

13. MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

The consultation requirements of Section 305(b) MSA directs Federal agencies to consult with NMFS on all actions, or proposed actions, that may adversely affect EFH. Adverse effects include the direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside EFH, and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 C.F.R. 600.810). Section 305(b) also requires NMFS to recommend measures that may be taken by the action agency to conserve EFH.

The Pacific Fishery Management Council identified EFH for groundfish (PFMC 1998a), coastal pelagic species (PFMC 1998b), and Chinook salmon, coho salmon, and Puget Sound pink salmon (PFMC 1999). The proposed action and action area for this consultation are described in the Introduction to this document. The proposed action and action area are detailed above in section 3.2 of this Opinion. The action area includes habitats that have been designated as EFH for various life-history stages of Chinook and coho salmon.

13.1 EFH Related to the Project

Upon withdrawal of the December 16, 1999, Opinion, NMFS also withdrew its EFH analysis for groundfish and coastal pelagic species. At that time, there was not a finalized salmon EFH appendix to the *Pacific Coast Salmon Plan* that could be included in the 1999 Opinion. Now that a final EFH appendix exists, this Opinion includes an EFH analysis and determination of potential adverse effects to Chinook and coho salmon (*see* sections 6. and 13.6 of this Opinion).

The Corps did not include their existing EFH response for groundfish and coastal pelagic species in their 2001 BA. Therefore, NMFS has requested, and the Corps has agreed, to address EFH for groundfish and coastal pelagic species as part of their upcoming supplemental EIS process for the Project. NMFS will review the information provided in the supplemental EIS as well as our previous correspondence with the Corps on this subject and provide a new determination at that time.

13.2 EFH Conservation Recommendations

Pursuant to Section 305(b)(4)(A) of the MSA, NMFS is required to provide EFH conservation recommendations to Federal agencies regarding actions which may adversely affect EFH. While NMFS understands that the proposed dredging and disposal Impact Minimization Measures and BMPs identified in Chapter 3 of the 2001 BA will be implemented by the Corps, it does not believe that these measures are sufficient to address the adverse impacts to EFH described above. However, the Conservation Measures outlined in section 10 of this Opinion and all the Reasonable and Prudent Measures and Terms and Conditions outlined in section 12 of this Opinion are generally applicable to designated EFH for Chinook and coho salmon and address these adverse effects.

13.3. Statutory Response Requirement

Federal agencies are required to provide a detailed written response to NMFS' EFH conservation recommendations within 30 days of receipt of these recommendations (50 C.F.R. 600.920(j)(1)). The response must include a description of measures proposed to avoid, mitigate, or offset the adverse effects that the activity has on EFH. If the response is inconsistent with the EFH conservation recommendations, the response must explain the reasons for not following the recommendations, including the scientific justification for any disagreements over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects.

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 consultation and how many are adopted by the action agency. Therefore, in your statutory reply to the EFH portion of this consultation, we ask that you clearly identify the number of conservation recommendations accepted.

13.4 Supplemental Consultation

The Corps must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations (50 C.F.R. 600.920(k)).

14. DATA QUALITY ACT DOCUMENTATION AND PRE-DISSEMINATION REVIEW

Section 515 of the Treasury and General Government Appropriations Act of 2001 (Public Law 106-554) ('Data Quality Act') specifies three components contributing to the quality of a document. They are utility, integrity, and objectivity. This section of the Opinion addresses these Data Quality Act (DQA) components, documents compliance with the DQA, and certifies that this Opinion has undergone pre-dissemination review.

Utility: This document records the results of an interagency consultation. The information presented in this document is useful to three agencies of the Federal government (NMFS, the Corps, and FWS), the sponsoring Ports (Portland and St. Helens, in Oregon, and Vancouver, Kalama, Longview and Woodland in Washington), and the general public. The information is useful and of interest to the general public as it describes the manner in which public trust resources are being managed and conserved. This consultation also fulfills multiple legal obligations of the named agencies and sponsoring Ports. The information presented in this Opinion and used to prepare it represents the best available scientific and commercial information and has been improved through interaction with the Corps.

Individual copies were provided to the Federal agencies. The Corps will provide a copy of the Opinion to the sponsoring Ports. This consultation will be posted on the NMFS Northwest Region website (<http://www.nwr.noaa.gov>). The format and naming adheres to conventional standards for style.