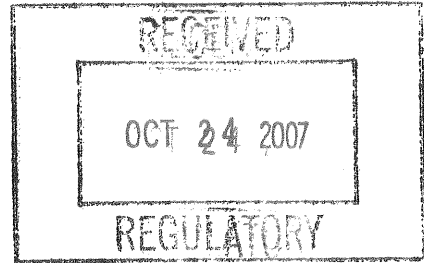




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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

NMFS Tracking No.:
2007/06785

October 22, 2007



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 – Reinitiation of Informal Consultation for
Nookachamps Creek and Wetland/Habitat Restoration Bank (HUC 171100070201,
Nookachamps Creek, COE No.: 200600098)

Dear Ms. Walker:

This correspondence is in response to your request for consultation under the Endangered Species Act (ESA).

The Army Corps of Engineers (COE) submitted a Biological Evaluation (BE) to the National Marine Fisheries Service (NMFS) for the above referenced project on October 5, 2007. The COE requested NMFS' concurrence with "may affect, not likely to adversely affect" for Puget Sound steelhead (*O. mykiss*) (PS steelhead). The PS steelhead Distinct Population Segment (DPS) was listed as threatened under the ESA on June 11, 2007 (72 FR 26722). This consultation with the COE is conducted under section 7(a)(2) of the ESA, and its implementing regulations, 50 CFR 402.

The COE proposes to issue a permit to Clear Valley Environmental Farm, LLC under Section 10 of the Rivers and Harbors Act of 1898 and Section 404 of the Clean Water Act to restore reaches of the mainstem of Nookachamps Creek and set up a wetland/habitat mitigation bank.

A previous consultation on this project submitted on April 7, 2007 requested consultation for Puget Sound Chinook (PS Chinook) salmon and Critical Habitat for PS Chinook. NMFS concurred with the following COE determinations: (1) "may affect, not likely to adversely affect" for PS Chinook and (2) "may affect, not likely to adversely affect" Critical Habitat (CH) for PS Chinook with a concurrence letter on July 25, 2006.

The original proposal was for the restoration of selected reaches of the mainstem of Nookachamps Creek and creation of approximately 311 acres of wetland. This would be accomplished by installing four engineered log jams (ELJs), planting 81 acres within a



150-foot wide buffer along 13,000 Linear Feet (LF) of existing stream channel, and re-establishing 311 acres of wetland. The original project would restore 13,000 feet of existing stream channel and riparian habitat, construct 9,720 feet of new high-flow channel, and restore 340 acres of palustrine emergent shrub-scrub and forested wetlands. An additional 81 acres of 150 foot buffer will be planted and preserved. The project will be constructed in 3 phases that includes:

1. filling all drainage ditches and constructing 3 Engineered Log Jams (ELJs), the fill and placement of ELJs is expected to raise the groundwater level and established wetlands;
2. wetland planting, according to monitoring of hydrologic conditions; and,
3. excavating 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 proposed adjustments to the original project plan include adjusting the number and placement of the ELJs, the size of the mitigation bank boundary, the landscaping, and the number of upland wells. In the original plan, 4 ELJs were proposed, for one to be placed in the mainstem of Nookachamps Creek, one not detailed, and two in the east fork. Now, only 3 ELJs (total) are proposed, with the first ELJ location moved upstream of the Nookachamps bridge in order to remain within project boundaries, and the other two ELJs to follow the original plan and be placed in the east fork of the Nookachamps Creek. The mitigation bank boundary has been shifted approximately 300 feet to the southeast to match a portion of the Clear Valley Farm Property boundary, adjacent to SR 9. The adjustment in buffer area on the site increased from 50 acres to 83 acres, and the total area of the mitigation bank increased from 375 acres to 397 acres. Upland and wetland shrub mosaics were added to the landscaped design. There are currently a total of 37 monitoring wells on the site.

These minor changes to the original proposal will not alter the previous effect determinations for PS Chinook, PS Chinook CH, and Magnuson-Stevens Act. Therefore, this consultation letter will not include additional analysis.

The proposed restoration project will restore reaches of the mainstem and east fork of Nookachamps Creek and their associated palustrine and riverine wetlands. The project will improve water quality in the lower Skagit River watershed, improve hydrologic processes, improve fish habitat, and improve wildlife habitat. The project will raise groundwater levels, improve groundwater recharge, and provide more storage during floods. Furthermore, the overall effect of the project is likely to increase productivity, as ELJs and an improved riparian forest are expected to increase invertebrate and vertebrate densities.

Species Determination, PS Steelhead

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

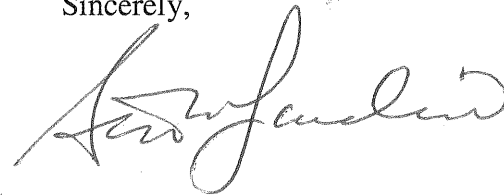
The effects will be discountable because PS steelhead are not expected to be present during construction. Construction is planned to occur between June 15th and August 31st, after emergence and before spawning, when water temperatures and dissolved oxygen levels are generally unsuitable for salmon. If a few steelhead salmon do occur in the action area, the effects are expected to be insignificant. If adult steelhead were to occur in the action area, the noise and suspended sediment levels associated with construction are not expected to rise to a degree that would cause harm to the fish. Although fish habitat may be slightly altered in the project area, these changes are expected to produce only minor changes in prey abundance or availability. Both prey abundance and availability are expected to return to pre-construction levels shortly after completion of each phase.

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

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

If you have questions regarding this consultation, please contact Brianna Blaud of the Washington State Habitat Office at (206) 526-4749, or by electronic mail at brianna.blaud@noaa.gov.

Sincerely,



D. Robert Lohn
Regional Administrator

cc: Tom McDowell, USFWS
Gail Terzi, COE