



**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 NMFS No:**

**2010/02704**

November 9, 2010

Kevin Moynahan  
U.S. Army Corps of Engineers  
Regulatory Branch, CENWP-CO-GP  
P.O. Box 2946  
Portland, Oregon 97208-2946  
*Attn: James M. McMillan*

William F. Broglie  
NOAA Chief Administrative Officer  
National Oceanic and Atmospheric Administration  
1305 East West Highway  
Silver Spring, Maryland 20910-3278

RADM Jonathan W. Bailey  
Director, NOAA Office of Marine and Aviation Operations  
8403 Colesville Road  
Silver Spring, Maryland 20910-6333

Re: Endangered Species Act Biological Opinion and Magnuson-Stevens Fishery  
Conservation and Management Act Essential Fish Habitat Conservation  
Recommendations for the NOAA Marine Operations Center-Pacific, Yaquina Bay (6<sup>th</sup>  
field HUC 171002040303), Lincoln County, Oregon

Dear Mr. Moynahan, Mr. Broglie, and RADM Bailey:

The enclosed document contains a biological opinion (Opinion) prepared by the National Marine Fisheries Service (NMFS) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on: (1) the effects of the U.S. Army Corps of Engineers (Corps) issuing a permit to the Port of Newport for construction of the National Oceanic and Atmospheric Administration (NOAA) Marine Operations Center-Pacific (MOC-P) under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act; and (2) the effects of NOAA's Safety and Environmental Compliance Office and Office of Marine and Aviation Operations Marine Operations Center-Pacific locating to Newport.

In this Opinion, NMFS concludes that the proposed action is not likely to adversely affect Eulachon (*Thaleichthys pacificus*). NMFS has not proposed critical habitat for Eulachon. NMFS also concluded that the proposed action is not likely to jeopardize the continued existence of Southern green sturgeon (*Acipenser medirostris*) or Oregon Coast (OC) coho salmon (*Oncorhynchus kisutch*) or result in the destruction or adverse modification of designated critical habitat for either of these species.



Although the Corps and NOAA did not request consultation for marine mammal and turtle species, upon review of the project NMFS provides an NLAA determination for the following: Southern Resident killer whales (*Orcinus orca*), Steller sea lions (*Eumotopias jubatus*), blue whales (*Balaenoptera musculus*), fin whales (*B. physalus*), humpback whales (*Megaptera novaeangliae*), green turtle (*Chelonia mydas*), leatherback sea turtle (*Dermochelys coriacea*), loggerhead turtle (*Caretta caretta*), and olive ridley turtle (*Lepidochelys olivacea*), and proposed critical habitat for leatherback sea turtles.

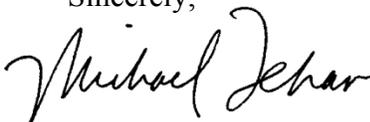
As required by section 7 of the ESA, NMFS is providing an incidental take statement with the Opinion. The incidental take statement describes reasonable and prudent measures NMFS considers necessary or appropriate to minimize the impact of incidental take associated with this action. The take statement sets forth nondiscretionary terms and conditions, including reporting requirements, that the Corps, NOAA, and Port of Newport must comply with to carry out the reasonable and prudent measures. Incidental take from actions that meet these terms and conditions will be exempt from the ESA's prohibition against the take of listed species.

This document also includes the results of our analysis of the action's likely effects on essential fish habitat (EFH) pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and includes four conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH. Section 305(b) (4) (B) of the MSA requires Federal agencies to provide a detailed written response to NMFS within 30 days after receiving these recommendations.

If the response is inconsistent with the EFH conservation recommendations, the Corps must explain why the recommendations will not be followed, including the scientific justification for any disagreements over the effects of the action and the recommendations. In response to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each EFH consultation and how many are adopted by the action agency. Therefore, we request that in your statutory reply to the EFH portion of this consultation, you clearly identify the number of conservation recommendations accepted.

If you have questions regarding this consultation, please contact Bridgette Lohrman, fish biologist, in the Northern Oregon Coast/Lower Columbia River Habitat Branch of the Oregon State Habitat Office, at 503.230.5422.

Sincerely,

  
for William W. Stelle Jr.  
Regional Administrator

cc: Dan Avery, ODFW  
Don Mann, Port of Newport