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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

NMFS Tracking No.:
2006/01512

July 25, 2006

TO Michelle Walker
Corps of Engineers, Seattle District
Regulatory Branch CENWS-OD-RG
Post Office Box 3755
Seattle, Washington 98124-3755

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the proposed Clear Valley Environmental Farm Project (HUC 171100070201, Nookachamps Creek).

Dear Ms. Walker:

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

Endangered Species Act

The Army Corps of Engineers (COE) submitted a Biological Evaluation (BE) and a Memorandum for the Services to the National Marine Fisheries Service (NMFS) for the above referenced project on April 10, 2006 and requested NMFS' concurrence with the following determinations: (1) "may affect, not likely to adversely affect" Puget Sound Chinook (*Oncorhynchus tshawytscha*) salmon (PS Chinook), (2) "may affect, not likely to adversely affect" designated critical habitat for PS Chinook. PS Chinook was listed as threatened under the ESA on March 24, 1999 (50 CFR 223 and 224). Critical habitat (CH) for PS Chinook was designated on September 2, 2005 (70 FR 52630) and became effective on January 2, 2006. The proposed project is located within designated CH of PS Chinook.

The COE proposes to issue a permit, under Section 404 of the Clean Water Act, to Clear Valley Environmental Farm, LLC (the applicant) to restore selected reaches of the stream and create approximately 311 acres of wetland in the Nookachamps Creek watershed. The applicant proposes to install a total of four engineered log jams (ELJ), plant a total of 81 acres within a 150 foot wide buffer along 13,000 linear feet of existing stream channel, and reestablish 311 acres of wetland. The applicant is in the process of establishing a wetland mitigation bank for the 311 acres that they are creating. The COE is requesting consultation on only the construction of this project. The COE has agreed to consult with NMFS on each future activity that will withdraw "credits" from the proposed wetland mitigation bank.



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The project will involve intensive earth movement and will be constructed in three phases, over five years. Phase 1 includes filling of all drainage ditches and constructing four ELJs. The fill and placement of ELJs is expected to raise the groundwater level and establish some wetlands. Phase 2 includes wetland planting, according to monitoring of hydrologic conditions. Phase 3 will include the excavation in the action area to remove non-hydric soils in areas that were designed to become wetlands, and will form islands that will benefit aquatic and wildlife habitat. The applicant will ensure the depth of excavations would support forested wetlands. PS Chinook use the East Fork Nookachamps Creek for spawning, generally spawn at least a mile upstream of the action area. Juvenile PS Chinook use the action area for refuge, feeding and migration.

There will be two primary effects of the action. One effect will be temporary effects to water quality during various in-water construction activities throughout the project. Another effect will be the project's long term effects to hydrology within the reach and action area.

Species Determination, Puget Sound Chinook Salmon

NMFS analyzed the potential impacts of the project on PS Chinook and determined that the impacts will be discountable and insignificant.

The effects will be discountable because PS Chinook are not expected to be present during construction. In-water construction during all phases will occur between June 15 and August 31, when water temperatures in Nookachamps Creek are unsuitable for juvenile Chinook. Juvenile PS Chinook have generally moved out of the river by June. Adult PS Chinook migrate through the action area usually beginning in September.

Few adults may occur in the project area in late August during their spawning migration; however NMFS expects effects to be insignificant. Adults can detect disturbance, principally noise, and slightly increased sediment loads in the water column caused by construction and avoid the construction site. Even if adults occur in the action area, construction effects (e.g. low levels of noise and suspended sediment) are not expected to rise to the level of harm.

Although habitat may be slightly altered in the project area, these changes are expected to produce only minor changes in prey abundance or availability which will return to pre-construction levels shortly after completion of each phase. Furthermore, the overall effect of the project is likely to increase productivity as ELJs and an improved riparian forest is expected to increase invertebrate and vertebrate densities. Because prey abundance will be re-established before juvenile PS Chinook return to the action area the following spring, the effects to PS Chinook are expected to be insignificant.

The changes in hydrology are not designed to reduce surface flow during the summer or increase the flow during storms in the East Fork or mainstem Nookachamps Creek. The project is designed to do the opposite, which is beneficial to PS Chinook. The project will raise groundwater levels, improve groundwater recharge, and provide more storage during floods. These improvements in hydrology are counter to many areas throughout the ESU that are doing the opposite as land is

converted from natural to developed.

Because all potential adverse effects to PS Chinook are discountable or insignificant, NMFS concurs with the COE effect determination of "may affect, not likely to adversely affect" for PS Chinook.

Critical Habitat Determination, Puget Sound Chinook Salmon

Critical Habitat for PS Chinook was designated on September 2, 2005 (70 FR 52630) and became effective on January 2, 2006. Critical habitat consists of six Primary Constituent Elements (PCEs) for the PS Chinook Evolutionary Significant Unit (ESU). Freshwater rearing areas, and migration corridors (PCEs 2, and 3) occur within the action area.

Site	Essential Physical and Biological Features	Species Life Stage
Freshwater rearing	Water quantity and floodplain connectivity	Juvenile growth and mobility
	Water quality and forage	Juvenile development
	Natural cover ^a	Juvenile mobility and survival
Freshwater migration	Free of artificial obstructions, water quality and quantity, and natural cover ^b	Juvenile and adult mobility and survival

^a Natural cover includes shade, large wood, log jams, beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks.

^b Forage includes aquatic invertebrate and fish species that support growth and maturation.

NMFS analyzed the potential effects of the project on PS Chinook and determined that the effects will be discountable and insignificant.

The effects will be discountable. Because PS Chinook are not expected to be present during construction (June 15, - August 31), the conservation value of the PCEs will not be reduced. The effects of the proposed project will be insignificant because the project will not result in a long term reduction in the amount or quality of rearing habitat in Nookachamps Creek, and will not impede migration for juvenile and adult PS Chinook. All riparian vegetation that are removed during the project will be replaced with native trees and shrubs. The proposed ELJs, riparian plantings, and wetland establishment will improve long term physical processes at Nookachamps Creek.

Because all potential adverse effects to PS Chinook are discountable or insignificant, NMFS concurs with the COE's effect determination of "may affect, not likely to adversely affect" for PS Chinook critical habitat.

This concludes informal consultation pursuant to the regulations implementing the ESA, 50 CFR 402.10. The COE must re-analyze this ESA consultation if new information reveals effects of the action that may affect listed species in a way not previously considered, the action is modified in a

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manner that causes an effect to the listed species or critical habitat that was not previously considered, or a new species is listed, or critical habitat designated, that may be affected by the identified action.

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 NMFS 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, NMFS is required to provide the Federal action agency with EFH conservation recommendations (section 305(b)(4)(A)).

This consultation is based, in part, on information provided by the Federal 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).

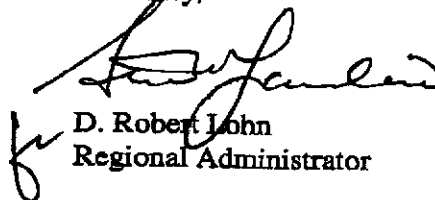
The proposed action is described in pages 7 through 36 of the BE. The proposed action includes habitats which have been designated as EFH for various life stages of Chinook, coho (*O. kisutch*), and Puget Sound pink (*O. gorbuscha*) salmon.

EFH Conservation Recommendations: Because the habitat requirements (*i.e.*, EFH) for the MSA-managed species in the action area are similar to that of the ESA-listed species, and because the conservation measures that the COE 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 [section 305(b)(4)(A)] are not necessary. Since NMFS is not providing conservation recommendations at this time, no 30-day response from the COE is required [MSA section 305(b)(4)(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 NMFS's EFH conservation recommendations, the COE will need to reinitiate consultation in accordance with the implementing regulations for EFH at 50 CFR 600.920(l).

If you have questions regarding either the ESA or EFH consultation, please contact Joel Moribe of the Washington Habitat Branch Office at (206) 526-4359, or by electronic mail at joel.moribe@noaa.gov.

Sincerely,



D. Robert Lohn
Regional Administrator

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cc: Randel Perry, COE
Gail Terzi, COE
Martha Jensen, USFWS