UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
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July 16, 2024

Lt. Col. ShaiLin KingSlack
U.S. Army Corps of Engineers
Walla Walla District
201 N. 3rd Avenue
Walla Walla, Washington 98362-1836

Re: Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson–Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Riverside Water and Sewer District Lagoon Embankment Repair and Stabilization Project (NWW-2015-00066), Clearwater County, Idaho, HUC 1706030613.

Dear Lt. Col. KingSlack:

This letter responds to your June 10, 2024 request for initiation of consultation with National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) for the Riverside Water and Sewer District Lagoon Embankment Repair and Stabilization Project. 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. Your request qualified for our expedited review and analysis because it met our screening criteria and contained the required information on, and analysis of, your proposed action and its potential effects to listed species, designated critical habitat, and EFH.

We reviewed the 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. In our biological opinion below, we indicate what parts of your document we have incorporated by reference and where that information is being incorporated.

Consultation History

The U.S. Army Corps of Engineers (Corps) submitted a consultation initiation package, including a Biological Assessment (BA) prepared by Ardurra Group, Inc. (Corps 2024), to NMFS on June 20, 2023. The Corps concluded that the proposed action was not likely to adversely affect Snake River Basin steelhead (SRB steelhead), Snake River fall-run Chinook salmon (SRF Chinook salmon), and their critical habitat. NMFS reviewed the initiation package and sent a letter to the Corps requesting additional information, in which we also indicated the project is likely to adversely affect both of these species and their critical habitat. NMFS' requested information was provided in a subsequent draft BA on January 10, 2024. The new

information about in-water work and fish salvage led to a discussion with the Corps resulting in a change in determination to likely to adversely affect for both species and their critical habitat. On April 23, 2024, NMFS received an updated draft BA reflecting the change in determinations but revisions to the proposed action were still needed. After further discussions and commenting on the BA, NMFS received a request for consultation and revised final BA from the Corps on June 10, 2024. NMFS sent a letter to the Corps on June 17, 2024, stating the BA was sufficient and initiating formal consultation on June 10, 2024. On June 11, 2024, NMFS received additional information including the elimination of the use of herbicides from the proposed action.

Updates to the regulations governing interagency consultation (50 CFR part 402) were effective on May 6, 2024 (89 Fed. Reg. 24268). We are applying the updated regulations to this consultation. The 2024 regulatory changes, like those from 2019, were intended to improve and clarify the consultation process, and, with one exception from 2024 (offsetting reasonable and prudent measures), were not intended to result in changes to the Services' existing practice in implementing Section 7(a)(2) of the Act (89 Fed. Reg. at 24268; 84 Fed. Reg. at 45015). We have considered the prior rules and affirm that the substantive analysis and conclusions articulated in this biological opinion and incidental take statement would not have been any different under the 2019 regulations or pre-2019 regulations.

Proposed Action

The proposed action is described in the BA in Sections *Project Description*, *Impact Avoidance and Minimization Measures,* and *Appendix A*. In summary, the Riverside Water and Sewer District (RWSD) in Clearwater County, Idaho, will discharge approximately 1,180 cubic yards of rock riprap and 410 cubic yards of native streambed material below the ordinary high water mark (OHWM) of the Clearwater River in a 4,290 square foot (ft^2) area associated with repairing and stabilizing approximately 660 linear feet (ft.) of the RWSD's rapidly eroding lagoon embankment structure. The embankment structure separates RWSD's sewage treatment lagoons from the Clearwater River and has been substantially eroded due to high river flows and is continuing to erode at a rapid rate. General activities include:

- Staging will be in an upland area, and the work site accessed using existing gravel roads and a temporary rock road parallel to the Clearwater River in the work zone.
- Temporary Erosion Controls (TECs) will be used throughout the project area to avoid sediment delivery to the Clearwater River.
- 630 ft. of stream bank (3,840 ft^2) will be stabilized (6 ft. thick riprap toe, 2 ft. thick above the toe) above the water surface with equipment operating from the temporary access road. The toe will be a maximum of 6 ft. deep below the water surface elevation but the excavation will be done upslope of the water's edge, and the toe will not be dug instream. If necessary, a silt curtain or fence will be used to prevent sediment from reaching the river.
- A 30 ft. bank length by 15 ft. waterward area (450 ft^2) of the Clearwater River will be isolated, but not dewatered, for instream work using a silt fence or curtain.

- Instream work will take approximately 5 to 7 days during the instream work window from July 15 through August 15, 2024.
- Fish will be herded from the isolated area (1 to 3 ft. deep) by pushing out a silt fence or curtain from shore: (1) during initial instream work area isolation, (2) prior to each day's work if fish are found in the isolated area, and (3) if five or more fish are discovered in the isolated area during work, work will cease until the fish are herded out of the isolated area.
- After stabilization work is complete, the isolation silt fence and temporary access road will be removed. All disturbed areas will be replanted with native seed and 700 willow stakes.

BIOLOGICAL OPINION

Status of Species and Designated Critical Habitat

We examined the status of SRB steelhead and SRF Chinook salmon, 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.

The *Status of Species and Critical Habitat* Section of the BA includes descriptions of the status of the species and critical habitat in the action area, which are adopted here. NMFS' status of the species summaries for species that may be impacted by the proposed action are available on the NOAA Fisheries website at: https://www.fisheries.noaa.gov/s3/2023-02/feb-2023-status-snake-r-steelhead.pdf for SRB steelhead and https://www.fisheries.noaa.gov/s3/2023-02/feb-2023-status-snake-r-fall-chinook.pdf for SRF Chinook salmon, and are incorporated here by reference. NMFS also incorporates by reference the following 2022 5-year reviews:

- 2022 5-Year Review: Summary & Evaluation of Snake River Basin Steelhead
- 2022 5-Year Review: Summary & Evaluation of Snake River Fall-Run Chinook Salmon

Action Area

"Action area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). A description of the action area is included in the *Action Area* Section of the BA, which is adopted here. As described in the BA, the action area includes the 5.5 acre area on RWSD property including upland staging, and work areas below the OHWM of the Clearwater River. In addition, NMFS includes up to 300 feet downriver of the downstream most extent of the work below the OHWM, which is the potential extent of turbidity plumes from the proposed action.

Environmental Baseline

The "environmental baseline" refers to the condition of the listed species or its designated critical habitat in the action area, without the impacts 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 impacts to listed species, or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify are part of the environmental baseline (50 CFR 402.02).

The environmental baseline, species and habitat use, and pictures, are described in the *Environmental Baseline Conditions* and *Appendix B, Existing Conditions Photo Inventory* Sections of the BA, respectively, which are adopted here. The eroded stream bank in the action area was an artificially built riprap buttress to protect the RWSD's sewage lagoons from erosive high flows in the Clearwater River. Continued degradation and erosion of the embankment has caused shallow near-shore depths, and contributes both fine and course sediment to near-shore substrate. Due in part to this process, a lack of spawning substrate exists within the action area for anadromous fish. In addition, erosion has caused streambank vegetation and trees to fall in the river and wash away, which has eliminated streamside shade and cover. The action area is designated critical habitat for SRB steelhead and SRF Chinook salmon. While degraded, these species may use the action area for migration and rearing.

SRB steelhead presence in the action area during construction could include migrating and rearing juveniles from all five populations of the Clearwater Major Population Group (MPG; Lower Mainstem Clearwater River, South Fork Clearwater River, Selway River, Lochsa River, Lolo Creek populations). Although some steelhead may spawn in the Clearwater River mainstem, they are unlikely to do so in the action area because substrate in the action area is not suitable for steelhead spawning. Adult steelhead are not expected to be present during implementation of the proposed action because of later run timing, and the poor quality, shallow, and exposed habitat. Because juvenile migration on the way to the ocean occurs primarily with spring runoff, year-round rearing is distributed throughout the Clearwater subbasin, and there is poor rearing habitat in the action area, only a few migrating or rearing juveniles are expected in the action area during the inwater work window for construction.

SRF Chinook salmon (one extent population in the Evolutionary Significant Unit (ESU): Lower Snake River population) spawn from late August through November, emerge from redds in the following March through April, and migrate downstream within several weeks of emergence. With this timing and the poor spawning conditions, only a few migrating juveniles, and no adults or redds, are expected in the action area during construction.

Effects of the Action

Under the ESA, "effects of the action" are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action.

The BA provides a detailed discussion and comprehensive assessment of the effects of the proposed action in the *Analysis of Effects* Section, 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 effects would be distributed among juveniles from each population of the SRB steelhead Clearwater River MPG and SRF Chinook salmon.

Potential project effects to juvenile SRB steelhead and SRF Chinook salmon include:

1. Harassment of a few, or harm or death of very few juveniles from herding from, or remaining in, the instream isolation area. Fish would be harassed as they move away from the silt fence as it is placed for the first time and during any subsequent re-placing events. Fish could be unharmed, harmed, or killed by machinery if they remain in the isolated area.

2. Reduced fitness (i.e., harm) of a few juveniles by extending the life of the existing modified riprap streambank, which affects typical river processes resulting in long-term, simplified, and less productive habitat.

3. Behavioral changes (e.g., avoidance or fleeing of the area or, discontinued or increased feeding [Gregory and Northcote 1993]), physiological stress (e.g., coughing), gill abrasion, and pauses in migration of a few juveniles are potential effects from turbidity. Turbidity plumes from in-water work will be contained behind a silt fence. When the fence is removed, however, there may be a small plume of turbidity lasting minutes or hours, of low intensity, and localized to a small area before dissipating within 300 feet downstream of the work area (e.g., substrate in the work area is eroded course riprap with few fine sediments, and is expected to settle within a short distance). These expected low levels of turbidity may cause fish to flee, which may increase predation, causing injury or death of a few SRB steelhead and SRF Chinook salmon; however, NMFS does not expect reduced growth or survival of juveniles from minor, temporary increased in turbidity as juveniles will have ample access to similar habitat nearby.

4. Machinery will be working in and near the water for 5 to 7 days. Machinery noise would be at levels below those found to have adverse effects to salmonids. The temporary presence of machinery along the river may cause some juveniles to move away for a few hours a day during the project. NMFS does not expect reduced growth or survival of juveniles from the temporary disturbance from machinery because juveniles will have ample access to similar available habitat nearby.

5. Injury or death from chemical contamination from leaks or spills to a few juveniles is improbable. Refueling will occur offsite, staging is in an established upland area away from the Clearwater River, and heavy equipment will be washed and inspected for leaks before work begins.

Potential effects to PBFs of SRB steelhead and SRF Chinook salmon designated critical habitats identified by the Corps include:

1. The water quality PBF will be temporarily adversely affected by sediment plumes during silt fence removal. Turbidity plumes would last for minutes or hours within a 5 to 7 day period, be localized to a small portion of the river width and length, and be of low intensity causing a temporary reduction in water quality.

2. The water quality PBF may be temporarily affected by chemical contamination; however, we believe this is improbable given best management practices (BMPs) for in and near water work, and the distant location of the upland staging area.

3. The substrate PBF will be temporarily affected by deposition from turbidity plumes. Sediment from the removal of the silt fence will become suspended then deposited on substrates in minor amounts. This sediment will remain until flows increase within the months following the proposed action. A long-term, post-project improvement to substrate is expected from the reduction sedimentation due to continued bank erosion.

4. The food/forage PBFs will be temporarily affected by minor deposition from turbidity plumes due to the small volume of deposited sediment over a small area. Although temporary effects to invertebrates may occur to bottom-dwelling organisms in localized areas where sediment deposition occurs, insect drift from upstream and through the action area is expected to be similar to unaffected areas (Bjornn et al. 1977). The food/forage PBF will be permanently affected due to extending the life of the existing modified riprap streambank, which will prevent channel migration and reduce habitat complexity. However, we believe this effect will be minor because the length of stream bank will be similar to baseline conditions and substrate is expected to improve over time with the halting of further erosion of the riprap streambank and the installation of willows (e.g., into the currently denuded streambank), which will provide terrestrial invertebrate food in the future.

5. The natural cover/shelter/riparian vegetation PBFs may improve over the long term following the planting of willows.

6. The free of artificial obstructions and safe passage PBFs may be temporarily affected by the presence of a small isolated area and minor turbidity plumes.

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). 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. NMFS is not aware of any future non-Federal activities within the action area that

could adversely affect SRB steelhead and SRF Chinook salmon, or their critical habitat. Therefore, NMFS assumes that future State and private actions and land uses will continue within the action area at roughly their current rate.

Integration and Synthesis

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

The eroded, and eroding, streambank in the action area was a riprap terrace constructed to protect RWSD lagoons. The erosion has caused deposition of riprap along the bank and downstream of the lagoons. In addition, streamside vegetation and trees have been lost from the streambank from the erosion. NMFS is unaware of any planned or ongoing non-Federal projects in the vicinity and assumes that future State and private actions and land uses will continue within the action area at roughly their current rate. This project will be done in 5 to 7 days and although the project will not provide quality habitat, it will not have significant synergistic effects with climate change.

Adults and juveniles from each population of the SRB steelhead Clearwater River MPG and SRF Chinook salmon use the action area as a migration corridor. Juveniles of these species also rear in the action area. NMFS recently reaffirmed that SRB steelhead have not achieved viable status and are at continuing risk of extinction. The overall current risk rating for SRF Chinook salmon, which has only one extant population, (Lower Mainstem Snake River fall Chinook salmon population) is viable.

Major threats include, but are not limited to: climate change, regulation of the Columbia River, and impairment of tributary habitat. SRB steelhead and SRF Chinook salmon are listed as threatened under the ESA. While some populations are viable for SRB steelhead and SRF Chinook salmon (single population), some populations within the SRB steelhead Distinct Population Segments (DPSs) remain at moderate or high risk.

Based on the species life stages present in the action area during the proposed inwater work window and the activities described in the submitted BA and supplemental information supplied on June 11, 2024, the proposed action is expected to result in behavior modification, harassment, harm, injury, or death of a few juvenile SRB steelhead and SRF Chinook salmon within the action area from fish herding, instream work (isolated area), turbidity, and extending the life of the riprap bank stabilization. These adverse effects would be distributed among juveniles from each population of the SRB steelhead Clearwater River MPG and Lower Mainstem SRF Chinook salmon population.

Fish herding will be done in preparation for inwater work in an isolated stream area of 450 ft^2. This area will not be dewatered. Few juvenile SRB steelhead and few juvenile SRF Chinook salmon are expected to be in the action area during the instream work window. A silt curtain or fence will be walked out from shore to herd ESA-listed fish from the isolated area. The fence will be left in place to contain suspended sediment generated from inwater work. Juveniles are expected to quickly move away from the disturbance but some juveniles may remain in the cobble as the fence passes over them. This procedure will be repeated if daily morning visual checks find ESA-listed fish in the isolated area or, if during work, five or more ESA-listed fish are found in the isolated area. For those fish that remain inside the isolated area, they may be unharmed, harmed, injured, or killed by machinery. NMFS estimates that a few juvenile SRB steelhead and SRF Chinook salmon will be harassed, injured or killed by the fish salvage activity or inwater machinery.

Riprap will be replaced on 660 ft. of the existing previously modified streambank, therefore extending the life of the riprap streambank. As stated in the BA, riprap banks can have adverse effects to stream morphology, and simplify habitat reducing habitat complexity, large wood recruitment, shade, cover, and terrestrial food. All of these factors lead to reduced habitat productivity and lower salmonid abundance around riprap.

Turbidity plumes from inwater work will be contained behind a silt fence. When the fence is removed, a small turbidity plume lasting minutes or hours will occur. This plume will be of low intensity, and localized to a small area over poor shallow habitat (eroded riprap) before dissipating within 300 feet downstream of the work area. Expected low levels of turbidity could cause fish to increase or decrease feeding, and flee, which may increase predation of a few SRB steelhead and SRF Chinook salmon.

NMFS does not expect reduced growth or survival of juveniles from the temporary presence of machinery. With the upland staging location, refueling offsite, and machinery inspections, and BMP's, chemical contamination from spills or leaks is improbable.

NMFS has determined that the loss of a very few juvenile steelhead and salmon caused by the proposed action is not substantial enough to negatively influence the viable salmonid population (VSP) criteria at the population scale for any population of these two species, and will not appreciably reduce the likelihood of any population maintaining its current status. The effects will be distributed among fish from all populations of the SRB steelhead Clearwater River MPG and SRF Chinook salmon.

Because the effects of the proposed action will not be substantial enough to negatively influence VSP criteria at the population scale, the viability of MPGs, DPS, and ESU are also not expected to be reduced. Therefore, the effects of the proposed action are not likely to appreciably reduce survival of the two species considered in this opinion, nor is the proposed action likely to reduce the likelihood of recovery of these species.

The proposed action will temporarily reduce the function of SRB steelhead and SRF Chinook salmon critical habitat PBFs for water quality (turbidity; minutes to hours), substrate (sediment in substrate; months), free of artificial obstruction/safe passage (stream area isolation and

turbidity plume; 5 to 7 days), and safe passage (reroute around isolated area or turbidity plume for minutes per individual fish). In addition, extending the life of the riprap will modify long-term river processes resulting in simplified, less productive local habitat for the life of the riprap. The stabilization of the eroding bank (via riprap placement and willow plantings) will reduce the input of sediment to the Clearwater river in the long term. The reduced function of critical habitat in supporting ESA-listed species during the proposed action will be temporary and of low intensity. Therefore, the effects will not influence the conservation value of the critical habitats at the scale of the designations.

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 SRB steelhead and SRF Chinook salmon or destroy or adversely modify their designated critical habitats.

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).

Amount or Extent of Take

In the biological opinion, NMFS determined that incidental take of juvenile SRB steelhead and SRF Chinook salmon is reasonably certain to occur as follows: (1) a few juvenile SRB steelhead and SRF Chinook salmon will be harassed, injured, or killed by the fish herding activity and machinery working in the isolated work area; (2) reduced long-term productivity of habitat for juvenile rearing from extending the life of riprap; and (3) altered juvenile behavior and increased predation caused by turbidity. NMFS expects these adverse effects would be distributed among juveniles from each population of the SRB steelhead Clearwater River MPG, and SRF Chinook salmon.

NMFS anticipates the proposed action will result in altered behavior, injury, death, or reduced annual productivity (annual long-term) of a few juvenile SRB steelhead and SRF Chinook salmon. Estimating the specific number of animals injured or killed is not possible because of the range of responses that individual fish will have, and because the numbers of fish present at any time is highly variable due to seasonal and diurnal patterns of migration and juvenile rearing. While this uncertainty makes it impossible to quantify take in terms of numbers of animals harassed, injured or killed, the extent of habitat altered by the three take pathways identified above (stream area isolated for in water work and fish herding, length of streambank riprapped, and length of turbidity plume) are readily discernible and as surrogates present reliable measures of the extent of take that can be monitored and tracked. 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. The proposed surrogates are causally linked to anticipated take because they describe the area or length of activity that are proportional to the number of juvenile SRB steelhead and SRF Chinook salmon harassed, injured, or killed. Therefore, NMFS will consider the extent of take exceeded if:

1. the instream area isolated and cleared of fish exceeds 450 ft^2;
2. the stream bank length of installed riprap exceeds 660 linear ft.; or
3. the linear extent of the visible turbidity plume, when removing the silt fence or curtain from the isolated area, extends greater than 300 ft. downstream.

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 SRB steelhead and SRF Chinook salmon or destruction or adverse modification of critical habitat.

Reasonable and Prudent Measures

The "reasonable and prudent measures" listed below are measures that are necessary or appropriate to minimize and/or monitor the impact of the amount or extent of incidental take (50 CFR 402.02).

The Corps shall:

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

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 or contractor 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. The following terms and conditions implement reasonable and prudent measure number one:
    a. The applicant shall not remove the silt fence from the isolated area for one day or until turbidity inside the isolated area is visually the same as the water outside of the isolated area, whichever occurs first. This will reduce the intensity of the inevitable turbidity plume.
2. The following terms and conditions implement reasonable and prudent measure number two:
    a. During the project, the applicant shall monitor the amount of (1) instream areas isolated (ft^2), (2) waterline length of riprap installed (ft.), and (3) downstream extent of visible turbidity plume when removing the silt fence/curtain from the isolated area (ft.) to ensure that the conservation measures are meeting the objective of minimizing take.
    b. The applicant shall submit a completion of project report to NMFS at nmfswcr.srbo@noaa.gov two months after project completion, referencing the consultation tracking number WCRO-2024-01283. The completion report shall include, at a minimum, the following:
        i. Starting and ending dates for work completed, with in-water work period specified.
        ii. Monitoring and measurements of the isolated area, length of riprapped streambank, and length of turbidity plumes.
        iii. A description of any erosion control failure, contaminant release, and efforts to correct such incidences.
        iv. Number and species of fish observed, injured, or killed in the isolated instream work area during the project.
    c. If the amount or extent of take is exceeded, the applicant shall stop project activities and notify NMFS immediately using the contact information at the end of this consultation.

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. For future new or repairment bank stabilization projects, the Corps should include on or offsite habitat improvement projects to mitigate for lost habitat quality from the stabilization project.

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."

MAGNUSON–STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT ESSENTIAL FISH HABITAT RESPONSE

NMFS also reviewed the proposed action for potential effects on EFH designated under the Magnuson–Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1855(b)). This review was pursuant to **S**ection 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 600.905(b)).

The proposed project occurs within EFH for various federally managed fish species within the Pacific Coast Fishery Management Plan (FMP; Chinook and Coho salmon; PFMC 2014). In addition, the project occurs within, or in the vicinity of habitat area of particular concern (HAPC) for various federally managed fish species within the FMP. HAPCs are described in the regulations as subsets of EFH, which are rare, particularly susceptible to human-induced

degradation, especially ecologically important, or located in an environmentally stressed area. Designated HAPC are not afforded any additional regulatory protection under the MSA; however, federal projects with potential adverse impacts on HAPC will be more carefully scrutinized during the consultation process.

NMFS, and the Corps, concluded that the action would adversely affect EFH, including the complex channels and floodplain habitats HAPC designated under the FMP, as follows:

1. Turbidity will decrease water quality for minutes to hours when reopening the isolated instream work area.
2. Substrate will be slightly affected in the short term from sediment mobilizing, suspending, and settling out after reopening the isolated instream work area.
3. The reinstallation of riprap will negatively affect long-term natural geomorphic processes, which will impair the potential development of floodplains and habitat complexity.

NMFS determined that the following conservation recommendation is necessary to avoid, minimize, mitigate, or otherwise offset the adverse effects of the proposed action on EFH.

1. The applicant shall not remove the silt fence from the isolated area for one day or until turbidity inside the isolated area is visually the same as the water outside of the isolated area, whichever occurs first. This will reduce the intensity of the inevitable turbidity plume.

As required by Section 305(b)(4)(B) of the MSA, the Corps must provide a detailed response in writing to NMFS within 30 days after receiving an EFH conservation recommendation. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH conservation recommendations unless NMFS and the Federal agency have agreed to use alternative time frames for the Federal agency response. The response must include a description of 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)).

The Corps must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations (50 CFR 600. 920(l)). This concludes the EFH consultation.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The biological opinion will be available through NOAA Institutional Repository

https://repository.library.noaa.gov/welcome. A complete record of this consultation is on file at our Boise office.

If you have any questions concerning this consultation, or if you require additional information, please contact Aurele LaMontagne, Northern Snake Branch, at (208) 378-5686 or aurele.lamontagne@noaa.gov.

Sincerely,

Nancy L. Munn, Ph.D.
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