

Appendix C.2 NOAA Fisheries Consultation

Henry Hagg Lake Resource Management Plan: Final EA



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7800 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

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April 8, 2004

Refer to:
2004/00153

Ms. Karen Blakney
ESA Program Manager
Bureau of Reclamation
Pacific Northwest Region - Lower Columbia
825 NE Multnomah Steet, Suite 1110
Portland, Oregon 97232-2135

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Henry Hagg Lake Resource Management Plan Project in the Scoggins Creek Watershed, near Forest Grove, Washington County, Oregon

Dear Ms. Blakney:

This correspondence is in response to your request for consultation under the Endangered Species Act (ESA) on implementation of a Regional Management Plan (RMP) affecting activities in and around Hagg Lake in the Scoggins Creek watershed, near Forest Grove, Washington County, Oregon. The purpose of the proposed action is to manage resources, facilities and access of land and water associated with Henry Hagg Lake under the Bureau of Reclamation's (BOR) authority. The RMP would be used as the basis for directing activities on BOR lands and Hagg Lake reservoir. These activities include the following:

- Installing bird and bat boxes.
- Planting trees and shrubs in riparian areas.
- Evaluate wetland habitat projects.
- Enhance open meadow habitat for elk use.
- Manage fisheries in Hagg Lake.
- Identify and survey for cultural resources.
- Protect historic and cultural resource areas.
- Manage landscape for public safety at day use and overnight facilities.
- Expand and enhance overnight camping areas and public education opportunities.
- Expand and enhance boat ramp and picnic facilities.
- Expand and lengthen trail systems for people and horses.

The RMP does not address the development or implementation of integrate pest management plan and use of pesticides. The RMP does not address the maintenance or operation of the Scoggins Creek Dam or management and distribution of the stored water in Hagg Lake. Activities associated with these actions are considered independent of the proposed action and



would be considered under separate consultation. Additionally, this letter serves to meet the requirements for consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

ENDANGERED SPECIES ACT

On February 13, 2004, the National Marine Fisheries Service (NOAA Fisheries) received information from the BOR describing a proposed action and assessing its effects and a written request for concurrence with a determination that the proposed action is "not likely to adversely affect" (NLAA) the Upper Willamette River (UWR) steelhead (*Oncorhynchus mykiss*). This consultation is undertaken pursuant to section 7(a)(2) of the ESA and its implementing regulations, 50 CFR Part 402.

Based on information provided by the BOR and developed during informal consultation, NOAA Fisheries concurs with the BOR's determination that the proposed project is NLAA the listed species for the following reasons: (1) Hagg Lake is located above an impassable barrier and listed UWR steelhead are not present; and (2) activities that will occur under the plan that may affect listed UWR steelhead and EFH for coho salmon will be conducted in such a way as to minimize potential adverse effects, including:

- Pollution and erosion control measures will be implemented during construction to contain and limit the potential spill of pollutants and discharge of fine sediment to adjacent streams and wetlands.
- All heavy equipment used will be cleaned and checked for fluid leaks with staging areas setback from stream and riparian area.
- Work activity and use of machines and heavy equipment will be isolated from the actively flowing stream.
- Monitoring will be implemented and reported to ensure the project was completed as designed and long-term adverse effects have been minimized;
- riparian setbacks and vegetative buffers will be established to further reduce potential adverse effect to stream.
- All disturbed streambed, streambank, and riparian areas will be revegetated and restored to preconstruction state with no significant changes to stream and riparian character.
- All storm water resulting from the proposed action will be treated and managed to limit further degradation of water quality and water quantity discharged in adjacent streams.
- All temporary access roads will be limited and located on shallow sloped ground with all temporary crossings avoiding spawning beds and provide for fish passage.
- In-water work will be conducted during those periods of the year when listed fish are less likely to be present or are less sensitive to the proposed activity.

Therefore, the proposed project is not reasonably certain to cause adverse effects or incidental take of UWR steelhead.

The BOR 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-STEVENS 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 action agency and descriptions of EFH for Pacific salmon contained in Appendix A to Amendment 14 to the *Pacific Coast Salmon Plan* (August 1999) developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce (September 27, 2000).

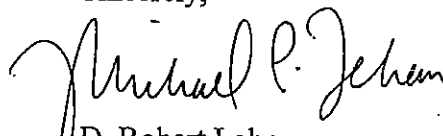
The proposed action and action area are described above in this concurrence letter. The project area includes habitat which has been designated as EFH for various life stages of coho salmon.

Because the habitat requirements (*i.e.*, EFH) for the MSA-managed species in the project area are similar to that of the ESA-listed species, and because the conservation measures that the BOR included as part of the proposed action to address ESA concerns are also adequate to avoid, minimize, or otherwise offset potential adverse effects to designated EFH, 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 BOR 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 BOR will need to reinitiate EFH consultation with NOAA Fisheries in accordance with our implementing regulations for EFH at 50 CFR 600.920(k).

Please direct questions regarding this letter to Jim Turner of my staff in the Oregon State Habitat Office at 503.231.6894.

Sincerely,



D. Robert Lohn
Regional Administrator

cc: Joe Zisa, USFWS

for

