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:
OHB2002-0096-FEC

June 6, 2002

Mr. Rob Iwamoto
Acting Forest Supervisor
Willamette National Forest
211 East 7th Avenue
Eugene, Oregon 97401

Re: Endangered Species Act Formal Section 7 Consultation for the Opal Creek Scenic Recreation Area Management Plan, Little North Santiam River, 5th Field Watershed, Willamette National Forest, Marion County, Oregon.

Dear Mr. Iwamoto:

Enclosed is a biological opinion (Opinion) prepared by the National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act (ESA) on the effects of implementing the proposed Opal Creek Scenic Recreation Area Management Plan (OCSRAMP) by the Willamette National Forest within the Little North Santiam River watershed on Upper Willamette River (UWR) steelhead (*Oncorhynchus mykiss*), UWR chinook salmon (*O. tshawytscha*), and their designated critical habitat. NMFS concludes in this Opinion that the implementation of the proposed OCSRAMP is not likely to jeopardize UWR steelhead or UWR chinook salmon or adversely modify critical habitat for these species. NMFS is unable to anticipate all possible circumstances related to implementation of the OSCRAMP, including programmatic actions or individual projects that might be developed in the future. As a result, NMFS is unable to issue a "blanket" incidental take statement or a comprehensive list of reasonable and prudent measures to cover all actions subsequently implemented pursuant to OSCRAMP direction. Accordingly, we are deferring exemption of incidental take to subsequent individual or grouped project level consultations.

The attached Opinion contains an analysis of the effects of the proposed action on designated critical habitat. Shortly before the issuance of this opinion, however, a Federal court vacated the rule designating critical habitat for the evolutionarily significant units considered in this Opinion. The analysis and conclusions regarding critical habitat remain informative for our application of the jeopardy standard, even though they no longer have independent legal significance. Also, if critical habitat is redesignated before this action is fully implemented, the analysis will be relevant when determining whether a reinitiation of consultation will be necessary at that time. For these reasons and the need for timely issuance of this Opinion, our critical habitat analysis has not been removed from this Opinion.

This Opinion also serves as consultation on essential fish habitat (EFH) for chinook salmon, pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR Part 600.

Please direct any questions regarding this consultation to Ron Lindland, of my staff, in the Oregon Habitat Branch at 503.231.2315.

Sincerely,

For Michael R Crouse

D. Robert Lohn
Regional Administrator

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

BIOLOGICAL OPINION

Opal Creek Scenic Recreation Area Management Plan
Little North Santiam River, 5th Field Watershed
Willamette National Forest, Marion County, Oregon.

Agency: U.S. Forest Service

Consultation Conducted By: National Marine Fisheries Service, Northwest Region

Date Issued: June 6, 2002

Issued by: For Michael R Crouse

D. Robert Lohn
Regional Administrator

Refer to: **OHB2002-0096-FEC**

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1. ENDANGERED SPECIES ACT

1.1 Background

On April 8, 2002, the National Marine Fisheries Service (NMFS) received a letter and biological assessment (BA) dated April 3, 2002, from the Willamette National Forest (WNF) requesting formal consultation under Section 7 (a)(2) of the Endangered Species Act (ESA) regarding the potential effects of implementation of the proposed Opal Creek Scenic Recreation Area Management Plan (OCSRAMP) on Upper Willamette River (UWR) steelhead (*Oncorhynchus mykiss*), UWR chinook salmon (*O. tshawytscha*) and their designated critical habitat in the Little North Santiam River (LNSR) watershed. NMFS designated critical habitat for UWR steelhead and UWR chinook salmon on February 16, 2000 (65 FR 7764), and issued protective regulations under section 4(d) of the ESA on July 10, 2000 (65 FR 42422).

On November 13, 1996, U.S. Congress passed Public Law 104-333 (P.L 104-333), otherwise known as the Omnibus Parks and Public Lands Management Act of 1996. Section 1023 of that act provides specific language to establish the Opal Creek Scenic Recreation Area (OCSRA). As directed by P.L. 104-333, the Forest Service has worked with an appointed advisory council to develop the proposed OCSRAMP. The OCSRA covers 13,408 acres of Federal land in the Little North Santiam River (LNSR) drainage. UWR spring chinook salmon and UWR winter steelhead can access habitat within the OCSRA (Appendix, Figure 1). The LNSR is a designated key watershed under the Northwest Forest Plan (NFP). A watershed analysis for the LNSR was completed in December, 1997 (USDI-BLM 1997).

This Opinion has been completed pursuant to the ESA and its implementing regulations (50 CFR § 402), and constitutes formal consultation for listed UWR steelhead and UWR chinook salmon. The objective of this Opinion is to determine whether implementation of the proposed OCSRAMP is likely to jeopardize the continued existence of UWR chinook salmon, or result in the destruction or adverse modification of designated critical habitat.

This Opinion contains an analysis of the effects of the proposed action on designated critical habitat. Shortly before the issuance of this opinion, however, a Federal court vacated the rule designating critical habitat for the evolutionarily significant units (ESUs) considered in this Opinion. The analysis and conclusions regarding critical habitat remain informative for our application of the jeopardy standard, even though they no longer have independent legal significance. Also, if critical habitat is redesignated before this action is fully implemented, the analysis will be relevant when determining whether a reinitiation of consultation will be necessary at that time. For these reasons and the need for timely issuance of this Opinion, our critical habitat analysis has not been removed from this Opinion.

1.2 Proposed Action

The proposed action is the implementation of the OCSRAMP. The OCSRAMP establishes goals and desired conditions to be met within the OCSRA; these are listed in Section 1.2.1 below.

Standards and guidelines in the Willamette National Forest Land and Resource Management Plan (WNFLRMP) and in the OCSRAMP provide the sideboards for reaching the broad goals, objectives, and desired conditions established in the management plans. The OSCRAMP also authorizes various general categories of activities which would occur within the OSCRA; these are described in Section 1.1.2 below. Even though the WNFLRMP and the OCSRAMP set important parameters for the authorization of specific projects, they do not provide the final authorization for project implementation. This final authorization is provided through the National Environmental Policy Act (NEPA) process and, as appropriate, through ESA consultation. Final authorization of site-specific projects depends on the analysis of site-specific effects conducted by WNF personnel in future consultations with NMFS and consistency with appropriate management direction (WNFLRMP, OCSRAMP). Potential, site-specific effects from the continued implementation of the OCSRAMP on the listed species and their designated critical habitat will be evaluated in second level (NEPA and ESA) project analyses at the time such actions are proposed.

1.2.1 Goals and Desired Conditions

Goals of the OCSRAMP, as described in the BA, are as follows:

- Protect and provide for the enhancement of the natural, scenic, recreational, historic and cultural resources of the area in the vicinity of Opal Creek.
- Protect and support the economy of the communities of the Santiam Canyon.
- Provide increased protection for an important drinking water source for communities served by the North Santiam River.
- Provide for a broad range of land uses, including recreation; harvesting of nontraditional forest products, such as gathering mushrooms and material to make baskets; and educational and research opportunities.

Desired conditions in the OCSRA, as managed under the OCSRAMP and described in the BA are:

- The OCSRA fosters public use and enjoyment of the area to the level that ensures protection of its special scenic, recreational, educational, cultural, historical, natural, ecological and water-quality values. Appropriate uses, activities and projects are managed in order to be compatible with each other, and protect resources such as ecological processes, geological features, cultural resources, and plant, fish and wildlife habitats or species including threatened, endangered and/or sensitive species. Management practices are gentle on the land and maintain the naturally-evolving appearance of the OCSRA. The landscape appears as an unaltered and intact natural setting, and developments harmonize with the natural environment.

- Natural ecological processes operate to the extent practical. Fire suppression occurs in many areas to protect private land ownerships, and other resources. Late-successional ecosystems function as part of a regional network of old-growth ecosystems, and are protected from loss due to wildfire. No timber harvest or mineral entry will occur.

- Formal partnerships are encouraged, and provide support in management, education, historic preservation, safety, research, monitoring and stewardship within the OCSRA. The OCSRA offers a wide range of high-quality educational and interpretive experiences to all people, as well as unique and significant research opportunities. Representative features of historic mining activities are preserved in order to maintain the local historical integrity of the area and are a significant part of the education and interpretive activities within the OCSRA.

- Visitors to the Opal Creek Scenic Recreation Area can participate in a wide range of year-round activities in a safe and natural-appearing setting. Both developed and dispersed non-motorized recreational opportunities are available, and range from "roaded natural" to "primitive" within the Recreation Opportunity Spectrum (ROS). Use and occupancy are managed in order to protect natural and cultural resources, minimize depreciative behavior, prevent conflicting uses, and to ensure healthy, safe and enjoyable recreational experiences. Information and education enhance visitors' knowledge, understanding and enjoyment of the OCSRA, and encourage appropriate and safe use.

Four zones of variable intensity of use would be established within the OCSRA by the OCSRAMP (Appendix, Figure 2). These zones are:

1. The Very Low Intensity Zone would be managed to provide opportunities for the most primitive recreational experiences. This zone is characterized as an unmodified natural environment of very high scenic integrity, and would remain undeveloped, with little or no evidence of recent human activity or impacts. There are 4,097 acres in this zone.

2. The Low Intensity Zone would be managed to provide opportunities for dispersed semi-primitive motorized and non-motorized recreation experiences. Recreation use would generally remain light to moderate. Frequency and duration of contact with other recreationists would be low-to-moderate. The zone is characterized as a natural environment of high scenic integrity, essentially undeveloped, with a few rustic facilities designed for site protection. Minimal management restrictions, law enforcement presence, and onsite visitor management controls, such as informational and regulatory signs, would be present, but subtle. There are 8,293 acres in this zone.
3. The Medium Intensity Zone would be managed to provide visitors an opportunity to recreate in a natural environment of high scenic integrity with limited facilities. This zone would be primarily a day use destination with some overnight use occurring within this zone in designated areas. Recreation use would vary by season with moderate numbers of people most of the year. During higher use periods, frequency of contact with other recreationists would be moderate-to-high and low-to-moderate in duration.

Facilities would be provided to protect resources, ensure visitor safety and disperse use into the adjacent low use intensity zone. Management and law enforcement presence would be evident. Presence of on-site visitor management controls would be low to moderate. There are 453 acres in this zone.

4. The High Intensity Zone would be managed to provide visitors opportunity to recreate in a roaded natural environment of high scenic integrity with moderately, but rustically developed facilities. Frequently, there would be numerous people present and contacts among recreationists would be very high and may last for a moderate-to-long period. Most overnight use would occur in this zone in designated areas. Facilities would accommodate high concentrations of users, protect natural resources, and meet sanitary and safety needs. Management and law enforcement presence, and on site visitor management controls, such as informational and regulatory signs, established parking areas, and barriers, would be obvious. There are 663 acres in this zone.

1.2.2 Categories of Activities and Management Guidelines

The BA described 17 activity categories to be authorized under the OCSRAMP. These categories are: General activities, recreation, scenic management, mining, trail system, vegetative management, watershed restoration, fish and wildlife management, fire and fuels management, special uses, land exchanges and acquisitions, transportation, facilities, public safety, education, interpretation, research, Tribes, and local communities. The WNF determined in the BA, and NMFS concurs, that the implementation of the: General; scenic management; public safety; education, interpretation, and research; Tribes; and local communities activity categories will have no effect on UWR steelhead or UWR chinook salmon, or their designated critical habitat. Therefore, these 6 categories of activities will not be further addressed in this Opinion.

Management standards and guidelines, which will amend the Willamette National Forest Land and Resource Management Plan (WNFLRMP) upon adoption of the OCSRAMP, are listed below for each of the 11 categories of activities addressed by this Opinion:

1. <u>Recreation</u>

Recreational actions will provide for a wide range of developed and dispersed recreational opportunities. Developed recreation actions include campground maintenance, and site and trail construction/maintenance. Dispersed activities include general public use of Federal lands (hunting, fishing, camping, hiking, etc), environmental education, and management of off-highway vehicles. Under the OCSRAMP, the following guidelines would apply, and be amended to the WNFLRMP:

- The OCSRA shall be made available for public use and enjoyment, consistent with resource protection and maintenance of OCSRA values.

- Recreation activities at not less than the levels in existence on the date of enactment of P.L. 104-333 shall be permitted. Levels of recreation use higher than the levels in existence on the date of enactment of P.L. 104-333 may be provided if such uses are consistent with the protection of the resource values of the OCSRA.

- The OCSRA shall be made available for a range of recreational opportunities, as explained above, and will be managed to provide four recreation opportunity settings as specified for each management zone: Very Low Intensity Zone, Low Intensity Zone, Medium Intensity Zone, and High Intensity Zone.

When recreation use results in effects that would not achieve desired conditions or meet standards, management actions shall be taken to address the impacts or effects. The following actions, in order of priority, would be used in most cases:

1. Informing and educating the public, and site restoration.
2. Site improvement and/or use of regulations, such as limiting and designating campfires, designating campsites, hardening sites, establishing minimum setbacks from features, facility development for health and safety, resource protection, and/or restricting types of use, group size and/or length of stay.
3. Restrict number of users or timing of use, such as allowing only day use, and/or restricting number of entries.
4. Close areas to all users.

Subject to applicable Federal and state law, hunting and fishing in the OCSRA shall be permitted. Under consultation with the Oregon Department of Fish and Wildlife (ODFW), designated zones or periods where no hunting or fishing shall be permitted for reasons of public safety, administration or public use and enjoyment of the OCSRA may be established.

Discharging of firearms shall be prohibited in the Medium and High Intensity Zones from Memorial Day to Labor Day to ensure the safety of other visitors. The use of these weapons (firearms and bows) will be allowed for wildlife hunting, as established by the Oregon Department of Fish & Wildlife, during the remainder of the year. Target shooting with firearms shall be prohibited in the medium and high intensity zone.

Information and education efforts should be oriented toward enhancing visitors' experiences, increasing their understanding of and respect for the natural processes and area's special values, and encouraging safe and appropriate use. Visitors will be provided with information that encourages user behavior that is respectful of area resources, other visitors, and minimizes conflicts. Information topics would include visitor orientation, recreation opportunities, management goals and standards, regulations, user safety, fire prevention, enforcement and emergency services, and "leave no trace practices."

Day use recreation should be encouraged in the Medium Intensity Zone. Camping should be encouraged within the High Intensity Zone.

Partnerships, volunteer programs, and co-operative agreements shall be encouraged to assist in maximizing visitor recreational opportunities and reducing operational costs.

Non-motorized recreational mineral collecting activities shall be allowed to occur on all streams within the Opal Creek Scenic Recreation Area. All activities should remain within the wet perimeter of the stream to insure the least possible effect on OCSRA resources and values. Recreational mining activities, as defined in OAR 141-89-0040, include the use of equipment such as gold pans, sluices, and rocker boxes.

Motorized suction dredging shall be allowed to occur for recreation purposes on all streams within the OCSRA. All activities should remain within the wet perimeter of the stream and to insure the least possible effect on OCSRA resources and values. Activities will comply with state permit standards, as required by the Oregon Department of Environmental Quality (DEQ). Motorized suction dredges will be limited to an intake nozzle with an inside diameter not exceeding four inches, and motor not exceeding 16 horsepower. Dredging operations shall comply with existing state (OAR 141-89-0050) and Federal regulations for streams.

Dredging activities shall comply with the ODFW Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources (ODFW 2000). To provide maximum protection of potential fish habitat, recommendations will be made to ODFW to restrict work activities to operating only within the existing, published dates.

2. Mining

Mining activities can be combined into two broad categories based on the method of extraction. Surface mining includes dredging and pit mining, while underground mining utilizes tunnels or shafts to extract minerals. Activities associated with mining include roads, supporting structures, and facilities. Subject to valid existing rights, all lands in the OSCRA are withdrawn from any form of entry, appropriation, or disposal under the public lands laws; location, entry, and patent under the mining laws; and disposition under the mineral and geothermal laws (per the Opal Creek Act, P.L. 104-333, Sect. 1023 (d)(7)). Under the OCSRAMP, the following guidelines would apply and would be amended to the WNFLRMP:

Non-motorized recreational mineral collecting activities shall be allowed to occur on all streams within the Opal Creek Scenic Recreation Area. All activities should remain within the wet perimeter of the stream to insure the least possible effect on OCSRA resources and values. Recreational mining activities, as defined in OAR 141-89-0040, includes the use of equipment such asgold pans, sluices, and rocker boxes.

Motorized suction dredging shall be allowed to occur for recreation purposes only in the High Use Zone within the Opal Creek Scenic Recreation Area. All activities should remain within the wet perimeter of the stream and to insure the least possible effect on OCSRA resources and values. Activities will comply with state permitting standards as required by the Oregon Department of Environmental Quality (DEQ). Motorized suction dredges will be limited to an intake nozzle with an inside diameter not exceeding four inches and motor not exceeding 16

horsepower. Dredging operations shall comply with existing State (OAR 141-89-0050) and Federal regulations for streams.

Dredging activities shall comply with the ODFW guidelines for "Timing of In-Water Work to Protect Fish and Wildlife Resources" (ODFW 2000).

Subject to valid existing rights, all lands in the OCSRA are withdrawn from any form of entry, appropriation, or disposal under the public lands laws; location, entry, and patent under the mining laws; and disposition under the mineral and geothermal leasing laws (per Opal Creek Act, P.L. 104-333, Sect. 1023 (d)(7)).

Nothing in the Opal Creek Legislation (P.L. 104-333) shall be construed to interfere with or approve any exploration, mining, or mining-related activity in the Bornite Project Area[1], conducted in accordance with applicable laws.

Where valid claims exist, the rights of the minerals claimant shall be met with the least possible effect on OCSRA resources and values.

The operating plan referred to in FW-291 (Plan of Operations as required by 36 CFR 228.4) shall emphasize restoration of the site by minimizing, mitigating, preventing, or repairing adverse impacts within the OCSRA.

Extraction of common variety minerals shall be prohibited, except for the use of the Elkhorn rock quarry for enhancement, restoration, maintenance or construction projects within the OCSRA and Bornite Project Area.

3. Trail System

Trail types, difficulty level, and management practices shall be consistent with recreation settings and opportunities (ROS) identified in each management zone.

MA-2c-18: No trails shall be developed in the Very Low Intensity Zone. In other management zones, new trails should be considered to disperse use and provide loop travel opportunities. Provide for some barrier-free segments in compliance with accessibility standards.

Within Low Intensity Zones, trails should be maintained at a Level 2 standard, and at a Level 3 maintenance standard within Medium and High Intensity Zones.

Trails shall be closed to off-road motorized vehicle use.

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[1]The Bornite Project Area is a proposed copper mine in the Cedar Creek drainage. It is located outside the boundaries of the Opal Creek Scenic Recreation Area. Although some exploration activities have occurred, there is no expectation that the Bornite Project will become active in the foreseeable future (April 23, 2002, e-mail from Wayne Somes, Fishery Biologist, Detroit Ranger District)

Within the medium intensity zone, bicycle use shall be prohibited on the Mike Kopetski/Opal Creek trail. Bicycles will be allowed beyond the gate, on the 2209 road and the Battle Axe Trail within the OCSRA.

Within the High Intensity Zone, stock use shall be permitted only on existing roads.

Pets should be kept under voice control and/or physical restraint. They may be banned to decrease social and resource effects.

4. Vegetative Management

Vegetative management should be used to resolve issues of public safety, such as: To control the continued spread of a forest fire in the OCSRA or on land adjacent to the OCSRA, for activities related to administration of the OCSRA, and for removal of hazardous trees along trails and roadways. Under the OCSRAMP, the following guidelines would apply, and would be amended to the WNFLRMP:

The cutting and/or selling of trees, including salvage sales, shall be prohibited in the Scenic Recreation Area. The cutting of trees in the OCSRA may be allowed only for:

- Public safety, such as to control the continued spread of a forest fire in the OCSRA, or on land adjacent to the OCSRA.
- Activities related to administration of the OCSRA that are consistent with the OCSRAMP.
- Removal of hazard trees along roads and trails.
- Stumps resulting from hazard tree felling should be flush-cut to meet scenic quality objectives.

In roadside zones, vegetation management practices should employ treatment methods consistent with scenic resource management needs such as brush cutting for protection of roads and public safety, controlling/eradicating noxious weeds, and removing slash associated with removing hazardous trees. Preferred methods are manual treatments over mechanized equipment to avoid or reduce undesirable impacts to soils and damage to vegetation. The establishment of native low-maintenance species through seeding or planting should be considered on bare soils.

5. Watershed Restoration

Watershed restoration actions on Federal lands are an integral part of management to aid in the recovery of fish habitat, riparian habitat, and water quality. Road decommissioning, culvert upgrades, riparian and stream habitat improvements, fish passage improvements, and riparian tree planting treatments are typical restoration actions.

6. Fish and Wildlife Management

Fish and wildlife management actions on Federal lands may include stream and riparian habitat surveys; surveys for fish (smolt traps, snorkeling, spawning ground counts, electrofishing),

amphibians, and ROD identified survey and manage species, and wildlife habitat improvements (tree topping and falling).

7. Fire and Fuels Management

Fire and fuels management actions include the suppression of wildfire and prescribed fire used to meet resource management objectives. Prescribed burning is used for fuels management for wildfire hazard reduction (underburning), restoration of desired vegetation conditions, management of habitat and silvicultural treatments, i.e. site preparation (broadcast burning or pile burning). Pump chances, or water withdrawal sites, are created as water sources for fire suppression. Usually located next to roads, these sites are typically small excavated ponds or short spurs for vehicle access to streams or lakes. Under the OCSRAMP, the following guidelines would apply, and would be amended to the WNFLRMP:

- Fire prevention messages shall be integrated into information and education efforts, and public contact should be scheduled throughout the recreation use season.

- Suppression practices within the Opal Creek OCSRA should have the least physical impact on the land, consistent with other management considerations.

- Minimal Impact Suppression Tactics (MIST) should be used during suppression efforts.

- Preference will be given to the use of natural firebreaks. In some cases direct attack with a minimum width of hand fire line, or wet line using power driven pumps and hose may be more cost-effective and cause the least overall damage to OCSRA values.

8. Special Uses

Federal lands within the OCRSA can be a source of forest products for domestic and commercial uses. These products could include such things as firewood, mushrooms, ferns, boughs, and mosses. The Forest Service issues a variety of permits for the use of Federal lands. Permits may be issued for utility and powerline corridors, communications sites, domestic and municipal water lines and diversions, and hydroelectric facilities. Road use permits are issued to allow for the transportation of commercial commodities on Forest Service managed roads. Road right-of-ways are issued to private individuals and companies for the construction and use of access roads across Federal lands. Under the OCSRAMP, the following guidelines would apply and would be amended to the WNFLRMP:

- Special forest product collection shall be consistent with resource management needs and limited to traditional tribal uses, and persona,l non-commercial use associated with recreation activities, but limited to plant cuttings without mortality, gathering of fruits, nuts and mushrooms, and firewood gathering for on-site campfires.

- Nothing in P.L. 104-333 shall interfere with activity for which a special use permit has been issued, has not been revoked, and has not expired, before the date of enactment of this law, subject to the terms of the permit.

- Nothing in P.L. 104-333 shall be construed to interfere with the ability to approve and issue, or deny, special use permits in connection with exploration, mining, and mining-related activities in the Bornite Project Area.

- Notwithstanding the Federal Power Act (16 U.S.C. 791a et seq.), the Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project work in the OCSRA, except as may be necessary to comply with the provisions with regard to the Bornite Project in accordance to P.L. 104-333.

- Any new utility or transmission line permitted in the OCSRA should be buried.

- Inholders, including mine claim holders, within the OCSRA shall have the right of reasonable access to and lawful use of their property, as provided by law, and subject to valid existing rights.

- Requests for special use permits shall be considered and may be issued for compatible uses if such uses are consistent with the protection of the values for which the OCSRA was established.

- Services shall be compatible with general public use, and protect or enhance other OCSRA values and objectives. Outfitting and guiding services may be authorized to support the purposes for which the OCSRA was established. Limits on number of operational days, people served, or other restrictions may be placed to preserve a quality recreation experience in the OCSRA.

9. Land Exchanges and Acquisitions

Land exchanges and acquisitions are made to benefit a variety of uses and values. Land tenure adjustments are made to improve public access, acquire important habitats or resources and improve the efficiency of managing Federal lands. Under the OCSRAMP, the following guidelines would apply, and would be amended to the WNFLRMP:

- Subject to the other provisions of P.L. 104-333, the Forest Service may acquire any lands or interests in land in the OCSRA that the Secretary of Agriculture determines are needed to carry out this law.

- Any lands or interests in land owned by a State or a political subdivision of a State may be acquired only by donation or exchange.

- Within the boundaries of the Opal Creek Wilderness or the OCSRA, the Secretary shall not acquire any privately owned land or interest in land without the consent of the owner unless the Secretary finds that the nature of land use has changed significantly, or the landowner has demonstrated intent to change the land use significantly, from the use that

existed on the date of the enactment of P.L. 104-333; and acquisition of the land or interest in land is essential to ensure use of the land or interest in land in accordance with the purposes PL 104-333 or the management plan.

10. Transportation

A transportation plan shall be developed for the OCSRA. It will evaluate the road network to determine which roads should be retained or closed, provide guidelines for transportation and access consistent with management objectives, and consider the access needs of persons with disabilities. This plan will state:

- Roads serving recreation sites and facilities in existence on the date of enactment of P.L. 104-333 shall remain open.

- Roads not needed for motorized access shall be closed or decommissioned as warranted for resource protection. Roads may be converted to recreation trails.

- No new roads shall be constructed.

- Motorized vehicles shall not be permitted off open roads. Off-road vehicle (ORV) use on open forest system roads may occur, but shall not conflict with other vehicle traffic.

- Motorized use on Forest Road 2209, beyond the gate at the Opal Creek Trailhead, shall be permitted for emergency and administrative use, authorized research, and for access by private inholders subject to terms and conditions established within a road easement. Timing and amount of motorized use on the road should be minimized to reduce conflicts with visitors during peak use periods.
- Forest Road 2209 and its bridge structures, beyond the gate at the Opal Creek Trailhead, shall be maintained or improved consistent with the character of the road as it existed upon the date of enactment of P.L. 104-333, and shall not include paving or widening.

- Forest Roads 2207, and 2209 to the gate at the Opal Creek Trailhead, should be maintained for low clearance vehicles at Maintenance Level 3. All other open roads needed for dispersed recreation should be maintained for high-clearance vehicles at Maintenance Level 2.

11. Facilities

Motorized vehicles, roads, structures, and utilities (including but not limited to power lines and water lines) shall be allowed inside the OCSRA as needed to serve the mining-related activities conducted on land within the Bornite Project. However:

- Facilities shall be designed and constructed to provide recreation settings and experiences that are compatible with the management zone in which they occur.

- Facility development and site modification shall be at a level that will cause the minimum possible impact on the natural character and provide resource protection. Design standards should be characterized by minimal size and careful integration with the area's natural character. They should facilitate interaction with the natural and cultural resources, rather than serve as attractions themselves. Where facilities are appropriate, they shall be simple and durable in design, and constructed with materials that harmonize with features of the natural landscape.

- Development of structures and improvements shall be kept at the minimum level necessary to facilitate use, protect resources and OCSRA values, and provide for visitor education, health and safety.

- No roads, bridges, trails, recreation facilities or other resource developments shall be permitted within the Very Low Intensity Zone.

- Developed recreation sites, such as campgrounds and day use areas, shall only be built in the High Intensity Zone.

1.3 Biological Information and Critical Habitat

The listing status and biological information for UWR steelhead are described in Busby *et al*. (1996) while those for UWR chinook salmon are described in Myers *et al*. (1998). NMFS listed UWR steelhead as threatened on March 25, 1999 (64 FR 14517). UWR chinook salmon were listed as threatened on March 24, 1999 (64 FR 14308). NMFS designated critical habitat for UWR chinook salmon on February 16, 2000 (65 FR 7764), and issued protective regulations under section 4(d) of the ESA on July 10, 2000 (65 FR 42422). The adjacent riparian zone is included in this critical habitat designation.

Habitat loss and degradation has contributed to the decline of winter steelhead and spring chinook in the Willamette River Basin. Many of the key production areas in the basin have been blocked by the construction of dams. Much of the most productive habitat in the Santiam sub-basin has been blocked by dams on the North and Middle Santiam Rivers. Detroit Dam and the downstream Big Cliff Dam, constructed in 1953 on the North Santiam River, and Foster and Green Peter Dams, constructed in 1953 on the South and Middle Santiam Rivers, have blocked anadromous fish passage to historic upstream spawning and rearing areas. As a result of these dams, wild anadromous fish production is restricted to the lower mainstem of the North Santiam River and its tributaries, such as the LNSR. Channelization and the loss of complex side channel and wetland habitat has reduced the amount of rearing habitat in the mainstem Willamette River. Alterations to temperature and flow regimes have resulted in premature emergence of juveniles, and lower flows during spring smolt emigrations which results in lower juvenile survival. Large artificial production programs within the basin have likely contributed to the loss of genetic diversity among natural populations from hatchery fish straying into natural production areas. Harvest rates in the past have been 50-70%, which were too high for wild stocks to sustain.

The LNSR is managed by ODFW as a wild steelhead fishery, and is considered a key area for late-run wild steelhead production (USDI-BLM 1997). ODFW steelhead spawner surveys in two tributaries to the LNSR (Sinker and Elkhorn Creek) indicate that wild steelhead spawner escapement has been declining since the late l980s. UWR steelhead are known to occur in the LNSR and certain tributaries within the OCSRA.

Historically, Salmon Falls at River Mile (RM) 15.9 on the LNSR was a barrier to upstream movement of anadromous fish. A fish ladder was installed in 1958 and steelhead are now suspected to migrate as far as a barrier falls near Jawbone Flats at RM 23.9. According to the BA, although spring chinook salmon are know to be able to ascend the ladder, they are seldom seen above the Salmon Falls.

1.4 Evaluating Proposed Actions

The standards for determining jeopardy and destruction or adverse modification of critical habitat are set forth in section 7(a)(2) of the ESA as defined by 50 CFR Part 402 (the consultation regulations). In conducting analyses of habitat-altering actions under section 7 of the ESA, NMFS uses the following steps of the consultation regulations combined with the Habitat Approach (NMFS 1999): (1) Consider the status and biological requirements of the species; (2) evaluate the relevance of the environmental baseline in the action area to the species' current status; (3) determine the effects of the proposed or continuing action on the species and whether the action is consistent with the available recovery strategy; (4) consider cumulative effects; and (5) determine whether the proposed action, in light of the above factors is likely to appreciably reduce the likelihood of species survival in the wild or destroy or adversely modify critical habitat. In completing this step of the analysis, NMFS determines the action under consultation, together with all cumulative effects when added to the environmental baseline, is likely to jeopardize the ESA-listed species or result in the destruction or adverse modification of critical habitat. If either or both are found, NMFS will identify reasonable and prudent alternatives for the action that avoid jeopardy or destruction or adverse modification of critical habitat.

1.4.1 Biological Requirements

The first step in the methods NMFS uses for applying the ESA section 7(a)(2) to listed salmonids 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 information considered in its decision to list UWR chinook salmon for ESA protection then considers new data available that are relevant to the determination.

The relevant biological requirements are those necessary for UWR chinook 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 relevant biological requirements are improved habitat characteristics that function to support successful adult and juvenile migration, spawning and rearing. UWR steelhead and UWR chinook salmon survival in the wild depends upon the proper functioning of certain ecosystem processes, including habitat formation and maintenance. Restoring functional habitats depends largely on allowing natural processes to increase their ecological function, while removing adverse impacts of current practices. In conducting analyses of habitat-altering actions, NMFS defines the biological requirements in terms of a concept called Properly Functioning Condition (PFC) and applies a "habitat approach" to its analysis (NMFS 1999b). The current status of the LCR steelhead, based upon their risk of extinction, has not significantly improved since the species were listed.

1.4.2 Environmental Baseline

In step 2 of NMFS' analysis, we evaluate the relevance of the environmental baseline in the action area to the species current status. The environmental baseline is an analysis of the effects of past and ongoing human-caused and natural factors leading to the current status of the species or its habitat and ecosystem within the action area. The action area includes "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). The action area for this consultation, therefore, encompasses the OCSRA on the Detroit Ranger District on the WNF within the listed Upper Willamette River ESU for spring chinook salmon and winter steelhead and/or their critical habitat, and downstream intermittent and perennial reaches within the NFP watershed area that may be affected by the Federal land management actions of the OCSRAMP.

The Matrix of Pathways and Indicators (MPI) (NMFS 1996) was used to characterize the environmental baseline in the LNSR watershed. This method assesses the current condition of instream, riparian, and watershed factors that collectively provide properly functioning aquatic habitat, essential for the survival and recovery of the species. An assessment of the essential features of the UWR steelhead and UWR chinook salmon critical habitat is obtained by using the MPI to evaluate whether aquatic habitats are properly functioning. Based on thresholds presented in the MPI, four habitat parameters were rated as properly functioning, seven as functioning at risk, and six as not properly functioning.

Access, along with the habitat elements of substrate, pool quality, and off-channel refugia are all considered to be in properly functioning condition. Historically, Salmon Falls at River Mile 15.9 was a barrier to upstream movement. A fish ladder was installed in 1958 and steelhead are now suspected to migrate as far as a barrier falls near Jawbone Flats at River Mile 23.9. Although spring chinook salmon are know to be able to ascend the ladder, they are seldom seen above the falls.

Based on data collected in portions of the LNSR downstream from the OCSRA, the water quality parameters of water temperature, sediment/turbidity, and chemical factors within the LNSR watershed are generally considered to be at risk. A relatively high number of forest roads within riparian areas in the downstream portion of the drainage contribute to an increase in drainage network and cause an at-risk rating. Overall, the watershed condition is rated as at-risk. Road density ranges from less than one mile of roadway per square mile in the upper part of the watershed to greater than five miles of roadway per square mile in the Sinker and Evans Creeks lower part of the watershed. The LNSR watershed disturbance history leads to an at risk rating primarily due to past activities in the west end of watershed. Riparian reserves are considered to be functioning at-risk.

Large woody debris and pool frequency are the two habitat elements that are considered to be in not properly functioning condition. Large woody debris is generally in short supply, averaging less than five pieces per mile in the mainstem of the LNSR, while some reaches of the Elkhorn and Opal Creeks exceed 70 pieces per mile. Pool frequency is very low through the LNSR basin with only two reaches of Opal Creek meeting the MPI standard. Channel conditions and dynamics were considered to be in not properly functioning condition due to high width to depth ratios throughout the LNSR basin, and relatively high amounts of streambank instability in three watersheds in the downstream portion of drainage off WNF land. Flow/hydrology impacts in the form of high swings between peak and base flows, due possibly to the over-allocation of water rights and past management activities, rated the basin as not properly functioning for habitat element.

1.5 Analysis of Effects

In step 3 of the jeopardy/adverse modification analysis, NMFS evaluates the effects of the proposed action on listed salmon and steelhead and their designated critical habitat. Because this is a plan level consultation which does not address site-specific projects, the potential effects of actions within each activity category are general.

1.5.1 Determination Standard for Effects of Proposed Actions

The implementation of the OCSRAMP will require an amendment to the WNFLRMP, as amended by the Northwest Forest Plan. The WNFLRMP, as amended by the NFP, contains many standards and guidelines that will not be amended by the OCSRAMP decision. Only those existing plan standards and guidelines in conflict with the OCSRAMP decision will be replaced. Where the existing WNFLRMP is more restrictive, or provides greater benefits to late-successional forest-related and aquatic species than the NFP standards and guidelines, the existing plan will continue to be implemented.

Consideration of the needs of Pacific salmonids is important at both levels of administrative unit decision-making (i.e., management plan and project levels). Management plans such as the OCSRAMP set goals, objectives, standards and guidelines that regulate the production of goods and services. Consultation at the project scale is enhanced when there is an opportunity to

consider the full range of effects at the ESU scale under an ecosystem-based strategy applied at the management plan scale.

1.5.2 Effects From Implementation of OCSRAMP Direction

1.5.2.1 General Effects

Implementation of the OCSRAMP is consistent with the WNFLRMP standards and guidelines, and Aquatic Conservation Strategy (ACS) objectives included in the Northwest Forest Plan (NFP), and is expected to result in improved habitat conditions (over various time scales) for resident and anadromous fish species within Federal ownership. This, in turn, is expected to provide for increased survival of the various life stages of these fish and an increased probability of restoring and maintaining viable populations of listed species.

1.5.2.2 Effects by Activity Type

The following description of effects is intended to provide a general overview of the impacts associated with actions that may be implemented under the OCSRAMP. Standards and guidelines from the NFP ROD are listed for each action category. As individual projects are designed, they will receive site-specific analyses to determine the extent of these impacts and the effects on proposed or listed species. Projects which may affect listed fish species will require review by the Interagency Level 1 team using the NMFS effects determination process (NMFS 1996), and subsequent project-specific consultation under Section 7(a)(2) of the ESA.

1. Recreation

Recreation use can affect salmonid habitat in several ways: (1) Upland changes in soils and vegetation may affect runoff and erosion; (2) riparian changes that influence erosion, cover, food resources, and/or water quality, and (3) instream changes that affect stream morphology, water quality, streamflow, substrate and debris. Direct recreational effects on fish occur primarily through angling. Campground and trail maintenance and construction may increase human access to fish habitats and affect the distribution of recreational use (Meehan 1991). Standards and guidelines for recreation management in riparian reserves are identified in the ROD (RM-1, RM-2, p. C-34). Additionally, the standards and guidelines for recreation uses and developments in Late-Successional Reserves afford additional protections to watersheds (ROD, p. C-17,18) (USDA-FS and USDI-BLM 1994).

2. Mining

The potential effects of mining activities on salmonids and their habitats are discussed in Meehan (1991), Spence *et al*. (1996), and NMFS (1997). Briefly, the use of portable suction dredges to recover gold from streambeds can adversely impact salmonid eggs and sac fry which may be present in stream gravels. Salmonid eggs and fry can be crushed by the dredging process or displaced from the redd and exposed to predators. Disturbance of stream substrate by dredging can also cause sediment to be transported downstream where it can settle out and smother eggs and fry in redds. Standards and guidelines to reduce the impacts of mining

operations in riparian reserves are identified in the ROD (MM-1, MM-2, MM-3, MM-4, MM-5, MM-6, p. C-34,35).

3. Trail System

Trail maintenance, reconstruction, and construction near streams can cause an increased sediment delivery rate to streams, an increase in turbidity, a potential increase in substrate embeddedness, a disturbance to fish at stream crossings or where trails are near streams, and can possibly cause chemical contamination. Standards and guidelines for recreation management, including trails, in riparian reserves are identified in the ROD (RM-1, RM-2, p. C-34).

4. Vegetative Management

The felling and removal of hazard trees reduces stream shade, reduces potential large woody material for streams and riparian reserves, and may increase access to riparian reserves, which might allow new developments. Standards and guidelines for dealing with hazard trees in riparian reserves are identified in the ROD (TM-1, p. C-31; RA-2, p. C-37).

5. Watershed Restoration

Watershed restoration activities may have short-term adverse effects on salmonids and their habitats, however, the long-term effects should be beneficial (NMFS 1997). The primary effect of culvert replacements and road decommissioning is a short-term increase in fine sediment and turbidity to streams. Benefits realized from the replacement or upgrading of culverts at stream crossings include restoration of fish, flood flow, and bedload passage (NMFS 1997). Road decommissioning is, perhaps, the most beneficial action for long-term restoration of aquatic habitats (NMFS 1997).

Regarding instream habitat enhancement structures, NMFS agrees with fishery scientists who concluded that the benefits of these projects are usually short-term in effect, though they may be appropriate in limited use to augment longer-term riparian rehabilitation and sediment source reduction (NMFS 1997 and NMFS 1996). The NFP (page B-32) states that instream restoration will be accompanied by riparian and upslope restoration if the watershed restoration is to be successful. In addition, the standards and guidelines for riparian reserves (NFP, pg. C-37, WR-3) indicate that mitigation or planned restoration cannot substitute the prevention of habitat degradation. Additional standards and guidelines for restoration activities in riparian reserves are also in the ROD (WR-1, FW-1, p. C-37). Actions described above may also cause minor, short-term degrading effects on instream habitat. Work within fish-bearing stream channels associated with these actions may result in incidental take should listed salmon and/or steelhead species be present. Depending on the association between project site disturbance and downstream fish habitat, the resulting short-term fine sediment pulses may adversely affect the survival of some fish life stages.

Riparian silvicultural treatments include planting conifer trees in riparian areas dominated by hardwood and brush species. Small openings may need to be created in both the overstory and understory vegetation to allow the conifers to grow. There is a slight potential for fine sediments to get into streams from disturbances in these openings as well as a slight potential for increased

air temperatures in the riparian area, which may affect water temperatures. In the long term, planted conifers should provide a source for large woody debris.

6. Fish and Wildlife Management

The primary effect of conducting surveys in or near stream channels is disturbance to adult and/or juvenile fish, and a potential for trampling on eggs in the gravels. Sampling techniques, like smolt traps and electrofishing, may result in injury or death to individual fish. Felling and topping of wildlife trees may have slight effects on the long-term input of large wood into channels.

7. Fire and Fuels Management

Ground-disturbing activities associated with the suppression of wildfire may result in an increase in sediment delivery to streams. The use of chemical fire retardants have an important role in wildfire suppression. The effects of fire retardants on salmonids are discussed in Meehan (1991) and Spence *et al*. (1996). The use of prescribed fire may result in an increase of nutrients and fine sediment into streams (Spence 1996), and there is a potential for prescribed fire to kill streamside vegetation. The construction and use of pump chances has the potential to deliver fine sediment and chemicals (i.e., oil and gasoline) into streams, and the use of unscreened pump equipment has a slight potential to kill fish. Standards and guidelines for fuels and wildfire management in riparian reserves are identified in the ROD (FM-1, FM-2, FM-3, FM-4, FM-5, RA-4, p. C-35, 36, 37).

8. Special Uses

The harvesting of special forest products (i.e., mushrooms, mosses, etc.) would likely have minimal effect on salmonids or their habitats, however, the role these products play in riparian forests is poorly understood. One forest product activity, firewood cutting, has the potential to reduce large woody debris in riparian areas but is not allowed in the OCSRA.

The effects of these kinds of activities, which are authorized under special use permits, are highly variable due to the range of disturbance associated with the individual actions. Spence *et al*. (1996) discusses the effects of hydropower projects and water withdrawal projects. Powerline and utility corridors have the potential to increase sediment delivery, reduce the input of large woody debris, and may be sources of chemical contamination (herbicides) to streams. Hauling on Federal roads (road use permits) and construction of roads under right-of-ways can increase the delivery of fine sediments from roads into streams (Meehan 1991 and Spence et al. 1996). Standards and guidelines for the management of special use activities in riparian reserves are identified in the ROD (LH-1, LH-2, LH-3, LH-4, RA-1, p. C-36,37).

9. Land Exchanges and Acquisitions

Acquisitions, exchanges and conservation easements should be used to meet ACS objectives and facilitate the restoration of fish stocks (ROD, LH-5, p. C-37). Land exchanges and acquisitions have no direct impact on salmonids or their habitat. Newly acquired Federal lands will be managed under the land allocation standards and guidelines of the NFP, which will likely provide greater protection for salmonid habitat on these lands than if they had remained in non-

Federal ownership. Conversely, Federal lands which are exchanged will likely be managed with fewer protections to fish habitat than if they had remained in Federal ownership.

10. Transportation
The construction, use and maintenance of forest roads has been shown to be a primary source of sediment impacts in developed watersheds. Roads can alter both subsurface and surface water flows, which, in turn, may alter both peak and base streamflows (Jones and Grant 1996). The effects of road construction are reduced by the standards and guidelines. The OCSRAMP does not allow the construction of any new roads. Standards and guidelines for road management in riparian reserves are identified in the ROD (RF-1, RF-2, RF-3, RF-4, RF-5, RF-6, RF-7; p. C-32,33).

11. Facilities
Roads, recreation sites, trails, administrative structures, power lines and their maintenance, and associated public use can have significant effects on matrix indicators. Impacts from facilities can include effects on water temperature from removing hazard trees and brushing riparian roadsides. There can be inputs of sediment and increased turbidity from use and maintenance of roads and trails, including road surfacing, and ditch and culvert cleaning. Campgrounds can impact streams and listed fish through compaction of soil, removal of vegetation and direct disturbance to fish. Power lines and water transmission lines can increase solar radiation to streams and the forest floor from clearing of trees and brush in riparian reserves. Standards and guidelines for facilities management in riparian reserves are identified in the ROD (RF-1, RF-2, RF-3, RF-4, RF-5, RF-6, RF-7; RM-1, RM-2; RA-4; FW-2 p. C-32,33,34,37,38).

1.5.3 Effects on Critical Habitat

NMFS designates critical habitat based on physical and biological features that are essential to 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 the subject listed ESUs (65 FR 7764; February 16, 2000) consists of all waterways below naturally-impassable barriers within the ranges of the ESUs. The adjacent riparian zones are also included in the designation. The riparian zone is defined as the area that provides the following functions: Shade, sediment, nutrient or chemical regulation, stream bank stability, and input of large woody debris or organic matter.

Implementation of the OCSRAMP, as proposed under the NFP, will affect critical habitat. In the short term, some of the individual actions going forward under the sideboards established by NFP direction may result in temporary habitat degradation. However, for the reasons stated above in this opinion, NMFS does not expect that the implementation of the OCSRAMP will diminish the long-term survival or recovery of the listed ESUs. In fact, NMFS expects that implementation of the OCSRAMP, as amended by the NFP, will result in significant improvement in critical habitat parameters on Federal lands within the range of the subject listed ESUs.

1.5.4 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." This is step 4 in NMFS' analysis process. For the purposes of this analysis, the action area encompasses the OCSRA on the Detroit Ranger District on the Willamette National Forest within the Upper Willamette River ESU's for spring chinook salmon and winter steelhead or their critical habitat, and downstream intermittent and perennial reaches within the NFP watershed area that may be affected by the Federal land management actions of the OCSRAMP.

Sixty-eight percent of the land in the LNSR Watershed are administered by the Forest Service or Bureau of Land Management. Private land within the OCSRA is very limited. Jawbone Flats, at the confluence of Battle Ax and Opal Creeks, is the only major parcel of private land in the OCSRA. State and private activities are not expected to increase within the Opal Creek Scenic Recreation Area. NMFS assumes that future WNF projects within the OCSRA will be reviewed through separate Section 7 consultation processes, and therefore are not considered cumulative effects.

1.6 Conclusion

The final step in NMFS' approach to determine jeopardy/adverse modification is to determine whether the proposed action is likely to appreciably reduce the likelihood of species survival or recovery in the wild, or adversely modify or destroy critical habitat. NMFS has determined, based on the information and analysis described in this opinion and in NMFS (1996, 1999), that implementation of the OCSRAMP is not likely to jeopardize the continued existence of UWR steelhead or UWR chinook salmon. Further, NMFS concludes the subject action would not cause adverse modification or destruction of designated critical habitat for these ESUs.

These conclusions are based on the following considerations and assumptions:

1. Implementation of management direction provided in the OCSRAMP, which includes the components of the ACS, and associated standards and guidelines, will result in improved habitat conditions for subject listed species over the next few decades and into the future. Implementation of actions consistent with the ACS objectives and components will provide high levels of aquatic ecosystem understanding, protection, and restoration for aquatic habitat-dependent species. NMFS criteria for determining whether actions would be likely to jeopardize listed and proposed salmonid species is described in NMFS (1996, 1999).

2. Improved habitat conditions for UWR steelhead and UWR chinook salmon will result in increased survival of the freshwater life-stages of these fish.

3. The Forest Ecosystem Management Assessment Team (FEMAT) determined that implementation of the NFP amendments to management plans would result in an 80 percent or greater likelihood of providing sufficient aquatic habitat to support stable, well distributed populations of Pacific salmonids as they occur on and are affected by the Federal lands within the subject administrative units.

4. Level 1 and 2 teams, as established in the May 31, 1995, Interagency Consultation Streamlining Agreement, will follow the August 29, 1995, February 26, 1997, and July 27, 1999, interagency consultation processes to ensure that future individual and grouped actions within the OCSRA include appropriate measures to avoid or minimize adverse effects to listed, proposed or candidate salmonid species.

5. Use of a consistent, agreed-upon effects determination methodology (NMFS 1996, 1999) will support efficient, accurate assessments of the environmental baseline and will further ensure that the biological requirements of Pacific salmonid species will be met during the project design process.

6. Current and future monitoring efforts, including regional implementation and effectiveness monitoring programs, will facilitate the adaptive management process in determining whether changes in land allocations or standards and guidelines are needed in order to achieve management plan goals and ACS objectives.

1.7 Conservation Recommendations

Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of threatened and endangered species. Conservation recommendations are discretionary measures suggested to minimize or avoid adverse effects of a proposed action on listed species, to minimize or avoid adverse modification of critical habitat, or to develop additional information. NMFS has no additional conservation recommendations regarding the action addressed in this Opinion.

1.8 Reinitiation of Consultation

Reinitation of consultation is required if: (1) The action is modified in a way that causes an effect on the listed species that was not previously considered in the BA and in this Opinion; (2) new information or project monitoring reveals effects of the action that may affect the listed species in a way not previously considered; or (3) a new species is listed, or critical habitat is designated, that may be affect by the action (50 CFR 402.16).

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 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.

2.1 Amount or Extent of the Take

Notwithstanding NMFS' conclusion that implementation of management direction in the OCSRAMP is not expected to jeopardize the continued existence of subject listed species, agency decision-makers retain enough discretion when implementing management direction in the OCSRAMP that NMFS anticipates more than a negligible likelihood of incidental take of these species from such actions. NMFS is unable to anticipate all possible circumstances related to OCSRAMP implementation, including programmatic actions or individual projects that might be developed in the future. As a result, NMFS is unable to issue a "blanket" incidental take statement or a comprehensive list of reasonable and prudent measures to cover all programs and actions subsequently implemented pursuant to OCSRAMP direction. Accordingly, we are deferring exemption of incidental take to subsequent individual or grouped project level consultations.

3. MAGNUSON-STEVENS ACT

3.1 Background

The objective of the essential fish habitat (EFH) consultation is to determine whether the proposed action 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 104-297), 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 Federally-managed fisheries within the waters of Washington, Oregon, and California. The designated EFH for groundfish and coastal pelagic species encompasses all waters from the mean high water line, and upriver extent of saltwater intrusion in river mouths, along the coasts of Washington, Oregon and California, seaward to the boundary of the U.S. exclusive economic zone (370.4 km)(PFMC 1998a, 1998b). 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)(PFMC 1999). In estuarine and marine areas, designated salmon EFH extends from the nearshore and tidal submerged environments within state territorial waters out to the full extent of the exclusive economic zone (370.4 km) offshore of Washington, Oregon, and California north of Point Conception to the Canadian border.

Detailed descriptions and identifications of EFH for salmon are found in Appendix A of Amendment 14 to the Pacific Coast Salmon Plan (PFMC 1999). Assessment of the potential adverse effects 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 LNSR Watershed is within designated EFH for chinook salmon.

3.5 Effects of Proposed Action

The effects of the proposed action are described in section 1.5 above. The effects of implementing the OCSRAMP on EFH are expected to be the same as those on critical habitat for UWR chinook salmon.

3.6 Conclusion

NMFS believes that the proposed action may adversely affect EFH for UWR chinook salmon in the LNSR Watershed.

3.7 EFH Conservation Recommendations

Pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS is required to provide EFH conservation recommendations for any Federal or state agency action that would adversely affect EFH. However, as stated in Section 2.1 above, NMFS is unable to anticipate all possible circumstances related to OCSRAMP implementation, including programmatic actions or individual projects that might be developed in the future. As a result, NMFS is unable to provide specific conservation recommendations to cover all programs and actions subsequently implemented pursuant to OCSRAMP direction. Specific conservation recommendations will be provided in future consultations conducted for individual or groups of actions in the OCSRA.

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. However, since NMFS is not providing conservation recommendations at this time, no 30-day response from the WNF is required at this time.

3.9 Supplemental Consultation

The WNF must reinitiate EFH consultation with NMFS if the 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

Section 7(a)(2) of the ESA requires biological opinions to be based on "the best scientific and commercial data available." This section identifies the sources of data, information and references used in developing this consultation.

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