



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

<https://doi.org/10.25923/2wr5-a296>

Refer to NMFS No: WCRO-2022-01764

January 10, 2023

Megan Hill
Pelton Round Butte Natural Resource Manager
Portland General Electric Company
1121 SW Salmon Street
Portland, Oregon 97204

Cathy Ehli
General Manager
Warm Springs Power Enterprises
5180 Jackson Trail Road
Warm Springs, Oregon 97761

Re: Endangered Species Act Section 7 Biological Opinion, Conference Opinion, and Magnuson–Stevens Fisheries Conservation and Management Act Essential Fish Habitat Response for the Maintenance Activities at the Pelton Round Butte Hydroelectric Project (FERC No. 2030).

Dear Ms. Hill and Ms. Ehli:

This letter responds to your June 6, 2022, request for consultation with the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the subject action. Portland General Electric (PGE) and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS) are the Federal Energy Regulatory Commission's (FERC) designated non-Federal representatives for the requested consultation for effects on the Middle Columbia River (MCR) steelhead (*Oncorhynchus mykiss*) Distinct Population Segment (DPS) and its designated critical habitat. Your request qualified for our expedited review and analysis because it met our screening criteria and contained all required information on, and analysis of, your proposed action and its potential effects to ESA-listed species and designated critical habitat.

On July 5, 2022, the U.S. District Court for the Northern District of California issued an order vacating the 2019 regulations that were revised or added to 50 CFR part 402 in 2019 ("2019 Regulations," 84 FR 44976, August 27, 2019) without making a finding on the merits. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order. On November 14, 2022, the Northern District of California issued an order granting the government's request for voluntary remand without vacating the 2019 regulations. The District Court issued a slightly amended order 2 days later on November 16, 2022. As a result, the 2019 regulations remain in effect, and we are applying the 2019



regulations here. For purposes of this consultation and in an abundance of caution, we considered whether the substantive analysis and conclusions articulated in the biological opinion and incidental take statement (ITS) would be any different under the pre-2019 regulations. We have determined that our analysis and conclusions would not be any different.

On February 1, 2005, NMFS completed a section 7 consultation with FERC on a new Federal license for the Pelton Round Butte Hydroelectric Project (Project), FERC No. 2030 (NMFS 2005). NMFS and the U.S. Fish and Wildlife Service (USFWS) met with PGE staff on December 13, 2021, to discuss upcoming maintenance and testing activities proposed for Round Butte Dam that were not considered in the NMFS 2005 biological opinion. NMFS' 2005 consultation remains in effect and this consultation only addresses the maintenance and testing activities.

Round Butte Dam is located on the Deschutes River (river mile 110) near the City of Madras in Jefferson County, Oregon. PGE and the CTWS submitted the consultation package, including a biological evaluation (BE) to NMFS on June 6, 2022, and a revised BE on September 16, 2022. We reviewed PGE's and the CTWS' consultation request and related initiation package and determined that it was sufficient to initiate consultation. As such, September 16, 2022, serves as the initiation date for formal consultation. Where relevant, we have adopted the information and analyses you have provided and/or referenced but only after our independent, science-based evaluation confirmed they meet our regulatory and scientific standards. We adopt by reference the following sections of the BE (PGE & Stillwater 2022): Section 2.2 (action area), Section 2.4 (proposed action), Section 3.2 (status of species and critical habitat), Section 4 (environmental baseline) and Section 5.2 (effects of the action), and Section 5.3 (cumulative effects).

As described in the BE, various maintenance activities are necessary at Round Butte Dam and associated facilities including the selective water withdrawal facility (SWW) and Round Butte Hatchery. Some maintenance activities include the temporary deactivation of the SWW, while releasing water through the spillway into Lake Simtustus below to maintain regulated releases and temperature downstream (PGE & Stillwater 2022). Use of the spillway in this manner is referred to as a "controlled spill event." PGE and the CTWS propose using controlled spill events to facilitate necessary maintenance and maintenance-related testing on components of Round Butte Dam, the SWW, and Round Butte Hatchery through the term of the FERC license which expires May 31, 2055. Table 1 summarizes the frequency and duration of each of type of controlled spill event proposed. Each of these activities are described in detail in Section 2.4 of the BE (PGE & Stillwater 2022).

Table 1. Controlled spill events occurring between October 1 and January 31 for the remaining term of the FERC license.

Activity Type	Number of Events	Maximum Duration per Event	Total Maximum Duration	Exclusion Net deployed
Exclusion net test	1	2 days	2 days	Yes
Turbine dewatering test	1	14 days	14 days	Yes
Short duration spill	15	2 days	30 days	No
Long duration spill (TSV ¹ replacement)	2	4 months (123 days)	8 months (246 days)	Yes

Activity Type	Number of Events	Maximum Duration per Event	Total Maximum Duration	Exclusion Net deployed
Long duration spill (Switch gear replacement)	1	1 month (31 days)	1 month (31 days)	Yes
Other maintenance	Undefined	Undefined	3 months (93 days)	Yes

¹Turbine shutoff valve.

Except for short duration spills (up to 2 days), a fish exclusion net will be deployed from the surface to a depth of 100 feet to minimize entrainment of steelhead into the spillway. All spill events will occur between October 1 and January 31, outside of the primary juvenile steelhead outmigration period. Returning adult steelhead will be released roughly 2 miles upstream of the Round Butte Dam spillway to minimize entrainment during short duration spill events. During all spill events, PGE will monitor total dissolved gas (TDG) concentrations in Lake Simtustus, which is the reservoir immediately downstream of Round Butte Dam.

We examined the status of MCR steelhead, which would be adversely affected by the proposed action, to inform the description of the species' "reproduction, numbers, or distribution" as described in 50 CFR 402.02. We also examined the condition of critical habitat throughout the designated area and discussed the function of the physical and biological features essential to the conservation of the species that create the conservation value of that habitat. Middle Columbia River steelhead critical habitat is designated in the lower 100 miles of the Deschutes River. Round Butte Dam is located about 10 miles upstream of the terminus for critical habitat. Section 3.2 of the BE (PGE & Stillwater 2022) describes the status of the species and critical habitat and is adopted here. Major risk factors that limit MCR steelhead recovery include reduced quality and quantity of freshwater habitat, predation, regulatory mechanisms that fail to adequately protect habitat, ocean conditions, hatchery fish, and climate change.

We note that this is a conference opinion for the species because all life stages of MCR steelhead that occur above Round Butte Dam were designated as a nonessential experimental population (NEP) on January 15, 2013, under section 10(j) of the ESA. For purposes of ESA section 7 consultation, NEPs are treated as a species "proposed for listing" and incidental take is not prohibited for actions that are otherwise permitted under existing laws and regulations. The NEP designation is set to expire on January 15, 2025, and all life stages of MCR steelhead located upstream of Round Butte Dam will be included in the MCR steelhead DPS and be considered a threatened species under the ESA. Therefore, this conference opinion will serve as a biological opinion when the NEP expires and the ITS in this opinion will be in effect. Lastly, all MCR steelhead that occur below Round Butte Dam are not part of the NEP and are treated as a threatened species under the ESA.

"Action area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). Section 2.2 of the BE (PGE & Stillwater 2022) identifies the action area and is incorporated here by reference.

The "environmental baseline" refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the past and present

impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultations, and the impact of State or private actions which are contemporaneous with the consultation in process. The consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify are part of the environmental baseline (50 CFR 402.02). Section 4 of the BE (PGE & Stillwater 2022) describes the environmental baseline and is incorporated here by reference.

Under the ESA, "effects of the action" are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action (50 CFR 402.17). In our analysis, which describes the effects of the proposed action, we considered 50 CFR 402.17(a) and (b). The BE (PGE & Stillwater 2022) provides a detailed discussion and comprehensive assessment of the effects of the proposed action in Section 5.2 of the initiation package, and is adopted here (50 CFR 402.14(h)(3)). NMFS has evaluated this section and after our independent, science-based evaluation determined it meets our regulatory and scientific standards. The following is a brief description of the anticipated effects resulting from the proposed action.

Juvenile steelhead emigrate during the spring months of April through June with peak migration in May. Therefore, very few, if any, individuals are expected to be present near the spillway, which is located near the fish collection facility, during the October 1 through January 31 spill event period. Based on data collected at Round Butte Dam from 2009 to 2021, the average monthly collection of juvenile steelhead for the period of October 1 through January 31 has ranged between 0 and 2 fish per month. The proposed exclusion net would be deployed around the spillway entrance during long duration spills which is projected to occur for a maximum of 386 days, or roughly 12.5 months, during the remaining term of the license (32 years). This net would extend to a depth of 100 feet. Three-dimensional acoustic telemetry studies conducted by PGE during the spring migration season examined steelhead movement near the fish collection facility and spillway entrance to a depth of 120 feet. These studies demonstrated that 99 percent of the juvenile steelhead observed were located above the 100-foot depth level, but no data were collected below 120 feet. Therefore, for purposes of this consultation, PGE assumed that 2 percent of the juvenile steelhead could occur below the bottom of the net and may be entrained and lost. Based on collection data, and to be conservative, we assume that two juvenile steelhead per month would encounter the exclusion net. During the remaining life of the license, a total of 25 steelhead (2 steelhead/month X 12.5 months) could encounter the exclusion net. Given that 2 percent of the 25 individuals may dive below the bottom of the net and be entrained in the spillway, we estimate that one juvenile steelhead (25 X 0.02) may be entrained and lost during the long duration spill events.

The best opportunity for entrainment would occur during the short duration (up to 2 days) spill events where the exclusion net is not deployed. These events are expected to occur up to a total of 30 days over the next 32 years. Given that just two steelhead are collected each month during

the proposed controlled spill period, it is possible that two steelhead may be entrained in the spillway during the short duration spill events.

Any juvenile steelhead that are entrained in spill would likely be lost to the population. If individual fish survive the spillway, they would be confined to Lake Simtustus and unable to migrate further downstream to the lower Deschutes River and continue their migration to the Pacific Ocean. Between the long and short duration spill events, we estimate that a total of three juvenile steelhead would be lost to entrainment. PGE considered that over the next 32 years, more juvenile steelhead could be present in the reservoir and assumed that a total of five juvenile steelhead could be lost due to entrainment in the spillway.

We do not anticipate that any adult steelhead would be entrained. These fish would be released at least 2 miles upstream of the Round Butte Dam forebay and would be actively migrating to upstream areas. The ongoing upstream trap and haul program was addressed in our 2005 consultation on the FERC license and is considered part of the environmental baseline for this consultation.

The BE (PGE & Stillwater 2022) in Section 5.2.2 considered how steelhead could be impacted by changes to water quality in the downstream reach below Round Butte Dam. Spill from Round Butte Dam plunges into Lake Simtustus and impacts dissolved oxygen (DO), TDG, and temperature. Middle Columbia River steelhead that are part of the NEP are not present in Lake Simtustus. Juveniles are trapped at Round Butte Dam and trucked around Lake Simtustus (formed by Pelton Dam) and the reregulating reservoir (formed by the Reregulating Dam) for release in the lower Deschutes River below the Reregulating Dam. Adults are trapped downstream of the Reregulating Dam and trucked to above Round Butte Dam. The BE (PGE & Stillwater 2022) describes in detail the effects resulting from the controlled spill events to DO, TDG, and water temperature in the downstream reaches. Effects of spill events on DO and TDG in the Lower Deschutes River downstream of Project facilities are expected to be unmeasurable given the time and distance from the Round Butte Dam spillway to the Reregulating Dam tailrace (9.5 miles). PGE and the CTWS anticipate that a minor rise in stream temperature immediately below the Reregulation Dam could occur under spill events in October due to the release of warmer surface water from the reservoir. The potential increase in the mean weekly average temperature (MWAT) is predicted to be no more than 1°C to 1.5°C higher than baseline conditions. In early October (October 1 through 15), the MWAT is predicted to range between 11.8 to 15.4°C and by late October (October 15 through 31) between 11.8 and 15.1°C (PGE & Stillwater 2022). The estimated increases in MWAT are well within the tolerance limits for both adult and juvenile steelhead. However, the higher predicted increase in temperature may alter gamete development in holding steelhead, resulting in reduced viability or survival of eggs that are placed in redds. This is expected to be a rare occurrence.

The essential features of critical habitat for MCR steelhead includes water quality, substrate, water quantity, water temperature, food, riparian vegetation, water, velocity, space, and passage. All the proposed controlled spill events would occur nearly 10 miles above designated critical habitat for MCR Steelhead. The potential for a minor increase of 1°C to 1.5°C in MWAT over baseline conditions below the Reregulating Dam in October would affect rearing and adult holding habitat in the Deschutes River for roughly 3 miles downstream, or to the confluence with

Shitike Creek. We do not expect the proposed action to have any effect on the other features of MCR steelhead critical habitat.

“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. We were not able to identify any additional cumulative effects not already discussed in Section 5.3 of the BE (PGE & Stillwater 2022).

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

NMFS recently reaffirmed that MCR steelhead have not achieved viable status and continue to be at a moderate risk of extinction. Major threats to MCR steelhead include, but are not limited to, climate change, predation in the Columbia River, various impairments in tributaries due to low flows, poor passage conditions, degradation of floodplain and riparian habitat, and out-of-DPS hatchery stray rates (NMFS 2022).

Within the action area, the key threats to MCR steelhead viability include impairment of floodplain function that limits rearing productivity, water temperatures, and impaired passage conditions. While out-of-basin hatchery stray rates have declined in recent years, it continues to be a concern in the Deschutes River basin.

During the four types of controlled spill events (i.e., exclusion net testing; turbine dewatering testing; short-duration, controlled spill events for maintenance; and long-duration, controlled spill events for maintenance), there is the potential to directly impact steelhead through entrainment into and through the spillway tunnel and into Lake Simtustus. These fish are considered mortalities for the purposes of this effects analysis. The controlled spill has the potential to result in up to five steelhead mortalities, over the course of the next 32 years, due to entrainment in the spillway. Steelhead may also be adversely affected by elevated temperatures in the lower Deschutes River should spill occur during October. Implementation of the proposed action will impact water quality (i.e., DO and TDG concentrations) downstream of the spillway; however, measurable changes in DO or TDG concentrations in designated critical habitat are not expected. It is possible that water temperatures in critical habitat below the Reregulating Dam will increase by up to 1.5°C for short periods of time if controlled spill events occur in October. The effects will be short-lived and is expected to occur a few times throughout the life of the license. Given the temporary and infrequent nature of the potential temperature increases, the overall conservation value of the temperature physical and biological feature will not be affected at the watershed. The proposed action is not likely to alter the viable salmonid population (VSP)

parameters of the Deschutes River Eastside and Westside populations within the MCR steelhead DPS, because few individuals may be killed and reduced viability or survival of eggs that are placed in redds is expected to be a rare occurrence. Because the population VSP parameters are not expected to be appreciably influenced, the viability of the associated major population groups (Deschutes Eastside and Westside) will not be altered by the Project. Similarly, the proposed action is not expected to reduce the conservation value of critical habitat in the lower Deschutes River, because controlled spill events from the proposed action would not change water quality downstream during the months of November through January and changes to water quality in October would be temporary and infrequent. Thus, we expect no reduction in the conservation value of critical habitat at the scale of the designation.

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

INCIDENTAL TAKE STATEMENT

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

Amount or Extent of Take

In the conference and biological opinion, NMFS determined that incidental take is reasonably certain to occur as direct lethal take of a maximum of five juvenile MCR steelhead over the course of the next 32 years due to entrainment in the Round Butte Dam spillway. Additionally, incidental take may occur if pre-spawn adults are exposed to elevated water temperatures during the month of October for sufficient periods of time to cause reduced gamete viability.

PGE will monitor daily for steelhead mortalities in the tailrace of Round Butte Dam during controlled spill events. While we expect few, if any, juvenile steelhead to be entrained, it is likely that some individuals could escape observation. Furthermore, NMFS cannot reasonably quantify the number of individual adult steelhead that may be exposed in the month of October to slightly

higher water (1.5°C above ambient) temperatures below the Reregulating Dam during controlled spill events. Therefore, to monitor for take exceedance and function as a meaningful reinitiation trigger, we set limits for the number of short term (48 hours) controlled spill events where the exclusion net is not deployed, and for the number of controlled spill events that can occur during the month of October. Although these surrogates could be considered coextensive with the proposed action, monitoring and reporting requirements included in this ITS will provide opportunities to check throughout the course of the proposed action whether the surrogates are exceeded. For this reason, the surrogates function as effective reinitiation triggers.

Effect of the Take

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

Reasonable and Prudent Measures

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

PGE and the CTWS, as FERC’s designated non-Federal representative, shall minimize incidental take by:

1. Minimizing the potential for harm and mortality to steelhead from controlled spill entrainment and elevated water temperature.
2. Monitoring the project to ensure that the measures are meeting the objective of minimizing take and that the amount or extent of take is not exceeded.

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. FERC and its designated representatives have 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.

To implement RPM 1, apply the following terms and conditions:

1. To the extent practicable and still effective for Project objectives, combine and coordinate timing of maintenance duties that require deactivation of the SWW.
 - a. Limit the number of short-duration (48 hours) spill events that occur during the maintenance period (October–January) to no more than 10 events, or a maximum of 20 days short-duration spill over the remaining term of the Project license.

- b. A raise in stream temperature by more than 1°C above ambient below the Reregulating Dam as a result of controlled spill shall be limited to no more than 7 consecutive days in any single year during the maintenance period (October–January).

To implement RPM 2, the following terms and conditions:

1. Annually by March 31, for the previous October-January maintenance period, FERC (or PGE and the CTWS on behalf of FERC) shall provide a report to NMFS documenting the number, duration, purpose (short- or long-term spill) and exclusion net deployment for controlled spill activities shown in Table 1 and shall include:
 - a. The number of spill events where the exclusion net was not deployed.
 - b. The number and duration of elevated water temperatures of more than 1°C above ambient, as measured at the Madras gauge (USGS gauge 14092500).

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).

NMFS has no conservation recommendations for the proposed action.

Reinitiation of Consultation

Under 50 CFR 402.16(a): “Reinitiation of consultation is required and shall be requested by the Federal agency or by the Service where discretionary Federal agency involvement or control over the action has been retained or is authorized by law and: (1) if the amount or extent of taking specified in the ITS 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.”

MAGNUSON–STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

NMFS also reviewed the proposed action for potential effects on essential fish habitat (EFH) designated under the Magnuson–Stevens Fishery Conservation and Management Act (MSA), including conservation measures and any determination you made regarding the potential effects of the action. This review was conducted pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation.

Section 305(b) of the MSA directs Federal agencies to consult with 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 associated physical, chemical, and biological 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 may result from actions occurring within EFH or outside of it and may include direct, indirect, site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810). Section 305(b) of the MSA also requires 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 (50 CFR 600.0-5(b)).

The action area includes areas designated as EFH for various life-history stages of coho and Chinook salmon. Affected portions of EFH include potential migratory corridors, spawning habitat, and rearing habitat for coho and Chinook salmon downstream of Reregulating Dam.

NMFS determined the proposed action would adversely affect EFH of Pacific salmon as follows:

1. Chinook and coho salmon spawning habitat located in the Deschutes River between the Reregulating Dam and the Highway 26 bridge (roughly 3 miles) could be affected by elevated water temperatures from controlled spill activities.

NMFS determined that that the following Conservation Recommendations are necessary to avoid, minimize, mitigate, or otherwise offset the impact of the proposed action on EFH:

1. To the extent practicable and still effective for Project objectives, combine and coordinate timing of maintenance duties that require deactivation of the SWW.
 - a. Limit the number of short-duration (48 hours) spill events that occur during the maintenance period (October–January) to no more than 10 events, or a maximum of 20 days short-duration spill over the remaining term of the Project license.
 - b. A raise in stream temperature by more than 1°C above ambient below the Reregulating Dam as a result of controlled spill should be limited to no more than 7 consecutive days in any single year during the maintenance period (October–January).

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

As required by section 305(b)(4)(B) of the MSA, FERC (or PGE and the CTWS as FERC's non-Federal representative) must provide a detailed response in writing to NMFS within 30 days after

receiving an EFH Conservation Recommendation. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH Conservation Recommendations unless NMFS and the Federal agency have agreed to use alternative time frames for the Federal agency response. The response must include a description of the measures proposed by the agency for avoiding, minimizing, mitigating, or otherwise offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with the Conservation Recommendations, the Federal agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects (50 CFR 600.920(k)(1)).

PGE and the CTWS, as FERC's non-Federal representative, must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations (50 CFR 600.920(l)).

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

Please direct any questions to Scott Carlon, Interior Columbia Basin Office, at (971) 322-7436 or scott.carlon@noaa.gov.

Sincerely,



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

cc: Peter Lickwar – USFWS
Anna Soens – USFWS

REFERENCES

- NMFS (National Marine Fisheries Service). 2005. Endangered Species Act Section 7 Consultation, Biological Opinion & Magnuson–Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation, Pelton Round Butte Project, FERC No. 2030, Deschutes River, Jefferson County, Oregon. National Marine Fisheries Service, Portland, OR.
- NMFS. 2022. 2022 5-year review: Summary and evaluation of Middle Columbia River steelhead. NMFS, West Coast Region, Portland, OR.
- PGE and Stillwater (Portland General Electric and Stillwater Sciences). 2022. Supplement to Pelton Round Butte Hydroelectric Project Revised Biological Evaluation. Portland, OR.