



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Northwest Region  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, Washington 98115

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October 1, 2012

Refer to NMFS No:  
2012/03544

Michelle Walker  
Corps of Engineers, Seattle District  
Regulatory Branch CENWS-OD-RG  
Post Office Box 3755  
Seattle, Washington 98124-3755

Re: Endangered Species Act Section 7 Concurrence Letter and Magnuson-Stevens Essential Fish Habitat Response for the Northlake Shipyard Cleanup Project in Seattle, Washington, King County (Lake Union 6<sup>th</sup> Field HUC, 171100120400, COE Number: NWS-2012-0538)

Dear Ms. Walker:

On August 20, 2012, the National Marine Fisheries Service (NMFS) received your request for a written concurrence that the Northlake Shipyard Interim Action Cleanup project on Lake Union is not likely to adversely affect (NLAA) species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402, and agency guidance for preparation of letters of concurrence.<sup>1</sup>

NMFS also reviewed the proposed action, including conservation measures and any determination that you made, for potential effects on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Marine Conservation and Management Act (MSA). This review was pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation.<sup>2</sup> In this case, NMFS concluded that the action would not adversely affect EFH. Thus, consultation under the MSA is not required for this action.

This letter is in compliance with section 515 of the Data Quality Act (44 U.S.C. 3504 (d) (1) et seq.) and underwent pre-dissemination review.

<sup>1</sup> Memorandum from D. Robert Lohn, Regional Administrator, to ESA consultation biologists (Guidance on informal consultation and preparation of letters of concurrence) (January 30, 2006).

<sup>2</sup> Memorandum from William T. Hogarth, Acting Administrator for Fisheries, to Regional Administrators (National finding for use of Endangered Species Act section 7 consultation process to complete essential fish habitat consultations) (February 28, 2001).



## Consultation History

The NMFS received the Corps of Engineers' (COE) Biological Evaluation (BE) and the request for concurrence on August 20, 2012. A complete initiation package was received on September 5, 2012.

The COE proposes to issue a permit under Section 404 of the Clean Water Act to the Washington State Department of Ecology (the applicant) to dredge a contaminated area at a shipyard facility on Lake Union, in King County, Washington. The COE requested NMFS' concurrence with the following determinations: (1) "may affect, not likely to adversely affect" Puget Sound (PS) Chinook (*Oncorhynchus tshawytscha*) salmon and critical habitat, and (2) "may affect, not likely to adversely affect" Puget Sound steelhead (*O. mykiss*) (PS steelhead).

The NMFS listed PS Chinook salmon as threatened under the ESA on March 24, 1999 (64 FR 14308) and designated critical habitat for PS Chinook salmon on September 2, 2005 (70 FR 52630). On June 11, 2007, NMFS listed the PS steelhead Distinct Population Segment (DPS) as threatened under the ESA (72 FR 26722). The NMFS conducts consultations with the COE under section 7(a)(2) of the ESA, and its implementing regulations found at 50 CFR 402. A complete record of this consultation is on file at the NMFS' Washington State Habitat Office in Lacey, Washington.

## Description of the Proposed Action and the Action Area

The applicant is proposing to dredge approximately 10,000 cubic yards of sediment (i.e. sand blast grit) in a location immediately beneath and adjacent to two existing dry dock locations in Lake Union. A total of 2.48 acres of nearshore area will be dredged between minus 20 and minus 22 feet below Ordinary High Water. A silt curtain will enclose the cleanup area and will extend from the surface to the bottom substrate. The barge and associated dredging activities will occur within the silt curtain to limit turbidity from drifting into Lake Union. The applicant will cap the dredged area with six inches of clean sand; capping will be completed within the silt curtain. Additional work includes removing derelict materials (i.e. sunken boats and cables) from the dredge site. The contaminated material will be removed with a clamshell-style bucket mounted on a barge then transferred to another barge for dewatering before being transported to an upland site for disposal.

The habitat within the shipyard facility is poor with little or no vegetation and heavily impacted by industrial and recreational boating activities. Dredging within the facility will not further degrade the poor existing environmental baseline.

Minimization measures are included in the project design to avoid and minimize potential effects on ESA-listed species. Minimization measures include (1) conducting work within the approved in-water work window of October 1 through April 15 when salmonid species are least likely to be in the action area, (2) not allowing bottom sweeping or stockpiling material on the bottom, (3) pausing the bucket at the surface to drain excess water, and (4) deploying scupper inserts (i.e. geo-textile fabric) on the barge to filter drainwater. The contractor will have a spill-prevention, containment, and cleanup kit on the barge in case of a spill or leak.

The action area is 2.48 acres extending out from the shoreline to the end of the pier where sediment-disturbing activities will occur. The action area includes designated critical habitat for PS Chinook salmon. Critical habitat consists of six Primary Constituent Elements (PCEs) for the PS Chinook Evolutionary Significant Unit. The action area contains two of the six PCEs of PS Chinook salmon critical habitat:

- PCE #2: Freshwater rearing sites with water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and mobility; water quality and forage supporting juvenile development; and natural cover such as shade, submerged and overhanging large wood, log jams and beaver dams, aquatic vegetation, large rocks and boulders, side channels and undercut banks.

PCE #3 - Freshwater migration corridors free of obstruction and excessive predation with water quantity and quality conditions and natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels, and undercut banks that support juvenile and adult mobility and survival;

### Effects of the Action

For purposes of the ESA, "effects of the action" means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). The applicable standard to find that a proposed action is NLAA listed species or critical habitat is that all of the effects of the action are expected to be discountable, insignificant, or completely beneficial.<sup>3</sup> Beneficial effects are contemporaneous positive effects without any adverse effects to the species. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur.

The effects of the proposed action are reasonably likely to include the potential for temporary increases in turbidity from sediment disturbance. The effects to PS Chinook salmon or PS steelhead will be insignificant because any turbidity generated during project construction would be temporary, minimal, and contained within a silt curtain which would effectively eliminate exposure of sediment to these listed species. In addition the work will occur during the work window of October 1 through April 15 when listed species are not expected to occur in the action area.

NMFS analyzed the potential impacts of the project on PCEs and determined that the potential effects to water quality will be insignificant because any turbidity generated from dredging will be contained within a silt curtain which effectively eliminates the potential for turbidity migrating into Lake Union. The silt curtain does not extend past the existing pier so it will not be a barrier for salmonid migration moving through Lake Union. Future benefits will also include cleaner substrate habitat for eventual macro-invertebrate colonization.

<sup>3</sup> U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. Endangered Species Act consultation handbook: procedures for conducting section 7 consultations and conferences. March. Final. P. 3-12.

## Conclusion

Based on this analysis, NMFS concludes that all effects of the proposed action are NLAA the subject ESA-listed species and ESA-designated critical habitats.

## Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by the Federal agency, or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) 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 this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA portion of this consultation.

Please direct questions regarding this letter to Sean Callahan of the Washington State Habitat Office at (206) 526-4744, or by electronic mail at [Sean.Callahan@noaa.gov](mailto:Sean.Callahan@noaa.gov).

Sincerely,



f William W. Stelle, Jr.  
Regional Administrator

cc: Suzanne L. Anderson, COE  
John Keeling, DOE