



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd, Blvd., Suite 1100
Portland, OR 97232

July 24, 2020

**Refer to NMFS No:
WCR-2020-01675**

Chris Yates
Assistant Regional Administrator
Protected Resources Division
501 West Ocean Blvd., Suite 4200
Long Beach, CA 90802

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter for the National Marine Fisheries Service's authorization pursuant to section 120(f) of the Marine Mammal Protection Act to reduce predation impacts on at-risk fish stocks by California sea lions and Steller Sea Lions in the Columbia River Basin

Dear Mr. Yates

On June 13, 2019, the National Marine Fisheries Service (NMFS) received a request pursuant to section 120(f) of the Marine Mammal Protection Act (MMPA) from the Oregon Department of Fish and Wildlife, the Washington Department of Fish and Wildlife, the Idaho Department of Fish and Game, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, and the Willamette Committee¹ (hereafter called – “eligible entities”) to remove (place in permanent captivity or kill) California sea lions and Steller sea lions (sea lions) in the Columbia River Basin.

We have determined--pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402, and agency guidance for preparation of letters of concurrence—that the proposed action is not likely to adversely affect (NLAA) species listed as threatened or endangered or critical habitat designated under the Endangered Species Act (ESA).

NMFS also reviewed the proposed action for potential effects on essential fish habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C.1855(b). This review was pursuant to section 305(b) of the MSA, implementing

¹ The 120(f)(6)(D) Committee fulfills the requirements for an eligible entity under section 120(f)(6)(A)(iii) of the MMPA. Pursuant to this section of the statute, the Committee members include the Oregon Department of Fish and Wildlife, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Grand Ronde Community, and the Confederated Tribes of the Siletz Indians of Oregon.

regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation. In this case, NMFS concluded that the action would not adversely affect any EFH. Thus, consultation under the MSA is not required for this action.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The document will be available within two weeks at the Environmental Consultation Organizer [<https://eco.fisheries.noaa.gov>]. A complete record of this consultation is on file at NMFS Protected Resources Division Office, Portland, Oregon.

CONSULTATION HISTORY

The impact of sea lion predation on at-risk fish stocks in the Columbia River Basin, especially at Bonneville Dam and Willamette Falls, is well known and well documented.

To address the pinniped predation at Bonneville Dam, NMFS has issued the states of Washington, Oregon, and Idaho five MMPA section 120 authorizations. The current authorization expires on June 30, 2021.² Under these authorizations, the states have removed (transferred and killed) 238 California sea lions.

In addition, to address pinniped predation at Willamette Falls, NMFS issued a section 120 authorization to the state of Oregon. This authorization expires on November 14, 2023.³ Under this authorization, the state has removed (killed) 33 California sea lions.

On December 18, 2018, the Endangered Salmon Predation Prevention Act was signed into law, Public Law 115-329. Public Law 115-329, amended Public Law 103-238, the MMPA Amendments of 1994, by replacing section 120, subsection (f) of the MMPA with a new subsection (f). The changes to section 120(f) of the MMPA were made specifically to address the ongoing threat of sea lion predation on at-risk fishes in the Columbia River Basin.

In response to the eligible entities' application and the requirements of the MMPA, on May 12, 2020 through May 14, 2020, NMFS convened a Pinniped-Fishery Interaction Task Force (Task Force) to evaluate the eligible entities' application and to recommend whether NMFS should approve or deny the eligible entities' application. The Task Force submitted its report and recommendations to NMFS on July 14, 2020. NMFS proposes to adopt 25 of the 26 recommendations submitted by the Task Force. The majority of Task Force members present at the meeting (16 of 22) recommended approving the eligible entities' application requesting authorization for lethal removal with certain terms and conditions, two (2) Task Force member recommended denying the eligible entities' application, one (1) Task Force member abstained, and three (3) Task Force members were intermittently absent and did not provide a recommendation.

² Revised MMPA Section 120 Authorization letter from Barry Thom, National Marine Fisheries Service, to Kelly Susewind, Washington Department of Fish and Wildlife; Curtis Melcher, Oregon Department of Fish and Wildlife; and Ed Schriever, Idaho Department of Fish and Game; April 17, 2019 (Administrative File: 151416WCR2016PR00037).

³ MMPA Section 120 Authorization letter from Barry Thom, National Marine Fisheries Service, to Curtis Melcher, Oregon Department of Fish and Wildlife; November 14, 2018 (Administrative File: 151416WCR2017PR00255).

PROPOSED ACTION

The proposed action is NMFS' issuance of a permit pursuant to section 120(f) of the MMPA to the eligible entities authorizing them to remove (place in permanent captivity or kill) sea lions in the Columbia River Basin, as well as any NMFS funding, permitting, or support of active lethal and non-lethal activities, e.g., trapping, capture, etc., of sea lions in the Columbia River Basin under section 120(f) and 109(h) of the MMPA⁴.

Under the proposed action, sea lion removal activities would take place intermittently over a five-year period – five years from date of issuance. The primary sea lion capture activities would take place in the areas identified as Category 1 in Figure 1 (below). They are Bonneville Dam and Willamette Falls. At Bonneville Dam, the core periods of operation would be March through May and September through November, although sea lion removals may occur any time of year. Sea lions at Bonneville Dam would be captured using four to eight floating traps (a floating dock-like structure)⁵. At Willamette Falls, the core periods of operation would take place from March through May and September through November, although sea lion removals may occur anytime of year. Sea lions at Willamette Falls would be captured using two to three floating traps. Secondly, sea lion removal activities in areas identified as Category 2 and Category 3 (Figure 1) could take place at any time of the year (though, typically, March through May)—such activities would be dependent on animal presence and staffing availability. Sea lions at these sites would be captured using one or two floating traps, if conditions are favorable, by live capture of free ranging animals using established wildlife darting techniques, or both. Sea lion removal activities in areas identified as Category 3 would generally depend on the success of sea lion removal activities in areas identified as Category 1 and Category 2, but might also be used in response to animals beginning to habituate at these locations. If a pre-approved facility (zoo or aquarium) were willing to accept eligible sea lions, those animals would be transferred there. Sea lions not transferred to a pre-approved facility would be killed.

We considered, under the ESA whether or not the proposed action would cause any other activities and determined that it would not.

⁴ Section 109(h)(1)(C) of the MMPA authorizes non-lethal removal of nuisance marine mammals by state and federal officials.

⁵ Similar to on-going pinniped management activities in the Columbia and Willamette Rivers that the states of Oregon and Washington have implemented under their MMPA section 109(h) authority. Section 109(h)(1)(C) of the MMPA authorizes non-lethal removal of nuisance marine mammals by state and Federal officials.

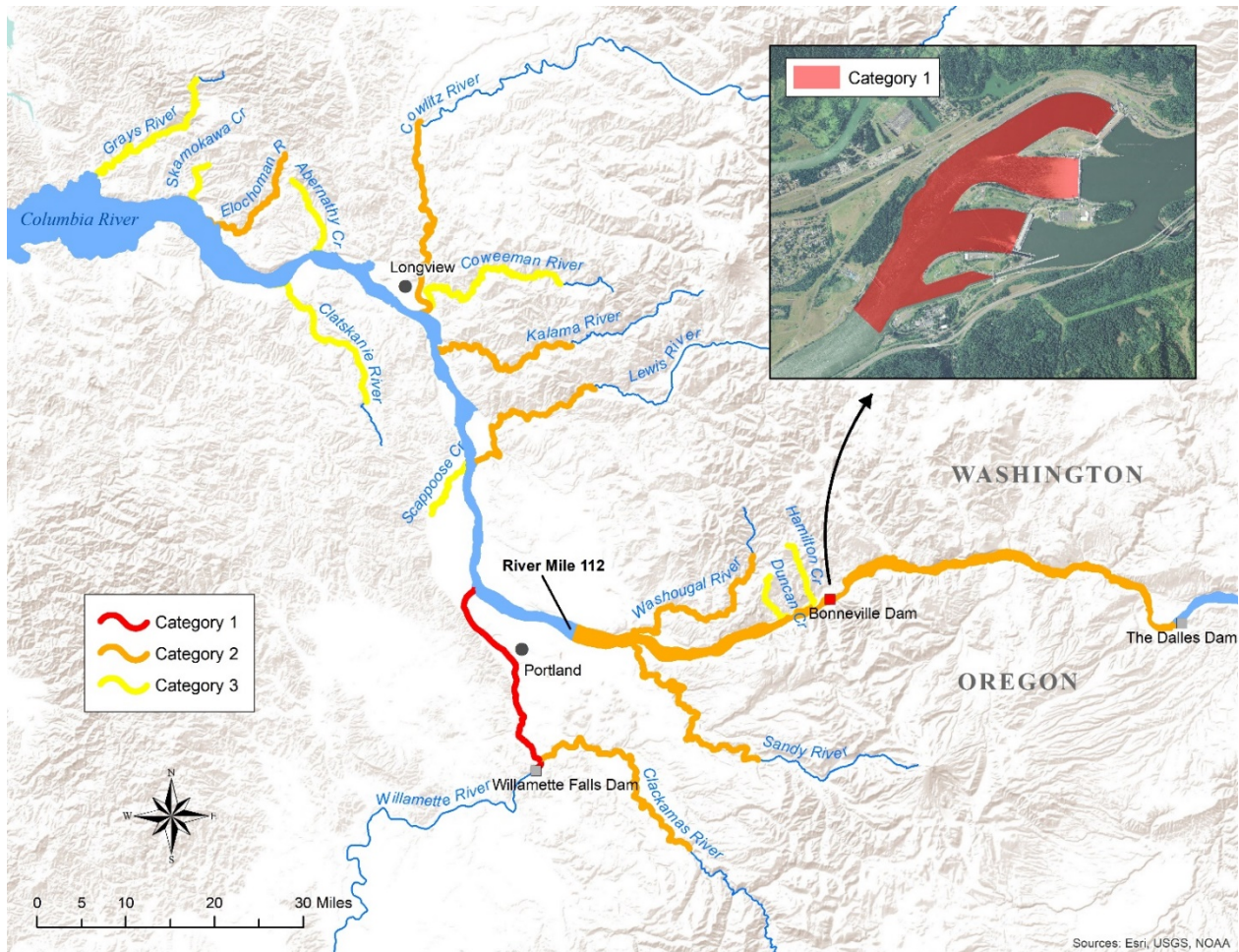


Figure 1. Map of proposed sea lion management areas. Category 1 includes areas that currently have high numbers of sea lions (more than 20) that are often present for the majority of the year. Category 2 includes areas that currently have low to moderate numbers of sea lions (less than 10) that are present only periodically. Category 3 includes areas where sea lions have not been officially documented but contain spawning habitat for ESA-listed salmonids, or have documented presence that managers are monitoring but do not deem a conservation risk at present.

ACTION AREA

The proposed action would take place in the mainstem of the Columbia River between river mile 112 (I-205 bridge) and river mile 292 (McNary Dam), or in any tributary to the Columbia River below river 292 that includes spawning habitat of threatened or endangered salmon or steelhead (Figure 1). While trapping and transport of sea lions would occur throughout the action area, most (more than 85 percent) of the program activities would continue to take place at Bonneville Dam and Willamette Falls (Figure 1).⁶ Euthanasia of sea lions would take place in secure facilities off-site.

⁶ The states of Oregon, Washington, and Idaho currently operate six authorized floating traps that are associated with existing MMPA section 120 authorizations, as well as section 109(h) activities, four at Bonneville Dam and two at Willamette Falls.

LISTED SPECIES AND CRITICAL HABITAT

The NMFS determined that 14 ESA-listed species⁷ and their respective designated critical habitats occur in the action area and may be affected by the proposed action (Table 1 and Table 2).

Table 1. Summary of the listing status for species considered in this consultation.

Species	Listing Classification, Date, and Federal Register Citation
Lower Columbia River Chinook salmon (<i>Onchorynchus tshawytscha</i>)	Threatened 06/28/2005 (70 FR 37160)
Snake River fall-run Chinook salmon	Threatened 06/28/2005 (70 FR 37160)
Snake River spring/summer-run Chinook salmon	Threatened 06/28/2005 (70 FR 37160)
Upper Columbia River spring-run Chinook salmon	Endangered 06/28/2005 (70 FR 37160)
Upper Willamette River Chinook salmon	Threatened 06/28/2005 (70 FR 37160)
Columbia River chum salmon	Threatened 06/28/2005 (70 FR 37160)
Lower Columbia River coho salmon (<i>O. kisutch</i>)	Threatened 06/28/2005 (70 FR 37160)
Snake River sockeye salmon (<i>O. nerka</i>)	Endangered 06/28/2005 (70 FR 37160)
Lower Columbia River steelhead (<i>O. mykiss</i>)	Threatened 01/05/2006 (71 FR 834)
Middle Columbia River steelhead	Threatened 01/05/2006 (71 FR 834)
Snake River basin steelhead	Threatened 01/05/2006 (71 FR 834)
Upper Columbia River steelhead	Threatened 01/05/2006 (71 FR 834)
Upper Willamette River steelhead	Threatened 01/05/2006 (71 FR 834)
Southern DPS of eulachon (<i>Thaleichthys pacificus</i>)	Threatened 03/18/2010 (75 FR 13012)

⁷ The ESA defines a “species” to include any distinct population segment (DPS) of any species of vertebrate fish or wildlife. For Pacific salmon, NMFS considers an evolutionarily significant unit, or ESU, a “species” under the ESA.

Table 2. Summary of the status of critical habitats for species considered in this consultation.

Species	Designation Date and Federal Register Citation
Lower Columbia River Chinook salmon (<i>O. tshawytscha</i>)	9/02/05 70 FR 52630
Snake River fall-run Chinook salmon	10/25/99 64 FR 57399
Snake River spring/summer-run Chinook salmon	9/02/05 70 FR 52630
Upper Columbia River spring-run Chinook salmon	9/02/05 70 FR 52630
Upper Willamette River Chinook salmon	9/02/05 70 FR 52630
Columbia River chum salmon	2/24/16 81 FR 9252
Lower Columbia River coho salmon (<i>O. kisutch</i>)	10/25/99 64 FR 57399
Snake River sockeye salmon (<i>O. nerka</i>)	9/02/05 70 FR 52630
Lower Columbia River steelhead (<i>O. mykiss</i>)	9/02/05 70 FR 52630
Middle Columbia River steelhead	9/02/05 70 FR 52630
Snake River basin steelhead	9/02/05 70 FR 52630
Upper Columbia River steelhead	9/02/05 70 FR 52630
Upper Willamette River steelhead	9/02/05 70 FR 52630
Southern DPS of eulachon (<i>Thaleichthys pacificus</i>)	10/20/11 76 FR 65324

ENDANGERED SPECIES ACT

EFFECTS OF THE ACTION

Under the ESA, “effects of the action” are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action (50 CFR 402.02). In our analysis, which describes the effects of the proposed action, we considered 50 CFR 402.17(a) and (b). When evaluating whether the proposed action is not likely to adversely affect listed species or critical habitat, NMFS considers whether the

effects are expected to be completely beneficial, insignificant, or discountable. Completely beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Effects are considered discountable if they are extremely unlikely to occur.

We do not expect any activities associated with the proposed action to have adverse effects on the species considered herein, or their designated critical habitats. The states of Oregon, Washington, and Idaho (states) currently operate six authorized floating traps⁸ that are associated with existing MMPA section 120 authorizations, as well as section 109(h) activities; four floating traps at Bonneville Dam and two floating traps at Willamette Falls. Three of the four traps at Bonneville Dam are moored January through June, and a fourth trap is moored year-round above Bonneville Dam in the Bonneville Pool. The two existing traps at Willamette Falls are moored year-round at the Sportcraft Marina. The states also, on occasion, have captured and removed sea lions using established wildlife darting techniques in the pools between Bonneville Dam and McNary Dam.

In areas identified as Category 1 (Figure 1), the eligible entities would capture and remove sea lions by trapping, by live capture of free ranging sea lions using established wildlife darting techniques, or both. Total number of new floating traps proposed at Bonneville Dam would be one to four. The eligible entities do not have plans to add traps at Willamette Falls, but if they were to do so, they would add one more trap⁹. This trap would be built on the existing walkway. Therefore, there would be no additional over-water infrastructure in the Willamette River.

In areas identified as Category 2 and Category 3, the eligible entities would capture and remove sea lions by trapping, by live capture of free ranging sea lions using established wildlife darting techniques, or both. Total number of new traps proposed in areas identified as Category 2 and Category 3 would be one to two.

Thus the effects of the proposed action considered here are (a) the effects of existing and additional floating traps at Bonneville Dam and in areas identified as Category 2 and Category 3, (b) the effects associated with sea lion removal via wildlife darting, and (c) the effects of boat operations associated with trapping and wildlife darting operations throughout the action area.

FLOATING TRAPS

Bonneville Dam

The intermittent mooring of four to eight traps at Bonneville Dam (Figure 1) is not expected to adversely affect the species considered herein because:

- The floating traps at Bonneville Dam would likely be located where the states currently moor three floating traps under their existing MMPA section 120 authorization between Robins Island and Tower Island. The traps have a shallow draft depth of 1 to 2 feet; water depths in the area of the floating traps range between 12 and 18 feet. There is little

⁸ The states operate the existing floating traps under their MMPA section 109(h) authority.

⁹ Previously covered under separate ESA 7(a)(2) consultation: WCR-2018-10687.

likelihood salmon, steelhead, and eulachon would be present near the floating traps because this area of the river does not lead to any of the fish ladders and eulachon migrate over Bonneville Dam via the navigation lock—which is located on the opposite side of Robins Island. These factors would minimize the likelihood of salmon, steelhead, and eulachon exposure to removal activities, e.g., boat traffic.

- Adult salmon and steelhead migrate over Bonneville Dam at several fish ladders, which are located in the tailraces that lead to Powerhouse 1, Powerhouse 2, and the Spillway. This would minimize the likelihood of salmon and steelhead exposure to removal activities, e.g., boat traffic, as the floating traps would not be located in either of these tailraces.
- Juvenile salmon and steelhead migrate downriver through the juvenile bypass system at Powerhouse 2. This bypass system transports and releases juvenile salmon and steelhead more than two thousand feet downriver from where the floating traps would be moored, which would minimize the likelihood of salmon and steelhead exposure to removal activities e.g., boat traffic.
- The Columbia River at Bonneville Dam is functionally a migratory corridor and not rearing or holding habitat, which minimizes the likelihood of salmon, steelhead, and eulachon exposure to removal activities, e.g., boat traffic, because their residence time near Bonneville Dam is generally very brief.
- The intermittent mooring of four to eight traps would reduce sea lion predation on adult salmon, steelhead, and eulachon, and would not impede fish passage or migration for the above-mentioned reasons.

Therefore, the intermittent mooring of four to eight traps would not likely result in any physiological, behavioral, or reproductive effects on the species considered herein. That is, all such effects (except for reductions in sea lion predation – see section on *Beneficial Effects*), would be too small and transitory to meaningfully measure, detect or evaluate, and would therefore be insignificant.

Furthermore, the intermittent mooring of four to eight traps would not create habitat for predatory fish to prey on salmon, steelhead, and eulachon. The traps would be (a) used as haul outs for sea lions, which eat fish, (b) in place for short periods and then placed in storage until the next year, and (c) moored in deep water with strong currents that would prevent predatory fish predatory from establishing areas to prey on salmon, steelhead, and eulachon. Thus, the probability of such effects (predation) occurring would be discountable.

Areas identified as Category 2 and Category 3

The intermittent mooring of one or two traps in areas identified as Category 2 and-or Category 3 (Figure 1) is not expected to adversely affect the species considered herein because:

- If the eligible entities use floating traps to capture and remove sea lions, the mooring of the floating traps would only be in areas identified as Category 2 and-or Category 3 for very short periods. The floating traps have a shallow draft depth of 1 to 2 feet, and the eligible entities would not place floating traps in shallow water areas. Even though adult and juvenile fish (there are no juvenile eulachon, only eggs and larvae) do migrate through those portions of the action area, they are traveling well below the surface of the

water and below the draft depth of the traps. These factors would minimize the likelihood of salmon, steelhead, and eulachon exposure to removal activities, e.g., boat traffic.

- Even though juvenile fish may or may not pass near the floating trap, we expect their residence time in the area of the floating trap to be short-lived as the floating traps would be moored in areas of deep water, and away from riverbanks where juvenile salmon and steelhead preferentially rear and migrate. These factors would minimize the likelihood of salmon, steelhead, and eulachon exposure to removal activities, e.g., boat traffic.
- The intermittent mooring of one or two traps in any of the areas identified as Category 2 and-or Category 3 would reduce sea lion predation on adult salmon, steelhead, and eulachon, and would not impede fish passage or migration for the above-mentioned reasons.

Therefore, the intermittent mooring of 1 or 2 floating traps in the areas identified as Category 2 and-or Category 3 would not likely result in any physiological, behavioral, or reproductive effects on the species considered herein. That is all such effects (except for reductions in sea lion predation—see section on *Beneficial Effects*), would be too small and transitory to meaningfully measure, detect or evaluate, and would therefore be insignificant.

Furthermore, the intermittent mooring of one or two traps would not create habitat for predatory fish to prey on salmon, steelhead, and eulachon. The traps would be (a) used as haul outs for sea lions, which eat fish, (b) in place for short periods and then placed in storage until the next year, and (c) moored in deep water with strong currents that would prevent predatory fish predatory from establishing areas to prey on salmon, steelhead, and eulachon. Thus, the probability of such effects (predation) occurring would be discountable.

WILDLIFE DARTING

Wildlife darting may take place anywhere within the action area (Figure 1). Wildlife darting techniques used for sea lion capture and removal typically involve a crew deployed in two boats. Generally, once an animal has been darted and the anesthetic drug has taken affect, the crew maneuvers the boat, retrieves the animal, and moves it into a floating cage that is attached to the boat. Once the animal is secured, the floating cage would be moved to a location (boat ramp) where it can be lifted from the water and placed in a truck for transport. As such, potential effects on the species and their designated critical habitats considered herein from wildlife darting are chiefly related to boat operations, and are discussed in the section below on *Boat Traffic*.

BOAT TRAFFIC

Sea lion removal activities involve overwater and in-water activities that use floating traps, wildlife darting operations, and boat operations. These activities are similar to existing activities carried out by the eligible entities under their MMPA section 120 authorizations at Bonneville Dam and Willamette Falls¹⁰, and their MMPA section 109(h) authorities. As such, there may be a minor increases in activity associated with capturing and handling sea lions at the trap sites, if the trapping efforts are increased. An increase in removals would likely result in a corresponding minor increase sound levels (decibel – dB) associated with boat use.

¹⁰ Both authorizations have previously undergone consultation pursuant to section 7 of the ESA with a determination of not likely to adversely affect the species subject to this consultation or their designated critical habitats.

The activities at the traps or associated with wildlife darting operations would result in an increase in boat traffic above current levels, but given that hundreds of boats can be in the action area on any given day, the additional noise created by this increase would be of short duration and frequency, and is unlikely to be detectable above background. Therefore, any minor boat-traffic-induced effects (e.g., changes in foraging or migration behavior) in the action area, would have no discernable adverse physiological, behavioral, or reproductive effects on the species considered herein. That is all such effects would be too small and transitory to meaningfully measure, detect or evaluate, and would therefore be insignificant.

CRITICAL HABITAT

The intermittent and temporary mooring of one to four additional traps at Bonneville Dam and one to two floating traps in the areas identified as Category 2 and-or Category 3 (Figure 1) is not expected to adversely affect designated critical habitats for the species considered herein. That is, the effects on critical habitat physical and biological features (PBFs) would be insignificant as the activities would not alter, modify, or impact any of the PBFs for the species considered herein.

In addition, no vessel-related activities are expected alter, modify or affect critical habitat PBFs. Vessel discharges, e.g., petroleum-based by-products, or spills associated with boat operations are likely to be rare, minor, and quickly dissipate. The activities at the traps or associated with wildlife darting operations would result in an increase in boat traffic above current levels, but given that hundreds boats can be in the action area on any given day, the additional noise created by this increase would be of short duration and frequency, and is unlikely to be detectable above background. As such, we expect increases in sound levels (dB) on critical habitat PBFs to be too low and short in duration to affect the conservation value of any of the PBFs in the action area.

Therefore, we expect the likelihood of effects on critical habitat PBFs for the species considered herein would be too small to meaningfully measure, detect or evaluate, and therefore are likely to be insignificant.

BENEFICIAL EFFECTS

Removal of predatory sea lions in the action area are expected to benefit the species considered herein by decreasing predation events (improving the chance for survival), improving passage conditions (opportunity), and increasing the number (abundance) of adult salmon, steelhead, and eulachon that reach their respective spawning areas. In their application, the eligible entities estimated that implementation of the proposed action could save between 13,098 and 78,533 salmon and steelhead over a 5-year period by reducing sea lion predation.¹¹

CONCLUSION

Based on this analysis, NMFS has determined that the proposed action is not likely to adversely affect the subject listed species and designated critical habitats.

¹¹ Email to Robert Anderson, NMFS, from Bryan Wright, ODFW, June 8, 2020.

REINITIATION OF CONSULTATION

Reinitiation of consultation is required and NMFS shall request it when (1) the proposed action causes take; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA consultation.

Please direct questions regarding this letter to Robert Anderson with the Protected Resources Division, Portland, Oregon at 503.231.2226.

Sincerely,

Robert Markle
Branch Chief, Protected Resources Division
West Coast Region

cc: Administrative File: 151416WCR2019PR00086

bcc: CHRON File (pdf)
Division - File copy
Robert Anderson, PRD