



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

Refer to:  
2002/01117

September 24, 2002

Mr. Richard Yarde  
Department of Energy  
Bonneville Power Administration  
P.O. Box 3621  
Portland, OR 97208-3621

Re: Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Act  
Essential Fish Habitat Consultation for Replacement of a Culvert with a Clear Span  
Bridge on Evans Creek, East Fork Hood River, Hood River County, Oregon.

Dear Mr. Yarde:

Enclosed is a biological opinion (Opinion) prepared by the National Marine Fisheries Service (NOAA Fisheries) pursuant to section 7 of the Endangered Species Act (ESA) on the above referenced project. In this Opinion, NOAA Fisheries concluded that the proposed action is not likely to jeopardize the continued existence of ESA-listed Lower Columbia River (LCR) steelhead (*Oncorhynchus mykiss*). As required by Section 7 of the ESA, NOAA Fisheries has included reasonable and prudent measures with nondiscretionary terms and conditions that NOAA Fisheries believes are necessary to minimize the impact of incidental take associated with this action.

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 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,

*f.l.* Handwritten signature of Michael R. Crouse in black ink.

D. Robert Lohn  
Regional Administrator

cc: Steve Pribyl, ODFW  
Joe McCanna, CTWSRO



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

Replacement of a Culvert with a Clear Span Bridge on Evans Creek,  
East Fork Hood River Watershed,  
Hood River County, Oregon

Agency: Bonneville Power Administration

Consultation  
Conducted By: NOAA Fisheries,  
Northwest Region

Date Issued: September 24, 2002

Issued By: *for*   
D. Robert Lohn  
Regional Administrator

Refer to: 2002/01117

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# 1. ENDANGERED SPECIES ACT

## 1.1 Background

On September 11, 2002, the National Marine Fisheries Service (NOAA Fisheries) received a letter and attached biological assessment (BA) from the Bonneville Power Administration (BPA) requesting formal consultation on a proposed culvert replacement project on Evans Creek in the East Fork Hood River watershed. The BPA is funding the proposed project through the Confederated Tribes of the Warm Springs Indian Reservation of Oregon (CTWSRO), and BPA has been designated as the lead agency for section 7 consultation under the Endangered Species Act (ESA). In the September 2002 BA, the BPA determined that Lower Columbia River (LCR) steelhead (*Oncorhynchus mykiss*) may occur within the project area and that the proposed project is “likely to adversely affect” (LAA) LCR steelhead. The BPA also determined, and NOAA Fisheries concurs, that the proposed project would have no effect on LCR chinook salmon (*O. tshawytscha*). LCR chinook salmon do not currently occur in the East Fork Hood River watershed (S. Pribyl, ODFW District Fisheries Biologist, personal communication, March 21, 2002).

The LCR steelhead was listed as threatened under the Endangered Species Act (ESA) by NOAA Fisheries on March 19, 1998 (63 FR 13347). NOAA Fisheries issued protective regulations under section 4(d) of the ESA on July 10, 2000 (65 FR 42422).

The objective of this Opinion is to determine whether the subject action is likely to jeopardize the continued existence of LCR steelhead.

## 1.2 Proposed Action

The proposed action is the removal of an existing culvert at river mile (RM) 0.9 on Evans Creek (NW1/4 of SW1/4 of Section 5, Township 1 South, Range 10 East), and replacement of that culvert with a steel and concrete clear span bridge. The culvert is located on a private residential/farm access road. The 3-foot diameter, 30-foot long culvert is currently a migration barrier to LCR steelhead in Evans Creek. The culvert removal and bridge installation would be completed during the Oregon Department of Fish and Wildlife (ODFW) preferred in-water work period between July 15 and October 15. Construction supervisors will coordinate closely with ODFW fishery biologists during all phases of the project. According to the BA, the BPA will adopt conservation measures listed in NMFS (2002) which are applicable to this project.

Roadway overburden over the existing culvert will be removed using a track-mounted hoe. The overburden material will be removed down to an elevation slightly higher than the water surface level existing at the time of culvert removal. All streamflow will be diverted through the culvert using plastic sheeting and hay bales and/or sandbags. Material will then be removed from both sides of the culvert. Once material from both sides of the culvert has been removed, the culvert itself will be removed using the track hoe. The track hoe will operate from the existing roadway to the greatest extent possible. During removal of the existing culvert, the flow of Evans Creek

at the site is expected to be approximately 1 to 2 cubic feet per second (Joe McCanna, CTWSRO Fishery Biologist, personal communication, September 16, 2002). CTWSRO fisheries personnel will be on-site during in-water work. In-water work is expected to be completed in one day.

After culvert removal, a clear span steel and concrete bridge will be constructed to replace the culvert crossing. The bridge span would be designed to be approximately forty feet in length, so that the bridge abutments are located well outside both the ordinary high water mark and the bankfull width of Evans Creek. The concrete bridge footings will be constructed well outside the bankline, and no in-water excavation or fill will be required. The wing-walls on each end of the bridge will be constructed of pre-cast concrete “ecology blocks”.

The location and orientation of the existing culvert has created an elevation difference in Evans Creek between the upstream end of the culvert and the existing streambed elevation downstream from the culvert. This elevation difference may need to be modified after culvert removal to prevent a headcut from forming at the site. If necessary, rock from an upland source will be added to the stream to remedy the elevation difference. Rock would be placed using a track hoe operating from the streambank.

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

The listing status and biological information for LCR steelhead are described in Busby *et al.* (1995, 1996).

Evans Creek and the East Fork of Hood River downstream from Evans Creek serve as spawning, rearing, and migration habitat for LCR steelhead. Essential habitat features this proposed project may affect are substrate, water quality (turbidity), cover/shelter, and safe passage conditions.

According to the BA, winter steelhead are known to spawn throughout the East Fork of Hood River watershed. It is likely that winter steelhead use the lower 0.9 mile of Evans Creek up to the proposed culvert removal site. Winter steelhead spawn mainly in March and April, and would not be spawning, nor would eggs or alevins be present in the gravels, in Evans Creek or the East Fork of Hood River downstream from the Evans Creek confluence during the preferred in-water work period between July 15 and October 15. Some juvenile LCR steelhead could be present at the project site during culvert removal, but numbers are expected to be low because of low stream flows.

### **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 402.14 (the consultation regulations). In conducting analyses of habitat-altering actions under section 7 of the ESA, NOAA Fisheries 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, NOAA Fisheries determines whether the action under consultation, together with 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, NOAA Fisheries 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 NOAA Fisheries 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. NOAA Fisheries 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, NOAA Fisheries starts with information considered in its decision to list LCR steelhead for ESA protection then considers new data available that are relevant to the determination.

The relevant biological requirements are those necessary for LCR steelhead to survive and recover to naturally-reproducing population levels, at which time 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 adult and juvenile migration, spawning and rearing. LCR steelhead 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, NOAA Fisheries defines the biological requirements in terms of a concept called Properly Functioning Condition (PFC) and applies a "habitat approach" to its analysis (NMFS 1999). The current status of the LCR steelhead, based upon their risk of extinction, has not significantly improved since the species was listed.

## **1.4.2 Environmental Baseline**

In step 2 of NOAA Fisheries' 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, includes the streambed and streambank of Evans Creek within the area of disturbance at the culvert removal/bridge installation site downstream to the extent of visible short-term turbidity increases resulting from the project work.

The current population status and trends for LCR steelhead are described in Busby *et al.* (1996). In general, the current status of LCR steelhead populations is the result of several long-term, human-induced factors (*e.g.*, habitat degradation, water diversions, hydropower dams) that serve to exacerbate the adverse effects of natural environmental variability from such factors as drought, floods, and poor ocean conditions.

Stream flows in Evans Creek are influenced by irrigation water withdrawal and water transfer and delivery operations of the Middle Fork Irrigation District (MFID). ESA section 7 consultation was previously completed (May 8, 2002) on a BPA funded project to modify irrigation ditches, improve fish passage conditions, and improve water quality in Evans Creek at several sites upstream from the current project site.

The culvert removal/bridge installation site is located on private land approximately 0.7 mile southeast of Parkdale, Oregon. Fruit orchards are the dominant land use in the vicinity of the project. According to the BA, riparian vegetation along Evans Creek at the project site consists of a young, mixed stand of second-growth conifers and hardwoods including Douglas-fir, western red cedar, cottonwood and alder. Canopy cover is low, generally averaging less than 50%, varying between 10% and 70%, with a dense understory of shrubs.

## **1.5 Analysis of Effects**

In step 3 of the jeopardy analysis, NOAA Fisheries evaluates the effects of the proposed action on listed salmon and steelhead.

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

Some in-water work will be needed to place the temporary diversion materials, to remove the existing culvert, and to remove the temporary diversion materials. If necessary, rock would be placed in the stream downstream from the existing culvert site to prevent a headcut from forming. All in-water work will be completed during the ODFW preferred in-water work period for the East Fork of Hood River and tributaries, which is between July 15 and October 15, when listed steelhead are least likely to be present. However, since juvenile LCR steelhead may rear

in Evans Creek year-round, some may be present downstream from the culvert site. No juvenile LCR steelhead would be expected upstream from the existing culvert, because the culvert is a migration barrier. The in-water work will result in disturbance of stream substrate and a temporary increase in stream turbidity in Evans Creek. The temporary increase in stream turbidity, could result in temporarily reduced feeding efficiency for juvenile steelhead. There is also the possibility that the track hoe used to remove the culvert in Evans Creek could kill or injure juvenile LCR steelhead while performing in-water work. Direct mortality is expected to be minimal, because juvenile fish will likely avoid the equipment and can move freely downstream from the project site. In addition, because of the low flows (approximately 1 to 2 cfs) in Evans Creek during the in-water work period, few juvenile fish would be expected to be rearing downstream from the culvert site. As mentioned above, none would be expected upstream from the culvert site.

Disturbance of riparian vegetation is expected to be minimal, because the new bridge will be installed within the existing roadway alignment. In addition, most of the fill removal and culvert removal activities requiring the use of heavy equipment (track hoe) can be accomplished from the existing road bed.

### **1.5.2 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 NOAA Fisheries' analysis process. The project site is located on private land approximately 0.7 miles southeast of Parkdale, Oregon. Fruit orchards are the dominant use of land in the vicinity of the project. NOAA Fisheries is not aware of any specific future actions which are reasonably certain to occur on non-federal lands within the Evans Creek watershed.

### **1.6 Conclusion**

The final step in NOAA Fisheries' approach to determine jeopardy is to determine whether the proposed action is likely to appreciably reduce the likelihood of species survival or recovery in the wild. NOAA Fisheries has determined that, given the status and biological requirements of LCR steelhead, and adding the effects of the Evans Creek culvert removal and clear span bridge installation project addressed in this Opinion to the environmental baseline and cumulative effects occurring in the action area, it is not likely that this projects, as proposed, will jeopardize the continued existence of LCR steelhead. NOAA Fisheries believes that the proposed action would cause a minor, short-term increase in stream turbidity in Evans Creek downstream from the project area. In the long term, survival and safe passage conditions for adult and juvenile LCR steelhead will be improved. Although direct mortality of juvenile LCR steelhead from this project could occur during in-water work in Evans Creek, it is not expected, and the level of potential mortality would be minimal and would not result in jeopardy.

These conclusions are based on the following considerations: (1) All in-water work will be completed during the ODFW preferred in-water work period between July 15 and October 15, when listed salmonids are least likely to be present; (2) very few, if any, juvenile LCR steelhead are expected to be present in Evans Creek during the in-water work period because of low stream flow (estimated 1 to 2 cfs); (3) all in-water work is expected to be completed within one day, so any increases in stream turbidity are expected to be of short duration; (4) disturbance of riparian vegetation is expected to be minimal because the new bridge will be installed within the existing roadway alignment; 5) removal of the culvert will allow access by LCR steelhead to previously unavailable spawning and rearing habitat; and (6) NOAA Fisheries expects that the net effect of the proposed action will be to maintain or help restore properly functioning habitat conditions in the project area of Evans Creek.

### **1.7 Reinitiation of Consultation**

Reinitiation 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 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 affected by the action (50 CFR 402.16).

## **2. INCIDENTAL TAKE STATEMENT**

Section 9 and rules promulgated under section 4(d) 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. “Harass” is defined as actions that create the likelihood of injuring listed species by annoying it 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 the incidental take statement.

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

NOAA Fisheries anticipates that the proposed action is reasonably certain to result in incidental take of LCR steelhead because of detrimental effects from increased sediment and pollutant levels (non-lethal), riparian habitat disturbance (non-lethal), and the disturbance or possibly killing of juvenile fish during in-water work (non-lethal and lethal).

Effects of actions such as minor sedimentation and minor riparian disturbance are unquantifiable in the short term and are not expected to be measurable as long-term harm to habitat features or by long-term harm to salmonid behavior or population levels. Therefore, even though NOAA Fisheries expects some low level incidental take to occur due to the construction actions covered by this Opinion, best scientific and commercial data available are not sufficient to enable NOAA Fisheries to estimate the specific amount of incidental take to the species itself. In instances such as these, NOAA Fisheries designates the expected level of take as "unquantifiable." Based on the information in the BA, NOAA Fisheries anticipates that an unquantifiable amount of incidental take could occur as a result of the habitat altering actions covered by the Opinion. The extent of the take includes the aquatic and associated riparian habitats affected by removal of the existing culvert and installation of the clear span bridge.

Unlike general habitat effects, the effects of the culvert removal/bridge installation on Evans Creek could result in minor incidental lethal take of juvenile LCR steelhead. The incidental lethal take could be caused by contact with equipment used to remove the culvert or from delayed mortality. Because of the low flow in Evans Creek (estimated to be 1 to 2 cfs) at the time of culvert removal/bridge installation, very few if any juvenile LCR steelhead are expected to be present at the project site. NOAA Fisheries anticipates that lethal incidental take of less than five juvenile LCR steelhead in total could occur as a result of activities described in this Opinion. The extent of take is limited to LCR steelhead in Evans Creek.

## **2.2 Effect of the Take**

In this Opinion, NOAA Fisheries has determined that the level of anticipated take is not likely to result in jeopardy to LCR steelhead when the reasonable and prudent measures are implemented.

## **2.3 Reasonable and Prudent Measures**

NOAA Fisheries believes the following reasonable and prudent measures are necessary and appropriate to minimize the likelihood of take of LCR steelhead resulting from the action covered by this Opinion. The BPA shall:

1. Minimize the likelihood of incidental take resulting from in-water work required to complete the project addressed in this Opinion.
2. Minimize the likelihood of incidental take and impacts on anadromous salmonid habitat resulting from damage to riparian vegetation, streambank erosion, or water pollution associated with this project.
3. Monitor the effectiveness of the conservation measures in minimizing take of LCR steelhead.

## 2.4 Terms and Conditions

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

1. To implement reasonable and prudent measure #1 (in-water work), the BPA shall ensure that:
  - a. All work within the active channel that could potentially contribute sediment or toxicants to the stream will be completed within the ODFW approved in-water work period for Evans Creek of July 15 to October 15.
  - b. Extensions 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, in writing, by biologists from NOAA Fisheries prior to implementation.
  - c. Operate equipment used to perform the culvert removal/bridge installation in Evans Creek from existing roads or the streambank (equipment will not enter the active stream).
  - d. Minimize the time period (estimated to be 1 day) during which in-water work is performed.
  
2. To implement reasonable and prudent measure #2 (riparian vegetation, streambank erosion, and water pollution), the BPA shall ensure that:
  - a. Disturbance of existing riparian vegetation is minimized at the project site.
  - b. All areas disturbed during activities associated with this project will be planted with native vegetation specific to the project vicinity. Plantings will achieve an 80% survival success after three years.
  - c. Equipment used in the project will be cleaned of external oil and grease and inspected for fluid leaks before operating below the bankfull elevation of the stream.
  - d. Equipment staging, cleaning, maintenance, refueling, and fuel storage must take place in an equipment staging area at least 150 feet from any stream, water body, or wetland.
  - e. Construction debris will be prevented from dropping into the stream and any material that does drop into the stream will be removed with a minimum of disturbance to the streambed and water quality.
  - f. All discharge water created by construction (*e.g.* concrete washout, vehicle wash water) will be collected and treated using the best available technology applicable to site conditions. The treatment must remove debris, nutrients, sediment, petroleum, hydrocarbons, metals, and other pollutants likely to be present.

3. To implement reasonable and prudent measure #3 (conservation measures), the BPA shall ensure that:
  - a. Within 30 days of completing the project, the BPA will submit a monitoring report to NOAA Fisheries describing the BPA's success meeting these terms and conditions. This report will consist of the following information:
    - i. Project identification.
      - (1) Project name
      - (2) Starting and ending dates of work completed for this project, and;
      - (3) Name and address of the construction supervisor.
    - ii. A narrative assessment of the project's effects on natural stream function.
    - iii. Photographic documentation of environmental conditions at the project site before, during and after project completion.
      - (1) Photographs will include general project location views and close-ups showing details of the project area and project, including pre and post construction.
      - (2) Each photograph will be labeled with the date, time, photo point, project name, the name of the photographer, and a comment describing the photograph's subject.
      - (3) Relevant habitat conditions include characteristics of channels, streambanks, riparian vegetation, flows, water quality, and other visually discernable environmental conditions at the project area, and upstream and downstream of the project.
  - b. Monitoring reports will be submitted to:

NOAA Fisheries  
Oregon Habitat Branch  
Attn: 2002/01117  
525 NE Oregon Street, Suite 500  
Portland, Oregon 97232-2778

### **3. MAGNUSON-STEVENSON 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 104-267), requires the inclusion of EFH descriptions in Federal fishery management plans. In addition, the MSA requires Federal agencies to consult with NOAA Fisheries 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 (50 CFR 600.110).

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

- Federal agencies must consult with NOAA Fisheries on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH;
- NOAA Fisheries 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 NOAA Fisheries provide a detailed response in writing to NOAA Fisheries 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 NOAA Fisheries, 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 NOAA Fisheries 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. 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).

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 potential adverse effects to these species' EFH from the proposed action is based on this information.

The Pacific Fisheries Management Council (PFMC) has designated EFH for three species of Pacific salmon: Chinook (*O. 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 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 action area for this consultation includes the streambed and streambank of Evans Creek within the area of disturbance at the culvert removal/bridge installation site downstream to the extent of visible short-term turbidity increases resulting from the project work.. This area has been designated as EFH for coho salmon (*O. kisutch*) and chinook salmon.

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

Neither coho salmon or chinook salmon presently occur in the East Fork of Hood River. Information submitted by the BPA in its request for consultation is sufficient for NOAA Fisheries to conclude that the effects of the proposed action are transient, local, and of low intensity. NOAA Fisheries also believes that the conservation measures proposed as an integral part of the action would avoid, minimize, or otherwise offset potential adverse impacts to designated EFH for coho salmon and chinook salmon.

### **3.6 Conclusion**

NOAA Fisheries believes that implementation of the Evans Creek culvert removal and bridge installation project may temporarily adversely affect designated EFH for coho salmon and chinook salmon.

### **3.7 EFH Conservation Recommendations**

Pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act, NOAA Fisheries is required to provide EFH conservation recommendations for any Federal or state agency action that would adversely affect EFH. The conservation measures that the BPA has built into the project and all of the reasonable and prudent measures and terms and conditions contained in sections 2.2 and 2.3 are applicable to salmon EFH. Therefore, NOAA Fisheries 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 NOAA Fisheries EFH conservation recommendations within 30 days of its receipt of this letter. The response must include a description of measures proposed to avoid, mitigate, or offset the adverse impacts of the activity on EFH. If the response is inconsistent with a conservation recommendation from NOAA Fisheries, the agency must explain its reasons for not following the recommendation.

### **3.9 Supplemental Consultation**

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

#### 4. LITERATURE CITED

- Busby, P.J., T.C. Wainwright, G.J. Bryant, L.J. Lierheimer, R.S. Waples, F.W. Waknitz, and I. V. Lagomarsino. 1996. Status Review of West Coast Steelhead from Washington, Idaho, Oregon, and California. NOAA Technical Memorandum NMFS-NWFSC-27. August. (Available @ [www.nwr.noaa.gov](http://www.nwr.noaa.gov), under Protected Resources Division, Status Reviews).
- NMFS (National Marine Fisheries Service). 2002. Programmatic Biological Opinion and Magnuson-Stevens Act Essential Fish Habitat Consultation for Standard Local Operating Procedures for Endangered Species (SLOPES) for Certain Activities Requiring Department of Army Permits in Oregon and the North Shore of the Columbia River. June 14.
- NMFS (National Marine Fisheries Service). 1999. Endangered and Threatened Wildlife and Plants; Definition of "Harm." Federal Register. Vol. 64, No. 215, pages 60727-60731. Final Rule. November 8. (Available @ [www.nwr.noaa.gov](http://www.nwr.noaa.gov), under ESA Information, Federal Register Notices).
- NMFS (National Marine Fisheries Service). 1999. The Habitat Approach: Implementation of Section 7 of the Endangered Species Act fo Actions Affecting the Habitat of Pacific Anadromous Salmonids. Guidance memorandum from Assistant Regional Administrators for Habitat Conservation and Protected Resources to staff. 3 pages. August. NMFS, 525 NE Oregon Street, Suite 500, Portland, Oregon 97232-2737. (Available @ [www.nwr.noaa.gov](http://www.nwr.noaa.gov), under Habitat Conservation Division, Habitat Guidance Documents).
- ODFW (Oregon Department of Fish and Wildlife). 2000. Oregon Guidelines for Timing of In-water Work to Protect Fish and Wildlife Resources. June.
- PFMC (Pacific Fishery Management Council). 1999. Amendment 14 to the Pacific Coast Salmon Plan. Appendix A: Description and Identification of Essential Fish Habitat, Adverse Impacts and Recommended Conservation Measures for Salmon. Portland, Oregon.