



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
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Refer to NMFS No: WCRO-2023-01663

William D. Abadie
Chief, Regulatory Branch
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P.O. Box 2946
Portland, Oregon 97208-2946

Re: Reinitiation of Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson–Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the St. Hilaire Brothers Irrigation Pump Station Permit Modification (Corps No. NWP-2017-414, Modification #1), Umatilla County, Oregon (Lat/Long: 45°55'46"N 119°05'57"W).

Dear Mr. Abadie:

This letter responds to your July 24, 2023 request for reinitiation 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 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.

NMFS also reviewed the likely effects of the proposed action on essential fish habitat (EFH), pursuant to section 305(b) of the Magnuson–Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(b)) and concluded that the action would adversely affect the EFH of Pacific coast salmon. Therefore, we have included the results of that review in this document.

We have reviewed the US Army Corps of Engineers (Corps') original February 1, 2018 consultation request and biological assessment (BA) for the St. Hilaire Brothers pump station expansion; our March 6, 2018, biological opinion (NMFS 2018, Tracking No. WCR-2018-8908) on the original action; and the Corps' July 24, 2023, reinitiation request and updated BA (Campbell 2023) for the St. Hilaire Brothers proposed modifications to the original pump station expansion project. Where relevant, we have adopted the information and analyses you and the applicant have provided and/or referenced but only after our independent, science-based evaluation confirmed they meet our regulatory and scientific standards. From the January 2018 BA, we adopt by reference the following sections: (1) Chapter 1, portions of sections 1.4 (description of the proposed action), 1.5 (scope of the proposed action), and 1.7 (proposed conservation measures) that pertain specifically to the St. Hilaire Brothers' pump station



expansion¹; and Chapter 4 (effects of the action). From the July 20, 2023, updated BA for the proposed modifications, we adopt by reference the modified proposed action (pages 1 and 2), and (2) the effects of the modified action (pages 2 through 5).

Updates to the regulations governing interagency consultation (50 CFR part 402) were effective on May 6, 2024 (89 FR 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 ESA (89 FR 24268; 84 FR 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.

In 2018, the Corps issued a 5-year permit (NWP-2017-414) for the St. Hilaire Brothers and East Improvement District (EID) Columbia River Pump Station and Intake Project on the Columbia River at about river mile (RM) 301.7, in Umatilla County near Hermiston, Oregon. This included the expansion of the existing St. Hilaire Brothers pump station; construction of an adjacent, new irrigation pump station for EID to consolidate the transfer of existing and new mitigated irrigation water rights to a centralized point of diversion; and removal of approximately 6,450 square feet (0.15 acre) of asphalt and concrete debris from below the ordinary high-water (OHW) line of the Columbia River. NMFS completed a biological opinion with the Corps for this action on March 6, 2018 (NMFS 2018). Construction of the new, adjacent EID pump station and the removal of asphalt and concrete has been completed, but the proposed expansion of the St Hilaire Brothers existing pump station was delayed, and the Corps permit expired before it could be completed. The St Hilaire Brothers have requested a 5-year extension and modification to Corps permit NWP-2017-414.

As described in the Corps' July 24, 2023 letter and associated BA, the Corps proposes to reauthorize permit NWP-2017-414 to allow St. Hilaire Brothers to complete the pump station expansion as originally proposed with the modifications described in the updated BA. As previously noted, the original proposed action (pump station expansion) and proposed modifications are incorporated by reference. For purposes of reinitiation of ESA section 7 consultation, both proposed actions are combined into one action and summarized below.

Proposed Action Summary

- Expand the St. Hilaire Brothers' existing pump station deck roughly 15 feet to the east to accommodate three new pumps and a new 42-inch diameter discharge pipe which allow for an additional 38.6 cubic feet per second (cfs) withdrawal capacity.
- Install, with a vibratory hammer, 26 steel H-piles to support the decking, three 60-inch diameter by 7.75-foot-long sleeve pipe to protect the new pumps, and two 12.75-inch diameter steel piles to support the new 42-inch diameter discharge pipe.

¹ Construction of the adjacent East Improvement District pump station and removal of the asphalt and concrete debris were completed under the Corps' original 5-year permit and addressed in NMFS' March 6, 2018, biological opinion. Therefore, reinitiation on that portion of the original action is not required.

- Remove roughly 360 cubic yards of accumulated sediment from under the existing St. Hilaire pump station, below the OHW line, with a suction dredge and a floating pipeline for discharging into the actively flowing river channel about 275 feet north of the existing pump station.
- Fill approximately 365 cubic yards of material placed below the OHW line and consisting of the excavated sediment and steel H-piles.

The pump station deck would cover approximately 751 square feet over the ordinary high-water line and consist of 544 square feet of concrete and 207 square feet of grating. All the in-water work, including pile driving, in-water pump and pipe connections, and dredging would be accomplished during the in-water work period of December 1 through February 28.

BIOLOGICAL OPINION

We examined the status of each species that could 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. These species are the same as in NMFS 2018 and include: Upper Columbia River (UCR) spring-run Chinook salmon, UCR steelhead, Middle Columbia River (MCR) steelhead, Snake River (SR) spring/summer-run Chinook salmon, SR fall-run Chinook salmon, and Snake River Basin (SRB) steelhead. We also examined the condition of critical habitat throughout the designated area and discuss the function of the physical or biological features essential to the conservation of the species that create the conservation value of that habitat. The most updated status of the species and critical habitat summary information as well as the relevant Recovery Plans for these species can be found at: <https://www.fisheries.noaa.gov/west-coast/consultations/esa-section-7-consultations-west-coast#columbia-river-middle-and-upper>. In summary, the status of the listed species addressed in this opinion were upheld in our most recent status review updates. Our conclusions regarding the effects of the action on SR sockeye salmon is presented below under the heading: NLAA determinations.

"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). For the St. Hilaire Brothers pump station, the action area is the in-water construction footprint including a radius of 500 feet into the Columbia River to account for the minor, temporary turbidity effects.

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 environmental baseline is highly degraded, primarily as a result of operation of the Columbia River hydropower system that has transformed the action area from a free-flowing river into a reservoir with warm, slow-moving water and an abundance of native and non-native predators of juvenile salmonids. Water management activities have reduced flows in the Columbia River, measured at Bonneville Dam,

from April through July. On average, this reduction ranges from 7,000 cubic feet per second (cfs) in March to 171,000 cfs in June (NMFS 2020). Additionally, the Columbia River dams and hydrosystem operations have decreased the delivery of sediment to the lower river and estuary by more than 50 percent (as measured at Vancouver, Washington). The overall reduction in sediment, combined with bank armoring and in-water structures that focus flow in the navigation channel, has reduced the availability of shallow water habitat along the margins of the Columbia River (NMFS 2020).

Over the course of the year, the action area supports both adult and juvenile migration of all populations of UCR spring-run Chinook salmon, UCR steelhead, MCR steelhead, SR spring/summer-run Chinook salmon, SR fall-run Chinook salmon, SRB steelhead and SR sockeye salmon. The action area also supports juvenile rearing for these same populations except SR sockeye salmon smolts, which migrate quickly through the action area. However, only a small number of adult UCR, MCR, and SRB steelhead may overwinter in the action area during the winter in-water work period (Dec. 1 – Feb. 28) and a few individual, late migrating, adult SR fall-run Chinook salmon may be in the action area during the early part of the in-water work period. A few individuals of juvenile UCR, MCR, and SRB steelhead may rear in the action area during the in-water work period. Also, a small number of juvenile SR fall-run Chinook salmon that do not fully outmigrate could overwinter in the action area.

The action area provides physical and biological features (PBFs) of critical habitat for rearing and migration, though these persist in a largely degraded condition. The ability of critical habitat in the action area to support recovery of these listed species is primarily limited by the existence and operations of McNary Dam and dams upstream of the action area that have dramatically altered hydrology of the Columbia River and changed the basic nature of the action area from a river to a series of reservoirs. Predation on juveniles and poor water quality, particularly high temperature, also impede the ability of the critical habitat in the action area to support recovery.

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.

An assessment of the effects of the proposed action to species are included in the original Biological Assessment (BA) (Corps 2018), pages 56 through 61, and the updated BA (Campbell 2023), pages 2 through 5, and these sections are adopted here (50 CFR 402.14(h)(3)). NMFS has evaluated these sections and, after our independent, science-based evaluation, determined it meets our regulatory and scientific standards.

The Corps found that effects to species and critical habitat from the proposed action may include:

- Entrainment of rearing juveniles in the suction dredge, resulting in injury or death.
Increased, localized turbidity from pile installation and dredging, resulting in minor,

temporary and intermittent behavioral changes to adults and juveniles. Increased turbidity will also have a minor, temporary and intermittent negative effect to water quality.

- Accidental release of a very small amount of toxic materials in the water, which will have a minor, temporary negative effect on water quality but will not result in injurious effects to adults or juveniles due to the proposed containment measures and spill response.
- New pile placement will alter substrates, resulting in a minor, permanent loss of rearing habitat for juveniles. This loss of habitat may also permanently displace juveniles, resulting in their increased risk of predation.
- Dredging will alter substrates, resulting in a minor, temporary loss of rearing habitat. This loss of habitat may also temporarily displace juveniles, resulting in their increased risk of predation.
- Increased noise during pile driving, resulting in a minor, temporary, and intermittent behavioral effect to juveniles and adults. The installation of steel piles and sleeve pipe with a vibratory hammer is not expected to cause injury or mortality.
- Increased in-water and overwater structures, resulting in an increased risk of predation to juveniles. These structures can attract fishes that prey on juvenile salmonids.
- The additional 38.6 cfs of pumping capability is a transfer of existing surface withdrawal water rights and is not a new withdrawal.

We supplement the BAs (Corps 2018 and Campbell 2023) with the following effects to the physical and biological features (PBFs) of critical habitat:

- The use of a suction dredge will have a minor, temporary negative effect on the safe passage PBF of critical habitat due to the risk of entrainment of juveniles.
- The addition of in-water and overwater structures will have a minor, but permanent, negative effect on safe passage PBFs of critical habitat due to the potential for increased predation on juveniles.

“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 NMFS (2018) and we assume that future State and private actions and land uses will continue within the action area at roughly their current rate.

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 environmental baseline is highly degraded, primarily as a result of operation of the Columbia River hydropower system that has transformed the action area from a free-flowing river into a reservoir with warm, slow-moving water and an abundance of native and non-native predators of juvenile salmonids. Water management activities have reduced flows in the Columbia River, measured at Bonneville Dam, from April through July. On average, this reduction ranges from 7,000 cubic feet per second (cfs) in March to 171,000 cfs in June (NMFS 2020). Additionally, the Columbia River dams and hydrosystem operations have decreased the delivery of sediment to the lower river and estuary by more than 50 percent (as measured at Vancouver, Washington). The overall reduction in sediment, combined with bank armoring and in-water structures that focus flow in the navigation channel, has reduced the availability of shallow water habitat along the margins of the Columbia River (NMFS 2020).

As stated above, the existing status of each evolutionarily significant unit (ESU) and distinct population segment (DPS) were upheld in the most recent status review updates. UCR spring-run Chinook salmon and SR sockeye salmon remain endangered and SR spring/summer and fall Chinook salmon and UCR and MCR steelhead remain threatened under the ESA. This is largely due to a combination of effects in their natal systems (water diversions, riparian habitat loss, high stream temperatures, embedded gravels, etc.) outside the action area and of the existence and operation of several Columbia River dams impairing habitat in the action area.

During the winter in-water work period, we expect a few overwintering adult UCR, MCR, and SRB steelhead, a few late-migrating adult SR fall-run Chinook salmon, a few rearing juvenile UCR, MCR, and SRB steelhead, and a few juvenile SR fall-run Chinook salmon that do not fully outmigrate to be in the action area. Over the course of the year, the action area supports both adult migration and juvenile rearing and migration of UCR spring-run Chinook salmon, UCR steelhead, MCR steelhead, SR spring/summer-run Chinook salmon, SR fall-run Chinook salmon, and SRB steelhead. These individuals could be from any population of these ESUs/DPSs.

The proposed action may kill or injure a small number of juveniles, if present, via entrainment during suction dredging operations. Increased turbidity during pile installation and dredging may cause temporary and intermittent behavioral changes to adults and juveniles; these minor behavioral changes are not expected to interrupt normal migration or rearing activities. Due to the proposed containment and spill response measures, any accidental chemical spills will be minor and are not expected to result in injurious effects to adults or juveniles. Dredging activities may displace and temporarily increase juvenile susceptibility to predation, resulting in the death of a small number of individuals during construction. The placement of new piles may permanently displace and increase juvenile susceptibility to predation, resulting in the death of a small number of individuals over the life of the structure. Noise from pile driving will be minor, temporary and intermittent and may cause temporary and intermittent behavioral changes to adults and juveniles; these minor behavioral changes are not expected to interrupt normal migration or rearing activities. The permanent placement of in-water and overwater structures will permanently increase juvenile susceptibility to predation, resulting in the death of a small number of individuals over the life of the structure. The one-time loss of a very small number of juveniles during construction coupled with the annual loss of a very small number of juveniles over the life of the structure will not appreciably reduce the survival and recovery of the listed species addressed in this opinion.

While degraded, critical habitat is important in the action area. The proposed action will temporarily reduce the function of critical habitat with respect to the freshwater rearing habitat and water quality PBFs during construction via increased turbidity and a temporary (i.e., a few months) loss of forage habitat due to dredging. In the long term, the function of critical habitat with respect to the freshwater rearing and safe passage PBFs will be reduced very slightly from the increase of permanent fill (i.e., new permanent piles) and overwater structures. These minor, negative effects will only occur within the relatively small action area, but will not degrade the ability of critical habitat to support recovery of the listed species. Therefore, the proposed action will not affect the conservation value of critical habitat at the scale of the designation.

Cumulative effects are largely a result of ongoing climate change and are expected to cause a slight degradation of habitat conditions in the action area over the coming decades.

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, and cumulative effects, it is NMFS' biological opinion that the proposed action is not likely to jeopardize the continued existence of UCR spring-run Chinook salmon, UCR steelhead, MCR steelhead, SR spring/summer-run Chinook salmon, SR fall-run Chinook salmon, and SRB 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 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 this opinion, NMFS determined that incidental take of a few juveniles from all populations of UCR spring-run Chinook salmon, UCR steelhead, MCR steelhead, SR spring/summer-run Chinook salmon, SR fall-run Chinook salmon, and SRB steelhead is reasonably certain to occur as follows:

1. Injury or death from entrainment during suction dredge operations.
2. An increased risk of predation due to displacement during pile placement and dredge operations.
3. An increased risk of predation due to the permanent placement of in-water and overwater structures.

Estimating the specific number of juveniles injured, killed, or harmed by habitat-modifying activities is not possible because of the wide range of responses that individual juveniles may have and the numbers of predators in the action area. Therefore, as a surrogate, NMFS quantifies take based on the extent of habitat modified. Specifically, the extent of the modified habitat with the added fill of 365 cubic yards (0.041 acre) and removal of 360 cubic yards (0.041 acre). Additionally, 751 square feet of overwater shadow will be cast on aquatic habitat covered by the proposed added decking, and finally the addition of 10 steel piles. Although these surrogates could be considered coextensive with the proposed action, monitoring and reporting requirements will provide opportunities to check throughout the course of the proposed action whether the surrogates are exceeded. For this reason, these surrogates' function as effective reinitiation triggers.

Effect of 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” 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). The following RPMs are modified from NMFS (2018) to address the updated proposed action.

The Corps shall:

1. Minimize take from construction activities.
2. Minimize take from reduction in benthic habitat.
3. Minimize take from new in-water and overwater structures.
4. Track and monitor the project to ensure the applicant meets the requirements of this incidental take statement and that the 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 number 1 (construction activities), the Corps shall ensure that:
 - a. The applicant conducts all work below OHW within the winter in-water work window of December 1 through February 28.
 - b. Installation of all piles, including the additional 10 steel piles, will be accomplished using a vibratory hammer.
 - c. All state and federal permits are followed during the project implementation and after the project is completed.

2. To implement RPM number 2 (benthic habitat), the Corps shall ensure that:
 - a. The amount of additional fill material occurring below OHW shall not exceed an area of 0.041 acre.
 - b. The amount of additional material removed below OHW shall not exceed 0.041 acre.

3. To implement RPM number 3 (in-water and over-water structures), the Corps shall ensure that the permit requires that the overwater structures provide at least 60 percent light penetration.

4. To implement RPM number 4 (monitoring activities), the Corps shall ensure that:
 - a. The applicant tracks and monitors construction activities to ensure that the conservation measures are meeting the objective of minimizing take.
 - b. Monitoring shall be conducted by the permittee and include daily visual survey for fish in the nearshore area inside the in-water work area.
 - c. The applicant submits a completion of project report to NMFS 2 months after project completion. The applicant shall report all monitoring items to include, at a minimum, the following:
 - i. Size and maximum surface area that is covered by structures.
 - ii. Piling: number, size and type of piles installed.
 - iii. Piling installation: provide a log of the dates, start and stop time, and total duration of all vibratory pile installations.
 - d. All reports should include the NMFS tracking number WCRO-2023-01663 and be sent to: crbo.consultationrequest.wcr@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).

The following recommendations are discretionary measures that NMFS believes are consistent with this obligation and therefore should be carried out by the Corps:

- Follow recommendations by the Independent Scientific Advisory Board (2007) to plan now for future climate conditions by implementing protective tributary habitat measures. Implement measures to protect or restore riparian buffers, wetlands, and floodplains; remove stream barriers; and ensure late summer and fall tributary stream flows.
- Support ongoing regional discussions with sovereigns and stakeholders to develop and implement future collaborative conservation approaches to rebuild listed fish populations in the Columbia River Basin.
- Support the various ongoing research, monitoring, and evaluation programs occurring in the Columbia and Snake River Basins. The information derived from these programs facilitates effective adaptive management through establishing a better understanding of the effects of the ongoing operation, maintenance, and management of the 14 federal dam and reservoir projects on the Columbia and Snake Rivers.

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.”

NLAA DETERMINATION

We reviewed the Corps’ original February 1, 2018, consultation request and BA for the St. Hilaire Brothers pump station expansion; our March 6, 2018, biological opinion (NMFS 2018, Tracking No. WCR-2018-8908) on the original action; and the Corps’ July 24, 2023, reinitiation request and updated BA (Campbell 2023) for the St. Hilaire Brothers proposed modifications to the original pump station expansion project. Based on our knowledge, expertise, and your action agency’s materials, we concur with the action agency’s conclusions that the proposed action is not likely to adversely affect the following NMFS ESA-listed species and/or designated critical habitat: SR sockeye salmon and its designated critical habitat.

Snake River Sockeye Salmon

This ESU includes all anadromous and residual sockeye salmon from the Snake River Basin, Idaho, and artificially propagated sockeye salmon from the Redfish Lake captive propagation program. This species continues to be at extremely high risk across all four basic risk measures (abundance, productivity, spatial structure and diversity) and remains at high risk for extinction (NMFS 2022). The most updated status of the species and critical habitat summary information

can be found at: <https://www.fisheries.noaa.gov/west-coast/consultations/esa-section-7-consultations-west-coast#columbia-river-middle-and-upper>.

The primary risks to Snake River sockeye salmon from the proposed action include project construction, pile driving, and increased turbidity. However, NMFS does not expect SR sockeye salmon to be present in this off-channel area during project construction or use this area for rearing during their outmigration. Because sockeye salmon will not likely be present in the action area during project implementation, effects to sockeye or their critical habitat from the proposed action is extremely unlikely, or discountable.

Essential Fish Habitat Response

Thank you also for your request for essential fish habitat (EFH) consultation. NMFS reviewed the proposed action for potential effects on EFH pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation. We have concluded that the action would adversely affect EFH designated under the Pacific Salmon Fisheries Management Plan and six conservation recommendations are provided below.

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

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 life history stages of two federally managed fish species within the Pacific Salmon Fishery Management Plan (PFMC 2014): Chinook salmon and coho salmon. Freshwater EFH for Pacific Coast Chinook and coho salmon consists of four major components: 1) spawning and incubation, 2) juvenile rearing, 3) juvenile migration corridors, and 4) adult migration corridors and holding habitat, and overall, can include any habitat currently or historically occupied within Washington, Oregon, and Idaho. Detailed

descriptions and identifications of EFH for salmon are found in Appendix A of Amendment 18 of the Pacific Coast Salmon Plan (PFMC 2014).

Adverse Effects on EFH

NMFS determined the proposed action would adversely affect EFH of Pacific Coast Chinook and coho salmon as follows:

1. The permanent alteration of the near-shore environment by placement of in-water and overwater structures may adversely affect juvenile rearing and migration habitat.
2. Temporary reduction in prey availability from removal and disturbance of benthic habitat during dredging may adversely affect juvenile rearing habitat.
3. Permanent shading of in-water habitat from new overwater structures will adversely affect juvenile rearing migration habitat and adult migration and holding habitat.
4. Temporary reduction in established substrate composition from removal and disturbance of native substrates during dredging and pile placement will adversely affect juvenile rearing habitat.
5. Temporary degradation of water quality (i.e., turbidity, sedimentation, chemical spills) from construction activities will adversely affect juvenile rearing and migration habitat and adult migration and holding habitat.

EFH Conservation Recommendations

NMFS determined that the following conservation recommendations are necessary to avoid, minimize, mitigate, or otherwise offset the adverse effects of the proposed action on EFH:

1. All state and federal permits should be followed during the project implementation and after the project is completed. This will avoid and minimize all adverse effects listed above.
2. The area of additional fill from pile placement should not exceed 0.041 acre. This will minimize adverse effects #1 and #4.
3. The area of additional substrate removal should not exceed 0.041 acre. This will minimize adverse effects #2 and #4.
4. The overwater structures should provide at least 60 percent light penetration and waterproof lightening equipment under portions of the new decking. This will minimize adverse effects #1 and #3.
5. A sediment turbidity curtain should be installed to minimize downstream suspension of sediments and should remain in place until turbidity inside the isolated work area is visually the same as outside the isolated work area. This will minimize adverse effect #5.

Statutory Response Requirement

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)).

Supplemental Consultation

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 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 NMFS' Columbia Basin Branch.

Please direct questions regarding this letter to Scott Carlon at 971-322-7436 or email scott.carlon@noaa.gov.

Sincerely,



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

cc: Danielle Erb, Corps – Portland, Oregon
Eric Campbell, Campbell Environmental, LLC – Wilsonville, Oregon

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