



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, WA 98115

Refer to:
2004/00506

June 8, 2004

Mr. Robert E. Willis
Portland District, Corps of Engineers
P. O. Box 2946
Portland, Oregon 97208-2946

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Proposed Construction of the North Jetty Revetment at the Entrance to Tillamook Bay, Tillamook County, Oregon

Dear Mr. Willis:

This correspondence is in response to U.S. Army Corps of Engineers (Corps) request for consultation under section 7(a)(2) of the Endangered Species Act (ESA) and its implementing regulations, 50 CFR Part 402, for the proposed construction of the north jetty revetment at the entrance to Tillamook Bay, Oregon. This ESA consultation applies to marine mammals, sea turtles, and Oregon Coast (OC) coho salmon (*Oncorhynchus kisutch*). Additionally, this letter serves to meet the requirements for consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

This consultation was delayed due to uncertainty over the listing status of OC coho salmon. On May 18, 2004, the U.S. Department of Justice clarified that OC coho salmon remain listed as threatened under the Endangered Species Act until the Ninth Circuit Court of Appeals issues a mandate to make effective their February 24, 2004, order dissolving their December 14, 2001 stay of the September 12, 2001 Federal district court ruling vacating the listing determination.

The proposed project is construction of a revetment at the root of the north jetty at the entrance to Tillamook Bay. The proposed revetment will be 60 feet wide and 450 feet long (250 feet along the shoreline). The height of the revetment will be +23 feet mean low low water (MLLW) and will require 8,000 to 14,000 tons of stone depending on the finished length. Once the revetment is constructed, sand fill from local sand and gravel distributors will be used to fill in the area in the front of the revetment. The volume of sand placed in front of the revetment after its construction will be 2,400 cubic yards for the minimum length, and 6,000 cubic yards for the maximum revetment length. The proposed project will take approximately 30 days to complete and will take place during July through September.



For construction of this revetment, materials and equipment will be staged upland in the county park parking area near the construction site. Equipment used for the revetment will be small bulldozer, front-end loader, and an excavator. The construction equipment will work from the top of the revetment and above and on the beach.

ENDANGERED SPECIES ACT

On April 21, 2004, NOAA's National Marine Fisheries Service (NOAA Fisheries) received a complete biological assessment (BA) from the Corps and a written request for concurrence with a determination that the proposed action is "not likely to adversely affect" (NLAA) the Steller sea lion (*Eumetopias jubatus*) and OC coho salmon in the project area. This consultation is undertaken pursuant to section 7(a)(2) of the ESA and its implementing regulations, 50 CFR Part 402.

Steller Sea Lion

The Steller sea lion was listed as threatened under the ESA on November 26, 1990 (55 FR 49204). Subsequently, NOAA Fisheries delineated two discrete population segments of Steller sea lions within their geographic range: (1) An eastern segment, which includes animals east of Cape Suckling, Alaska (144° W. long); and (2) and a western segment, which includes animals at and west of Cape Suckling, Alaska. The western population segment was reclassified as endangered under the ESA on May 5, 1997, while the threatened listing was maintained for the eastern population segment of Steller sea lions (62 FR 24345). Hence, the Steller sea lions, which use habitat in Oregon and Washington, continue to be classified as threatened under the ESA. The Steller sea lion is also protected under the Marine Mammal Protection Act (1972 as amended in 1994).

The nearest haulout area to Tillamook north and south jetties for Steller sea lions is Three Arch Rock, approximately 7.5 miles south of Tillamook Bay. There are no indications that Steller sea lions haulout at either jetty. However, foraging by Steller sea lions would be expected to occur in the project vicinity although the extent of foraging activities at the immediate project site are unknown (BA, p. 11).

The proposed construction activities will occur from July through September. This work window is outside the high-use timeframe (winter) for Steller sea lions at Three Arch Rock. Steller sea lions present during construction may avoid the immediate project area in response to a higher level of human activity and noise associated with construction. Work activities are not expected to hinder Steller sea lion use of the channel area access to Tillamook Bay. The project may result in some localized avoidance around the immediate construction site by Steller sea lions.

Additional marine species, the loggerhead sea turtle (*Caretta caretta*) (threatened), the leatherback sea turtle (*Dermochelys coriacea*) (endangered), the blue whale (*Balaenoptera*

musculus) (endangered), the fin whale (*Balaenoptera physalus*) (endangered), the Sei whale (*Balaenoptera borealis*) (endangered), the sperm whale (*Physeter macrocephalus*), and the humpback whale (*Megaptera novaeangliae*) (endangered) were also included in the BA. The Corps made a “no effect” determination for these species and therefore did not request consultation for the proposed action.

Based on information provided by the Corps and developed during informal consultation, NOAA Fisheries concurs with the Corps’ determination that the proposed project is NLAA the Steller sea lion for the following reasons: (1) There are no Steller sea lion haulouts within 1 mile of the project area; (2) the project includes no in-water construction activities; and (3) construction activities would occur during the summer when Steller sea lion abundance is lowest at the nearest haulout, Three Arch Rock. Therefore, the proposed project is not reasonably certain to cause incidental take of Steller sea lions.

OC Coho Salmon

NOAA Fisheries listed OC coho salmon under the ESA as threatened on August 10, 1998 (63 FR 42587). Protective regulations for OC coho salmon were issued by NOAA Fisheries under section 4(d) of the ESA on July 10, 2000 (65 FR 42422). This consultation is undertaken under section 7(a)(2) of the ESA, and its implementing regulations, 50 CFR Part 402.

Based on information provided by the Corps and developed during informal consultation, NOAA Fisheries concurs with the Corps’ determination that the proposed project is NLAA OC coho salmon for the following reasons: (1) The project includes no in-water construction activities; and (2) all construction work would occur from the beach or county park. Therefore, the proposed project is not reasonably certain of causing adverse effects to or incidental take of OC coho salmon.

The Corps must reinitiate this consultation if: (1) New information reveals that effects of the action may affect listed species in a way not previously considered; (2) the action is modified in a way that causes an effect on listed species that was not previously considered; or (3) a new species is listed or critical habitat is designated that may be affected by the action (50 CFR 402.16).

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

Federal agencies are required, under §305(b)(2) of the MSA and its implementing regulations (50 CFR 600 Subpart K), to consult with NOAA Fisheries regarding actions that are authorized, funded, or undertaken by an agency that may adversely affect essential fish habitat (EFH). The MSA (§3) defines EFH as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” If an action would adversely affect EFH, NOAA Fisheries is required to provide the Federal action agency with EFH conservation recommendations (MSA

§305(b)(4)(A)). This consultation is based, in part, on information provided by the Federal agency and descriptions of EFH for Pacific coast groundfish, coastal pelagic species, and Pacific salmon contained in the Fishery Management Plans developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce.

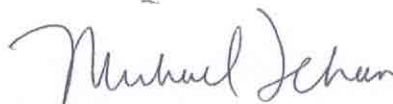
The proposed actions are described above and in the written requests for consultation from the Corps. The project areas include habitat which has been designated as EFH for groundfish species, coastal pelagic species, and coho and Chinook salmon (Table 1).

Because the conservation measures included as part of the proposed action to address ESA concerns are also adequate to avoid, minimize, or otherwise offset potential adverse effects to coho salmon, Chinook salmon and groundfish species, conservation recommendations pursuant to MSA (§305(b)(4)(A)) are not necessary. Since NOAA Fisheries is not providing conservation recommendations at this time, no 30-day response from the Corps is required (MSA §305(b)(B)).

This concludes consultation under the MSA. If the proposed action is modified in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NOAA Fisheries' EFH conservation recommendations, the Corps will need to reinstate EFH consultation with NOAA Fisheries in accordance with our implementing regulations for EFH at 50 CFR 600.920(k).

Thank you for the opportunity to comment. If you have any questions, please contact Ms. Bridgette Lohrman, Natural Resource Specialist, of my staff in the Oregon Coast/Lower Columbia River Habitat Branch of the Oregon State Habitat Office at 503.230.5422.

Sincerely,


for D. Robert Lohn
Regional Administrator

Enclosure (1): Species with Designated EFH in the Estuarine EFH Composite in the State of Oregon

Enclosure. Groundfish and Pacific Salmon Species with Designated EFH in the Estuarine EFH Composite in the State of Oregon

Groundfish Species	
Leopard Shark (southern OR only)	<i>Triakis semifasciata</i>
Southern Shark	<i>Galeorhinus zyopterus</i>
Spiny Dogfish	<i>Squalus acanthias</i>
California Skate	<i>Raja inornata</i>
Spotted Ratfish	<i>Hydrolagus collicii</i>
Lingcod	<i>Ophiodon elongatus</i>
Cabezon	<i>Scorpaenichthys marmoratus</i>
Kelp Greenling	<i>Hexagrammos decagrammus</i>
Pacific Cod	<i>Gadus macrocephalus</i>
Pacific Whiting (Hake)	<i>Merluccius productus</i>
Black Rockfish	<i>Sebastes maliger</i>
Bocaccio	<i>Sebastes paucispinis</i>
Brown Rockfish	<i>Sebastes auriculatus</i>
Copper Rockfish	<i>Sebastes caurinus</i>
Quillback Rockfish	<i>Sebastes maliger</i>
English Sole	<i>Pleuronectes vetulus</i>
Pacific Sanddab	<i>Citharichthys sordidus</i>
Rex Sole	<i>Glyptocephalus zachirus</i>
Rock Sole	<i>Lepidopsetta bilineata</i>
Starry Flounder	<i>Platichthys stellatus</i>
Pacific Salmon Species	
Chinook Salmon	<i>Oncorhynchus tshawytscha</i>
Coho Salmon	<i>Oncorhynchus kisutch</i>