



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 NMFS No: 2013/9724

March 22, 2013

F. Lorraine Bodi
Vice President for Environment, Fish & Wildlife
Bonneville Power Administration Mailstop KE-4
P.O. Box 3621
Portland, Oregon 97208-3621

Re: Endangered Species Act Section 7 Formal Programmatic Biological and Conference Opinion, Letter of Concurrence, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Bonneville Power Administration's Habitat Improvement Program III (HIP III) KEC-4

Dear Ms. Bodi:

The enclosed document contains a programmatic biological and conference opinion (opinion) and letter of concurrence prepared by the National Marine Fisheries Service (NMFS) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the Bonneville Power Administration (BPA) funding habitat improvement actions within the Columbia River Basin and coastal rivers in the State of Oregon north of Cape Blanco. BPA funds habitat improvement activities to fulfill its obligations under section 4(h) the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Public Law 96-501) and in response to the requirements of various biological opinions, including the 2008 Biological Opinion on the Operation of the Federal Columbia River Power System.

In this opinion, NMFS concluded that the proposed program and activities authorized under that program are not likely to adversely affect the Eastern distinct population segment of Steller sea lion (*Eumetopias jubatus*), southern green sturgeon (*Acipenser medirostris*), Pacific eulachon (*Thaleichthys pacificus*), or designated critical habitat for southern green sturgeon or eulachon. The Steller sea lion does not have critical habitat designated in the action area.

NMFS also concluded that the proposed program and activities authorized under that program are not likely to jeopardize the continued existence of the following 14 species, or result in the destruction or adverse modification of their designated or proposed critical habitats.

- Lower Columbia River Chinook salmon (*Oncorhynchus tshawytscha*)
- Upper Willamette River spring-run Chinook salmon
- Upper Columbia River spring-run Chinook salmon
- Snake River spring/summer-run Chinook salmon



- Snake River fall-run Chinook salmon
- Columbia River chum salmon (*O. keta*)
- Lower Columbia River coho salmon (*O. kisutch*)
- Oregon Coast coho salmon
- Snake River sockeye salmon (*O. nerka*)
- Lower Columbia River steelhead (*O. mykiss*)
- Upper Willamette River steelhead
- Middle Columbia River steelhead
- Upper Columbia River steelhead
- Snake River Basin steelhead

As required by section 7 of the ESA, NMFS is providing an incidental take statement with the opinion. The incidental take statement describes reasonable and prudent measures NMFS considers necessary or appropriate to minimize the impact of incidental take associated with this action. The take statement sets forth nondiscretionary terms and conditions, including reporting requirements, that the Federal action agency must comply with to carry out the reasonable and prudent measures. Incidental take from actions that meet these terms and conditions will be exempt from the ESA's prohibition against the take of listed species, except for eastern Steller sea lion.

Constructing or maintaining barriers which eliminate or impede a listed species' access to habitat or ability to migrate, and any water withdrawal or other alteration of streamflow when it significantly impairs spawning, migration, feeding, or other essential behavioral pattern, is a habitat-modifying activity that may harm listed species and therefore may be considered a take under the ESA.¹ NMFS identified impaired passage and altered streamflow due to irrigation diversions, among other things, as a primary factor limiting recovery of many listed species considered in this opinion. The proposed action area is also designated as critical habitat and the function and conservation role of that habitat is degraded in many areas due, in part, to altered hydrology. However, water would have continued to be withdrawn using the existing irrigation facilities whether or not irrigation diversions are retrofitted by BPA, so the existing passage impairments and water withdrawals are part of the current environmental baseline for those sites. However, NMFS does not consider any take that may be associated with such passage impairments or withdrawals to be incidental to the proposed action and compliance with these terms and conditions will not remove the prohibition against any take that may occur due to those withdrawals.

This document also includes the results of our analysis of the action's likely effects on essential fish habitat (EFH) pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and includes two conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH. This conservation recommendation is a subset of the ESA take statement's terms and conditions. Section 305(b) (4) (B) of the MSA

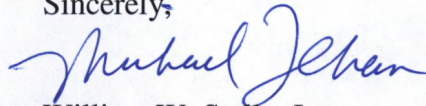
¹ See, 64 FR 60727 (November 8, 1999) (defining "harm" as an element of "take" in the ESA, and citing constructing or maintaining barriers that eliminate or impede a listed species' access to habitat or ability to migrate and removing water or otherwise altering streamflow when it significantly impairs spawning, migration, feeding or other essential behavioral patterns as an example of harm).

requires Federal agencies to provide a detailed written response to NMFS within 30 days after receiving these recommendations.

If the response is inconsistent with the EFH conservation recommendation, the Federal action agency must explain why the recommendations will not be followed, including the scientific justification for any disagreements over the effects of the action and the recommendations. In response to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each EFH response and how many are adopted by the action agency. Therefore, we request that in your statutory reply to the EFH portion of this consultation, you clearly identify the number of conservation recommendations accepted.

Please direct questions regarding this opinion to Dr. Nancy Munn at 503.231.6269, of my staff in the Habitat Conservation Division.

Sincerely,


for William W. Stelle, Jr.
Regional Administrator

cc: U.S. Fish and Wildlife Service