



**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, PORTLAND DISTRICT**  
**PO BOX 2946**  
**PORTLAND OR 97208-2946**

REPLY TO  
ATTENTION OF

Nov 13, 2003

Planning, Programs and Project  
Management Division (1165-2-26a)

Mr. Michael Tehan  
NOAA Fisheries  
Habitat Conservation Division  
525 NE Oregon  
Portland, OR 97232

Dear Mr. Tehan:

The Corps of Engineers and NOAA Fisheries completed formal consultation on the Columbia River Channel Improvements Project (Project) on May 20, 2002, with the issuance of the NOAA Fisheries and U.S. Fish and Wildlife Services (USFWS) Biological and Conference Opinions for the Project (Biological Opinions). Consistent with the requirements of the Endangered Species Act (ESA) and its implementing regulations, the Biological Opinions require reinitiation of consultation in certain circumstances. These circumstances include "if the action is modified in a way that causes an effect on ESA-listed salmonids that was not previously considered in the biological assessment and this Opinion (NOAA Fisheries Biological Opinion at Section 11, Reinitiation of Consultation.). The Project has been modified since the issuance of the Biological Opinion. This letter evaluates these modifications in light of the requirements for reinitiation. As discussed below, the Corps' conclusion is that the Project modifications do not require reinitiation because the manner and extent of potential effects associated with the modifications were analyzed and addressed during formal consultation.

The Project modifications addressed in this letter arise from conditions imposed by the states of Oregon and Washington through their review of the Project under the Clean Water Act (CWA) and Coastal Zone Management Act (CZMA). The Corps of Engineers received the states' CWA Section 401 Water Quality Certifications and CZMA consistency concurrences on June 23, 2003.

The states' conditions that are potentially relevant to the ESA analysis affect two of the ecosystem restoration actions being pursued under the Corps' Section 7(a)(1) and other authorities reviewed in the Biological Opinion, a portion of one of the proposed wildlife mitigation actions and the use of dredged material. Project elements required under Section 7(a)(2) of the ESA are not affected by the States' conditions. Further, as discussed below, the potential effects of the Project modifications are considered and addressed in the BA and BiOp. Consequently, we have concluded that the Project modifications that resulted from the state

approvals do not require reinitiation of consultation. These modifications, as well as their consideration in the BiOp, are detailed in the following paragraphs.

## **Project Modifications**

**Miller Pillar Ecosystem Restoration Feature.** The State of Oregon's 401 certification and CZMA concurrence disallow the creation of 235 acres of tidal marsh habitat<sup>1</sup> at the Miller-Pillar ecosystem restoration feature located between Miller Sands and Pillar Rock Islands. Oregon indicated that creation of this ecosystem restoration feature would impact an existing commercial drift net fishing site and would therefore be inconsistent with the state's enforceable CZMA policies. The Corps disagrees with the state's policy choice -- trading off a viable ecosystem restoration feature that would benefit listed stocks of salmon in the entire basin to avoid a minor impact (14% reduction in area) to a single commercial drift net fishing site. Nevertheless, the Corps will implement the Channel Improvement Project without constructing the Miller-Pillar ecosystem restoration feature. As proposed by the Corps and considered in the BiOp, this feature was to be constructed utilizing maintenance material from the deepened channel over an approximately 15-year period. This material will now be disposed of at existing upland sites within the estuary (Rice Island, Miller Sands Spit, Pillar Rock Island) until capacity is exhausted at these locations. Thereafter, material would be placed in an EPA-approved ocean disposal site.

While the Miller Pillar ecosystem restoration feature would have provided long-term benefits to salmonids, its removal from the Project does not require reinitiation because the feature was not required as mitigation for salmonid impacts and because the potential impacts of the alternate disposal methods are considered and addressed in the BiOp. The Miller Pillar feature was not proposed or required as mitigation for impacts to salmonids under Section 7(a)(2) of the ESA. Rather, it was proposed as a voluntary ecosystem restoration project under Section 7(a)(1) of the Act. [See BiOp at Section 3.2.7 (p. 24) and 6.7.2 (p. 67)]. Second, the potential impacts to salmonids of the alternate methods of disposal for the dredged material that would have been used to construct the Miller Pillar feature are considered in the BA and BiOp. Specifically, the BiOp considered and imposed conditions on any use of ocean disposal for the dredged material that was slated for Miller Pillar in the event this feature could not be constructed. [See BiOp at Section 3.2.3 (p. 15), Table 3.2 (p. 16) and Section 12.5.3.i (p. 96)].

**Lois Island Ecosystem Restoration Feature.** Although the Oregon 401 certification and CZMA concurrence allow implementation of restoration on 191 acres for the Lois Island ecosystem restoration feature, they impose conditions on its construction that may significantly exceed the Federal standard (33 CFR 335.7). The State of Oregon currently allows Clatsop

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<sup>1</sup> As proposed in the BA and considered in the BiOp, this ecosystem restoration feature was to have created 160-170 acres of shallow water and flats habitat. The change to 235 acres of tidal marsh habitat was done in consultation with Oregon, the Services and other stakeholders.

County to operate and manage a 1,029-acre select area fishery (SAF) for commercial gillnetters at Tongue Point, which encompasses the area of the Lois Island ecosystem restoration feature. The Corps reduced the size of the restoration feature from the 357 acres considered in the BiOp to 191 acres to minimize the impact of the ecosystem restoration feature on commercial fishers. The Corps also modified the habitat type to be restored from shallow subtidal and tidal sand flats habitat considered in the BiOp to the current proposal of tidal marsh habitat at the request of the agencies and local interests. This habitat change was coordinated with and agreed to by your agency prior to the Corps issuing the Final Supplement Environmental Impact Statement. All parties involved concurred that tidal marsh habitat would be more valuable and useful to salmonids than shallow subtidal and tidal sand flats habitat.

As we discussed prior to the Corps' publication of the Final SEIS, the proposed modification of target habitat type and reduction of acreage for the Lois Island ecosystem restoration feature do not require reinitiation because the effects of the modified feature have been considered and addressed in the BiOp. Specifically, the potential short-term adverse effects of constructing the feature (e.g., disturbance of the benthic community at the site during construction) have been addressed in the BiOp and are the same regardless of whether the final fill elevation and habitat type is shallow water flats or tidal marsh. [See BiOp at Section 6.2.1 (p. 46), Section 6.7.2.1 (p. 68), and Section 12.5.5.c (p. 98)]. Further, relative to the proposal addressed in the BiOp, the reduction in acreage only serves to reduce the feature's impacts. Finally, the type of habitat proposed for the modified feature – tidal marsh – would provide substantial long-term benefit to salmonids. [See BiOp at Section 6.7.2.9 (p. 72)]. Because the BiOp considered the effect of the alternative disposal methods on ESA-listed salmonids, the action is not being modified in a way that causes an effect on ESA-listed salmonids that was not previously considered in the Biological Assessment and the Biological Opinion; therefore, reinitiation of consultation is not required.

The State has imposed several conditions on construction of this ecosystem restoration feature. The state imposed these conditions to compensate for a perceived loss to the Tongue Point select area fishery from development of the ecosystem restoration feature. Under the state's conditions, if the Corps constructs the restoration feature, the Corps would be required to increase spring Chinook production by 500,000 smolts at two other select area fishery sites, Young's Bay and Blind Slough. The Corps would also be required to evaluate water quality and conduct a test fishery program at a potential new select area fishery site at Grant Slough (just upstream of the current Blind Slough site). Additionally, the Corps would be required to fund the operation of the relocated fishery from Tongue Point to Young's Bay and Blind Slough for 10 years. The state further imposed a 75% performance measure at two years post-implementation of the restoration feature for plants, benthic invertebrates and fish rather than the 25% standard established in the BiOp. It is extremely unlikely that this level of success could be reached in such a short time frame.

The Corps continues to believe that the proposal for the Lois Island embayment restoration feature is fully protective of the SAF and therefore fully consistent with Oregon's enforceable policies. In addition, this restoration feature would provide a substantial benefit to regional salmon recovery efforts.

The Lois Island embayment ecosystem restoration feature is still the Corps' environmentally preferred alternative consistent with the federal standard and regional salmon recovery objectives. However, unless circumstances or the conditions imposed by the State of Oregon change, the Corps will likely dispose of the 6 million cubic yards of dredge material previously proposed for the restoration feature at an EPA-approved ocean disposal site.

As discussed above for the Miller Pillar ecosystem restoration feature, the Lois Island ecosystem restoration feature was not required as mitigation for salmonid impacts, and the potential impacts of the alternate disposal methods are considered and addressed in the BiOp. Because the BiOp considered the effect of the alternative disposal methods on ESA-listed salmonids, the action is not being modified in a way that causes an effect on ESA-listed salmonids that was not previously considered in the Biological Assessment and the Biological Opinion; therefore, reinitiation of consultation is not required.

**Martin Island Embayment – Tidal Marsh Development For Wildlife Mitigation Purposes.** The State of Washington's 401 Certification disallows the creation of 16 acres of tidal marsh habitat<sup>2</sup> in the Martin Island embayment wildlife mitigation site. Simultaneously, the Washington 401 Certification requires replacement mitigation, i.e., the Certification requires the Corps to acquire and develop 80 acres of riparian forest habitat on Martin Island that was not previously part of the Project's selected mitigation Plan. The embayment feature had been proposed to mitigate impacts to wildlife resulting from upland disposal, rather than impacts to salmonids. Although the mitigation was for impacts to wildlife, the embayment mitigation feature would have also benefited salmonids.

The 401 Certification indicates that the embayment provides an important recreational boat use area and the creation of tidal marsh habitat beneficial to listed salmonids would interfere with recreational use of the area. Consequently the State of Washington has chosen to not allow fill material to be placed in any part of the embayment. The Corps disagrees with the State's conclusion that avoiding a small impact to a limited group of recreational boaters is more valuable than creating benefits supporting regional salmon recovery efforts. However, the Corps has eliminated the Martin Island embayment wildlife mitigation action from the Project due to the state's requirements. The Corps will instead implement the 80 acre riparian forest replacement mitigation required under the Certification. Dredge material that would have been placed in the Martin Island embayment will now be disposed of either at upland disposal sites

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<sup>2</sup> As proposed in the BA and considered in the BiOp, this Project element was to have created 32 acres of habitat. The reduction to 16 acres was done in consultation with Washington, the Services and other stakeholders.

(e.g., Martin Bar, Washington and/or Reichold, Oregon) or through flow-lane disposal. [See BiOp at Section 3.2.5 and Table 3.4 (pp. 17-18).]

While the Martin Island embayment ecosystem restoration feature would have provided long-term benefits to salmonids, its removal from the Project does not require reinitiation because the feature was not required as mitigation for salmonid impacts and because the potential impacts of the alternate disposal methods are considered and addressed in the BiOp. First, it is important to note that the Martin Island embayment Project element was not proposed or required as mitigation for impacts to salmonids. Rather, it was proposed as mitigation for wildlife impacts associated with upland disposal (filling of wetlands located behind flood control structures that are not accessible to and do not provide habitat for salmonids). [See BiOp at Table 3.5 and fn 5 (pp. 25-26)]. Second, as noted above, the potential impacts to salmonids of the alternate methods of disposal for the dredged material that would have been used to construct the Martin Island embayment feature have been considered in the BiOp. Because the BiOp considered the effect of the alternative disposal methods on ESA-listed salmonids, the action is not being modified in a way that causes an effect on ESA-listed salmonids that was not previously considered in the Biological Assessment and the Biological Opinion; therefore, reinitiation of the consultation is not required.

### **Conclusion**

The Corps has appreciated the opportunity to work with the NOAA Fisheries and US Fish and Wildlife Service to develop restoration activities as part of the Channel Improvement Project that also assist recovery of the species pursuant to Section 7(a)(1). The Corps is disappointed that two of the ten ecosystem restoration features may not be implemented due to conditions imposed by the states. The Corps remains committed to working with the Services as it implements the remaining restoration features and looks forward to the opportunity to work collaboratively with you in the context of other Corps projects to pursue restoration opportunities that will further the purposes of the ESA.

We would appreciate NOAA Fisheries' confirmation of the conclusions reached above. If you need any additional information please contact Mr. Kim Larson, of my staff, at (503) 808-4776 or by e-mail at [Kim.W.Larson@usace.army.mil](mailto:Kim.W.Larson@usace.army.mil).

Sincerely,

/s/

Robert E. Willis  
Chief, Environmental Resources Branch