UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
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Refer to NMFS No: WCRO-2022-00736

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October 18, 2022

Ralph J. Rizzo
Division Administrator
Federal Highway Administration
Evergreen Plaza, Suite 501
711 South Capitol Way
Olympia, Washington 98501-1284

Re: Endangered Species Act Section 7(a)(2) Biological Opinion for the Dell Sharpe Bridge Replacement, Touchet River (HUC 170701020702), Walla Walla County, Washington

Dear Mr. Rizzo:

This letter responds to your March 31, 2022, request for initiation of consultation with National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the subject action. Your request, including information submitted subsequent to that additional request, qualified for our expedited review and analysis because it met our screening criteria and contained all required information on, and analysis of, your proposed action and its potential effects to listed species and designated critical habitat.

On July 5, 2022, the U.S. District Court for the Northern District of California issued an order vacating the 2019 regulations that were revised or added to 50 CFR part 402 in 2019 ("2019 Regulations," see 84 FR 44976, August 27, 2019) without making a finding on the merits. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order. As a result, the 2019 regulations are once again in effect, and we are applying the 2019 regulations here. For purposes of this consultation, we considered whether the substantive analysis and conclusions articulated in the biological opinion and incidental take statement would be any different under the pre-2019 regulations. We have determined that our analysis and conclusions would not be any different.

We reviewed the Federal Highway Administration's (FHWA) consultation request and related initiation package. Where relevant, we have adopted the information and analyses you have provided and/or referenced in your biological assessment (BA) but only after our independent, science-based evaluation confirmed they meet our regulatory and scientific standards. We adopt by reference here: Section 2, Project Location; Section 3, Project Description; Section 4, Project Timeline; Section 5, Impact Avoidance and Minimization Measures; Section 6, Action Area; Section 7, Species and Critical Habitat Addressed in BA; Section 8, Species and Critical Habitat Occurrence; Section 9, General Setting; Section 10, Environmental Baseline; Section 11, Analysis of Effects; Section 12, Delayed Consequences; Section 13, Interrelated and

Interdependent Actions; Section 14, Cumulative Effects; and Section 15, Conclusions and Effects Determinations.

The FHWA submitted a request for initiation of consultation and a BA on March 31, 2022. After our review, we requested additional information via email on April 28, 2022. NMFS received the requested information from FHWA via email on May 25, 2022. Consultation was initiated on May 25, 2022. NMFS requested fish use information from the Washington State Department of Fish and Wildlife (WDFW) on August 15, 2022, and received requested information from WDFW on August 24, 2022.

BIOLOGICAL OPINION

Proposed Federal Action

The project includes funding from the FHWA, administered by the Washington State Department of Transportation Local Programs to Walla Walla County (County) as the project sponsor.

As described in the BA, the County proposes to replace the existing Dell Sharpe Bridge over the Touchet River, which is past its serviceable lifetime. The project includes: grading and construction of new bridge approaches; construction of geosynthetic retaining walls at the terminus of the approaches; constructing a 320-foot-long bridge with a single central pier located within the 100-year floodplain but outside the current ordinary high water mark (OHWM) and two abutments above and landward of the OHWM; creation of a stormwater conveyance system and infiltration swales; and demolition and removal of the existing Dell Sharpe Bridge and piers. Impact minimization measures will be implemented to minimize impacts to the Touchet River, riparian areas, and buffers. In-water work will be conducted during the WDFW-approved in-water work window (June 16–September 30). The project is scheduled for 2023. A detailed description of project construction and impact minimization measures are provided in Section 3 and Section 5 of the BA, respectively, and adopted here.

Project construction will include worksite isolation and dewatering, fish salvage, riparian vegetation removal, planting native riparian vegetation (trees and shrubs), an increase in impervious surface of 0.52 acres, and treatment (detention and infiltration) of all stormwater. In-stream work will be limited to isolation around, and demolition of, the existing bridge central pier. Operation of all heavy equipment will occur above the OHWM. We considered, under the ESA, whether or not the proposed action would cause any other activities and determined that it would not.

Status of Species and Critical Habitat

We examined the status of each species that would be adversely affected by the proposed action to inform the description of the species' "reproduction, numbers, or distribution" as described in 50 CFR 402.02. The status of the species, in this case, Middle Columbia River (MCR) steelhead, is described in Sections 8.1.1 and 8.1.3 of the BA and adopted here. We also examined the condition of critical habitat throughout the designated area and discuss the function of the

physical or biological features (PBFs) essential to the conservation of the species that create the conservation value of that habitat. Middle Columbia River steelhead critical habitat is described in Sections 8.1.2, 8.1.4, and 8.1.5 of the BA, and adopted here.

"Action area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). The action area is described in Sections 6.1, 6.2, and 6.3 of the BA, and adopted here.

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).

The Environmental Baseline is described in Sections 9, 9.1, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, and Appendix D, of the BA and adopted here. Overall, the MCR steelhead DPS is at "moderate risk" of extinction, with viability unchanged from the 2016 review (Ford 2022; NMFS 2022). The Touchet River population is one of three steelhead populations in the Umatilla/Walla Walla Rivers Major Population Group (MPG). The Umatilla/Walla Walla MPG is not viable. To achieve viability, one population needs to be viable (low risk) and one population needs to be highly viable (very low risk); with the only large population, the Umatilla River population, needing to be at least viable. Therefore, either the Walla Walla River or Touchet River population needs to be viable. Currently, both the Umatilla and Walla Walla populations are considered "maintained" (moderate risk), and the Touchet population is not viable (high risk) (Ford 2022; NMFS 2022). The recent 10-year (2010–2019) geometric mean of natural spawner abundance for the Touchet River steelhead population is 253, substantially below the threshold target of 1,000 (Ford 2022).

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).

An assessment of the effects of the proposed action is provided in Sections 11 and 12 of the BA, and adopted here (50 CFR 402.14(h)(3)). Touchet River summer steelhead primarily use the action area for migration to access spawning and good quality rearing habitat approximately 10

or more miles upstream in the subbasin. Because known spawning areas are located 10 or more miles upstream, we do not expect young-of-year steelhead to be present in the action area during project construction. Some limited juvenile rearing may occur in the action area, but habitat and water quality is considered poor (Trump 2021; Mendel et al. 1999). Therefore, the FHWA determined, and NMFS concurs, that no adults and only a small number of juvenile steelhead may be present in the action area during project construction.

Potential adverse project effects to juvenile MCR steelhead identified by the FHWA include:

- Stress or mortality of juvenile steelhead from fish capture and relocation from 2,300 square feet of the Touchet River.
- Juvenile steelhead exclusion from 2,300 square feet of the river during in-water work.
- Temporary juvenile steelhead avoidance of the action area for up to 200 feet downstream because of turbidity.

Potential adverse project effects to PBFs of MCR steelhead critical habitat identified by the FHWA include:

- A temporary loss of 2,300 square feet of in-stream habitat from isolation of the in-water work area.
- A short-term increase in turbidity and sedimentation, generated from disruption of riverbed material during installation and removal of cofferdams, removal of the existing bridge superstructure, and from vegetation clearing, negatively affecting benthic organisms up to 200 feet downstream.

The pollution generating roads and bridge within the project area currently have no stormwater management. Identified project benefits include construction of a stormwater conveyance system and infiltration swales so stormwater will no longer be discharged to surface waters. Stormwater from the proposed bridge approaches and bridge structure will be routed to four separate stormwater infiltration swales located within upland areas adjacent to the bridge. Stormwater treatment and detention was designed in accordance with Washington Department of Ecology's 2019 Stormwater Management Manual for Eastern Washington. Although the proposed project will result in an increase of 0.52 acres of new pollution generating impervious surface, stormwater facilities for the project will provide treatment and detention for a total of 1.5 acres, sufficient for all new and existing impervious surfaces. As a result, all stormwater will be infiltrated with no planned discharges to surface waters. Therefore, we do not expect negative effects to water quality from the increase in impervious surface.

Project benefits also include improvements to natural stream processes and in-stream habitat from removal of the existing central pier from the stream channel. The central pier of the new bridge will be constructed above the current OHWM.

NMFS has evaluated this section and, after our independent, science-based evaluation, determined it needs the additional information included in the following paragraphs to complete our analysis.

Effects to Juvenile Summer Steelhead

Construction-related activities have the potential to affect juvenile salmonid forage. The proposed action will affect available forage by crushing, covering, or dislodging them during installation of cofferdams and fish salvage; desiccation during dewatering of the in-stream work area; removal of riparian vegetation; and settling of suspended sediment below the work area. Approximately 2,300 square feet of benthic habitat will be disturbed and not accessible to juvenile steelhead during dewatering and subsequent construction activities. The disturbance will kill or displace benthic invertebrates, reducing available forage until the area is recolonized. Approximately 0.82 acres of riparian vegetation, of which an estimated 70 percent is invasive grasses and forbs and the remaining 30 percent is native shrubs and 10 to 15 small cottonwoods and alders, will be removed. Removal will cause some loss of allochthonous input, such as leaf litter and terrestrial invertebrates. In addition, elevated turbidity from in-water work to install and remove cofferdams, and settling of suspended sediment up to 200 feet downstream of the work area, is expected to cause a loss of abundance of benthic organisms. We expect deposited sediment to flush out with the first high flow event.

Aquatic invertebrates could start recolonizing within days to months after completion of construction (Fowler 2004; Korsu 2004; Miller and Golladay 1996; Paltridge et al. 1997). Some aquatic insect life cycles can extend up to 3 years (Hilsenhoff 1981; Pennak 1953), but most aquatic insects in the north temperate zone have an annual life cycle (Merritt and Cummins 1996). Thus, we estimate that recolonization of the disturbed areas will occur within 1 year.

The FHWA will plant 260 5-gallon trees, including cottonwood, alder, quaking aspen, and ponderosa pine, in four locations encompassing 0.66 acres. These plantings will help minimize the loss of allochthonous input in the short-term and provide better riparian function over time as native vegetation becomes established and replaces invasive grasses and forbs.

Together, the benthic habitat disturbance and loss of allochthonous input will slightly decrease potential forage production and availability to juvenile steelhead within the action area for about 1 year. Reducing food availability generally leads to reduced growth and ultimately survival (Spence et al. 1996). However, a source of forage will continue to be provided by invertebrate drift, benthic production in the action area, and allochthonous input from riparian vegetation in and adjacent to the action area. Due to the expected small number of juvenile steelhead in the action area, the very small area of benthic habitat disturbance, and the small amount of impacted riparian vegetation, we believe this slight decrease in forage production, and the temporary loss of access to the construction footprint by juvenile steelhead, will be too small to cause competition for forage or a decrease in the growth or survival of individual juvenile steelhead.

All in-water work will be restricted to the approved in-water work window, June 16 through September 30. Fish salvage will consist of herding fish out of the construction area and electrofishing and netting any fish that do not leave on their own. We expect most fish to be herded out of the work area using seines, and any remaining fish to be captured by electrofishing and netting, and relocated downstream of the project. Many factors influence the success of fish salvage efforts, including water depth, habitat complexity, temperature, salvage methods, crew experience, and care of fish after capture. At best, all fish are captured without injury and

successfully released. However, in many cases some fish are difficult to capture, sustain injuries, and experience high stress after capture. Herding will minimize the risk of injury and mortality to listed fish to the extent possible. However, seining, netting, capture, and handling may injure fish and can increase stress, resulting in harm or death to some individuals; and herded fish may experience increases in predation, increased competition for forage, or reduced feeding when moved out of their established areas. Additionally, a small number of fish may not be found by the fish capture crew and could end up stranded during dewatering.

NMFS estimates up to 2,300 square feet (100 feet long by 23 feet wide) of the Touchet River will be isolated and dewatered. NMFS used available juvenile population abundance data for the Touchet River from the WDFW's website to estimate juvenile steelhead density in the action area during fish salvage and dewatering. The estimated juvenile steelhead density in the Touchet River decreased from 667 per mile in 2008 to 153 per mile in 2015 (WDFW website, Juvenile Population Abundance Data). Because work area isolation and fish salvage will occur during the in-water work window, and because of expected high water temperatures limiting and potentially precluding steelhead use of the action area, NMFS expects the maximum juvenile density in the action area to be 153 fish per mile. The length of the berm to isolate the work area is expected to be 100 feet long, therefore, NMFS estimates there will be up to four juvenile steelhead in the area to be dewatered and salvaged.

NMFS expects all fish salvaged will be captured and released below the existing bridge. NMFS estimates that 95 percent[1] of juveniles (three fish) in the isolated area will be herded out or captured and released downstream without ill effects. However, we expect the remaining 5 percent (one juvenile fish) will be injured or killed because they are unable to be captured during fish salvage and succumb to lack of oxygen or desiccation during dewatering, or they will experience external or internal injury, including injurious levels of stress, during holding and handling. We assume that fish that are injured or experience injurious levels of stress will be less likely to survive the challenges of outmigration and will ultimately die as a result. Therefore, NMFS estimates three juvenile steelhead will be salvaged and released safely, and one juvenile will be injured or killed during fish salvage at the existing Dell Sharp Bridge.

The injury or death of one juvenile steelhead does not accrue to the loss of one adult steelhead. NMFS does not believe the proposed action will influence the abundance or productivity of the Touchet River population.

Elevated turbidity due to suspension of sediments is expected during work area isolation (cofferdam construction and fish salvage) and following removal of the cofferdam. Based on flows, increased turbidity is expected to extend up to 200 feet downstream from the construction limits. Because appropriate BMPs will be in place, we expect turbidity to be of low concentration and that water quality will return to baseline within a few hours following completion of installation and removal of cofferdams. In-water construction work will be limited to the approved in-water work window for the project. In-water work timing and anticipated high water temperatures should limit the number of juvenile steelhead exposed to the expected temporary increases in turbidity. However, NMFS expects that the turbidity levels generated by

[1] This is a conservative estimate based on the professional opinion of NMFS biologists and considers expected fish size, capture methods, and site conditions. The latter include anticipated depth, cover, substrate, turbidity, and flow.

this action will cause temporary behavioral changes to steelhead below the cofferdams, including moving short distances downstream, which will increase the risk of predation (Berg and Northcote 1985).

We used the same fish density estimate applied above to estimate the number of juveniles that will be exposed to increased suspended sediment concentrations. Therefore, we estimate exposure to eight juvenile steelhead (200 feet below in-water work). When exposed to increased suspended sediment concentrations, some individuals will likely move to avoid the turbid water, and others may sustain some physical or physiological damage, but it is unlikely that any will die. However, as a worst-case scenario, we assume that all of these fish will be steelhead and all will be harmed. These eight juveniles would be less than one adult equivalent.

Effects to Critical Habitat

Riparian vegetation serves important functions in stream ecosystems by providing shade, sediment storage, nutrient inputs, channel and streambank stability, habitat diversity, large wood input, and cover and shelter for fish (Murphy and Meehan 1991). Approximately 0.82 acres of riparian vegetation, including native shrubs and 10 to15 small cottonwoods and alders, will be removed. The FHWA will plant 260 5-gallon trees, including cottonwood, alder, quaking aspen, and ponderosa pine, in four locations encompassing 0.66 acres. The action area will temporarily experience decreased shade and allochthonous and terrestrial invertebrate inputs after vegetation clearing and while planted trees grow and mature. Therefore, NMFS expects small, temporary negative effects to riparian vegetation, natural cover, and forage PBFs at the scale of the action area. As riparian vegetation becomes established, NMFS expects improvements to riparian habitat, natural cover, and forage PBFs at the scale of the action area through the replacement of invasive species with native species.

The proposed action will negatively affect the availability of benthic invertebrates by covering, dewatering, or displacing them from 2,300 square feet of streambed, and from sediment deposition up to 200 feet below the cofferdams. Accumulated sediment is expected to flush out with the first high flows. Following reconnection of the isolated area with the flowing channel, we expect drifting invertebrates from upstream will recolonize the sediment. Over time, forage will improve and return to pre-project levels. We expect recolonization to occur within a few days to 1 year after project completion (Fowler 2004; Griffith and Andrews 1981). Given the small area of benthic habitat disturbance and the short-term nature of the action, NMFS expects this project to have a small, negative effect on forage at the scale of the action area.

Substrate conditions within the affected stream reach are expected to experience minor levels of sediment deposition as the small turbidity plumes settle out within 200 feet downstream of the cofferdams. Accumulated sediment is expected to flush out with the first high flows. Therefore, NMFS expects small, temporary negative effects to the substrate PBF at the scale of the action area.

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. Cumulative effects are described in Section 14 of the BA and incorporated by reference here.

Neither the FHWA nor NMFS are aware of any future non-Federal activities within the action area that could adversely affect MCR steelhead and their critical habitat. Within the action area, non-irrigated agriculture and road maintenance are expected to occur. In addition, the nearest cities are Prescott and Waitsburg, both with decreasing populations and fewer than 1,200 residents. Therefore, for our analysis, NMFS assumes that future State and private actions and land uses will continue within the action area at roughly their current rate.

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 to the environmental baseline and the cumulative effects, taking into account the status of the species and critical habitat, 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.

Middle Columbia River Steelhead

Juvenile MCR steelhead use the action area for rearing and migration. Adults use the area for migration to spawning and rearing habitat upstream in the Touchet River. The Touchet River population of MCR steelhead will be affected by the proposed action. As described above, the proposed action will have effects on juvenile MCR steelhead. We estimate that the proposed action will injure or kill a total of nine juvenile MCR steelhead from the Touchet River population, less than one adult equivalent.

Project construction will result in one Touchet River juvenile steelhead being harmed or killed by fish salvage and dewatering. Temporary increases in turbidity during installation and removal of isolation barriers and fish salvage; along with turbidity plumes, which extend 200 feet downstream of the isolated area, are likely to alter the feeding behavior and movement of an estimated eight juvenile steelhead (less than one adult equivalent), which will increase risk of predation.

In the context of the Touchet River steelhead population, which has an average natural spawner abundance of 253 adult steelhead, the loss of nine juveniles from a single cohort will not meaningfully affect the abundance or productivity of the population and will have no effect on

its spatial structure or diversity. The likelihood of persistence and recovery potential of the Umatilla/Walla Walla MPG will not be affected, because none of the component populations will meaningfully be affected. Similarly, the likelihood of persistence and recovery potential of MCR steelhead as a whole will not be affected because we expect no change in the viability status of the Umatilla/Walla Walla MPG.

After reviewing and analyzing the current status of the listed species and critical habitat, the environmental baseline within the action area, the effects of the proposed action, the effects of other activities caused by the proposed action, and cumulative effects, it is NMFS' biological opinion that the proposed action is not likely to jeopardize the continued existence of MCR steelhead.

Critical Habitat

The action area is designated critical habitat for MCR steelhead, providing migratory habitat for adult and juvenile steelhead as well as providing rearing habitat for juveniles. Summer rearing habitat may be limited because of high water temperatures. NMFS expects small, temporary negative effects to riparian vegetation, natural cover, sediment, and forage PBFs from installation and removal of coffer dams, removal of the existing central pier, and removal of riparian vegetation, at the scale of the action area. As riparian vegetation becomes established, NMFS expects improvements to riparian habitat, natural cover, and forage at the scale of the action area, with native riparian species replacing invasive species.

Based on our analysis, adverse effects from the proposed action will cause a small and localized decline in the quality and function of PBFs in the action area. However, because of the scale and extent of the effects to PBFs, we do not expect a reduction in the conservation value of critical habitat in the action area. Therefore, as we scale up from the action area to the designation scale, the proposed action is not expected to appreciably reduce the conservation value of critical habitat for MCR steelhead at the designation scale.

After reviewing and analyzing the current status of the listed species and critical habitat, the environmental baseline within the action area, the effects of the proposed action, the effects of other activities caused by the proposed action, and cumulative effects, it is NMFS biological opinion that the proposed action is not likely to destroy or adversely modify MCR steelhead's designated critical habitat.

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 ITS.

Amount or Extent of Take

In this opinion, NMFS determined that incidental take is reasonably certain to occur and will include: (1) harm and harassment caused by injury and mortality during fish salvage, including herding and dewatering; and (2) altered behavior and movement of an estimated eight juvenile steelhead from increased turbidity, which will increase risk of predation.

Incidental Take from Work Area Isolation and Fish Salvage

Work area isolation will be accomplished by installing temporary sandbags or a bulk bag coffer dam to push flows to the southern portion of the river channel, dewatering 2,300 square feet. Fish salvage will include seining (herding), electrofishing, and netting. NMFS estimates that the FHWA will successfully salvage and relocate up to three juvenile steelhead from the in-water work area, with one juvenile steelhead experiencing sufficient harm to result in injury or death. The extent of take will be exceeded if salvage activities result in the death of more than one juvenile steelhead, or if more than 2,300 square feet of the Walla Walla River is dewatered.

Take in the form of harm caused by the temporary increases in turbidity will be manifested in altered behaviors including avoidance of the area, abandonment of cover, and exposure to predators. NMFS estimates eight juvenile steelhead (less than one adult equivalent), will be harmed by turbidity plumes which extend 200 feet downstream of the isolated area. The extent of take will be exceeded if increased turbidity alters the behavior of eight juvenile steelhead, or if the downstream extent of turbidity plumes exceeds 200 feet below the work area.

The amount of take and the extent of take are the thresholds for reinitiating consultation. If any of these limits are exceeded during project activities, the amount of take would increase beyond that examined in this consultation, and thus the reinitiating provisions of this opinion apply.

Effect of the Take

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

Reasonable and Prudent Measures

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

The FHWA shall:

1. Track, monitor, and report on the proposed action to ensure that the project is implemented as proposed, and the amount and extent of take is not exceeded.

NMFS believes that full application of conservation measures included as part of the proposed action, together with the use of the RPM and terms and conditions described below, are necessary and appropriate to minimize the likelihood of incidental take of listed species due to completion of the proposed action.

Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the ESA, the Federal action agency must comply (or must ensure that any applicant complies) with the following terms and conditions. The FHWA 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 RPM 1:
    a. Track and monitor construction activities to ensure that the conservation measures are meeting the objective of minimizing take. Monitoring shall be conducted by the FHWA or contractor, and include a daily visual survey for fish in the areas adjacent to construction and inside the in-water work area.
    b. Submit a completion of project report to NMFS 2 months after project completion. The completion report shall include, at a minimum, the following:
        i. Starting and ending dates for work completed, with in-water work period specified.
        ii. Method used to isolate the work area.
        iii. Total area of in-water work. Include area isolated and dewatered.
        iv. Duration isolation materials were in place at the work area.
        v. Any daily observed sediment plume from the in-channel work area to 200 feet downstream during the 15-week in-water construction period.
        vi. A summary of pollution and erosion control inspection results, including results of implementing required BMPs, and including a description of any erosion control failure, contaminant release, and efforts to correct such incidences.
        vii. Number and species of fish observed injured or killed in the Touchet River.
        viii. Description of all capture and release methods employed including:
            1. Supervisory fish biologist name and address.
            2. Methods used.

3. Number of fish captured by species.
4. Location and condition of all fish released.
5. Observation of injury or mortality.

ix. Reference to NMFS consultation number WCRO-2021-02078.

c. All reports will be sent to: crbo.consultationrequest.wcr@noaa.gov.

d. If the amount or extent of take is exceeded, stop project activities and notify NMFS immediately.

Reinitiation of Consultation

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."

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

Please direct questions regarding this letter to Colleen Fagan, Interior Columbia Basin Office, La Grande, Oregon, (541) 962-8512.

Sincerely,

Nancy L Munn

Nancy L. Munn, Ph.D.
Assistant Regional Administrator
Interior Columbia Basin Office

cc: Gary Martindale, Jr., WDOT
Joe Baumgartner, WDFW
Mike Lambert, CTUIR

REFERENCES

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