



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

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September 20, 2004

NMFS Tracking No.:
2004/00828

David J. Kaunheimer
Environmental Program Manager
U.S. Bureau of Reclamation
Upper Columbia Area Office
1917 Marsh Road
Yakima, Washington 98901-2058

Post-it [®] Fax Note	7671	Date	9-21-04	# of pages	
To	Jim Esget	From	NOAA Fisheries		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	509-454-5611	Fax #			

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Sunnyside Division Water Conservation Plan, Yakima and Benton Counties, WA (HUCs 170300030407; 170300030603; 170300030605; 170300030607; 170300030608; 170300030609)

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Dear Mr. Kaunheimer:

This correspondence is in response to your request for consultation under the Endangered Species Act (ESA) of 1973, as amended, 16 USC 1536. Additionally, this letter serves to meet consultation requirements under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 USC 1855.

Endangered Species Act

NOAA's National Marine Fisheries Service (NOAA Fisheries) has reviewed the above referenced Biological Assessment (BA) dated July 20, 2004 and received by NOAA Fisheries on July 23, 2004. The Bureau of Reclamation (BOR) is requesting concurrence with its finding of "may affect, not likely to adversely affect" on ESA listed fishes under the jurisdiction of NOAA Fisheries for the above referenced project. This determination pertains to Middle Columbia River (MCR) steelhead (*Oncorhynchus mykiss*) listed as threatened March 25, 1999 (50 CFR Part 223). NOAA Fisheries has considered the determination of effects under section 7 (a)(2) of the ESA, and its implementing regulations (50 CFR Part 402).

The BOR proposes to fund water conservation activities on the Sunnyside Division (SD) of the Yakima Irrigation Project. These activities include the construction of up to three new re-regulation reservoirs, replacement of 28 fixed check structures with automated gates, addition of two new automated check structures, a new spillway at the Spring Creek Wasteway, and installation of a Supervisory Control and Data Acquisition (SCADA) system. The SD encompasses 103,570 acres along the east (left) bank of the Yakima River from Sunnyside



Diversion Dam located at River Mile (RM) 103.8 downstream to Spring Creek Wasteway at RM 41.8. Other major drains in this reach include Zillah Wasteway at RM 89.1 and Sulphur Creek Wasteway at RM 61.0.

Water conservation actions on the SD will be phased over an eight year period such that full implementation will be realized by the year 2012. Construction of structural elements of the water conservation plan (*e.g.*, re-regulation reservoirs, automated check structures, SCADA system components, etc.) will take place in the dry during the non-irrigation season (*i.e.*, mid-October to 1 April) within the delivery features of the SD, far removed from fish-bearing waters. However, after constructed, these features will likely improve the efficiency of water deliveries to irrigated lands which will likely produce changes to the flow patterns of the Yakima River and major drains emanating from the SD. Under full implementation and during average water years with a full water supply, the SD water conservation plan will result in an increase of 54 cubic feet per second (cfs) during the irrigation season in the Yakima River below Sunnyside Dam, a 13% decrease in streamflow in Sulphur Creek Wasteway, and a 71% decrease in discharge in Spring Creek Wasteway. Changes in stream and wasteway flow will vary according to water supply and prorationing levels within the Yakima Irrigation Project, but NOAA Fisheries has identified the following general effects of the action under consultation:

- Discharge in the Yakima River will incrementally increase (up to 54 cfs during the irrigation season) below Sunnyside Dam as diversions into the SD main canal are reduced. Water saved from implementation of the SD conservation plan will either be steadily spilled over Sunnyside Dam, or held in storage for shaped releases (*e.g.*, smolt flushing flows).
- Streamflow in Sulphur and Spring Creek Wasteways will decrease as less water is spilled from more efficient delivery systems. Flow reductions will be proportionally larger in Spring Creek.
- Discharge in the Yakima River at Kiona (RM 29.9) will decrease slightly (about 12 cfs) under average conditions.
- Water quality in drains and wasteways will largely remain unchanged, although ongoing water quality improvements on the SD unrelated to the action under consultation are expected to continue.
- Non-irrigation season streamflow in the Yakima River, Sulphur Creek, and Spring Creek Wasteways will remain largely unchanged, although additional on-farm conservation actions made possible by the action under consultation may alter future surface and subsurface flow patterns on SD lands.

The action under consultation will alter discharge in the Yakima River below Sunnyside Dam, Sulphur Creek Wasteway, and Spring Creek Wasteway. Increased streamflow in the Yakima River may improve migration, emigration, and rearing conditions for MCR steelhead below Sunnyside Dam. Streamflow decreases in the lower mainstem Yakima River (*e.g.*, at Kiona) are not expected to provide detectable changes in MCR steelhead habitat or passage conditions. Decreased streamflow in Sulphur and Spring Creek Wasteways is not expected to adversely

affect MCR steelhead and their habitat because water quality and physical habitat conditions presently provide only limited spawning and rearing opportunities. Additionally, decreased operational spills into Sulphur Creek Wasteway may help reduce straying of MCR steelhead and other anadromous fish, although the action under consultation will not affect high spill rates from the Roza Irrigation District—a major attractive nuisance in Sulphur Creek Wasteway. However, on balance, the action under consultation will likely create only localized, transient, and low intensity changes to the environment. Further, NOAA Fisheries does not expect that these changes will adversely affect MCR steelhead or their habitat, and some elements of the project (*i.e.*, diversion reductions at Sunnyside Dam and resultant saved water) may benefit habitat and flow conditions in the Yakima River. Accordingly, when the preceding factors are taken into consideration and executed as described, NOAA Fisheries concurs with BOR's determination of "may affect, not likely to adversely affect" to listed steelhead of Middle Columbia River ESU.

This concludes informal consultation on these actions in accordance with 50 CFR 402.14(b)(1). The BOR must re-analyze this ESA consultation if: (1) New information reveals effects of the action that may affect listed species in a way not previously considered; (2) The action is modified in a manner that causes an effect to the listed species or designated critical habitat that was not previously considered; or (3) A new species is listed, or critical habitat designated, that may be affected by the identified actions.

Magnuson-Stevens Fishery Conservation and Management Act

Federal agencies are required, under section 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 that agency that may adversely affect Essential Fish Habitat (EFH). The MSA (section 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 section 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 Pacific Fishery Management Council and approved by the Secretary of Commerce (September 27, 2000).

The proposed action and action area are described in the BA, as well as this concurrence letter. The project area includes habitat which has been designated as EFH for various life stages of chinook (*O. tshawytscha*) and coho (*O. kisutch*) 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 impacts to designated EFH, conservation recommendations pursuant to MSA (section 305(b)(4)(A)) are not necessary.

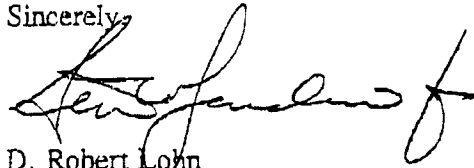
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Since NOAA Fisheries is not providing conservation recommendations at this time, no 30-day response from the BOR is required (MSA section 305(b)(4)(B)).

This concludes EFH 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 NOAA Fisheries' implementing regulations for EFH at 50 CFR 600.920(l).

Thank you for your continuing efforts to protect steelhead, salmon, and their associated riverine ecosystems. If you have any questions regarding either the ESA or EFH consultation, please contact Kale Gullett of the Eastern Washington Habitat Branch at (509) 962-8911, extension 222, or by electronic mail at Kale.Gullett@noaa.gov.

Sincerely,



D. Robert Lohn
Regional Administrator

cc: Fax to 509-454-5611 (Attn: Jim Esget)