



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

Refer to NMFS No.:
WCR-2015-2812

August 4, 2016

Robert G. MacWhorter
Forest Supervisor
Rogue River – Siskiyou National Forest
3040 Biddle Road
Medford, Oregon 97504-4119

Re: Endangered Species Act Section 7(a)(2) Programmatic Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for Suction Dredging and High Banking Notice of Intent Operations on National Forest System Lands within the Rogue River-Siskiyou National Forest in Oregon and California.

Dear Mr. MacWhorter:

Thank you for your letter of February 25, 2015, requesting initiation of consultation with National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) for Programmatic Suction Dredging and High Banking Notice of Intent (NOI) Operations on National Forest System Lands within the Rogue River-Siskiyou National Forest (RRSNF) in Oregon and California. This action is in accordance with the RRSNF's authority under the Organic Administration Act of 1897.

In this opinion, NMFS concluded that the proposed action is not likely to adversely affect (NLAA) southern distinct population segment (DPS) Pacific eulachon (*Thaleichthys pacificus*). We also concluded that the proposed action is not likely to jeopardize the continued existence of Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) and Oregon Coast (OC) coho salmon or result in the destruction or adverse modification of their designated critical habitats. Additionally, we concluded that the proposed action is not likely to jeopardize the continued existence of Southern DPS North American green sturgeon (*Acipenser medirostris*).

As required by section 7 of the ESA, NMFS provided an incidental take statement with the opinion. The incidental take statement describes reasonable and prudent measures NMFS considers necessary or appropriate to minimize incidental take associated with this action. The take statement sets forth nondiscretionary terms and conditions, including reporting requirements, that the RRSNF and any person who performs the action must comply with to carry out the reasonable and prudent measures. Incidental take from actions that meet these terms



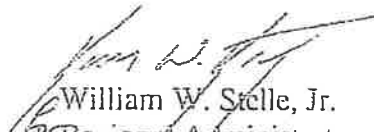
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and conditions will be exempt from the ESA take prohibition. This document also includes the results of our analysis of the action's likely effects on essential fish habitat (EFH) pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and includes five 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 this recommendation.

If the response is inconsistent with the EFH conservation recommendation, the RRSNF 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 response 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.

Please contact Michelle McMullin in the Oregon Coast Branch of the Oregon Washington Coastal Area Office, at 541-957-3378 or Michelle.McMullin@noaa.gov, if you have any questions concerning this section 7 consultation, or if you require additional information.

Sincerely,


William W. Stelle, Jr.
Regional Administrator

cc: Susan Maiyo, RRSNF
Karen Tarnow, ODEQ

During testimony at this hearing several items of misinformation were presented. Below are contrary and/or comparative statements.

1. Mentioned was a sufficient fee to offset actual costs of administration for a mining permit. The spokesperson was a fish conservative. I would ask he consider equal consideration for sport fishing "permits". The current ODF&W budget projects a shortfall of \$32 million dollars. There is no short fall for mining interest. The proposed fee for mining permits is up to \$1,750.00 per site permit. Also required is a site specific GPS for the mining activity, a separate permit is required for any other locations. In all fairness, fishing license/permits should therefore cost at least \$2,500.00 and require the fisherman to fish only one GPS site for the entire season, or pay the costs for fishing in another location. Equal treatment for activities.

2. A purported "published" paper was offered to establish damages from suction dredging by the author. This is **NOT** a scientific study; this was a single person observed activity in a specific location. These biased opinion "papers" can be "published" in any form of local newsletter and are not subject to peer review or duplication to verify the findings. I offer numerous true scientific studies by State, Federal and true scientists that directly contradict the "published" papers content.
 - (a) 1994 Alaska U.S Army Corps of Engineers Special public notice 94-10.. effects of small suction dredges and hand operations were de minimus and do not require Army Corps permitting.
 - (b) 2004 Alaska District of Army Corps special public notice 2004-06 .. restated placer mining still have "de minimus impacts" on aquatic environment.
 - (c) 1994 Calif. Dept. Of Fish and Game - Environmental Impact report conclusion that suction dredge mining had a less than significant on the environment.
 - (d) 2012 Calif. Dept. Of Fish and Game - **court ordered** environmental impact report (costs \$1.5 million)... overall conclusion was impact from small scale dredges was less than significant in 56 of 60 factors reviewed.
 - (e) 2001 Siskiyou National Forest, Ore. .. draft impact report – suction Dredge Activities are less than significant.
 - (f) 2004 Clearwater National FOREST, Idaho.. The report stated " EPA generally supports the terms and conditions for dredging and we believe they are designed to protect fish habitat and seem to minimize the potential to damage stream channels and banks.", which supports a less than significant outcome.
 - (g) 2012 Wallowa-Whitman National Forest, Oregon.. FINAL Supplemental Environmental Impact Statement reached a conclusion that suction dredging has a less than significant impact on the environment..
 - (h) 2013 U.S. Environmental Protection Agency Biological Evaluation Small Suction Dredge Placer Mining in Idaho - reached a conclusion that suction dredge mining would have a less than significant impact on the environment..

Of particular interest:::please read...

- (i) Oregon Department of State Lands – “Observations suggest that placer mining activities conducted in the observed stream systems during the 1997 season did **not permanently modify physical habitat characteristics**” and “data gathered during the 1996,1997, and 1998 seasons lend credence to our assumption that **no more than minimal adverse effects are resulting from issuing Placer Mining General Authorization..**”

Additional list of historic reports that identify mining effects on fish survival:

- (a) Ward, H.B. 1938 - Rouge River, Or. Effects of Hydraulic Water cannon mining (*effects are magnitudes higher than modern small scale suction dredges*) “muddy water from placer operations in the Rouge River Drainage is not inimical to fish and fish life.” “**Hydraulic placer mining debris is just more stream sand and gravel. It is typically chemically inert and does not take oxygen from the stream or add toxic agents to the water.**”
- (b) 1992 Chugach National Forest, Alaska. Do not indicate any strong cumulative effects from multiple placer mining operations.
- (c) 1999 E.P.A. Royer et al.. report on performance of 10, 8, and 4” dredges concluded environmental impacts were less than significant.
- (d) 2003 Bayley (OSU) Siskiyou National Forest OR. Effects of suction and hydraulic mining in the Illinois subbasin concluded “The statistical analyses did not see that suction dredge mining has no effect on the three responses measured, but rather **any effect that may exist could not be detected at the commonly used Type I error rate of 0.05%.**”

The following is a list of other studies by name and year w/o details: all rebutt damages, or lists benefits caused by dredge action.

CH2M Hill 2002

Stern 1998

Harvey 1991

Neilsen 1994

Siskiyou National Forest 2001

American River Spawning Gravel Supplement 2010

American River Spawning gravel 2011

3. Final item for discussion: salmon mortality was contributed to habitat destruction from suction dredges. **This is pure supposition w/o any scientific study confirmation.**

I previously provided to all committee members in the 2015 session during hearings on SB 838 - a copy of the U. S. Department of Interior's Fish and Wildlife Biological report 82 (11.70) 1987 - COHO salmon spawning profile.

Under the "Mortality of Coho Salmon" section: factors responsible for losses are: predators, drying stream channels, and disease. Also listed are high water temperatures, pollution, lack of suitable food, and lists predators as other fish, garter snakes, American Dipper, **lampreys**, larger coho, cutthroat trout, steelhead, Dolly Varden (*bull trout*), squawfish, and sculpins. Birds listed are kingfishers, loons, mergansers, other birds and small mammals. Ocean predators are seals, sharks, sea lions, and other salmon.

Additionally, **fishing**, commercial and recreational are major factors in removal of **mature returning fish**. As a prior commercial fishing boat operator in Oregon (17 years), I also observed that excessive commercial bait fish harvest (herring and anchovie) plus varied ocean temperatures did greatly affect the salmon in the ocean. The ocean conditions are the single greatest factor on salmon populations. The only issue we can control is human salmon harvest and that would have a great impact on populations..

In this 40 plus page salmon spawning report there is not one mention of suction dredge mining as even a minor contributing factor to any loss in salmon populations. Again, a less than significant factor....

Please vote no on SB 3:

Presented by

Michael Hunter

Vice President - Willamette Valley Miners assoc.

captainmvh@yahoo.com

SB 3 - referring to the terminology "tributary with the river is **above**" any stream listed as ESH. Refer to: SB 3, SECTION 1, page (2), (b) lines 9 and 10.

The definition of tributary is; "A stream or river flowing into a larger stream or river". (The American Heritage Dictionary of the English language). This would be interpreted as any water flow merging into another water flow. This definition only requires the water flows mingle as the waters continue downstream. Temporary delays do not stop the intermingling of water sources.

In view of this understanding any and all streams water flowing into any other water flow which has the legal definition of ESH would now be listed as also ESH.

To expand on this: here are a few examples of application

All water falls in the Columbia Gorge as; Multnomah, Bridal Veil, etc. – **above the falls** to the water flow head source of each is now listed as ESH.

The Deschutes river above the manmade impassible obstacle of the dam on lake Billy Chinook, including all water flows of the Metolius and other area streams now are ESH.

The main Santiam River above the manmade impassible obstacle of the dam at BIG Cliff reservoir continuing to the second manmade obstacle of the dam at Detroit Lake and encompassing all steams in this watershed that contribute water flow from the crest of the Cascade Mountains westwards are now ESH.

Similarly, the South Fork of the Santiam near Sweet Home has a manmade impassible obstacle at the dam at Foster Reservoir continuing upstream to the impassible obstacle of the dam at Green Peter Reservoir continuing upstream via Quartzville creek and it's numerous tributaries which now all become ESH designated water flows.

The Row River near Cottage Grove has a manmade impassible obstacle of the dam at Dorena lake with water flow sources from Brice creek, Sharps creek, and the entire Bohemia Mining district's water shed are now ESH.

SB 3 terminology's extreme over reach would be 100% of each and all water flows in the State of Oregon as all flowing waters at some point enter water flows containing true ESH. This bill will excessively exceed the ESH as defined in ORS 196.810 and should not be considered.