



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
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PORTLAND, OREGON 97232-1274

**Refer to NMFS No: WCRO-2023-02033**

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August 28, 2023

Michael S. Erickson  
Chief, Environmental Compliance Section  
U.S. Army Corps of Engineers  
Walla Walla District, Corps of Engineers  
201 North Third Avenue  
Walla Walla, WA 99362-1876

Re: Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson–Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Dworshak National Fish Hatchery Smolt Release Pipe Replacement Project (PM-EC-2017-0067)

Dear Mr. Erickson:

This letter responds to your June 20, 2023, request for initiation of consultation with the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the subject action. Your request was for informal consultation, but based on reviewing the changes to the proposed action, the current proposed action now involves dewatering and fish salvage, which is an adverse effect. So, in communication with the Corps of Engineers (Corps) on July 24, 2023, and August 4, 2023, the consultation moved forward as formal consultation.

Your request qualified for our expedited review and analysis because it met our screening criteria and contained all required information on, and analysis of, your proposed action and its potential effects to listed species and designated critical habitat. You also requested consultation pursuant to the essential fish habitat (EFH) provisions in Section 305(b) of the Magnuson–Stevens Fishery Conservation and Management Act [16 U.S.C. 1855(b)] for this action.

We reviewed the Corps consultation request and related initiation package. 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 here the following sections of the Biological Assessment (BA) prepared by the Corps (2023):

- Section 1 for the description of the proposed action, action area, and measures to minimize effects of the proposed action;
- Section 2 for occurrence and status of listed species and critical habitat in the action area;
- Section 3 for the description of the environmental baseline;



- Section 4 for the effects, and effects determination, of the proposed action on listed species, critical habitat, and essential fish habitat (EFH);
- Section 8 for the summary of species, critical habitat, and EFH effects determination.

The Corps submitted a consultation initiation package to NMFS on June 20, 2023. After our review, NMFS continued to coordinate with the Corps and the BA author regarding the proposed action.

On July 5, 2022, the U.S. District Court for the Northern District of California issued an order vacating the 2019 regulations that were revised or added to 50 CFR part 402 in 2019 (“2019 Regulations,” see 84 FR 44976, August 27, 2019) without making a finding on the merits. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court’s July 5 order. 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 two 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 would be any different under the pre-2019 regulations. We have determined that our analysis and conclusions would not be any different.

The proposed action is described in Section 1.2 of the BA. The Corps proposes to replace the corrugated metal steelhead smolt release pipe in 2024 at Dworshak National Fish Hatchery (NFH) with a concrete flume. The existing release pipe does not meet NMFS’ 2023 passage criteria and may impair survival of juvenile steelhead (*Oncorhynchus mykiss*).

Details of the proposed action can be found in Section 1 of the BA. In summary, the proposed action involves:

- Removal of three small trees on the north shore of the Clearwater River.
- Installation and removal of a small coffer dam (40 feet long, 20 feet wide, and 8 feet high) with associated dewatering and fish salvage to isolate the work area.
- Removal and replacement of existing riprap around the current pipe.
- Removal of the existing pipe.
- Installation of the spill pad and concrete flume.
- Associated onshore activities and equipment staging to complete the installation.

We examined the status of each species that would be adversely affected by the proposed action to inform the description of the species’ “reproduction, numbers, or distribution” as described in 50 CFR 402.02. We also examined the condition of critical habitat throughout the designated area and discuss the function of the physical or biological features (PBFs) essential to the conservation of the species that create the conservation value of that habitat.

Snake River Basin steelhead (*Oncorhynchus mykiss*) and Snake River fall-run Chinook salmon (*O. mykiss*) occur within the action area (BA, Section 2). Designated critical habitat also occurs for both species within the action area. In addition to the BA Section 2, more information on the

current status of the species and critical habitat (NMFS 2022), and limiting factors, can be found on NMFS' consultation website<sup>1</sup> and most recent recovery plans<sup>2</sup>.

“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 1.2 of the BA identifies an aquatic portion of the action area. Based on the proposed project construction methods, the anticipated impacts of sedimentation from construction, primarily removal of riprap and the construction of a small, temporary cofferdam, could likely extend 500 meters (0.31 miles) downstream of the proposed activities. Therefore, the aquatic portion of the action area includes the reaches of the mainstem Clearwater River and North Fork Clearwater River extending approximately 500 meters downstream of the construction site. This includes the removal of three trees on the north shore of the mainstem Clearwater River adjacent to a paved road and the possible construction of a temporary road along the existing paved road to facilitate removal of riprap.

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).

Biological assessment Section 3 describes the Environmental Baseline and is adopted here. The action area principally serves as spawning and rearing habitat for fall-run Chinook salmon and migration corridors for adult and juvenile steelhead. As such, water quality, water temperature, substrate, forage, and natural cover are important PBFs of critical habitat here. Despite the current status of highly viable for the Lower Mainstem Clearwater River steelhead population, the Clearwater River major population group (MPG) is not viable and is not meeting its recovery goal for the DPS. While the Snake River fall-run Chinook salmon population is currently considered to be viable, it is not meeting its recovery goals.

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

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<sup>1</sup> [https://www.fisheries.noaa.gov/west-coast/consultations/esa-section-7-consultations-west-coast#snake-river-\(north\)](https://www.fisheries.noaa.gov/west-coast/consultations/esa-section-7-consultations-west-coast#snake-river-(north))

<sup>2</sup> [https://www.fisheries.noaa.gov/species-directory/threatened-endangered?oq=&field\\_species\\_categories\\_vocab=All&field\\_region\\_vocab=All&items\\_per\\_page=350](https://www.fisheries.noaa.gov/species-directory/threatened-endangered?oq=&field_species_categories_vocab=All&field_region_vocab=All&items_per_page=350)

The BA provides a detailed discussion and assessment of the effects of the proposed action in Section 4 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. NMFS has supplemented the BA with additional information where necessary.

Based on the information presented in the BA, the action area may be used by all life histories of Snake River fall-run Chinook salmon, including spawning, incubation, rearing and migration. During the instream work window of July 1 to August 31, the vast majority of juveniles will have migrated downstream into Lower Granite pool, and other portions of the Snake and Columbia Rivers. Migrating adults may be present in the action area within the work window, since spawning occurs in the fall and migration and staging precede the spawning by several weeks, but the numbers of adult fall-run Chinook salmon should be very small in the action area during the work window. Also, adults would tend to be in deeper water offshore and, consequently, would not be displaced by coffer dam construction/removal or fish salvage. In summary, the primary life stages of fall run Chinook salmon that could be affected by the proposed action are rearing juveniles and adults migrating to spawning areas.

Based on the information presented in the BA, the action area may be used by juvenile Snake River Basin steelhead for rearing and migration, and adults for migration. During the instream work window of July 1 to August 31, juvenile steelhead, which rear/migrate year-round in the Clearwater River, will likely be present in the action area. Adult steelhead will not be present during the work window, as the migration/staging through this area begins in the fall and ends when the fish move upstream to spawn in late winter/early spring. Some adult steelhead kelts (post spawn surviving fish) may be present moving downstream through the action area during spring, prior to the instream work window. In summary, Juvenile fall-run Chinook salmon and steelhead may be present in the action area during instream work.

Instream work includes riprap removal, placement of a small temporary cofferdam during the installation of a spill pad and the end piece of the concrete flume. Fish salvage would be conducted, if needed, during the placement of the cofferdam.

Potential effects of the proposed action on Snake River fall-run Chinook salmon and Snake River Basin steelhead are:

1. Fish salvage operations associated with cofferdam placement could cause direct physical harm during fish displacement and/or capture and handling. This would occur within a 40 foot by 20-foot area (800 square feet).
2. In-water work, particularly coffer dam placement and removal, may harass or “take” juvenile Chinook salmon and steelhead, if present, resulting in fish to move, flee, or be displaced, resulting in changes in foraging activity.
3. Sound impacts associated with the use of an excavator and trenching bucket to construct the spill pad may impact fish behavior within approximately 54 meters.
4. Displacement of juvenile fall Chinook salmon and steelhead and disruption of their feeding and sheltering behavior from increases in suspended sediments (turbidity) during construction work.

5. Sediment deposition in river substrate may impact habitat conditions.
6. Chemical leakage and spills may impact water quality.
7. Improved survival of released steelhead smolts from the Dworshak hatchery.

NMFS has evaluated the effects sections of the BA and, after our independent, science-based evaluation, determined the additional information included in the following paragraph is needed to complete our analysis.

Due to the construction of the coffer dam, including associated dewatering and potential fish salvage activities, harmful impacts to juvenile Chinook salmon and steelhead may occur in the 800 square foot area. Limited data exist regarding juvenile salmon and steelhead densities within the mainstem Clearwater River. However, Mullan et al. (1992) reported that juvenile steelhead and spring-run Chinook salmon densities in tributary habitats of the Columbia River averaged 2.5 individuals of each species per thousand square feet surface area. Based on this information, it is assumed that 2 juveniles of fall-run Chinook salmon and 2 juvenile steelhead may be injured or killed by activities associated with the proposed action ( $2.5 \times 800 / 1000 = 2$ ). To account for natural variability, NMFS will double the number of juveniles of each species expected to be injured or killed to be 4 juvenile fall-run Chinook salmon, and 4 juvenile steelhead.

Sound impacts, as analyzed in the BA, should be temporary and minor as the excavator noise would be considerably less than the pile driving impacts analyzed in the BA. Displacement of juvenile fall-run Chinook salmon and steelhead due to construction and associated suspended sediments would be minor and temporary. Monitoring of temporary increases in turbidity, and a sediment barrier, will ensure fish are not exposed to damaging levels of sediment. Chemical leakage and spills would be unlikely and operations would stop immediately if any leakage or spills occur.

NMFS designated critical habitat for Snake River fall-run Chinook salmon throughout its current range, including the mainstem Columbia and Snake River migration corridor and the spawning and rearing areas in the lower Snake River and the lower reaches of its tributaries. Across these areas, human activities and climate change have disrupted watershed processes and the functioning of PBFs. This has reduced water and habitat quality and quantity as well as habitat complexity. Measures taken through the efforts of Federal, tribal, state, local, and private entities in the past two decades have improved the functioning of PBFs in some of the spawning and rearing areas and in the mainstem and tributary migration corridors. More improvements will be needed before critical habitat supports the recovery of Snake River fall-run Chinook salmon and Snake River Basin steelhead across the designated areas.

Potential effects of the proposed action to PBFs of Snake River fall-run Chinook salmon and Snake River Basin steelhead critical habitat are:

1. Temporary loss of 800 square feet of habitat associated with the construction and dewatering of the coffer dam, including the temporary loss of benthic organisms (prey) from the work area isolation and excavation activities.
2. Removal of three trees on the north bank of the mainstem Clearwater River associated with the removal of the existing pipe and installation of the concrete flume.

3. Turbidity from the construction activities may cause short term sedimentation within the action area.
4. Chemical leakage and spills.

The loss of 800 square feet of habitat due to coffer dam construction would be temporary with minor impacts. The removal of three trees on the north bank of the mainstem Clearwater River would have minor impacts on habitat conditions as they are located on the north side of the river and provide minimal shade to the river. Turbidity impacts from the proposed action would be temporary and minor due to a sediment barrier and monitoring. Chemical spills leakage and spills are unlikely and operations would cease immediately if they did occur, so impacts would be discountable.

Important PBFs in the action area include water quality, water temperature, substrate, forage, and natural cover. The ability of critical habitat in the action area to support Snake River fall-run Chinook salmon and Snake River Basin steelhead is primarily limited by effects from riprap presence and degraded water quality. Likely effects to Snake River fall-run Chinook salmon and Snake River Basin steelhead critical habitat are:

The water quality PBF would experience minor, temporary impacts during construction. Dewatering activities associated with coffer dam construction would be temporary and minimal. The water temperature PBF would not be impacted by the removal of three small trees on the north bank of the mainstem Clearwater River. The substrate PBF may experience temporary impacts from turbidity associated with construction activities, but would be minimal due to proposed sediment control and monitoring. The forage PBF impacts would also be minor and associated with temporary turbidity and sedimentation increases. The natural cover PBF would have minor impacts from the removal of three trees on the north shore of the mainstem Clearwater River. The site has been previously impacted by placement of riprap and impacts from the removal of three small trees would be minimal.

“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 versus cumulative effects. Given the 10-year timeframe utilized by NMFS for climate change effects and short duration of the project, climate change effects compounding effects from the proposed action are unlikely to occur. Therefore, all relevant future climate-related environmental conditions in the action area are described earlier in the discussion of environmental baseline.

Non-federal actions are likely to include activities associated with recreational activities including fishing and boating. Although not quantifiable, these non-federal actions are likely to have adverse effects on Snake River fall-run Chinook salmon and Snake River Basin steelhead at levels similar to those observed in recent years.

Therefore, NMFS does not expect cumulative effects in the action area to further reduce the conservation value of Snake River fall-run Chinook salmon and Snake River Basin steelhead critical habitat, or the productivity, spatial distribution, or abundance of Snake River fall-run Chinook salmon and Snake River Basin steelhead within the action area.

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 (BA Section 4) to the environmental baseline and the cumulative effects, taking into account the status of the species and critical habitat (BA Section 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.

The Snake River fall-run Chinook salmon ESU includes one extant population (Lower Snake River) with spawning in all five historical major spawning areas. The spatial structure risk for this population is low and is not precluding the species' recovery. While the below-replacement returns in recent years are concerning, the long-term (15-year) abundance trend is stable and the population remains well above the minimum abundance threshold set by the Interior Columbia (Basin) Technical Recovery Team (ICTRT). Although the population is currently viable, because the Lower Snake River is the only extant population, it needs to achieve highly viable status for the ESU to achieve recovery.

The status of this ESU has improved since the time of listing. While the population is currently considered to be viable, it is not meeting its recovery goals. This is due to: (1) low population productivity; (2) uncertainty about whether the elevated natural-origin abundance can be sustained over the long term; and (3) high levels of hatchery-origin spawners in natural spawning areas (NMFS 2022a). This ESU also continues to face threats from tributary and mainstem habitat loss, degradation, or modification, disease, predation, harvest, hatcheries, and climate change (NMFS 2022).

While the Clearwater River MPG of Snake River Basin steelhead is not viable overall, the Lower Mainstem population is rated at highly viable and the South Fork Clearwater River population is rated at viable. For the MPG to be viable and reach recovery goals, two additional populations must be viable and the remaining populations must be rated as at least maintained.

Adverse effects associated with the project on juveniles of Snake River fall-run Chinook salmon and Snake River Basin steelhead are related to fish displacement and fish salvage. Minor effects for a few juvenile fall-run Chinook salmon and steelhead may occur from turbidity exposure and sound impacts. Lethal impacts may occur during fish capture and handling of juveniles, resulting in mortality of an estimated four individuals each of fall-run Chinook salmon and steelhead.

These effects are not expected to appreciably alter the abundance, productivity, spatial structure, or diversity of the Clearwater River population of Snake River fall-run Chinook salmon or Lower Mainstem population of Snake River Basin steelhead. It is NMFS' opinion that when the effects of the action and cumulative effects are added to the environmental baseline, and in light of the status of the species, the effects of the action will not directly or indirectly reduce appreciably the likelihood of both the survival and recovery of Snake River fall-run Chinook salmon or Snake River Basin steelhead.

The action area is designated as critical habitat for Snake River fall-run Chinook salmon and Snake River Basin steelhead, providing spawning, rearing and migration habitat. Critical habitat in the action area is degraded due to riprap presence and lack of riparian vegetation. Climate change and human development have and continue to adversely impact critical habitat creating limiting factors and threats to the recovery of Snake River fall-run Chinook salmon and Snake River Basin steelhead. Cumulative effects are likely to continue to impact critical habitat at current levels. NMFS expects small, temporary minor effects to the function and conservation value of natural cover, forage, water quality, and free of artificial obstruction PBFs from the proposed action.

### **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 NMFS' biological opinion that the proposed action is not likely to jeopardize the continued existence of Snake River fall-run Chinook salmon or Snake River Basin steelhead or destroy, or adversely modify, their 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 biological opinion, NMFS determined that incidental take is reasonably certain to occur as follows:



The proposed cofferdam construction and fish salvage will take place when juvenile and/or adult individuals of Snake River fall-run Chinook and Snake River Basin steelhead may enter the action area. Cofferdam construction may result in displacement of fish, increasing the risk of predation. Activities associated with the coffer dam construction would also include dewatering which will result in juveniles being pushed out of areas they occupied previously.

Fish salvage operations associated with dewatering and cofferdam construction may result in handling of individual juvenile fish and subsequent injury or death may occur. It is estimated that up to 4 juvenile fall-run Chinook salmon and 4 juvenile steelhead would be handled or lethally harmed during the proposed salvage operations. Take would be exceeded if more than 4 juvenile fall-run Chinook salmon or 4 juvenile steelhead were captured, injured, or killed during cofferdam placement or removal, or during fish salvage.

### **Effect of the Take**

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

### **Reasonable and Prudent Measures**

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

The Corps shall:

1. Minimize incidental take from construction activities and implement all of the proposed conservation measures.
2. Monitoring and reporting of the project to ensure that the conservation measures are meeting the objective of minimizing take and that the amount and 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. The Corps or any applicant has a continuing duty to monitor the impacts of incidental take and must report the progress of the action and its impact on the species as specified in this ITS (50 CFR 402.14). If the entity to whom a term and condition is directed does not comply with the following terms and conditions, protective coverage for the proposed action would likely lapse.

1. To implement RPM 1 the Corps shall ensure the following:
  - a. A qualified biologist shall be present during fish salvage operations associated with the cofferdam construction and fish salvage. If more than 4 individuals of fall-run Chinook salmon or 4 individuals of steelhead are harmed or killed, operations shall cease and the Corps will contact NMFS promptly to determine an appropriate course of action.
  - b. The area of the isolated work area shall not exceed 800 square feet. The Corps will contact NMFS promptly to determine a course of action if the isolated area behind the coffer dam exceeds, or needs to exceed, 800 square feet.

2. To implement RPM 2 the Corps shall ensure the following:
  - a. Monitor, record, and report the number of fall-run Chinook salmon and steelhead captured, harmed, or killed during coffer dam construction and fish salvage.
  - b. Within 90 days following the completion of the proposed construction project, the Corps shall report all monitoring items to include, at a minimum, the following:
  - c. Project identification:
    1. Project name: Dworshak National Fish Hatchery Smolt Release Pipe Replacement; NMFS Tracking Number: WCRO-2023-02033.
    2. Corps contact person: Michelle Palmer
    3. Total area of coffer dam construction
    4. A summary of pollution and erosion control inspection results, including results of implementing required Best Management Practices (BMPs), and including a description of any erosion control failure, contaminant release, and efforts to correct such incidences.
  - d. All reports will be sent to National Marine Fisheries Service, Northern Snake Branch, Attention Jim Mital, [jim.mital@noaa.gov](mailto:jim.mital@noaa.gov) and NMFS' service account at [nmfswcr.srbo@noaa.gov](mailto:nmfswcr.srbo@noaa.gov).

### **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). No conservation recommendations are identified.

### **Reinitiation of Consultation**

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

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. In this case, NMFS concluded the action would not adversely affect EFH. Thus, we have no EFH Conservation Recommendations to provide at this time and consider the consultation process under the MSA to be concluded.

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

You may direct questions regarding this letter to Jim Mital, Moscow, Idaho, 208-310-0663, [jim.mital@noaa.gov](mailto:jim.mital@noaa.gov).

Sincerely,



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

cc: C. Cusack – USFWS  
M. Lopez - NPT

**REFERENCES**

Corps (U.S. Army Corps of Engineers). 2023. Biological Assessment for Dworshak National Fish Hatchery Steelhead Smolt Release Pipe Replacement. 61pp.

Mullan, J. W., K. R. Williams, G. Rhodus, T. W. Hillman, and J. D. McIntyre. 1992. Production and habitat of salmonids in mid-Columbia river tributary streams. U.S. Fish and Wildlife Service.

NMFS (National Marine Fisheries Service). 2022. 5-Year Review: Summary & Evaluation of Snake River Basin Steelhead. National Marine Fisheries Service, West Coast Region.