



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
BIN C15700
Seattle, WA 98115-0070

Refer to:
OHB2001-0080

August 21, 2002

Mr. Lawrence C. Evans
U.S. Army Corps of Engineers
Regulatory Branch, CENWP-CO-GP
P.O. Box 2946
Portland, Oregon 97208-2946

Re: Modification of the Incidental Take Statement for the Oregon City Bank Stabilization Project along the Clackamas River, at Oregon City, Clackamas County, Oregon.

Dear Mr. Evans:

The National Marine Fisheries Service (NOAA Fisheries) pursuant to section 7 of the Endangered Species Act (ESA) is in receipt of your August 20, 2002, request for modification of the Incidental Take Statement for the Oregon City Bank Stabilization Project along the Clackamas River, at Oregon City, Clackamas County, Oregon. On July 19, 2002, NOAA Fisheries issued a biological opinion (Opinion) to the Corps of Engineers (COE) on the proposed project. In that Opinion, NOAA Fisheries concluded that the proposed action was not likely to jeopardize the continued existence of ESA-listed Upper Willamette River (UWR) chinook salmon (*Oncorhynchus tshawytscha*), Lower Columbia River (LCR) chinook salmon (*O. tshawytscha*), and Lower Columbia River (LCR) steelhead (*O. mykiss*) in the project area. As required by section 7 of the ESA, NOAA Fisheries included an Incidental Take Statement (ITS) that provided reasonable and prudent measures with nondiscretionary terms and conditions that NOAA Fisheries believed were necessary to minimize the potential for incidental take associated with these actions.

To implement conservation measures to alleviate impacts to listed salmonids during construction, the applicant had proposed to install a silt curtain within the river. Installation of the silt curtain may result in entrapment of juveniles that choose to remain in the area. Consequently, the applicant has indicated that they wish to net and release any fish that may become trapped behind the curtain. This aspect of the project was inadvertently not addressed in the ITS. The proposal from the COE is to modify the ITS by including terms and conditions to allow for salvage of entrapped fish behind the silt curtain and that the addition of these terms and conditions would not result in take of listed species beyond that already considered within the Opinion.



NOAA Fisheries concurs with the determination of the COE that the inclusion of terms and conditions allowing for salvage of any fish entrapped as part of the installation of the silt curtain would not result in take of listed species beyond that considered in the Opinion. This concurrence occurs because: (1) NOAA Fisheries analyzed impacts resulting from increased turbidity in the Opinion; (2) salvage operations were inadvertently not addressed in the ITS; (3) there should be few, if any, juveniles in the action area during construction; (4) what few juveniles are there, would be readily released; and (5) the silt curtain may not be used, depending on flow conditions.

Therefore, NOAA Fisheries adds the following terms and conditions to the ITS for the Oregon City Bank Stabilization Project:

1. The COE shall include the following notice with the modified permit:
NOTICE. If a sick, injured or dead specimen of a threatened or endangered species is found, the finder must notify the Vancouver Field Office of NMFS Law Enforcement at 360/418-4246. The finder must take care in handling of sick or injured specimens to ensure effective treatment, and in handling dead specimens to preserve biological material in the best possible condition for later analysis of cause of death. The finder also has the responsibility to carry out instructions provided by Law Enforcement to ensure that evidence intrinsic to the specimen is not disturbed unnecessarily.
2. The COE shall require that immediately after installation of the silt curtain, an attempt must be made to capture and release fish from the isolated area using trapping, seining, electrofishing, or other methods as are prudent to minimize risk of injury.
 - i. A fishery biologist experienced with work area isolation and competent to ensure the safe handling of all ESA-listed fish must conduct or supervise the entire capture and release operation.
 - ii. If electrofishing equipment is used to capture fish, the capture team must comply with NMFS' electrofishing guidelines.
 - iii. The capture team must handle ESA-listed fish with extreme care, keeping fish in water to the maximum extent possible during seining and transfer procedures to prevent the added stress of out-of-water handling.
 - iv. Captured fish must be released as near as possible to capture sites.
 - v. ESA-listed fish may not be transferred to anyone except NMFS personnel, unless otherwise approved in writing by NMFS.
 - vi. Other Federal, state, and local permits necessary to conduct the capture and release activity must be obtained.
 - vii. NMFS or its designated representative must be allowed to accompany the capture team during the capture and release activity, and must be allowed to inspect the team's capture and release records and facilities.
3. The COE shall ensure that ensure that the permittee submits a monitoring report to the Corps within 120 days of project completion describing the permittee's success in

meeting the permit conditions for salvage. The monitoring report will include the following information:

- i. Supervisory fish biologist (name and address).
- ii. Methods of work area isolation and take minimization.
- iii. Stream conditions before, during and within one week after completion of work area isolation.
- iv. Means of fish capture.
- v. Number of fish captured by species.
- vi. Location and condition of all fish released.
- vii. Any incidence of observed injury or mortality.

If you have any questions regarding this consultation, please contact Jim Turner of my staff in the Oregon Habitat Branch at 503-231-6894.

Sincerely,


for D. Robert Lohn
Regional Administrator

cc: Willa Nehlsen, US FWS
Jim Grimes, ODFW
Mike McCabe, DSL
Tom Melville, DEQ
Yvonne Vallette, EPA