



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

Refer to NMFS No:
WCRO-2024-00837

December 18, 2024

Adam Merrill
Environmental Protection Specialist
US Department of Transportation, Federal Aviation Administration
2200 S. 216th Street
Des Moines, Washington 98198

Re: Revised ITS for the U.S. Department of Transportation (DOT) Federal Aviation Administration's (FAA) Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Port of Portland Airfield and Airport Related Tenant Projects—Batch #1

Dear Mr. Merrill:

This letter responds to your August 14, 2024, request for corrections to the Incidental Take Statement (ITS), which includes Reasonable and Prudent Measures (RPMs), and Terms and Conditions (T&Cs) issued on July 31, 2024, to the Federal Aviation Administration (FAA) in the Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Port of Portland Airfield and Airport Related Tenant Projects—Batch #1 (WCRO-2024-00837; hereinafter, the “Project”).

Following review of your request, discussions with FAA and Port of Portland (PoP) staff, and review of the issued Biological Opinion (“Opinion”) for the Project, NMFS determined that the requested modifications are warranted and has prepared the attached Amended ITS for the Project’s Opinion. The Amended ITS addresses errors and inconsistencies found in the issued ITS and more accurately aligns the Opinion’s RPMs and T&Cs with the Port of Portland’s existing operations and maintenance procedures for stormwater facilities.

The only changes to the ITS are corrections that do not implicate the reinitiation triggers for section 7 consultation under the ESA, and the original analysis remains in effect, including its effective date. The attached corrected ITS supersedes, in its entirety, the ITS of the issued Opinion.



Please contact Kate Wells, Assistant Regional Administrator at (503) 367-8047, or at Kathleen.Wells@noaa.gov, if you have any questions concerning this transmission, or if you require additional information.

Sincerely,



Kathleen Wells
Assistant Regional Administrator
Oregon Washington Coastal Office

cc: Cindy Callahan, DOT
Ilon Logan, FAA
Maureen Minister, Port of Portland
Michelle Hollis, Port of Portland
Nick Atwell, Port of Portland

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 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 because some individuals of salmon, steelhead, green sturgeon, eulachon, and sunflower sea stars in the action area will be harmed due to adverse effects of the proposed actions that will include reduced water quality due to increased impervious surfaces and stormwater inputs of heavy metals, suspended solids, petroleum hydrocarbons, excess nutrients, pesticides, 6PPD-quinone, and other trace pollutants. This effect on the water quality, which is an essential physical biological feature of designated critical habitat of affected species for which critical habitat has been designated, can significantly impair essential breeding, spawning, rearing, migrating, feeding, or sheltering behavioral patterns such that fish will be injured or killed from the increase in pollution or will experience a reduction in fitness, growth or survival.

Accurately quantifying the number of fish, or sea stars harmed by these pathways is not possible because injury and death of individuals in the action area is a function of habitat quality, competition, predation, and the interaction of processes that influence genetic, population, and environmental characteristics. These biotic and environmental processes are highly variable and interact in ways that may be random or directional, and may operate across broad temporal and spatial scales. The precise distribution and abundance of fish within the action area, at the time of the action are not a simple function of the quantity, quality, or availability of predictable habitat resources within that area. Rather, the distribution and abundance of fish also show wide, random variations due to biological and environmental processes operating at much larger demographic and regional scales. Furthermore, there are no methods available to monitor this death and injury because it will occur throughout the year and after the proposed action has been completed. Therefore it is not practical or realistic to attempt to identify and monitor the number of fish or sea stars taken by the pathways described.

Similarly, the distribution of stormwater pollutants also varies widely within the receiving waterbodies, as a function of surrounding land use, pre-rainfall conditions, rainfall intensity and duration, and mixing from other drainage areas. Stormwater runoff events are often relatively brief,

especially in urban streams, so that large inputs of runoff and pollutants can occur and dissipate within a few hours.

In cases such as this, where quantifying a number of fish and sea stars is not possible, we use take surrogates or take indicators that rationally reflect the incidental take caused by the proposed action. Here, the best available indicator for the extent of take is the following combination of stormwater facility inspection, maintenance, and recording actions, because those variables will determine whether the proposed stormwater treatment system continues to reduce the concentration of pollutants in stormwater runoff as designed, and thus reflect the amount of incidental take analyzed in the opinion. This indicator is appropriate for the proposed action because it has a rational connection to the release of stormwater pollutants that cause take of listed species.

1. All actions, whether implemented by FAA, or its non-federal permittee (PoP), shall construct, implement, or otherwise install the stormwater facilities/BMPs detailed in the Project's Biological Assessment.
2. FAA, or its non-federal permittee (PoP), shall monitor the function of installed stormwater facilities/BMPs to ensure their proper operation and conformation with established operations and maintenance procedures (O&M) for stormwater abatement, treatment, and detention/retention facilities at Portland International Airport (PDX) and Hillsboro International Airport (HIO).

If the stormwater system is not implemented, inspected and maintained (as described in #1 and #2, above) the extent of take surrogate for stormwater will be exceeded.

The amount or extent of take in this ITS serves two functions: (1) it identifies the quantity of incidental take exempted for the action agency and applicant. In the case of a species without 4(d) protective regulations, such as the sunflower sea star or eulachon, the exemption is not needed because incidental take is not prohibited; and (2) it serves as a check on NMFS's jeopardy analysis. The amount or extent of take identifies the anticipated level of take NMFS considered in reaching its conclusion that the proposed action will not jeopardize the continued existence of a listed species. If this level of take is exceeded, reinitiation of consultation is triggered to ensure that NMFS's no-jeopardy conclusion remains valid.

Effect of the Take

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

Reasonable and Prudent Measures

“Reasonable and prudent measures” (RPMs) refer to those actions the Director considers necessary or appropriate to minimize the impact of the incidental take on the species (50 CFR 402.02). RPMs are non-discretionary measures to minimize the impact of the incidental take on the species (50 CFR 402.02) and may include measures implemented inside or outside of the action area that avoid, reduce, or offset the impact of incidental take (50 CFR 402.14(i)(2)). The

following measures are necessary or appropriate to minimize the extent of incidental take of listed species from the proposed action:

1. The FAA will minimize take to species assessed in this Opinion from exposure to stormwater pollutants associated with new and reconstructed impervious surfaces by ensuring that stormwater runoff produced by impervious surfaces of the PDX and HIO airports that are modified through the proposed actions are treated and discharge(s) managed with stormwater facilities/BMPs that are designed, constructed, operated, and maintained using the best available information on low impact development (LID) principals, and best management practices for stormwater treatment, flow control, and discharge; and
2. The FAA will minimize take by ensuring the completion of a monitoring and reporting program to confirm that the take exemption of the proposed action is not exceeded, and that the terms and conditions in this incidental take statement are effective in minimizing incidental take.

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 (T&Cs). The T&Cs described below are non-discretionary, and FAA, or its permittees, must comply with them in order to implement the RPMs (50 CFR 402.14). The FAA, or its permittee, 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 FAA does not comply with the following T&Cs, protective coverage for the proposed action would likely lapse.

1. The following terms and conditions implement RPM #1 (stormwater management):
 - a. The project developer will be responsible for insuring installation, function and maintenance of the proposed stormwater facilities/BMPs during construction, as described in the proposed action.
 - b. Following construction, the Port of Portland or any successor in interest to the project developer will assume responsibility for maintenance of all of the system components per the manufacturers recommendations and/or as described in the BA and in the Port of Portland's stormwater management plans for the PDX and HIO airports.
 - c. The Port will carry out the stormwater operation and maintenance plans as described in the BA including all provisions pertaining to: identification of responsible parties, inspection and maintenance schedule, and inspection and maintenance procedures. The Port will also keep and preserve a log of all maintenance activities.
2. The following terms and conditions implement RPM #2 (monitoring and reporting):
 - a. The FAA shall submit the following reports to NMFS:

- i. A project completion report within 60-days of completing construction¹ for each of the five proposed activities, including:
 1. Project name (include the consultation tracking number WCRO-2024-00837);
 2. FAA contact person;
 3. Port of Portland contact person
 4. Construction completion date.
- ii. Three (3) annual reports summarizing each stormwater facility/BMP O&M for the three, consecutive, full years following construction¹, including the following information:
 1. Stormwater facility/BMP identifying information:
 - a. Identifying name or number;
 - b. Location; and, a
 - c. Diagram or schematic of facility/BMP depicting its location relative to adjacent infrastructure.
 2. Stormwater facility/BMP monitoring logs with:
 - a. The name of the employee or contractor responsible for all inspections;
 - b. The date of each regular inspection, as specified in the airport's O&M plan for stormwater facilities/BMPs;
 - c. The date of any additional inspection made in response to triggering events (such as storm events with greater than or equal to 1 inch of rain during a 24-hour period, spills or foreign materials entering a stormwater facility/BMP with the potential to impair its function or effectiveness);
 - d. A description of any structural repairs (such as facility cleanout – sediment and oil removal and disposal – vegetation management, erosion control, ponding water, pests, trash or debris removal) to return the facility/BMP to its designed functional condition; and
 - e. An estimate of the percent cover of healthy vegetation in those stormwater facilities/BMPs that rely on vegetated elements to achieve treatment or flow control functions. For those stormwater facilities/BMPs that have less than 80% cover of desirable vegetation, include a description of any corrective action taken to attain the 80% cover requirement.
- iii. Each of the above reports must be submitted to:
Projectreports.wcr@noaa.gov
Attn: WCRO-2024-00837

¹ Construction completion is identified as the date on which all stormwater facility/BMP components have been completed such that it can enter into service at its designed functionality. This includes vegetation installation, where applicable.