



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Northwest Region  
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BIN C15700  
Seattle, WA 98115-0070

Refer to:  
OSB2001-0011-FEC

September 11, 2001

Mr. Lawrence C. Evans  
US Army Corps of Engineers  
Attn: Teena Monical  
Regulatory Branch, CENWP-OP-G  
P.O. Box 2946  
Portland, Oregon 97208-2946

Re: Endangered Species Act Formal Section 7 Consultation and Magnuson-Stevens Act  
Essential Fish Habitat Consultation for Hampton Lumber Mills Stormwater Collection  
and Treatment System, City of Tillamook, Tillamook County, Oregon (Corps No. 2000-  
00287)

Dear Mr. Evans:

Enclosed is the National Marine Fisheries Service's (NMFS) biological opinion for issuance of a Clean Water Act section 404 permit (Corps No. 2000-287) authorizing Hampton Lumber Mills to conduct work in waters of the United States. Hampton Lumber proposes to install a new stormwater collection and treatment system for their sawmill in Tillamook, Tillamook County, Oregon.

The NMFS concludes in this opinion that the proposed action is not likely to jeopardize Oregon Coast coho salmon (*Oncorhynchus kisutch*) or destroy or adversely modify critical habitat. Pursuant to section 7 of the Endangered Species Act, NMFS has included reasonable and prudent measures with non-discretionary terms and conditions that NMFS believes are necessary and appropriate to minimize the potential for incidental take associated with this project. This opinion also serves as consultation on Essential Fish Habitat pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and its implementing regulations (50 CFR Part 600).



Questions regarding this letter should be directed to Scott Carlon of my staff in the Oregon Habitat Branch at 503.231.2379.

Sincerely,

*for Michael R. Course*

Donna Darm  
Acting Regional Administrator

Endangered Species Act - Section 7 Consultation  
&  
Magnuson-Stevens Act  
Essential Fish Habitat Consultation

**BIOLOGICAL OPINION**

Hampton Lumber Mills  
Stormwater Treatment and Collection System  
City of Tillamook, Tillamook County, Oregon

Agency: U.S. Army Corps of Engineers, Portland District

Consultation Conducted By: National Marine Fisheries Service, Northwest Region

Date Issued: September 11, 2001

Refer to: OSB2001-0011-FEC

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# 1. ENDANGERED SPECIES ACT

## 1.1 Background

On January 29, 2001, the National Marine Fisheries Service (NMFS) received a January 25, 2001, letter from the U.S. Army Corps of Engineers (Corps) requesting formal consultation pursuant to section 7 of the Endangered Species Act (ESA). The Corps proposes to issue a permit under section 404 of the Clean Water Act to Hampton Lumber Mills (Applicant). The Applicant is seeking authorization to construct a new storm water collection and treatment system. The current system does not satisfy the requirements of their General Stormwater Permit and the Applicant is under order from the Oregon Department of Environmental Quality to improve the system. The Corps determined that issuance of the permit would authorize activities that may adversely affect Oregon Coast coho salmon (*Oncorhynchus kistuch*).

The NMFS listed Oregon Coast (OC) coho salmon as threatened under the ESA on August 10, 1998 (63 FR 42587), and critical habitat was designated on February 16, 2000 (65 FR 7764). Protective regulations for this species were issued by NMFS on July 10, 2000 (65 FR 42422). The objective of this biological opinion is to determine whether the proposed action is likely to jeopardize the continued existence of OC coho salmon or destroy or adversely modify designated critical habitat for this species. This consultation is undertaken pursuant to section 7(a)(2) of the ESA and its implementing regulations, 50 CFR 402.

## 1.2 Proposed Action

The proposed project includes the installation of diversion berms, swales and ditches, collection ponds, three pump stations, force main piping, and moving a section of Holden Creek, a tributary to the Trask River. The intent of these facilities is to divert storm water runoff from the sawmill property for treatment before discharge.

To prevent untreated storm water from leaving the property, about 60,972 cubic yards of fill material would be used to construct berms along the east and west perimeters of the property, and along the north side of Holden Creek. The berms will be designed to direct untreated water away from Holden Creek and into bioswales. About 4,139 cubic yards of material will be used to construct the bioswales that will be used for primary treatment of storm water. These will run north to south and lead to a detention pond; one will also be constructed along the north side of Holden Creek, immediately north of the berm. Three detention ponds will be constructed. One will be on the west end of the property, one on the east end, and one in the center. About 6,294 cubic yards of material will be excavated to create the ponds. The detention ponds will provide secondary treatment of storm water by allowing solids to settle before the storm water is pumped to constructed wetlands south of 12<sup>th</sup> Street on Tillamook Lumber property, away from Holden Creek, for tertiary treatment.

Holden Creek enters Tillamook Lumber property on its eastern boundary and flows through two culverts, one that is 45-foot long and one that is 220-foot long, then flows under a log bridge

before exiting at the property's western boundary. Holden Creek enters the Trask River through a tide gate at about river mile 2.5. The applicant would move a 1,430-foot section of the creek to the northern edge of 12<sup>th</sup> Street (about 50 feet north of 12<sup>th</sup> Street), approximately 400 feet south of its current location. The new channel would be constructed with the following features: (1) A stable, self-maintaining channel designed to transport water and sediment over time without significant degrading or aggrading of streambed material; (2) increased sinuosity and connection to the floodplain; (3) native riparian vegetation to improve shading; and (4) large woody debris to create fish habitats.

The design of in stream structures will include the use of boulders, large wood, and root wads for both fish habitat creation and bank stability. Two or three conifer root wads will be placed at each meander bend at a 45-degree angle to flow. Between 45 and 60 root wads will be used.<sup>1</sup> A minimum of 15 feet of trunk will be placed in the stream bank. Large boulders and footer logs will be placed at the toe of the bank and channel. The intent is to provide fish habitats at both high and low flows. No in-water work would be required for channel creation. The newly constructed channel would remain dry until newly planted vegetation has been established and the banks are stable. Once this has occurred, flow would be diverted to the new channel. The Applicant proposes to monitor riparian plantings to ensure 80% survival after three years and to monitor the new channel for five years following project completion. Monitoring will include photo documentation and submission of an annual report to the Oregon Division of State Lands.

### **1.3 Biological Information and Critical Habitat**

Although limited data are available to assess population numbers or trends, NMFS believes that all coho salmon stocks comprising the OC coho salmon ESU are depressed compared with past abundance. The status and relevant biological information concerning OC coho salmon are well described in the proposed and final rules from the Federal Register (July 25, 1995, 60 FR 38011; and May 6, 1997, 62 FR 24588, respectively), Weitkamp *et al.* (1995), and Jacobs *et al.* (2000).

The OC coho salmon ESU, although not at immediate danger of extinction, may become endangered in the future if present trends continue (Weitkamp *et al.* 1995). Spawning escapements for this ESU may be at less than 5% of abundance from that in the early 1900s and recent production of coho salmon may be less than 10% of the historic production (Nickelson *et al.* 1992). Average recruits-per-spawner may also be declining. Long-term trends of total pre-harvest abundance and spawner escapement show significant declining trends over the last 49 years (1950-1999). The level of both spawner escapement and total pre-harvest abundance observed in 1997 and 1998 was the lowest on record for OC coho salmon (Jacobs *et al.* 2000).

Timing of adult coho salmon river entry is largely influenced by river flow. Coho salmon normally wait for freshets before entering rivers. If habitat conditions (flow, temperature, etc.) in

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<sup>1</sup> E-mail from David Like, Hampton Lumber, to Scott Carlon, NMFS (August 9, 2001) describing a change in the number of root wads proposed for placement in the new channel.

the stream are unsuitable, adults will hold near the streams entrance waiting, for several weeks if necessary, for river conditions to change. As river conditions improve, coho may take short excursions into the stream and return to salt water before commencing upstream migration (Sandercock 1991).

Usually, river entry for both the OC coho salmon ESU and the Oregon portion of the SONC coho salmon ESU occurs from mid September to mid February with peak entry occurring in October. Active upstream migration mostly occurs during daylight hours (Sandercock 1991). Spawning occurs from late October to February with most of spawning concentrated in November and December.

Juvenile coho salmon typically rear for one year in Oregon coastal streams before migrating to the ocean. Juveniles may also move downstream to upper estuarine and tidally influenced habitats as age-0s in the spring or fall of their first year (Miller and Sadro 2000). Seaward migration normally occurs from February through June with the highest concentration of migrants occurring in May. Coho salmon smolts are not believed to spend a great deal of time in the estuary before moving out to the ocean. However, juvenile coho salmon are likely to be present in Oregon's larger estuaries from early May through June.

#### **1.4 Evaluating Proposed Actions**

The standards for determining jeopardy are set forth in section 7(a)(2) of the ESA as defined by 50 CFR Part 402 (the consultation regulations). NMFS must determine whether the action is likely to jeopardize the listed species and/or whether the action is likely to destroy or adversely modify critical habitat. This analysis involves the initial steps of: (1) Defining the biological requirements and current status of the listed species, and (2) evaluating the relevance of the environmental baseline to the species' current status.

Subsequently, NMFS evaluates whether the action is likely to jeopardize the listed species by determining if the species can be expected to survive with an adequate potential for recovery. In making this determination, NMFS must consider the estimated level of mortality attributable to: (1) Collective effects of the proposed or continuing action, (2) the environmental baseline, and (3) any cumulative effects. If NMFS finds that the action is likely to jeopardize the listed species, NMFS must identify reasonable and prudent alternatives for the action.

Furthermore, NMFS evaluates whether the action, directly or indirectly, is likely to destroy or adversely modify the listed species' designated critical habitat. NMFS must determine whether habitat modifications appreciably diminish the value of critical habitat for both survival and recovery of the listed species. NMFS identifies those effects of the action that impair the function of any essential element of critical habitat. If NMFS concludes that the action will destroy or adversely modify critical habitat, it must identify any reasonable and prudent measures available.

For the proposed action, NMFS' jeopardy analysis considers direct or indirect mortality of fish attributable to the action. NMFS' critical habitat analysis considers the extent to which the proposed action impairs the function of essential elements necessary for migration, spawning, and rearing of OC coho salmon under the existing environmental baseline.

#### **1.4.1 Biological Requirements**

The first step in the methods NMFS uses for applying the ESA section 7(a)(2) to listed salmon is to define the species' biological requirements that are most relevant to each consultation. NMFS also considers the current status of the listed species taking into account population size, trends, distribution and genetic diversity. To assess the current status of the listed species, NMFS starts with the determinations made in its decision to list OC coho salmon for ESA protection and also considers new data available that is relevant to the determination (Weitkamp *et al.* 1995).

The relevant biological requirements are those necessary for OC coho salmon to survive and recover to naturally reproducing population levels at which protection under the ESA would become unnecessary. Adequate population levels must safeguard the genetic diversity of the listed stock, enhance their capacity to adapt to various environmental conditions, and allow them to become self-sustaining in the natural environment.

For this consultation, the biological requirements are improved habitat characteristics that function to support successful rearing and migration. The current status of the OC coho salmon, based upon their risk of extinction, has not significantly improved since the species was listed.

#### **1.4.2 Environmental Baseline**

The environmental baseline is an analysis of the effects of past and ongoing human and natural factors leading to the current status of the species or its habitat and ecosystem within the action area. The action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). Direct effects occur at the project site and may extend upstream or downstream based on the potential for impairing fish passage, hydraulics, sediment and pollutant discharge, and the extent of riparian habitat modifications. Indirect affects may occur throughout the watershed where actions described in this opinion lead to additional activities or affect ecological functions contributing to stream degradation. For this consultation, the action area includes Holden Creek from the upstream limit of the proposed action, downstream to its confluence with the Trask River.

Holden Creek originates in the foot hills west of Tillamook and drains an area of just 3.8 square miles. The stream runs about 3.2 miles through commercial, residential, and agriculture lands before entering the Trask River through a tide gate at river mile 2.5. Through the project reach, Holden Creek is entrenched and disconnected from the floodplain. Annual precipitation in Tillamook is approximately 90 inches with nearly 70% of this occurring between November and March. By contrast, just 7% of the total annual precipitation occurs during the summer months (July-September) with the majority occurring in later September (WRCC 2001).

The bulk of production for the OC coho salmon ESU is skewed to its southern portion where the coastal lake systems (e.g., Tenmile, Tahkenitch, and Siltcoos Basins) and the Coos and Coquille Rivers are more productive (Jacobs *et al.* 2000 and Weitkamp *et al.* 1995). The proposed action area is in the northern half of the ESU where production is more depressed and the habitat is under seeded. OC coho spawn in the Trask River and tributaries but it is not known if spawning occurs in Holden Creek. Juveniles likely used this stream for rearing historically, and may still use this stream for rearing and refuge from high water events. However, habitat quality is poor due to channelization of the creek (i.e., no side channels and little riparian and in stream cover). Holden Creek is on the Oregon Department of Environmental Quality's 303(d) list of water quality limited streams for exceeding the bacteria standard.

## **1.5 Analysis of Effects**

### **1.5.1 Effects of the Proposed Action**

The effects determination in this Opinion was made using a method for evaluating current aquatic conditions, the environmental baseline, and predicting effects of actions on them. This process is described in NMFS (1996). The effects of actions are evaluated in terms of the expected effect—restore, maintain, or degrade—on aquatic habitat factors in the action area.

Most of the proposed work—berm and bioswale construction, detention pond construction, new channel construction with placement of fish habitat structures, and riparian planting—will not require in-water work. Flow would remain in the existing channel until all of the new channel construction is completed. Therefore, effects on OC coho salmon and their habitat are expected to be minor in both space and time and thus existing aquatic conditions maintained in its current state. As with all ground disturbing activities, surface runoff from newly exposed soils may increase suspended sediment levels in Holden Creek, particularly during heavy rain events. Excessive sediment loading can alter channel morphology and reduce habitat complexity. At moderate levels, turbidity has the potential to adversely affect primary and secondary productivity; at higher levels, turbidity may interfere with feeding and may injure and even kill both juvenile and adult fish (Spence *et al.* 1996).

The NMFS anticipates that the use of sediment and erosion control measures during construction activities will minimize the potential for excessive sediment releases. Furthermore, Holden Creek does not currently provide any holding or spawning habitat for adult OC coho salmon and provides limited rearing habitat for juvenile OC coho. Therefore, NMFS does not expect that minor and temporary releases of sediment will have any significant impact on OC coho habitat either in Holden Creek or in the Trask River downstream of its confluence. In addition, it is not expected that individual juvenile coho salmon, if present, would be killed or injured due to excessive turbidity resulting from suspended sediment. If juveniles are present, they may be displaced and normal sheltering/feeding behavior could be disrupted.

As with all construction activities, accidental release of fuel, oil, and other contaminants can occur. Petroleum-based contaminants such as fuel, oil, and some hydraulic fluids contain

polycyclic aromatic hydrocarbons (PAHs) which can cause acute toxicity to salmonids at high levels of exposure and can also cause chronic lethal and acute and chronic sublethal effects to aquatic organisms (Neff 1985). A pollution control plan should provide for reducing effects from toxic spills should one occur. In addition, accidental spills of contaminants into Holden Creek are further minimized as much of the work will be accomplished in the dry (i.e., not in the active flowing channel).

Further disturbance could occur from the noise and vibration of construction equipment that may disrupt normal sheltering and feeding behavior. Fish, if present, could move either upstream or downstream if disturbed.

### **1.5.2 Effects on Critical Habitat**

The NMFS designates critical habitat based on physical and biological features that are essential to the listed species. Essential features for designated critical habitat include substrate, water quality, water quantity, water temperature, food, riparian vegetation, access, water velocity, space and safe passage. Critical habitat for OC coho salmon consists of all waterways below naturally impassable barriers including the project area. The adjacent riparian zone is also included in the designation. This zone is defined as the area that provides the following functions: Shade, sediment, nutrient/chemical regulation, streambank stability, and input of large woody debris/organic matter.

Temporary and minor impacts to critical habitat could result from ground disturbing activities that may release sediment into Holden Creek and downstream into the Trask River. These portions of both streams have very low gradient and thus sediments naturally drop out. NMFS expects that existing conditions for stream substrate would be maintained in the short term and should improve in the long term due to the creation of the proposed channel. In other words, sedimentation from mill operations is expected to cease once the berms are in place and stream flow is directed into the new channel. Stormwater runoff from the mill, which will be directed by berms into settling ponds and then pumped to a constructed wetland south of Holden Creek, will no longer enter the creek. Furthermore, sediment release is expected to occur as the old channel is plugged and flow is directed to the new channel. However, this is expected to be minor and temporary as well.

Lastly, the proposed action will result in a new channel that is expected to benefit OC coho salmon. The creation of habitat in the new channel and the significant reduction of sediment inputs from mill operations is expected to improve conditions for OC coho salmon that may use Holden Creek.

### **1.5.3 Cumulative Effects**

Cumulative effects are defined in 50 CFR 402.02 as those effects of "future state or private activities, not involving federal activities, that are reasonably certain to occur within the action area of the federal action subject to consultation." Future federal actions, including the ongoing

operation of hydropower systems, hatcheries, fisheries, and land management activities are being (or have been) reviewed through separate section 7 consultation processes. Therefore, these actions are not considered cumulative to the proposed action.

The NMFS is not aware of any specific future non-federal activities within the action area that would cause greater impacts to listed species than presently occurs. The NMFS assumes that future private and state actions will continue at similar intensities as in recent years.

## **1.6 Conclusion**

The NMFS has determined that, based on the available information, the proposed action is not likely to jeopardize the continued existence of OC coho salmon or result in the destruction or adverse modification of critical habitat. NMFS used the best available scientific and commercial data to apply its jeopardy analysis, when analyzing the effects of the proposed action on the biological requirements of the species relative to the environmental baseline, together with cumulative effects. NMFS applied its evaluation methodology (NMFS 1996) to the proposed action and found that it could cause slight degradation of anadromous salmonid habitat due to increases in sedimentation and turbidity. These effects will be short-term and minor in scale (i.e., confined to lower Holden Creek and the lower Trask River). Furthermore, NMFS expects that construction noise and vibration could alter normal feeding and sheltering behavior of juvenile OC coho salmon should any be present in the action area during the proposed action. These effects will be temporary and are not expected to result in death or injury to individual coho salmon.

Our conclusions are based on the following considerations: (1) Most of the proposed work will occur outside of Holden Creek (i.e., in the dry); (2) in-water work will occur during the Oregon Department of Fish and Wildlife's (ODFW) preferred work window of July 1-September 15, which is expected to minimize the likelihood of OC coho salmon presence in the action area due to high water temperatures; (3) the action area does not provide holding or spawning habitat for adult OC coho salmon; (4) any increases in sedimentation and turbidity to the lower portion of Holden Creek and potentially the Trask River will be short-term and minor in scale and would not change or worsen existing conditions for stream substrate in the action area; and (5) implementation of an erosion and sediment control plan and a spill prevention plan will minimize take of OC coho salmon.

In addition, the following beneficial effects are expected: (1) A significant reduction in suspended solid input to Holden Creek from mill operations is expected due to the installation of the proposed facilities; (2) the new channel will significantly improve rearing habitat for juvenile OC coho salmon in lower Holden Creek with the addition of riparian trees and shrubs and in stream cover; and (3) implementation of the monitoring plan proposed by the Applicant will ensure survival of riparian plantings and maintenance and function of the new channel.

## **1.7 Reinitiation of Consultation**

Consultation must be reinitiated if: (1) The amount or extent of taking specified in the incidental take statement is exceeded, or is expected to be exceeded; (2) new information reveals effects of the action may affect listed species or critical habitats in a way not previously considered; (3) the action is modified in a way that causes an effect on listed species that was not previously considered; or (4) a new species is listed or critical habitat is designated that may be affected by the action (50 CFR 402.16). To reinitiate consultation, the Corps must contact the Habitat Conservation Division (Oregon State Branch Office) of NMFS.

## **2. INCIDENTAL TAKE STATEMENT**

Section 4(d) and Section 9 of the ESA prohibit any taking (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct) of listed species without a specific permit or exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, and sheltering (64 FR 60727; November 8, 1999). Harass is defined as actions that create the likelihood of injuring listed species to such an extent as to significantly alter normal behavior patterns which include, but are not limited to, breeding, feeding, and sheltering. Incidental take is take of listed animal species that results from, but is not the purpose of, the Federal agency or the applicant carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to, and not intended as part of, the agency action is not considered prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement. An incidental take statement specifies the impact of any incidental taking of threatened species. It also provides reasonable and prudent measures that are necessary to minimize impacts and sets forth terms and conditions with which the action agency must comply in order to implement the reasonable and prudent measures.

### **2.1 Amount or Extent of the Take**

The NMFS anticipates that the action covered by this Opinion has more than a negligible likelihood of resulting in incidental take of listed salmonids because of short-term detrimental effects from increased turbidity levels (non-lethal), and the potential for direct incidental take during in-water work (non-lethal). Effects of actions such as the one covered by this Opinion are largely unquantifiable in the short term and are not expected to be measurable as long-term effects on habitat or population levels. Therefore, even though NMFS expects some low level of incidental take to occur due to the action covered by this Opinion, the best scientific and commercial data available are not sufficient to enable NMFS to estimate a specific amount of incidental take to the species itself. In instances such as these, the NMFS designates the expected level of take as unquantifiable. Based on the information provided by the Corps and other available information, NMFS anticipates that an unquantifiable amount of incidental take

could occur as a result of the action covered by this Opinion. The extent of the take is limited to the project area.

## **2.2 Reasonable and Prudent Measures**

The NMFS believes that the following reasonable and prudent measures are necessary and appropriate to avoid or minimize take of listed salmonid species resulting from the action covered by this Opinion. The Corps shall:

1. Minimize the amount and extent of incidental take resulting from in-water work required to complete the project addressed in this Opinion by implementing measures to limit the duration and extent of in-water work.
2. Minimize the amount and extent of take and adverse affects to critical habitat resulting from erosion and chemical pollution associated with this project by using construction practices that minimize the movement of soils and sediment both into, and within, the river and minimize or avoid the potential for chemical pollution.
3. Complete a comprehensive monitoring and reporting program to ensure implementation of these conservation measures are effective in this Opinion in minimizing the likelihood of take from permitted activities.

## **2.3 Terms and Conditions**

To be exempt from the prohibitions of section 9 of the ESA, the Corps must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

1. To implement reasonable and prudent measure #1 above (in-water work), the Corps shall ensure that:
  - a. All work within the active channels of Holden Creek will be completed within the ODFW approved in-water work period of July 1 to September 15.<sup>2</sup>
  - b. Extension of the in-water work period, including those for work outside the wetted perimeter of the stream but below the ordinary high water mark must be approved by biologists from NMFS.

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<sup>2</sup> Oregon Department of Fish and Wildlife, *Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*, 12 pp. (June 2000) (identifying work periods with the least impact to fish) ([http://www.dfw.state.or.us/ODFW/html/InfoCntrHbt/0600\\_inwtrguide.pdf](http://www.dfw.state.or.us/ODFW/html/InfoCntrHbt/0600_inwtrguide.pdf))

- c. In-water work will not inhibit passage of any adult or juvenile salmonid species throughout the construction period or after project completion.
  2. To implement reasonable and prudent measure # 2 above (erosion and pollution), the Corps shall ensure that:
    - a. All equipment that is used for in stream work will be cleaned before entering the job site. External oil and grease will be removed, along with dirt and mud. Wash and rinse water will not be discharged into streams and rivers without adequate treatment. Areas for fuel storage and servicing of construction equipment and vehicles will be at least 150-feet away from any water body.
    - b. A spill containment and control plan with notification procedures, specific clean up and disposal instructions for different products, quick response containment and clean up measures that will be available on site, proposed methods for disposal of spilled materials, and employee training for spill containment has been developed and can be carried out at the project site.
    - c. Appropriate erosion control devices (e.g., silt fencing or straw bales) will be placed to prevent turbid water from entering Holden Creek or other water bodies.
  3. To implement reasonable and prudent measure #4 above (monitoring and reporting), the Corps shall ensure that:
    - a. The Applicant shall follow the monitoring plan as submitted with the biological assessment. The annual monitoring report proposed for submittal to the Oregon Division of State Land by September 15 of each year shall also be submitted to NMFS.
    - b. Monitoring reports will be submitted to:

National Marine Fisheries Service  
Oregon Habitat Branch, Habitat Division  
Attn: OSB2001-0011  
525 NE Oregon Street, Suite 500  
Portland, OR 97232-2778
    - c. If a dead, injured, or sick endangered or threatened species specimen is found. initial notification must be made to the National Marine Fishery Service Law Enforcement Office at the Vancouver Field Office, 600 Maritime, Suite 130, Vancouver, Washington 98661; telephone: 360-418-4246. Care should be taken in handling sick or injured specimens to ensure effective treatment and care, or the handling of dead specimens to preserve biological material in the best possible state for later analysis of cause of death. In conjunction with the care of sick or

injured endangered and threatened species or preservation of biological materials from a dead animal, the finder has the responsibility to carry out instructions provided by Law Enforcement to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

### **3. MAGNUSON-STEVENSON ACT**

#### **3.1 Background**

The objective of the Essential Fish Habitat (EFH) consultation is to determine whether the proposed action described above may adversely affect designated EFH for relevant species, and to recommend conservation measures to avoid, minimize, or otherwise offset potential adverse effects to EFH resulting from the proposed action.

#### **3.2 Magnuson-Stevens Fishery Conservation and Management Act**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires the inclusion of EFH descriptions in Federal fishery management plans. In addition, the MSA requires Federal agencies to consult with NMFS on activities that may adversely affect EFH.

EFH means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (MSA §3). For the purpose of interpreting the definition of essential fish habitat: Waters include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; substrate includes sediment, hard bottom, structures underlying the waters, and associated biological communities; necessary means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle (50CFR600.110).

Section 305(b) of the MSA (16 U.S.C. 1855(b)) requires that:

- Federal agencies must consult with NMFS on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH;
- NMFS shall provide conservation recommendations for any Federal or State activity that may adversely affect EFH;
- Federal agencies shall within 30 days after receiving conservation recommendations from NMFS provide a detailed response in writing to NMFS regarding the conservation recommendations. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with the conservation recommendations of NMFS, the Federal agency shall explain its reasons for not following the recommendations.

The MSA requires consultation for all actions that may adversely affect EFH, and does not distinguish between actions within EFH and actions outside EFH. Any reasonable attempt to encourage the conservation of EFH must take into account actions that occur outside EFH, such as upstream and upslope activities, that may have an adverse effect on EFH. Therefore, EFH consultation with NMFS is required by Federal agencies undertaking, permitting or funding activities that may adversely affect EFH, regardless of its location.

### **3.3 Identification of EFH**

The Pacific Fisheries Management Council (PFMC) has designated EFH for three species of Pacific salmon: chinook (*Oncorhynchus tshawytscha*); coho (*O. kisutch*); and Puget Sound pink salmon (*O. gorbuscha*) (PFMC 1999). Freshwater EFH for Pacific salmon includes all those streams, lakes, ponds, wetlands, and other water bodies currently, or historically accessible to salmon in Washington, Oregon, Idaho, and California, except areas upstream of certain impassable man-made barriers (as identified by the PFMC), and longstanding, naturally-impassable barriers (i.e., natural waterfalls in existence for several hundred years). Detailed descriptions and identifications of EFH for salmon are found in Appendix A to Amendment 14 to the Pacific Coast Salmon Plan (PFMC 1999). Assessment of the impacts to these species' EFH from the proposed action is based on this information.

### **3.4 Proposed Action**

The proposed action is detailed above in Section 1.2. The action area includes the streambed and streambank of the mainstem of Holden Creek within the area of disturbance and downstream to its confluence with the Trask River. This area has been designated as EFH for various life stages of chinook salmon (*O. tshawytscha*) and coho salmon (*O. kisutch*).

### **3.5 Effects of Proposed Action**

As described in detail in Section 1.5.1, the proposed activity may result in detrimental short-term effects to water quality (turbidity) and disturbance of stream substrate. The temporary increase in stream turbidity could result in temporarily reduced feeding efficiency for juvenile salmonids which may be present in the area. A significant reduction in sediment input is expected after the proposed storm water treatment facilities are completed. Furthermore, the new channel will provide significant improvements to juvenile salmon rearing habitat within the project reach due to elimination of 1,430 feet of an incised channel and two culverts totaling 265 feet in length. The new channel will include extensive riparian plantings and installation of channel meanders with habitat structure (root wads and boulders).

### **3.6 Conclusion**

The NMFS believes that the proposed action may adversely affect EFH for Pacific salmon.

### **3.7 EFH Conservation Recommendations**

Pursuant to section 305(b)(4)(A) of the MSA, NMFS is required to provide EFH conservation recommendations for any Federal or state agency action that would adversely affect EFH. The conservation measures that the Applicant included as part of the proposed action are adequate to minimize the adverse impacts from this project to designated EFH for salmon. The conservation measures proposed for the project by the Corps and all of the Reasonable and Prudent Measures and the Terms and Conditions contained in Sections 2.2 and 2.3 are applicable to salmon EFH. Therefore, NMFS incorporates each of those measures here as EFH conservation recommendations.

### **3.8 Statutory Response Requirement**

Please note that the Magnuson-Stevens Act (section 305(b)) and 50 CFR 600.920(j) requires the Federal agency to provide a written response to NMFS after receiving EFH conservation recommendations within 30 days of its receipt of this letter. This response must include a description of measures proposed by the agency to avoid, minimize, mitigate or offset the adverse impacts of the activity on EFH. If the response is inconsistent with a conservation recommendation from NMFS, the agency must explain its reasons for not following the recommendation.

### **3.9 Consultation Renewal**

The Corps must reinitiate EFH consultation with NMFS if either action is substantially revised or new information becomes available that affects the basis for NMFS' EFH conservation recommendations (50 CFR 600.920).

## **4. LITERATURE CITED**

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