



**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-2021-02604**

June 16, 2022

Todd Tillinger  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers, Seattle District  
4735 East Marginal Way South, Bldg 1212  
Seattle, Washington 98134-3755

Re: Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for Spirit of Propeller Dock Replacement Project in Lake Union, Seattle, Washington (USACE No. NWS-2021-816; HUC: 171100120400 – Lake Union)

Dear Mr. Tillinger:

Thank you for your letter of October 7, 2021, 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 U.S Army Corps of Engineers (USACE) authorization of the Spirit of Propeller Dock Replacement Project in Lake Union, Seattle, Washington. This consultation was conducted in accordance with the 2019 revised regulations that implement section 7 of the ESA (50 CFR 402, 84 FR 45016).

Thank you, also, for your request for consultation pursuant to the essential fish habitat (EFH) provisions in Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)(16 U.S.C. 1855(b)) for this action.

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 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 PS Chinook salmon designated critical habitat. This opinion also documents our conclusion that the proposed action 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-2021-02604



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. Therefore, we have provided one conservation recommendation that can be taken by the USACE to avoid, minimize, or otherwise offset potential adverse effects on EFH. We also concluded that the action would not adversely affect EFH for Pacific Coast groundfish and coastal pelagic species. Therefore, consultation under the MSA is not required for EFH for Pacific Coast groundfish and coastal pelagic species.

Section 305(b) (4) (B) of the MSA requires Federal agencies to provide a detailed written response to the NMFS within 30 days after receiving this recommendation. If the response is inconsistent with the EFH conservation recommendations, the USACE must explain why the recommendations will not be followed, including the scientific justification for any disagreements over the effects of the action and recommendations. In response to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, the 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 request that in your statutory reply to the EFH portion of this consultation you clearly identify the number of conservation recommendations accepted.

Please contact Thomas Kennedy in the North Puget Sound Branch of the Oregon/Washington Coastal Office at (804) 543-5662, or by electronic mail at [Thomas.Kennedy@noaa.gov](mailto:Thomas.Kennedy@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: Colleen Anderson, 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**

Spirit of Propeller Dock Replacement Project in Lake Union, King County, Washington  
(USACE Numbers: NWS-2021-816)

**NMFS Consultation Number:** WCR-2021-02604

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

**Affected Species and Determinations:**

ESA-Listed Species	Status	Is Action Likely to Adversely Affect Species?	Is Action Likely To Jeopardize the Species?	Is Action Likely to Adversely Affect Critical Habitat?	Is Action Likely To Destroy or Adversely Modify Critical Habitat?
Chinook salmon ( <i>Oncorhynchus tshawytscha</i> ) Puget Sound (PS)	Threatened	Yes	No	Yes	No
Steelhead ( <i>O. mykiss</i> ) PS	Threatened	Yes	No	N/A	N/A
Killer whales ( <i>Orcinus orca</i> ) Southern resident (SR)	Endangered	No	No	No	No

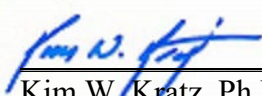
N/A = not applicable. The action area is outside designated critical habitat, or critical habitat has not been designated.

**Affected Essential Fish Habitat (EFH) and NMFS' Determinations:**

Fishery Management Plan That Describes EFH in the Project Area	Does Action Have an Adverse Effect on EFH?	Are EFH Conservation Recommendations Provided?
Pacific Coast Salmon	Yes	Yes
Pacific Coast Groundfish	No	No
Coastal Pelagic Species	No	No

**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:** June 16, 2022













































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.

Today, the overall water quality in the canal has improved substantially compared to the 1960s. However, the waters of the canal and lake Union, including the project site, are identified on the current Washington State Department of Ecology (WDOE) 303(d) list of threatened and impaired water bodies for bacteria and temperature (Category 5). Other water quality listings at the project site include chloride (Category 2); as well as total phosphorus, selenium, and chromium (Category 1) (WDOE 2021). The State identifies no specific sediment contamination at the project site, but some level of sediment contamination likely exists at the site.

The artificial shorelines and widespread presence of overwater structures along the length of the canal and much of Lake Union provide habitat conditions that favor fish species that prey on juvenile salmonids, such as the non-native smallmouth bass. Other predators in the canal include the native northern pikeminnow and the non-native largemouth bass (Celedonia et al. 2008a and b; Tabor et al. 2010). Tabor et al. (2010) estimated that about 3,400 smallmouth bass and 2,500 largemouth bass, large enough to consume salmon smolt were in the ship canal. They also estimated that smallmouth bass consumed about 48,000 salmon smolts annually, while largemouth bass consumed about 4,200 smolts. Of those, over half were Chinook salmon. Predation appeared to be highest near Portage Bay in June when smolts made up approximately 50% of the diet for smallmouth bass, and about 45% for northern pikeminnow. Returning adult salmon and steelhead are often exposed to excessive predation by pinniped marine mammals (seals and sea lions) that feed on the fish that accumulate downstream of the fish ladder at the locks.

At the project site, the substrate consists of silty sands and muds anthropogenic debris, with low levels of submerged aquatic vegetation (SAV). Some sediment contamination is indicated at the project site on the WDOE Water Quality Atlas Map website, but not enough to show persistent impairment (WDOE 2021). In addition, the long-term presence of creosote-treated timber piles suggests that some level of Polycyclic Aromatic Hydrocarbon (PAH) contamination likely exists in the water and sediments under and around the applicant's dock. Additionally, the applicant's dock likely induce migratory delays for juvenile salmonids, and provide habitat conditions that favor piscivorous fish such northern pikeminnow, smallmouth bass, and largemouth bass that prey on juvenile salmonids.

The past and ongoing anthropogenic impacts described above have reduced the action area's ability to support migrating PS Chinook salmon and PS steelhead. However, the action 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 (see 50 CFR 402.02). 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 the factors set forth in 50 CFR 402.17(a) and (b).

The effects of the proposed work can be characterized as temporary effects associated with construction, and long-term effects associated with the structure and its use. The construction-related effects include noise, water contamination, and prey diminishment. The USACE’s authorization of the construction would also have the additional effect of extending the operational life of the applicant’s dock by several decades beyond that of the existing dock. Over that time, the dock’s presence and normal operations would cause effects on fish and habitat resources through dock-related altered lighting, pollutants, elevated noise, and propeller wash.

The action’s October 1 through April 15 work window avoids the normal migration seasons for juvenile and adult PS Chinook salmon. As such, PS Chinook salmon are extremely unlikely to present during the proposed in-water work. The work window overlaps slightly with the normal migration seasons for juvenile and adult PS steelhead. However, PS steelhead are very rare in the Lake Washington watershed, which, combined with the short duration of the proposed work (maximum of 14 days), supports the expectation that it is extremely unlikely that any PS steelhead would be present during project-related work. Therefore, it is extremely unlikely that PS Chinook salmon and or PS steelhead would be exposed to the direct effects of the proposed action. However, over the decades-long life of the repaired dock, it is very likely that PS Chinook salmon would pass through the project area during their annual out-migration seasons, where they would be exposed to the action’s indirect effects identified above. Adults of both species are very unlikely to swim through the project area. They are also very unlikely to be measurably affected by exposure to the project’s indirect effects. For this reason, the remainder of this analysis will focus on juvenile PS Chinook and juvenile steelhead. The PBFs of PS Chinook salmon critical habitat would also be exposed to the action’s direct and indirect effects.

### **2.5.1 Effects on Listed Species**

Effects on species are a function of exposure and response. The duration, intensity, and frequency of exposure, and the lifestage at exposure all influence the degree of response.

#### **Construction-related Direct Effects**

Construction-related direct effects (i.e. construction-related noise, water contamination, and propeller wash) are unlikely to adversely affect PS Chinook salmon and PS steelhead because it

is extremely unlikely that individuals of either species would be present during the proposed work window.

### Construction-related Prey Diminishment

Construction-related prey diminishment is likely to adversely affect juvenile PS Chinook salmon and juvenile PS steelhead. It is extremely unlikely that adults of either species would be exposed to this stressor.

The normal behaviors of juvenile Chinook salmon in the freshwater emigration phase of their life cycle include a strong tendency toward shoreline obligation, which means that they are biologically compelled to follow and stay close to streambanks and shorelines, and likely to pass through and forage within the project area. The normal behaviors of out-migrating juvenile steelhead is much less tied to shoreline habitats. However, over the years-long presence of available contaminants at the site, some out-migrating juvenile steelhead are likely to pass through and forage within the project area.

PS Chinook salmon and PS steelhead can uptake contaminants directly through their gills and through dietary exposure (Karrow et al. 1999; Lee and Dobbs 1972; McCain et al. 1990; Meador et al. 2006; Neff 1982; Varanasi et al. 1993). Amphipods and copepods uptake contaminants such as PAHs from contaminated sediments (Landrum and Scavia 1983; Landrum et al. 1984; Neff 1982), and pass them to juvenile Chinook salmon and other small fish through the food web. Varanasi et al. (1993) found high levels of PAHs in the stomach contents of juvenile Chinook salmon in the contaminated Duwamish Waterway. They also reported reduced growth, suppressed immune competence, as well as increased mortality in juvenile Chinook salmon that was likely caused by the dietary exposure to PAHs. Meador et al. (2006) demonstrated that dietary exposure to PAHs caused “toxicant-induced starvation” with reduced growth and reduced lipid stores in juvenile Chinook salmon. The authors surmised that these impacts could severely impact the odds of survival in affected juvenile Chinook salmon.

The sediments at the project site are documented as contaminated, although not enough to show persistent impairment (WDOE 2022). Although not specifically identified by the State or the applicant, the sediments at the project site likely contain legacy contaminants that include PAHs, Polychlorinated Biphenyls (PCBs), and various metals. The extraction of the existing dock’s seven piles would mobilize small amounts of those contaminated subsurface sediments, which would settle onto the top layer of the substrate, where the contaminants would remain biologically available for years.

Romberg (2005) discusses the spread of contaminated sediments that were mobilized by the removal of creosote-treated piles from the Seattle Ferry Terminal, including digging into the sediment with a clamshell bucket to remove broken piles. Soon after the work, high PAH levels were detected up to 800 feet away, on the surface of a clean sand cap that had been installed less than a year earlier. Contaminant concentrations decreased with distance from the pile removal site, and over time. However, PAH concentrations remained above pre-contamination levels 10 years later. Lead and mercury values also increased on the cap, but the concentrations of both metals decreased to background levels after 3 years.

Given the dramatic difference in the scale of disturbance between the planned pile removal and the one described by Romberg (2005), the proposed project's sediment mobilization would be extremely less intense. Most of the mobilized sediment, and therefore the highest concentrations of contaminants, would settle onto the top layer of the substrate within 10s of feet around the pile removal sites. However, tugboat and recreational vessel propeller wash could spread sediments as far as 300 feet around the project site. The contaminated sediments that settle to the bottom would remain biologically available to juvenile PS Chinook salmon and juvenile PS steelhead for years after project completion. While present, some of those contaminants are likely to be taken up by invertebrate prey organisms within the affected area.

In addition to the trophic link to pollutants, increased contaminant levels from construction activities is likely to kill some prey organisms, reducing the number, size, and diversity of available prey species for foraging juvenile salmonids that pass through the affected area. When juvenile fish encounter areas of diminished prey, competition for those limited resources increases, and less competitive individuals are forced into suboptimal foraging areas (Auer et al. 2020). Further, individuals with an inherently higher metabolism tend to be bolder and competitively dominant, and may outcompete other individuals for resources within a microhabitat, potentially increasing interspecific mortality (Biro and Stamps 2010).

The exact number of years that detectable amounts of construction-related contaminants would be biologically available at the site is uncertain, but is expected to be low. Also, the amounts of contaminated prey that individual fish may consume, the amount of prey reduction, and the intensity of effects that exposed individuals may experience are uncertain and likely to be highly variable. However, the small amount of sediment that would be mobilized suggests that the number of years that detectable contaminants would be present would be low, and the affected area would be relatively small.

The annual numbers of juvenile PS Chinook salmon and juvenile PS steelhead that may be exposed to this stressor are uncertain. However, the best available information about the sizes of the affected populations, combined with the numerous routes taken by juvenile salmonids emigrating through the canal and Lake Union support the understanding that the subsets of the juvenile PS Chinook salmon and juvenile PS steelhead that would annually emigrate through the project area would be small and variable. This suggests that the probability of exposure to this stressor would be very low for any individual fish, and that the annual numbers of juvenile PS Chinook salmon and juvenile PS steelhead that would be measurably affected by construction-related prey diminishment would be too small to cause detectable population-level effects.

#### Dock-related Altered Lighting

Dock-related altered lighting is likely to adversely affect juvenile PS Chinook salmon and juvenile PS steelhead, but cause minor effects in adults of both species. As described above under Construction-related Prey Diminishment, juvenile Chinook salmon and steelhead are likely to pass through and forage within the project area, but the adults of both species are independent of shallow water nearshore habitats in the lake, and therefore unlikely to be exposed to this stressor.

At the end of the project, the applicant's new floating dock would be fully decked with grating, but it would extend 243 feet from the shoreline and have an overwater footprint of 1,398 square feet. The water depths under the new dock would range to about 17 feet at its offshore end. Despite the grated decking, the dock and the boats moored against it would create unnatural daytime shade over the water and aquatic substrate. The intensity of shadow effects are likely to vary based on the brightness and angle of the sun. They would be most intense on sunny days, and less pronounced to possibly inconsequential on cloudy days. The shade of the new dock and the vessels moored to it would maintain conditions at and adjacent to the dock's footprint that reduce aquatic productivity, alter juvenile salmonid migratory behaviors, and increase juvenile salmonids' exposure and vulnerability to predators.

Shade limits primary productivity and can reduce the diversity of the aquatic communities under over-water structures (Nightingale and Simenstad 2001; Simenstad et al. 1999). Juvenile salmon feed on planktonic organisms such as amphipods, copepods, and euphausiids, as well as the larvae of many benthic species and fish (NMFS 2006). Because the new dock and moored vessels would cast shadows over water and substrate that would otherwise be supportive of SAV and benthic invertebrates, the shade would continue to reduce the quantity and diversity of natural cover and prey organisms for juvenile salmonids (cover and prey diminishment).

If situated alone along a stretch of undisturbed shoreline, the impacts on aquatic productivity from shade related to the applicant's dock might not measurably affect the fitness of migrating juvenile salmonids. However, because the applicant's dock is situated among many bankside over-water structures that also impact aquatic productivity through shade, the combined impacts of shade would act to maintain a long stretch of migratory habitat with diminished shelter and forage resources for juvenile salmonids. Therefore, over the life of the applicant's dock, at least some juvenile Chinook salmon and juvenile steelhead that migrate through the project area would experience some degree of reduced fitness due to diminished shelter and forage resources that would be attributable to the shadow caused by the applicant's dock.

The shade of over-water structures also negatively affects juvenile salmonid migration. Numerous studies demonstrate that juvenile salmonids, in both freshwater and marine habitats, are more likely to avoid an overwater structure's shadow than to pass through it (Celedonia et al. 2008a and b; Kemp et al. 2005; Moore et al. 2013; Munsch et al. 2014; Nightingale and Simenstad 2001; Ono et al. 2010; Southard et al. 2006; Tabor et al. 2006). Swimming around overwater structures increases the migratory distance, which has been positively correlated with increased mortality in juvenile Chinook salmon (Anderson et al. 2005).

Although the dock's shade intensity would be reduced compared to the existing conditions, the shade of the repaired dock is likely to continue to alter the migratory behavior for at least some of the juvenile Chinook salmon that pass through the action area, and inhibit them from migrating along the shoreline, which is typical for juvenile Chinook salmon emigrating from freshwater. The shade would delay the passage under the dock for some, and or induce some individuals to swim around it, effectively forcing them to remain in open and relatively deep waters. The off-bank migration of these small fish increases migration distance and time for affected fish, and increases energetic costs (Heerhartz and Toft 2015). Shade-related altered migratory behaviors would mostly affect juvenile PS Chinook salmon, because the juvenile PS

steelhead that pass through this waterway are relatively large and shoreline independent, as are the adults of both species. Additionally, shade and deep water both favor freshwater predatory species, such as smallmouth bass and northern pikeminnow that are known to prey heavily on juvenile salmonids (Celedonia et al. 2008a; Tabor et al. 2010), and deep water increases the risk of predation for migrating juvenile salmonids (Willette 2001). Therefore, juvenile PS Chinook salmon and juvenile PS steelhead that are in close proximity to the dock would be more at risk of predation than they would be in the dock's absence.

In summary, over-water shade from the dock would cause a combination of altered behaviors and increased risk of predation that would reduce fitness or cause mortality for some juvenile PS Chinook salmon and juvenile PS steelhead that pass the site. The annual numbers of either species that would be impacted by this stressor, and the intensity of any effects that an exposed individual may experience are unquantifiable with any degree of certainty. However, for the same reasons expressed earlier for Construction-related Prey Diminishment, the numbers of individuals that would be exposed to this stressor are expected to be very low, highly variable over time, and extremely small subsets of their respective cohorts. Therefore, the annual numbers of juvenile PS Chinook salmon and juvenile PS steelhead that would be meaningfully affected by dock-related altered lighting would be too low to cause detectable population-level effects.

#### Dock-related Pollutants

Dock-related pollutants are likely to adversely affect juvenile PS Chinook salmon and juvenile PS steelhead through direct exposure to pollutants in the water column and through indirect exposure to pollutants through the trophic web, and through pollutant-related reduced prey availability (prey diminishment). As described above under Construction-related Prey Diminishment, juvenile Chinook salmon and steelhead are likely to pass through and forage within the project area, but the adults of both species are independent of shallow water nearshore habitats in the lake, and therefore unlikely to be exposed to this stressor.

The timber used to construct the new floating dock would be treated with ACZA, which contains copper, as does the anti-fouling paint that may coat the hulls of some of the vessels that would moor at the new dock. The new galvanized steel piles would be uncoated, and would leach zinc into the water. Additionally, vessel operation at the new dock is likely to result in the discharge of petroleum-based fuels and lubricants into the water.

As described above, under construction-related prey diminishment, Chinook salmon and steelhead can uptake contaminants directly through their gills, and through dietary exposure. Direct exposure to water-borne pollutants can cause effects in exposed fish that range from avoidance behaviors, to reduced growth, altered immune function, and immediate mortality. The intensity of effects depends largely on the pollutant, its concentration, and or the duration of exposure (Beitinger and Freeman 1983; Brette et al. 2014; Feist et al. 2011; Gobel et al. 2007; Incardona et al. 2004 and 2005; McIntyre et al. 2012; Meadore et al. 2006; Sandahl et al. 2007; Spromberg et al. 2015).

Beitinger and Freeman (1983) report that fish possess acute chemical discrimination abilities and that very low levels of some water-borne contaminants can trigger strong avoidance behaviors.

In freshwater, exposure to dissolved copper at concentrations between 0.3 to 3.2 µg/L above background levels has been shown to cause avoidance of an area, to reduce salmonid olfaction, and to induce behaviors that increase juvenile salmon's vulnerability to predators (Giattina et al. 1982; Hecht et al. 2007; McIntyre et al. 2012; Sommers et al. 2016; Tierney et al. 2010). Exposure to petroleum-based chemicals such as PAHs can cause reduced growth, increased susceptibility to infection, and increased mortality in juvenile salmonids (Meador et al. 2006; Varanasi et al. 1993).

Copper: The framing of the applicant's new 4,200-square foot floating dock would be built with ACZA-treated timber. Wet ACZA-treated wood leaches some of the metals used for wood preservation. Of these metals, dissolved copper is of most concern to fish because of its higher leaching rate compared to arsenic and zinc (Poston 2001). Post-treatment BMPs reduce the intensity and duration of copper leaching from ACZA-treated wood. Copper leaching from ACZA-treated wood is highest when the treated wood is immersed in freshwater, but decreases sharply to low levels during the first few weeks after installation. Above-water treated timber episodically releases very small amounts of copper when it is exposed to waves and stormwater. The dissolved copper concentrations that would be attributable to action-related installation of ACZA-treated timber is uncertain but expected to be very low, episodic, brief, and limited to the area immediately adjacent to the applicant's dock because all treated timber would be installed above the water.

Copper-based anti-fouling paints leach copper into the water at fairly constant levels, and can be a significant source of dissolved copper in harbors and marinas with high boat occupancy and restricted water flows (Schiff et al. 2004). This is most notable under conditions of high boat occupancy in enclosed moorages where water flows are restricted. WDOE (2017) reports that dissolved copper concentrations from anti-fouling paints can be above 5 µg/L in protected moorages, but below 0.5 µg/L in open moorages with high flushing rates. The dissolved copper concentrations that would be attributable to action-related copper-based anti-fouling paints are uncertain, but expected to be relatively low based on the low number of available moorage spots (a maximum of about 20), and the absence of an enclosure around the mooring float.

Neither action-related copper source is expected to cause very high concentrations. However, those sources would be additive to each other and to the numerous nearby moorage structures. Based on the best available information, the NMFS expects that action-related dissolved copper in the area immediately adjacent to the applicant's new mooring dock would episodically cause copper concentrations to exceed the threshold for the onset of detectable effects in exposed juvenile salmonids, and that over the life of the dock, some juvenile Chinook salmon and juvenile steelhead are likely to be exposed to dock-related dissolved copper at levels high enough to measurably alter their normal behaviors and increase their risk of predation.

Zinc: The applicant would install 7 galvanized steel piles. Uncoated galvanized steel that is exposed to water, including rain, is a known source of zinc contamination in the waters of Washington State (WDOE 2014). The dissolved zinc concentrations that would be attributable to the applicant's galvanized steel piles is uncertain. However, the emersion of those piles in the water means that zinc leaching would be certain, constant, and additive to the background zinc concentrations in Lake Union that result from innumerable sources that include stormwater

discharges, high numbers of galvanized steel piles, and sacrificial zincs that are commonly installed on vessels and on in-water installations of metallic infrastructure. Based on the best available information, the NMFS expects that action-related dissolved zinc would episodically cause zinc concentrations in the area immediately adjacent to the applicant's new mooring dock to exceed the threshold for the onset of detectable effects in exposed juvenile salmonids, and that over the life of the dock, some juvenile Chinook salmon and juvenile steelhead are likely to be exposed to dock-related dissolved zinc at levels high enough to measurably alter their normal behaviors and or reduce their fitness.

Petroleum-based fuels and lubricants: The vessels that would utilize the applicant's dock would periodically discharge PAH-laden petroleum-based fuels and lubricants into the water. As discussed above, PAHs are harmful to nearly all life stages of fish and other aquatic organisms. Vessel discharges would likely occur relatively infrequently, with the majority being very small. Additionally, some of the pollutants may evaporate relatively quickly (Werme et al. 2010), and currents would help to disperse the pollutants.

However, those discharges would occur repeatedly over the decades-long life of the mooring dock. Additionally, the action-related petroleum-based pollutants would be additive to the background pollutant concentrations that exist at the project site from the high levels of vessel operation in lake Union and the ship canal, and from the numerous outfalls that discharge stormwater into the surrounding waters from the local roads. Based on the best available information, the NMFS expects that action-related petroleum-based fuel and lubricant discharges would episodically cause PAH concentrations in the area immediately adjacent to the applicant's new mooring dock to exceed the threshold for the onset of detectable effects in exposed juvenile salmonids, and that over the life of the dock, some juvenile Chinook salmon and juvenile steelhead are likely to be exposed to dock-related in-water PAH concentrations at levels high enough to measurably alter their normal behaviors and or reduce their fitness.

Prey diminishment: Dock-related pollutants that settle to the bottom would accumulate on the substrate under and adjacent to the applicant's dock and be biologically available for years. The mechanisms of exposure for trophic effects on juvenile Chinook salmon and steelhead from dock-related pollutants would be virtually identical to what was described above under Construction-related Prey Diminishment. Based on the best available information, the NMFS expects that over the decades-long life of the repaired dock, some juvenile Chinook salmon and juvenile steelhead are likely to be exposed to dock-related prey diminishment capable of causing some combination of reduced growth, increased susceptibility to infection, and increased mortality.

Summary: Subsets of the juvenile Chinook salmon and juvenile steelhead that annually emigrate through Lake Union are likely to pass through the project area. Individuals that swim through the area are likely to be exposed to some combination of dock-related contaminated water and forage diminishment.

The size of the meaningfully affected area is uncertain, but would likely be limited to the distance dock-attributable contaminant particles would be detectable downstream from the dock, estimated to be no more than 300 feet. The exact number of years that detectable amounts of



dock-related contaminants would be biologically available at the site is also uncertain, but it is likely to exceed the decades-long life of the new dock by at a low number of years.

The annual numbers of juveniles of either species that may be exposed to dock-related pollutants are unquantifiable with any degree of certainty, as are the contaminant concentrations, the levels of prey diminishment, and the intensity of any effects that an exposed individual may experience.

However, for the same reasons expressed for construction-related forage diminishment, the numbers of individuals that would be detectably affected are expected to be very low and highly variable over time. Therefore, the annual numbers of PS Chinook salmon and PS steelhead that may be exposed to dock-related pollutants would represent extremely small subsets of their respective cohorts, and the numbers of exposed fish that would be meaningfully affected would be too low to cause detectable population-level effects.

### Dock-related Noise

Exposure to dock-related noise is likely to adversely affect juvenile PS Chinook salmon and juvenile PS steelhead. As described above under Construction-related Prey Diminishment, juvenile Chinook salmon and steelhead are likely to pass through the project area, but the adults of both species are independent of shallow water nearshore habitats in the lake, and therefore unlikely to be meaningfully exposed to this stressor.

The effects caused by a fish's exposure to noise vary with the hearing characteristics of the fish, the frequency, intensity, and duration of the exposure, and the context under which the exposure occurs. At low levels, effects may include the onset of behavioral disturbances such as acoustic masking (Codarin et al. 2009), startle responses and altered swimming (Neo et al. 2014), abandonment or avoidance of the area of acoustic effect (Mueller 1980; Picciulin et al. 2010; Sebastianutto et al. 2011; Xie et al. 2008) and increased vulnerability to predators (Simpson et al. 2016). At higher intensities and or longer exposure durations, the effects may rise to include temporary hearing damage (a.k.a. temporary threshold shift or TTS, Scholik and Yan 2002) and increased stress (Graham and Cooke 2008). At even higher levels, exposure may lead to physical injury that can range from the onset of permanent hearing damage (a.k.a. permanent threshold shift or PTS) and mortality. The best available information about the auditory capabilities of the fish considered in this opinion suggest that their hearing capabilities are limited to frequencies below 1,500 Hz, with peak sensitivity between about 200 and 300 Hz (Hastings and Popper 2005; Picciulin et al. 2010; Scholik and Yan 2002; Xie et al. 2008).

The NMFS uses two metrics to estimate the onset of injury for fish exposed to high intensity impulsive sounds (Stadler and Woodbury 2009). The metrics are based on exposure to peak sound level and sound exposure level (SEL). Both are expressed in decibels (dB). The metrics are: 1) exposure to 206 dB<sub>peak</sub>; and 2) exposure to 187 dB SEL<sub>cum</sub> for fish 2 grams or larger, or 183 dB SEL<sub>cum</sub> for fish under 2 grams. Further, any received level (RL) below 150 dB<sub>SEL</sub> is considered "Effective Quiet". The distance from a source where the RL drops to 150 dB<sub>SEL</sub> is considered the maximum distance from that source where fishes can potentially experience TTS or PTS from the noise, regardless of accumulation of the sound energy (Stadler and Woodbury 2009). When the range to the 150 dB<sub>SEL</sub> isopleth exceeds the range to the applicable SEL<sub>CUM</sub>

isopleth, the distance to the 150 dB<sub>SEL</sub> isopleth is typically considered the range at which detectable behavioral effects would begin, with the applicable SEL<sub>CUM</sub> isopleth identifying the distance within which sound energy accumulation would intensify effects. However, when the range to the 150 dB<sub>SEL</sub> isopleth is less than the range to the applicable SEL<sub>CUM</sub> isopleth, only the 150 dB<sub>SEL</sub> isopleth would apply because no accumulation effects are expected for noise levels below 150 dB<sub>SEL</sub>. For all project-related sources, the ranges to the SEL<sub>CUM</sub> threshold isopleths exceed the range to 150 dB<sub>SEL</sub> effective quiet isopleth. Therefore, this assessment considers the range to the 150 dB<sub>SEL</sub> isopleths as the maximum ranges for detectable acoustic effects.

The discussion in Stadler and Woodbury (2009) indicate that these thresholds likely overestimate the potential effects of exposure to impulsive sounds. Further, Stadler and Woodbury's assessment did not consider non-impulsive sound, which is believed to be less injurious to fish than impulsive sound. Therefore, application of the criteria to non-impulsive sounds is also likely to overestimate the potential effects in fish. However, these criteria represent the best available information. Therefore, to avoid underestimating potential effects, this assessment applies these criteria to the non-impulsive sounds that are expected from dock-related noise to gain a conservative idea of the potential effects that fish may experience due to exposure to that noise.

Elevated in-water noise at levels capable of causing detectable effects in exposed fish would be caused by vessel operations at the applicant's dock. Based on satellite imagery of the applicant's dock, the repaired dock would continue to provide mooring for a maximum of about 20 power boats and sailboats between 14 and 60 feet in length, with the majority being between 20 and 35 feet long.

The estimated in-water source levels (SL, sound level at 1 meter from the source) used in this assessment are based on numerous sources that describe sound levels for ocean-going ships, tugboats, and recreational vessels (Blackwell and Greene 2006; McKenna et al. 2012; Picciulin et al. 2010; Reine et al. 2014; Richardson et al. 1995). The best available information about the source levels from vessels close in size to those that would operate at the dock is also described in the acoustic assessment done for a similar project (NMFS 2018). In this assessment, we used vessel noise from an 85-foot long ferry, tugboats, and a 23-foot long power boat as surrogates for the mix of vessels likely to moor at the applicant's dock. All of the expected peak source levels are below the 206 dB<sub>peak</sub> threshold for instantaneous injury in fish.

In the absence of location-specific transmission loss data, variations of the equation  $RL = SL - \# \log(R)$  are often used to estimate the received sound level at a given range from a source (RL = received level (dB); SL = source level (dB, 1 m from the source); # = spreading loss coefficient; and R = range in meters (m)). Numerous acoustic measurements in shallow water environments support the use of a value close to 15 for projects like this one (CalTrans 2015). This value is considered the practical spreading loss coefficient, and was used for all sound attenuation calculations in this assessment.

Application of the practical spreading loss equation to the expected SEL SLs suggests that noise levels above the 150 dB<sub>SEL</sub> threshold would extend between about 33 feet (10 m) and 207 feet (63 m) from the representative vessels (Table 5).

**Table 5.** Estimated in-water source levels for vessels with noise levels similar to those likely to moor at the applicant’s new floats, and ranges to effects thresholds for fish.

Source	Acoustic Signature	Source Level	Threshold Range
85 foot Tourist Ferry	< 2 kHz Combination	187 dB <sub>peak</sub>	206 @ N/A
Episodic periods measured in minutes to hours		177 dB <sub>SEL</sub>	150 @ 63 m
Tugboat	< 2 kHz Combination	185 dB <sub>peak</sub>	206 @ N/A
Episodic periods measured in minutes to hours		170 dB <sub>SEL</sub>	150 @ 22 m
23 foot Boat w/ 2 4~ 100 HP Outboard Engines.	< 2 kHz Combination	175 dB <sub>peak</sub>	206 @ N/A
Episodic brief periods measures in minutes		165 dB <sub>SEL</sub>	150 @ 10 m

Individual vessel operations around mooring structures typically consist of brief periods of relatively low-speed movement as boats are driven to the docks and tied up. Their engines are typically shut off within minutes of arrival. The engines of departing vessels are typically started a few minutes before the boats are untied and driven away, and it is extremely unlikely that vessels would be run at anything close to full speed while near the applicant’s dock. However, they may briefly use high power settings while maneuvering.

To be protective of fish, this assessment estimates that dock-related in-water vessel noise levels above the 150 dB<sub>SEL</sub> threshold could routinely extend 72 feet (22 m) around the dock. Vessel noise levels would be non-injurious. However, juvenile Chinook salmon and steelhead that are within the 150 dB<sub>SEL</sub> isopleth, are likely to experience behavioral disturbances, such as acoustic masking, startle responses, altered swimming patterns, avoidance, and increased risk of predation. The intensity of these effects would increase with increased proximity to the source and or duration of exposure. Response to this exposure would be non-lethal in most cases, but some individuals may experience stress and fitness effects that could reduce their long-term survival, and individuals that are eaten by predators would be killed.

The annual numbers of juveniles of either species that may be exposed to dock-related noise are unquantifiable with any degree of certainty, as are the intensity of effects that an exposed individual may experience.

However, for the same reasons expressed for construction-related forage diminishment, the juvenile PS Chinook salmon and juvenile PS steelhead that would annually emigrate through the project area would comprise small and variable subsets of each year’s cohort. Further, the typically episodic and short-duration of vessel operations at the dock, combined with the knowledge that peak boating season occurs after the juveniles have left the ship canal suggests that the probability and duration of exposure would be very low for any individual fish. Therefore, the annual numbers of PS Chinook salmon and PS steelhead that would be meaningfully affected by exposure to dock-related noise would represent extremely small subsets of their respective cohorts, and would be too low to cause detectable population-level effects.

Dock-related Propeller Wash: Dock-related propeller wash would adversely affect juvenile PS Chinook salmon and juvenile PS steelhead, but cause only minor effects in adults of both species.

Spinning boat propellers kill fish and small aquatic organisms (Killgore et al. 2011; VIMS 2011). Spinning propellers also generate fast-moving turbulent water (propeller wash) that can displace and disorient small fish, as well as dislodge benthic aquatic organisms and SAV, particularly in shallow water and or at high power settings (propeller scour).

The juvenile Chinook salmon and steelhead that would be within the project area are likely to remain close to the surface where they may be exposed to spinning propellers and powerful propeller wash near the dock. Additionally, juvenile Chinook salmon tend to stay as close to shore as possible. Conversely, adults of both species would tend to swim offshore and below the surface, and they would be able to swim against most propeller wash they might be exposed to, without experiencing any measurable effect on their fitness or normal behaviors.

Juveniles that are struck or very nearly missed by spinning propellers at the new dock would be injured or killed by the exposure. At greater distances, the propeller wash may displace and disorient fish. Depending on the direction and strength of the thrust plume, displacement could increase energetic costs, reduce feeding success, and may increase the vulnerability to predators for individuals that tumble stunned and or disoriented in the wash. Although the likelihood of this interaction is very low for any individual fish or individual boat trip, it is very likely that over the decades-long life of the new dock, at least some juvenile PS Chinook salmon and juvenile PS steelhead would experience reduced fitness or mortality from exposure to spinning propellers and or propeller wash at the applicant's dock.

Given the shallow water depths under the dock (0 to 17.5 feet), some propeller scour of the substrate is likely to occur at the site. The degree to which propeller scour would reduce benthic resources is uncertain, but it is likely to be relatively small based on the small size of the affected area and on the expectation that vessels would typically operate at low power levels as they move around the dock. If situated alone along a stretch of undisturbed shoreline, the applicant's dock-related propeller scour impacts on aquatic productivity might not be expected to measurably affect the fitness of migrating juvenile salmonids. However, as stated above under altered lighting, instead of action-related impacts on aquatic and benthic resources being reduced by adjacent undisturbed habitat, the new dock's impacts would slightly intensify the conditions caused by the numerous adjacent piers and other over-water structures that result in inadequate shelter and forage resource availability for juvenile salmonids that migrate along the northeast bank of the lake.

If situated alone along a stretch of undisturbed shoreline, the impacts on aquatic productivity from propeller scour related to the applicant's dock might not measurably affect the fitness of migrating juvenile salmonids. However, because the applicant's dock is situated among many bankside over-water structures that also impact aquatic productivity through propeller scour, the combined impacts of propeller scour would act to maintain a long stretch of migratory habitat with diminished shelter and forage resources for juvenile salmonids. Therefore, over the life of the applicant's dock, at least some juvenile Chinook salmon and juvenile steelhead that migrate through the project area would experience some degree of reduced fitness due to diminished shelter and forage resources that would be attributable to propeller scour related to the applicant's dock.

In summary, dock-related propeller wash and scour would cause a combination of increased risk of injury and predation, and diminished shelter and forage resources that would reduce fitness or cause mortality for some juvenile PS Chinook salmon and juvenile PS steelhead that pass through the project area.

The annual numbers of juvenile PS Chinook salmon and PS steelhead that would be exposed to this stressor, and the intensity of any effects that an exposed individual may experience are unquantifiable with any degree of certainty. However, for the same reasons expressed for construction-related forage diminishment, the juvenile PS Chinook salmon and juvenile PS steelhead that would annually emigrate through the project area would comprise small and variable subsets of each year's cohort. Further, the typically episodic and short-duration of vessel operations at the dock, combined with the knowledge that the peak boating season occurs after the juveniles have left the ship canal suggests that the probability and duration of exposure would be very low for any individual fish. Therefore, the annual numbers of PS Chinook salmon and PS steelhead that may be exposed to dock-related propeller wash would represent extremely small subsets of their respective cohorts, and the numbers of exposed fish that would be meaningfully affected would 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 action would cause minor long-term adverse effects on this attribute. The altered light and in-water noise levels related to the presence of the new dock and the moored vessels would maintain conditions at the site that prevent normal migration behaviors, and increase the risk of predation for juvenile Chinook salmon that approach the dock.
  - b. Water quantity – The proposed action would cause no effect on this attribute.
  - c. Water quality – The proposed action would cause minor short- and long-term 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 continued vessel operations would maintain persistent low level inputs of pollutants at the dock, including PAHs. Detectable water quality

impacts would be limited to the area within 300 feet around the dock. 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. Over its decades-long life, the new dock 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 dock.

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 discussion of the environmental baseline (Section 2.4).

The current conditions of ESA-listed species and designated critical habitat within the action area are described in the Rangewide Status of the Species and Critical Habitat and Environmental Baseline sections above. The non-federal activities in and upstream of the action area that have contributed to those conditions include past and on-going bankside development, vessel activities, and upland urbanization, as well as upstream forest management, agriculture, road construction, water development, subsistence and recreational fishing, and restoration activities. Those actions were, and continue to be, 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 conservation groups dedicated to restoration and use of natural amenities, such as cultural inspiration and recreational experiences.

The NMFS is unaware of any specific future non-federal activities that are reasonably certain to affect the action area. However, the NMFS is reasonably certain that future non-federal actions such as the previously mentioned 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 use of the waters within the action area are 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 PS Chinook salmon and PS steelhead within many of the watersheds that flow into 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 assessing the risk that the proposed action poses to species and critical habitat. 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 in the action area would be fall-run Chinook salmon from the Cedar River and the North Lake Washington/Sammamish River populations, both of which are 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 on the north bank of Lake Union, about midway along the Lake Washington Ship Canal, 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 within the action area 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 normal migration season for PS Chinook salmon. However, over the next several decades, low numbers of out-migrating juveniles that annually pass through the project area would be exposed to low levels of diminished prey 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 in the action area 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 Seattle, Washington, on the northern shore of Lake Union, about mid-way along the Lake Washington Ship Canal (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 within the action area 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, over the next several decades, low numbers of out-migrating juveniles that annually pass through the project area would be exposed to low levels of diminished prey 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 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 in the action area 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 extended life of the dock, along with the continuation of dock-related vessel operations would cause minor long term adverse effects on the identified site attributes. On the positive side, the proposed work would remove creosote-treated piles, and increase light penetration under the repaired dock.

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 Incidental Take Statement**

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

Harm of PS Chinook salmon and PS steelhead from exposure to:

- Construction-related diminished forage,
- Dock-related altered lighting,
- Dock-related pollutants,
- Dock-related noise, and
- Dock-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 that they otherwise would not be exposed to.

The pile removal method and the extent of the visible turbidity plumes around that work are the best available surrogates for the extent of take of juvenile PS Chinook salmon and juvenile PS steelhead from diminished forage. The method of removal is appropriate because the intensity of surface sediment contamination would be positively correlated with the amount of contaminated subsurface sediments that would be brought to the surface, which is positively correlated with the extraction method. The proposed pulling of piles with a vibratory pile extractor would minimize sediment mobilization compared to other methods such as the use of excavators or water-jetting. As the amount of mobilized contaminated sediments increase, the amount of biologically available contaminants would increase, as would the intensity of prey contamination and prey mortality. The lateral extent of the visible turbidity plumes around pile extraction is appropriate because the size the affected areas would be positively correlated with the extent of the plume, and the amount of prey diminishment and or exposed juvenile salmonids would be positively correlated with the size the affected area. In summary, any increase in the amount of mobilized sediment or in the size of the affected area would increase the intensity of the exposure and or the number of exposed juvenile PS Chinook salmon and juvenile PS steelhead.

The size and configuration of the new dock are the best available surrogates for the extent of take of juvenile PS Chinook salmon and juvenile PS steelhead from exposure to dock-related altered lighting, pollutants, noise, and propeller wash. Size and configuration are appropriate for altered lighting because, salmonid avoidance and the distance required to swim around the dock would both increase as the size and opacity of the dock increase. Size and configuration are also appropriate for dock-related pollutants, noise, and propeller wash because those stressors are all positively correlated with the number of boats that moor at a structure, which is largely a function of the structure's size. As the size of a mooring structure increases, the number of boats that can moor there increases. As the number of boats increase, boating activity increases, which would increase the potential for, and the intensity of exposure to the related pollutants, noise, and propeller wash would also increase for juvenile PS Chinook salmon and juvenile PS steelhead. Additionally, as the size of the dock increases, the amount of AZCA-treated lumber that would be used for repairs would increase, which would increase the amount of ACZA-realted copper that would enter the water at the project site.

In summary, the extent of PS Chinook salmon and PS steelhead take for this action is defined as:

- Up to 3 weeks of in-water work to be completed between October 1 and April 15;
- Vibratory and or direct-pull extraction of 8 timber piles and 1 timber pile stub;
- Vibratory installation of 7 10-inch diameter steel pipe piles;
- Visible turbidity plumes extending up to 300 feet from project-related work; and

- The post-construction size and configuration of the applicant’s replacement dock as described in the proposed action section of this biological opinion.

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

Although these take surrogates could be construed as partially coextensive with the proposed action, they nevertheless function as effective reinitiation triggers. If any of these take surrogates exceed the proposal, it could still meaningfully trigger reinitiation because the USACE has authority to conduct compliance inspections and to take actions to address non-compliance, including post-construction (33 CFR 326.4).

### **2.9.2 Effect of the Take**

In the biological opinion, the 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 measures that are necessary or appropriate to minimize the impact of the amount or extent of incidental take (50 CFR 402.02).

The USACE shall require the applicant to:

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

### **2.9.4 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 USACE 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 develop and implement plans to collect and report details about the take of listed fish. That plan shall:
    - i. Require the applicant and or their contractor to maintain and submit records to verify that all take indicators are monitored and reported. Minimally, the records should include:

1. Documentation of the timing and duration of in-water work to ensure that no more 3 weeks of in-water work are done, and that the work is accomplished between October 1 and April 15;
  2. Documentation of the method of pile extraction and installation;
  3. Documentation of the number, type, and size of installed piles;
  4. Documentation of the lateral extent of turbidity plumes, and measures taken to maintain them within 300 feet; and
  5. Documentation of the size and configuration of the repaired dock to confirm that it does not exceed the characteristics described in this opinion.
- ii. Require the applicant to establish procedures for the submission of the construction records and other materials to the appropriate USACE office, and to submit an electronic post-construction report to the NMFS within six months of project completion. Send the report to: [projectreports.wcr@noaa.gov](mailto:projectreports.wcr@noaa.gov). Be sure to include Attn: WCRO-2021-02604 in the subject line.

## **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).

1. The USACE should require the use of full-depth sediment curtains around pile extraction work to limit the spread of contaminated sediments.

## **2.11 Reinitiation of Consultation**

This concludes formal consultation for the U.S. Army Corps of Engineers’ authorization of the Spirit of Propeller Dock Replacement Project in Lake Union, 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 described in Section 1.2 and 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 lifestage, 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 2021 for the Cedar River and North Lake Washington populations were 963 and 2,186 individuals, respectively (WDFW 2022b; 2022c). 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 dock replacement 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 actions 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 dock replacement would cause no detectable effects on passage conditions.

Therefore, the proposed action is not likely to adversely affect SR killer whale 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 the NMFS on all actions or proposed actions that may adversely affect EFH. Under the MSA, this consultation is intended to



promote the conservation of EFH as necessary to support sustainable fisheries and the managed species' contribution to a healthy ecosystem. For the purposes of the MSA, EFH means “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity”, and includes the physical, biological, and chemical properties that are used by fish (50 CFR 600.10). 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) of the MSA also requires the NMFS to recommend measures that can be taken by the action agency to conserve EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset the adverse effects of the action on EFH [CFR 600.905(b)].

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

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

The project site is located in Seattle, Washington, on the northern shore of Lake Union, about mid-way along the Lake Washington Ship Canal (Figure 1). The waters and substrate of Lake Union and the ship canal 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 project 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 and beneficial effects on EFH for Pacific Coast Salmon as summarized below.

1. Water quality: – 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 continued vessel operations would maintain persistent low level inputs of contaminants at the applicant’s dock. Detectable water quality impacts would be limited to the area within 300 feet around the dock. 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 long-term minor adverse effects on this attribute. Despite the increase light penetration under the replaced dock, the new dock would cast over-water shade that would limit SAV growth and reduce the density and diversity of the benthic and planktonic communities under it, such as amphipods, copepods, and larvae of benthic species that are important prey resources for juvenile salmonids. Additionally, any contaminants that are mobilized during pile extraction, combined with low-level input of contaminants from dock and related vessel operations would contaminate some of the available prey and slightly diminish the number, size, and diversity of prey organisms available at the project site. Detectable effects would be limited to the area within about 300 feet around the dock.
6. Cover and habitat complexity: – The proposed action would cause long-term minor adverse effects on this attribute. The shade-limited SAV growth identified above would reduce cover availability for juvenile salmon under and adjacent to the dock.
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 NMFS determined that the following conservation recommendations are necessary to avoid, minimize, mitigate, or otherwise offset the impact of the proposed action on EFH.

To reduce adverse impacts on water quality and prey availability, the USACE should:

1. Require the use of full-depth sediment curtains around pile extraction work to limit the spread of contaminated sediments.

The NMFS knows of no practical measures that are available to further reduce the action's expected effects on cover and habitat complexity.

### **3.4 Statutory Response Requirement**

As required by section 305(b)(4)(B) of the MSA, the USACE must provide a detailed written response to the 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 the NMFS' EFH Conservation Recommendations unless the 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 the 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, the 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 USACE must reinitiate EFH consultation with the 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 the NMFS' EFH Conservation Recommendations (50 CFR 600.920(l)).

#### 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 USACE. Other interested users could include the applicant, WDFW, the governments and citizens of King County and the City of Seattle, and Native American tribes. Individual copies of this opinion were provided to the USACE. The document will be available 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 the 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 the 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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