFH described above. Therefore, the NMFS makes no conservation recommendations pursuant to MSA (§305(b)(4)(A)).

### **3.4 Statutory Response Requirement**

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.

### **3.5 Supplemental Consultation**

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(1)).



## 4. DATA QUALITY ACT DOCUMENTATION AND PRE-DISSEMINATION REVIEW

The Data Quality Act (DQA) specifies three components contributing to the quality of a document. They are utility, integrity, and objectivity. This section of the opinion addresses these DQA components, documents compliance with the DQA, and certifies that this opinion has undergone pre-dissemination review.

### 4.1 Utility

Utility principally refers to ensuring that the information contained in this consultation is helpful, serviceable, and beneficial to the intended users. The intended user of this opinion is the Corps. Other interested users could include residential pier project applicants, the citizens of Seattle, and tribes. Individual copies of this opinion were provided to the Corps. The document will be available within two weeks at the NOAA Library Institutional Repository (<https://repository.library.noaa.gov/welcome>). The format and naming adheres to conventional standards for style.

### 4.2 Integrity

This consultation was completed on a computer system managed by NMFS in accordance with relevant information technology security policies and standards set out in Appendix III, 'Security of Automated Information Resources,' Office of Management and Budget Circular A-130; the Computer Security Act; and the Government Information Security Reform Act.

### 4.3 Objectivity

**Information Product Category:** Natural Resource Plan

**Standards:** This consultation and supporting documents are clear, concise, complete, and unbiased; and were developed using commonly accepted scientific research methods. They adhere to published standards including the NMFS ESA Consultation Handbook, ESA regulations, 50 CFR 402.01 et seq., and the MSA implementing regulations regarding EFH, 50 CFR 600.

**Best Available Information:** This consultation and supporting documents use the best available information, as referenced in the References section. The analyses in this opinion and EFH consultation contain more background on information sources and quality.

**Referencing:** All supporting materials, information, data and analyses are properly referenced, consistent with standard scientific referencing style.

**Review Process:** This consultation was drafted by NMFS staff with training in ESA and MSA implementation, and reviewed in accordance with West Coast Region ESA quality control and assurance processes.

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