



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
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Refer to NMFS No: WCRO-2024-02955

Ralph J. Rizzo
U.S. Department of Transportation
Federal Highway Administration, Division Administrator
Suite 501 Evergreen Plaza
711 South Capitol Way
Olympia, Washington 98501-1284

Re: Endangered Species Act Section 7(a)(2) Condensed Biological Opinion for the Five Mile Bridge Project (HUC 1707010202; 46.085751, -118.228320), Walla Walla County, Washington

Dear Mr. Rizzo:

This letter responds to your November 22, 2024, request for initiation of consultation with the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the subject action. Your request, including information submitted after that request, qualified for our expedited review and analysis because it met our screening criteria and contained all required information on, and analysis of, your proposed action and its potential effects to listed species and designated critical habitat.

The Federal Highway Administration (FHWA) submitted a consultation initiation package, including a Biological Assessment (BA) prepared by Anderson Perry & Associates, Inc. (AP) to NMFS on November 22, 2024. We reviewed the initiation package and sent an email to the FHWA on January 07, 2025, requesting additional information on fish passage in the temporary bypass channel, the planting plan, and stormwater management. The FHWA provided the requested information on January 23 and 28, 2025. We initiated consultation on January 28, 2025.

We reviewed the FHWA's consultation request and initiation package. Where relevant, we have adopted the information and analyses you have provided and/or referenced, but only after our independent science-based evaluation confirmed they meet our regulatory and scientific standards. We adopt by reference the following sections of the BA (FHWA 2024): Section 1.3, Project Description (pp 3-10); Section 1.4, Impact Avoidance and Minimization Measures (pp 10-12); Section 1.5, Action Area (pp 12-16); Section 2.0, Status of Species and Critical Habitat in the Action Area (pp 17-18); Section 3.0, Environmental Setting (pp. 21-26); Section 4.0, Analysis of Effects (pp 26-35); Section 5.0, Conclusions and Effects Determinations (pp. 35-36); Appendix A, Preliminary Design Plans (pp 48-59); Appendix C, Stormwater Memo (pp 69-72); and Appendix E, Environmental Baseline Data for Species and Habitats (pp 76-80).

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 (ITS) would not have been any different under the 2019 regulations or pre-2019 regulations.

As described in Section 1.3 (Project Description) of the BA, and additional submitted information, the FHWA proposes to replace the existing bridge over Mill Creek, at Five Mile Road (approximately 3.5 miles west of Walla Walla, Washington), with a new, wider full-span bridge structure placed on new abutments outside of the active Mill Creek channel. Project construction includes:

- Work area isolation and fish salvage;
- A temporary bypass channel conveying up to 50 cubic feet per second (cfs);
- Removal of 44 trees;
- Removal of the existing bridge, abutments, and piers;
- Construction of the new bridge, roadway, culvert crossing, and abutments;
- Installation of erosion control rock covered with native backfill in an apron around each abutment;
- Stormwater management;
- Impact avoidance and minimization measures; and
- Site restoration, including planting of native riparian species.

Project construction will take approximately 7 months, June to December. In-water work and work below the ordinary high-water mark (OHWM) will be conducted during Mill Creek's in-water work window, July 15-September 15, which corresponds with seasonal low-flows. We considered, under the ESA, whether the proposed action would cause any other activities and determined that it would not.

BIOLOGICAL OPINION

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

Rangewide Status of the Species and Critical Habitat

Section 2.0 (Status of Species and Critical Habitat in the Action Area, pp 17-18), Section 3.0 (Environmental Setting, pp 21-26), and Appendix E (Environmental Baseline Data for Species and Habitats) of the BA (FHWA 2024) include descriptions of the species and critical habitat in

the action area, which are adopted here. NMFS' status of the species summary for Middle Columbia River (MCR) steelhead, the species that may be affected by the proposed action, is available on the NOAA Fisheries website at [MCR Steelhead Update 2024](#), and incorporated by reference. NMFS also incorporates by reference the 2022 5-Year Review: Summary & Evaluation of Middle Columbia River Steelhead (NMFS 2022).

Most steelhead spawning in the Walla Walla Basin occurs above Nursery Bridge Dam (river mile [RM] 46.8), with less than 10 percent estimated to occur in Mill Creek. Mill Creek is approximately 37 miles long and the lower 12 miles (forebay of the Diversion Dam and below) is highly degraded, with habitat quality ranging from marginally suitable to completely unsuitable for spawning or rearing. Upstream of the Diversion Dam to the City of Walla Walla water intake (RM 25.2) habitat is of marginal quality because of sedimentation and temperature problems. Above the municipal water intake there is good to high quality steelhead habitat, with very good quality habitat in the headwaters (NPCC 2004). Most spawning and rearing in Mill Creek occur above the City of Walla Walla intake.

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 on page 16 in Section 1.5.2 of the BA, which is adopted here. As described in the BA, the action area includes the Mill Creek channel from 50 feet upstream to 300 feet downstream of the Five Mile Bridge, which is the extent of sediment plumes and sedimentation effects. The action area also includes all staging and access areas within the work limits of disturbance along Mill Creek, which encompasses all areas of vegetation clearing and planting.

Environmental Baseline

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 impacts to listed species or designated critical habitat from federal agency activities or existing federal 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, and species and habitat use, are described in Sections 3.0 and 2.0, and Appendix D of the BA (FHWA 2024), which are adopted here. The action area includes Mill Creek and riparian habitat near the Five Mile Bridge, approximately 12.5 miles upstream from the confluence of Mill Creek and the Walla Walla River. The riparian corridor is approximately 150 feet wide along the south bank of Mill Creek, and between 75-100 feet wide along the north bank. Riparian vegetation along both banks of Mill Creek abuts agricultural land. Riparian vegetation includes a mixed stand of trees, shrubs, and herbaceous vegetation. The existing Five

Mile Bridge and pier configuration constricts the flow of Mill Creek, preventing the bridge from effectively conveying flood flows. Adjacent agriculture contributes to the high levels of sediment in the area. During the in-water work window, flows will be approximately 50 cfs.

Mill Creek in the action area is designated critical habitat, and supports spawning, rearing, and migration of fish from the Walla Walla population of MCR steelhead. The Walla Walla population is at moderate risk for abundance/productivity and spatial structure/diversity, and NMFS considers it to be maintained. Recovery criteria requires either the Walla Walla or Touchet population to meet viability criteria (Ford 2022). Under current conditions, the Walla Walla population is much closer to reaching viable status than the Touchet River population. The action area provides physical and biological features (PBFs) of critical habitat for spawning, rearing, and migration, though the ability of critical habitat in the action area to support recovery of MCR steelhead is limited by sedimentation and temperature.

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.

Juvenile MCR steelhead migration downstream can occur year-round, with most occurring April through May, with another peak in November. Juvenile steelhead rearing in the action area occurs year-round, but most rearing occurs much higher in the basin. Most adult steelhead migration occurs January-June, peaking in March and April (Mahoney et al. 2011, 2012). Steelhead spawning in the action area occurs April through June, with incubation occurring through mid-July. Because the in-water work window is July 15-September 30, and avoids peak migration periods for juvenile and adult MCR steelhead, spawning and emergence is complete prior to July 15, and most spawning and rearing occurs in the upper basin. NMFS expects that a few juveniles and no adult MCR steelhead will be present in the action area during project construction.

Effects on Middle Columbia River Steelhead

An assessment of the effects of the proposed action is provided in Section 4.0 of the BA (FHWA 2024), and adopted here (50 CFR 402.14(h)(3)). The temporary and long-term effects of this proposed action on MCR steelhead, as identified by the FHWA and AP, in the BA are:

1. **Effects of fish handling on MCR steelhead** - Direct harm to juvenile MCR steelhead could result from fish salvage activities in 2,200 square feet, including mechanical injury and disease transmission during capture, holding, and release; injuries attributable to electrofishing, such as hemorrhage, spinal fracture, and mortality; and stress-related phenomena such as impaired reproductive success or lowered resistance to disease.

2. **Effect of sediment release on MCR steelhead** - Turbidity from increased suspended fine sediment may disrupt juvenile MCR steelhead feeding and territorial behavior and displace them from preferred feeding and resting areas. These effects are expected to be localized, extending from 50 feet upstream to 300 feet downstream, temporary, and of short duration (a few minutes to an hour).
3. **Effects of equipment and placement of construction material** - Work occurring below the OHWM, including work area isolation barrier installation and removal, could disturb, injure, or kill juvenile MCR steelhead through contact (or near-contact) with equipment or placement of construction material.
4. **Effects of isolating in-water work area** – Temporary in-water work area isolation that includes placement of 360 square feet of sandbag cofferdam/revetment below the OHWM will affect juvenile MCR steelhead by exclusion from nearshore refugia, disruption of normal feeding and territorial behaviors, and altered movements during migration. Upstream and downstream passage will be maintained by the bypass channel during project construction.

NMFS has evaluated the effects section in the BA and additional submitted information, and after our independent, science-based evaluation, determined that the additional information and analysis provided below is needed to complete our effects on MCR steelhead analysis.

Stormwater during project construction. During project construction, stormwater will be managed according to the Washington State Department of Ecology's 2019 Stormwater Management Manual for Eastern Washington (WDOE 2019) and the Washington State Department of Transportation's Temporary Erosion and Sediment Control Manual (WDOT 2019). A Stormwater Pollution Prevention Plan (SWPPP) will be prepared and implemented for the project. During construction, stormwater runoff will be detained behind isolation barriers. Based on the Best Management Practices (BMPs) for erosion control and stormwater management, we expect only infrequent and small amounts of stormwater will enter Mill Creek during the 7-months of project construction. Therefore, we do not expect stormwater to degrade water quality such that it impacts steelhead during project construction.

Stormwater post project construction/bridge use. Road traffic will continue to pose risks to water quality and ESA listed steelhead in Mille Creek after bridge construction. The road and bridge serve as access points for rural residents and farm properties, and the average daily traffic is 309 vehicles. As the population of Walla Walla continues to grow, we expect bridge use to increase, but remain relatively low due to its rural location. There will be a net increase of approximately 20,400 square feet (from 43,373 to 63,773 square feet) of impervious surfaces associated with construction of the new bridge. Stormwater runoff from roads (including bridges) conveys pollutants to surface water bodies. The main pollutants of concern to ESA-listed fish species and aquatic habitats are from vehicle sources (i.e., zinc, copper, 6PPD-q) and total suspended solids. Stormwater can also deliver other pollutants that accumulate on roadway surfaces (e.g., petroleum hydrocarbons, excess nutrients, and pesticides). Many stormwater runoff pollutants are persistent in the aquatic environment, travel long distances in solution or adsorbed onto suspended sediments, and may become remobilized or re-enter

solution as they move through the system, especially during high-flow events. These pollutants can be toxic to fish even at very low concentrations, ranging in effects from reduced growth, reproduction, and migratory success to direct mortality.

A combination of sheet flow off the roadway and bridge into ditches, drainage swales, and catch basins will be used to collect and infiltrate runoff from the new bridge and approach roads, in accordance with WDOT design specifications (WDOT 2019). Stormwater design details are provided in the Preliminary Design Plans in Appendix A and in the Stormwater Memo in Appendix C of the BA, and incorporated here by reference. The proposed stormwater treatment for the proposed action is consistent with the Washington State Department of Ecology's Stormwater Management for Eastern Washington (WDOE 2019). The new bridge will be curbed without holes and stormwater runoff will be directed to adjacent roadway shoulder swales. Although the new bridge and roadway will be slightly wider and contribute slightly more discharge, and a small increase in road use is likely, we expect roadway shoulder swales to provide adequate infiltration for the increased discharge. However, we recognize that stormwater treatment methods cannot completely eliminate discharges of pollutants to receiving water bodies. Therefore, we expect very small amounts of stormwater to enter Mill Creek over the life of the new structure. Because only very small amounts of stormwater will enter Mill Creek at a time, we do not expect any MCR steelhead to be adversely affected by degraded water quality from stormwater runoff at the replacement bridge and approach road.

Effects on Middle Columbia River Steelhead Critical Habitat

Potential effects to PBFs of critical habitat identified by the FHWA and AP are:

1. **Water Quality** - Project work below the OHWM has the potential to release and suspend sediment resulting in turbidity plumes lasting a few minutes to an hour and extending 50 feet upstream to 300 feet downstream.
2. **Water Quality** – Operation of equipment adjacent to and in Mill Creek has the potential to release toxic or harmful substances, causing localized, temporary, and short duration impacts to water quality.
3. **Substrate** – Fine sediment released by project-related in-water work may temporarily increase substrate embeddedness up to 300 feet downstream of the construction area, until mobilized during high winter and spring flows.
4. **Substrate** – Short term change to substrate at bridge pier and abutment removal sites, which will fill in quickly with native substrate.
5. **Forage** – In-water work activities may temporarily disrupt the benthic microfauna community, decrease prey availability, and decrease forage area. Herbaceous and woody vegetation clearing will potentially reduce terrestrial inputs to aquatic food webs.

6. **Natural Cover** - Herbaceous and woody vegetation clearing, including removal of 44 native and non-native trees, may result in short-term reductions of shading, low overhead cover, and habitat complexity until planted vegetation is fully established.
7. **Free of Artificial Obstruction** – Temporary in-water work area isolation will include placement of 360 square feet of sandbag cofferdam/revetments below the OHWM, which will temporarily preclude portions of Mill Creek from use by juvenile steelhead, and obstruct parts of the migration corridor. However, upstream, and downstream passage will be maintained through the temporary bypass channel.

NMFS has evaluated the effects section in the BA and additional submitted information, and after our independent, science-based evaluation, determined that the additional information and analysis provided below is needed to complete our effects on critical habitat analysis.

Substrate

Excavation and removal of midchannel piers and abutments below the OHWM (162 square feet) will result in a permanent benefit to 162 square feet of substrate once the excavated areas fill in with natural sediment. Therefore, NMFS expects a small, permanent beneficial effect to the substrate PBF from the removal of 162 square feet of in-channel piers and abutments.

Forage

The proposed action will have minor short-term effects on benthic invertebrates by crushing, covering, or dislodging them during installation and removal of work area isolation materials; dewatering; settling of suspended sediment below the work area; and the removal of up to 44 trees. Long term, we expect a minor beneficial effect on the forage PBF from removal of in-water piers and abutments (162 square feet), reseeding, and planting of native trees as they grow and mature.

Free of Artificial Obstruction

A permanent positive impact to the free of artificial obstruction PBF will occur from installation of a new channel spanning bridge that will eliminate two in-water piers and two abutments below the OHWM (162 square feet).

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 402.02 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.

The presence and continued use of Five Mile Road, and adjacent agriculture, are likely to continue to exert an influence on the quality of freshwater habitat in the action area. Additional effects to MCR steelhead are anticipated with population growth and urban development. NMFS assumes the population of Walla Walla will continue to grow for the foreseeable future, resulting in a small increase of road and bridge use. NMFS is not aware of any specific future non-Federal activities within the action area that would cause greater effects to MCR steelhead or their designated critical habitat than presently occur. Therefore, NMFS expects the cumulative effects of future State and private activities will continue to have a negative effect on ESA-listed MCR steelhead and their critical habitat.

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.

Species

Adults and juveniles from the Walla Walla population of MCR steelhead use the action area as a migration corridor. Adult steelhead spawn and may over-winter in the action area, and juveniles rear year-round in the action area. NMFS recently reaffirmed that MCR steelhead have not achieved viable status and are at a continuing risk of extinction. Major threats include, but are not limited to: climate change, regulation of the Columbia River, and impairment of tributary habitat. Middle Columbia River steelhead are listed as threatened under the ESA. The Walla Walla population is considered maintained, with moderate risk ratings for abundance/productivity and spatial structure/diversity. Recovery criteria requires either the Walla Walla or Touchet population to meet viability criteria (Ford 2022). Under current conditions, the Walla Walla population is much closer to reaching viable status than the Touchet River population. The cumulative effects of State and private actions within the action area are anticipated to continue to have negative effects on MCR steelhead.

The proposed action is expected to result in harm, harassment, injury, or death of juveniles from the Walla Walla population of MCR steelhead within the action area from:

- Injury and death of a few juveniles during fish salvage in 2,200 square feet due to stress and electrofishing.
- Behavioral changes of a few juveniles within 50 feet upstream and 300 feet downstream of turbidity generating activities due to intermittent increased turbidity lasting a few minutes to an hour. We expect that some juveniles will flee the areas of higher turbidity, which will increase their risk of predation.

- Behavioral changes, injury, and death of few juveniles during work area isolation of 2,200 square feet through contact with equipment and placement of 360 square feet of coffer dam/revetment materials.
- Behavioral changes of a few juveniles from placement of 360 square feet of coffer dam/revetment below the OHWM by excluding them from nearshore refugia, disruption of normal feeding and territorial behaviors, and altered movements during migration in 2,200 square feet.

NMFS has determined that the loss of a few juvenile steelhead from the Walla Walla population of MCR steelhead during project construction is not substantial enough to appreciably alter the abundance, productivity, spatial structure, or diversity of the Walla Walla population. It is NMFS' opinion that when the effects of the action and cumulative effects are added to the environmental baseline, and in light of the status of the species, the effects of the action will not cause reductions in reproduction, numbers, or distribution that would reasonably be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of MCR steelhead.

Critical Habitat

Critical habitat in the action area is degraded due to the existing road and bridge, and associated mid-channel piers and abutments below the OHWM; and adjacent land uses including agriculture. The cumulative effects of State and private actions within the action area are anticipated to continue to have negative effects on designated critical habitat for ESA-listed salmonids. We expect climate change to further impact designated critical habitat by increasing water temperatures and changing runoff timing.

The proposed action will temporarily reduce the function of critical habitat PBFs in the action area for:

- Water quality through intermittent increases in turbidity lasting a few minutes to an hour each from July 15-September 30 (78 days), and extending up to 50 feet above and 300 feet below turbidity generating activities;
- Water quality through chemical contamination from minor leaks and spills of petroleum-based fluids (not more than ounces) from operation of heavy equipment for 78 days, that will be contained on site due to the implementation of the proposed BMPs;
- Substrate from settling of suspended sediment up to 300 feet downstream of the construction area, until mobilized during high winter and spring flows;
- Substrate from removal of bridge piers and abutments, which will fill in quickly with native substrate;
- Forage through work area isolation and dewatering of 2,200 square feet; removal of riparian vegetation including bushes and 44 native and not-native trees, until plantings reestablish; and settling of suspended sediment up to 300 feet from turbidity generating activities. We expect benthic macroinvertebrates will start to recolonize the action area as soon as the 78-day project is complete, and benthic communities to be reestablished in a few months; and

- Natural Cover from removal of riparian vegetation, including bushes and 44 trees, until planted riparian vegetation is established and maturing.

The proposed action will result in a long-term improvement in the function of critical habitat PBFs for:

- Free of artificial obstruction by removing two mid-channel piers and two abutments below the OHWM, and installing a new, channel spawning bridge;
- Forage by removing 162 square feet of piers and abutments below the OHWM; and
- Substrate by removing 162 square feet of piers and abutments below the OHWM.

Based on our analysis that considers the current status of PBFs, adverse effects from the proposed action will cause a temporary and localized decline in the quality and function of the water quality, substrate, forage, and natural cover PBFs; and a small, permanent decline in the natural cover PBFs. We also expect the proposed action to result in permanent improvements to the free of artificial obstruction, forage, and substrate PBFs. Because of the small scale and extent of the effects to PBFs, we do not expect a reduction in the conservation value of critical habitat in the action area. As we scale up from the action area to the designation area of critical habitat for MCR steelhead, the proposed action is not expected to appreciably reduce the conservation value of the designated critical habitat.

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 MCR steelhead, or destroy or adversely modify their designated critical habitat.

INCIDENTAL TAKE STATEMENT

Section 9 of the ESA and federal regulations pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without a special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm" is further defined by regulation to include significant habitat modification or degradation that actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering (50 CFR 222.102). "Harass" is further defined by 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 juveniles from the Walla Walla population of MCR steelhead is reasonably certain to occur as follows:

1. Injury and death of a few juveniles during fish salvage.
2. Behavioral changes of a few juveniles due to temporary increases in turbidity, which will increase the risk of predation to juveniles;
3. Behavioral changes, injury, and death of few juveniles during work area isolation through contact with equipment and placement of coffer dam/revetment materials; and
4. Behavioral changes of a few juveniles through placement of coffer dam/revetment below the OHWM excluding them from nearshore refugia, disruption of normal feeding and territorial behaviors, and altered movements during migration.

Incidental Take due to Fish Salvage

NMFS anticipates the proposed action will result in capture, injury, and death of juvenile MCR steelhead as a result of fish salvage within the 2,200 square foot isolated work area. It is not possible to determine the number of fish injured and killed by fish salvage because of the range of responses that individual fish will have, and because the numbers of fish present at any time is highly variable. Therefore, NMFS uses a surrogate for incidental take caused by fish salvage. The surrogate is the areal extent of isolated work area and fish salvage. The surrogate is causally linked to the take pathways because the scale of the effect is related to the area of work area isolation and fish salvage. Thus, the extent of take will be exceeded if fish salvage occurs in more than 2,200 square feet (0.05 acres) of isolated work area. While this surrogate is coextensive with the proposed action, it functions as an effective reinitiation trigger because the extent of isolation and fish salvage can easily be monitored, and the FHWA is obligated to notify NMFS and stop all activities if the extent of take is exceeded.

Incidental Take due to Turbidity

NMFS anticipates the proposed action will result in harm of juveniles by increasing turbidity from installation and removal of coffer dams/revetment and fish salvage. Take in the form of harm caused by the temporary increases in turbidity will be manifested in altered behaviors including avoidance of the area, abandonment of cover, and exposure to predators. We expect turbidity plumes to extend no further than 50 feet upstream and 300 feet downstream, and persist for no more than an hour. It is not possible to determine the number of fish killed by the turbidity plumes because of the range of responses that individual fish will have, and because the numbers of fish present at any time is highly variable. Therefore, NMFS uses a surrogate for incidental take caused by the turbidity. The surrogate is the areal extent of the turbidity plume. The surrogate is causally linked to the take pathways because the scale of the effect is related to the size of the turbidity plume. Thus, the extent of take will be exceeded if turbidity plumes extend further than 50 feet upstream and 300 feet below the work area. While this surrogate is coextensive with the proposed action, it functions as an effective reinitiation trigger because turbidity plumes will be monitored and reported daily.

Incidental Take due to Work Area Isolation

NMFS expects the proposed action will result in harm and harassment of juvenile MCR steelhead from the presence of in-water equipment and installation of the coffer dam/revetment. We expect most juvenile steelhead to flee the area, but a few small, juvenile steelhead may be crushed by not being able to avoid the equipment and installation of the 360 square feet of coffer dam/revetment materials in 2,200 square feet. It is not possible to determine the number of fish killed by work area isolation because of the range of responses that individual fish will have, and because the numbers of fish present at any time is highly variable. Therefore, NMFS uses a surrogate for incidental take caused by the work area isolation. The surrogate is the amount of coffer dam/revetment installed and the areal extent of work area isolation. The surrogates are causally linked to the take pathways because the scale of the effect is related to the amount of coffer dam/revetment installed and the area isolated. Thus, the extent of take will be exceeded if more than 360 square feet of coffer dam/revetment materials is installed in over 2,200 square feet. While these surrogates are coextensive with the proposed action, they function as effective reinitiation triggers because the amount of materials installed and the areal extent of isolation can easily be monitored, and the FHWA is obligated to notify NMFS and stop all activities if the extent of take is exceeded.

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 MCR steelhead, or destruction or adverse modification of their critical habitat.

Reasonable and Prudent Measures

“Reasonable and prudent measures” (RPM) 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 FHWA shall:

1. 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.

NMFS believes that full application of conservation measures included as part of the proposed action, together with the use of the RPM and terms and conditions described below, are necessary and appropriate to minimize the likelihood of incidental take of listed species due to completion of the proposed action.

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 FHWA 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 1:
 - a. Track and monitor project construction activities to ensure that the conservation measures are meeting the objective of minimizing take.
 - b. Conduct turbidity monitoring as follows:
 - i. Daily, every 4 hours during daylight hours, while in-water work is conducted.
 - ii. Observations shall occur daily before, during, and after commencement of in-water work and compared to observable sediment load upstream of the action area.
 - iii. Measure or observe background turbidity levels at an undisturbed site approximately 100 feet upstream of the project area.
 - iv. Measure or observe turbidity levels approximately 300 feet from any in-water work activities, or within any visible turbidity plume.
 - c. Submit a completion of project report to NMFS no later than two months after project completion. 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. Dimension of bypass installed.
 - iii. Summary and details of turbidity monitoring.
 - iv. Any daily observed sediment plume from the in-channel work area to 300 feet away during the in-water construction period.
 - v. A summary of pollution and erosion control inspection results, including results of implementing required conservation measures, and including a description of any erosion control failure, contaminant release, and efforts to correct such incidences.
 - vi. Number of juvenile steelhead captured and released without injury during fish salvage.
 - vii. Number of juvenile steelhead observed injured or dead during fish salvage.
 - viii. Number and species of fish observed injured or killed during project construction.
 - ix. Amount of coffer dam/revetment materials installed, and size of area isolated below the OHWM.
 - x. Total number by size class and species of trees and bushes cleared.
 - xi. Area of vegetation clearing.
 - xii. Number and species of riparian plantings.
 - xiii. Reference to NMFS consultation number WCRO-2024-02955.

- d. All reports will be sent to: crbo.consultationrequest.wcr@noaa.gov
- e. If the amount or extent of take is exceeded, stop project activities, and notify NMFS immediately.

Reinitiation of Consultation

Under 50 CFR 402.16(a): “Reinitiation of consultation is required and shall be requested by the federal agency where discretionary federal 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.”

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 Colleen Fagan, Columbia Basin Branch, at 541- 962-8512 or colleen.fagan@noaa.gov.

Sincerely,



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

cc: Sue Brady, Anderson Perry and Associates, Inc.

REFERENCES

- FHWA (Federal Highway Administration). 2024. Biological Assessment for Walla Walla County, Washington Five Mile Bridge (CRP 23-01). Prepared by Sue Brady, Anderson Perry and Associates, Inc.
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- NPCC (Northwest Power and Conservation Council). 2004. Walla Walla Subbasin Plan.
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