



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.:
2004/01612

February 16, 2005

Richard W. Hobernicht
Colonel, Corps of Engineers
Portland District
P.O. Box 2946
Portland, Oregon 97208-2946

Re: Reinitiation of Endangered Species Act Section 7 Formal Consultation and Conference
Opinion and Magnuson-Stevens Act Essential Fish Habitat Consultation for the
Columbia River Federal Navigation Channel Improvement Project

The enclosed document contains a biological and conference opinion (Opinion) prepared by the National Marine Fisheries Service (NMFS) pursuant to Section 7(a)(2) of the Endangered Species Act (ESA) on the effects of Columbia River Federal Navigation Channel Improvements Project (Project). In this Opinion, NMFS concludes that the proposed action is not likely to jeopardize the continued existence of Snake River sockeye salmon (*Oncorhynchus nerka*), Snake River fall Chinook salmon (*O. tshawytscha*), Snake River spring/summer Chinook salmon, Snake River Basin steelhead (*O. mykiss*), Upper Columbia River steelhead, Lower Columbia River steelhead, Upper Willamette River steelhead, Middle Columbia River steelhead, Columbia River chum salmon (*O. keta*), Lower Columbia River Chinook salmon, Upper Willamette River Chinook salmon, Upper Columbia River spring run Chinook salmon, and Lower Columbia River coho salmon (*O. kisutch*) (proposed for listing) or result in the destruction or adverse modification of their proposed and designated critical habitat. In reaching this conclusion, NMFS relied on the best available scientific and commercial data.

The Opinion also includes an Incidental Take Statement with Terms and Conditions necessary to minimize the impact of taking that is reasonably likely to be caused by this action. Take from actions by the action agency and applicant, if any, which meet these terms and conditions, will be exempt from the ESA take prohibition.

This Opinion also includes the results of our consultation on the Project's likely effects on essential fish habitats (EFH) pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and includes conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects to EFH. Section 305(b)(4)(B) of the MSA 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 recommendations, the Corps of Engineers (Corps) must explain why the recommendations will



not be followed, including the justification for any disagreements over the effects of the action and the recommendations.

This new Opinion, which supercedes the May 20, 2002 Opinion for the Project, is based on a reinitiation request from the Corps. On October 20, 2004, the Corps requested reinitiation of consultation on the Project to evaluate the Opinion in light of the recent Ninth Circuit Court of Appeals decision on critical habitat, *Gifford Pinchot Task Force, et al. v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004). On October 28, 2004, NMFS agreed that while the 2002 Opinion properly analyzed the Project's impacts on the value of critical habitat for the recovery of the ESA-listed species, reinitiation of consultation was nonetheless warranted in light of the *Gifford Pinchot* decision.

We appreciate the continued close collaboration with your staff on this project. If you have questions regarding this consultation, please contact Ms. Cathy Tortorici, Chief, Oregon Coast/Lower Columbia River Branch, of the Oregon State Habitat Office in Portland, Oregon, at 503.231.6268.

Sincerely,

for 
D. Robert Lohn
Regional Administrator

cc: Kemper McMaster, FWS