

1041.21  
FEB 9 2001  
PRINEVILLE  
DISTRICT



**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:  
OSB2000-0258

February 16, 2001

Ms. Christina M. Welch  
Field Manager  
Central Oregon Resource Area  
Prineville District Office  
USDI Bureau of Land Management  
P.O. Box 550  
Prineville, Oregon 97754

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Act  
Essential Fish Habitat Consultation for the John Day River Proposed Management Plan,  
John Day River Basin, Prineville District Office, BLM.

Dear Ms. Welch:

The Bureau of Land Management (BLM) requested consultation under the Endangered Species Act (ESA) on the John Day River Proposed Management Plan (Plan) in a letter dated September 27, 2000, and provided a draft biological assessment (BA) for review. The final version of the BA was received on January 18, 2001, and an updated letter for consultation requesting concurrence with BLM's not likely to adversely affect (NLAA) determination was received on February 12, 2001 (via fax). The National Marine Fisheries Service (NMFS) considered the information adequate to evaluate the Plan's effects and initiate consultation.

The BLM determined the proposed Plan may affect Middle Columbia River (MCR) steelhead (*Oncorhynchus mykiss*). MCR steelhead were listed as threatened under the ESA by the NMFS on March 25, 1999 (64 FR 14517). The NMFS designated critical habitat for MCR steelhead on February 16, 2000 (65 FR 7764). Protective measures prohibiting take of MCR steelhead were issued on July 10, 2000 (65 FR 42422). The Plan includes proposed actions within designated critical habitat for MCR steelhead. In the letter (February 12, 2001), the BLM determined that the Plan is NLAA MCR steelhead or their designated critical habitat. This consultation is undertaken under section 7(a)(2) of the ESA and its implementing regulations, 50 CFR Part 402.

### **ENDANGERED SPECIES ACT CONSULTATION**

The Plan addresses management of lands administered by the BLM within the John Day River (JDR) corridor (1/4 mile each side of the river in mainstem, South, North and Middle Forks). The lower 1/4-mile segment of tributaries to the mainstem that occur within the corridor are also



included in the scope of the Plan. The expected life of this Plan is approximately 10 to 15 years. The broad management programs addressed in the Plan include:

1. Riparian and Aquatic Habitat Restoration
  - a. Riparian & Fisheries Enhancement Structures
  - b. Riparian Hardwood Outplanting
2. Fisheries
3. Water Quality and Water Quantity
4. Noxious Weed Control
5. Fire Management
  - a. Prescribed Fire Management
  - b. Fire Rehabilitation
6. Grazing
7. Forestland Management
8. Agricultural Lands Management
9. Recreation Management
  - a. Boating Use
  - b. Motorized Boating
  - c. Dispersed Camping
  - d. Developed Recreation
10. Public Access
11. Energy and Minerals Resources
12. Land Ownership, Classification and Use Authorizations.

Descriptions of the categories of actions covered by the Plan are presented in Chapter 3 of the BA (pages 164-325).

The BLM has determined that three management categories within the Plan will have no effect on MCR steelhead or their critical habitat (water quantity and water quality, forest management, and boat use) because the Plan does not authorize specific actions that may affect listed species. Under section 7, the NMFS consults upon activities that may affect ESA listed species or their designated critical habitat, therefore these three categories are not discussed further within this consultation.

The BLM determined that only road maintenance under the public access program of the Plan may affect, and is likely to adversely affect MCR steelhead or their critical habitat. Road maintenance was previously consulted upon. The NMFS issued a biological opinion (NMFS 1999) addressing this activity on November 30, 1999, which remains in place and provides ESA coverage for this category of activities within the Plan area.

The BLM did not make a determination of effect for six categories: Riparian and fisheries enhancement structures, fisheries, noxious weed management, grazing, energy and mineral resources, and land ownership, classification and use authorization. The BLM has indicated that

these activities will be consulted upon individually on an as needed basis, and are not addressed in this consultation. At this time, the ESA section 7 consultation process has already been completed for BLM grazing allotment administration within the John Day Basin, NMFS has issued a letter of concurrence (NMFS 2000) and a biological opinion (NMFS 2001).

The BLM has determined that the broad programmatic direction for eight categories of actions addressed by the Plan may affect, but are not likely to adversely affect MCR steelhead or their critical habitat: Riparian hardwood outplanting, prescribed fire management, fire rehabilitation, agricultural lands management, motorized boating, dispersed camping, developed recreation, and public access. Also, three specific actions identified in the Plan that may affect, but are not likely to adversely affect MCR steelhead are: Construction of boat launch facilities at Rock Creek, Clarno, and Lower Burnt Ranch under the Recreation Management Program's developed recreation category. These eight broad categories and three specific actions constitute the subject of this consultation.

The BLM will consult independently on a boat ramp proposed for Twickenham following identification and acquisition of a specific site. The Twickenham launch site would replace an existing site (private) at Twickenham Bridge. The development is contingent on BLM acquiring the necessary land. Upon land acquisition, a site specific proposal would be prepared and ESA consultation reinitiated. A parking area, boat ramp, and boater registration station are proposed.

The boat ramps (Rock Creek, Clarno, and Lower Burnt Ranch) proposed under the developed recreation category are located in the lower JDR (segments 1 through 3). These actions involve ground disturbance activities adjacent to or below the ordinary high water elevation and associated riparian vegetation removal. Construction of the boat launch ramps would occur during ODFW's preferred inwater work window, July 15 to August 31 (B. Ralston, BLM, personal communication via telephone conversation, February 7, 2001). MCR steelhead habitat use in the lower JDR is limited to migration. No MCR steelhead spawning or rearing occurs in the vicinity of these boat ramp projects of the lower JDR. High summer water temperatures preclude steelhead presence within the subject reaches during the preferred work window. The Plan proposes no additional specific ground-disturbing activities.

Of the three proposed boat ramps, only the Rock Creek launch ramp provides new access. Proposed for the site are improved parking facilities, a primitive boat ramp, and a boater's registration station. Ramp construction would require surface disturbance of approximately 450 square feet and removal of a 15-foot strip of riparian vegetation.

The Clarno boat ramp would be widened from 8 feet to 30 feet to add an additional launch lane. This would permanently remove 600 square feet of willows. Associated upland activities include the installation of a pay phone and providing water for the dump station. The water source will be an adjacent landowner's well (B. Ralston, BLM, personal communication via telephone conversation, February 12, 2001).

The existing Lower Burnt Ranch primitive launch site would be developed to provide a hardened boat ramp. Approximately 450 square feet of surface disturbance would take place above the mean high water elevation. Very little riparian vegetation currently exists at the site. An existing site at Burnt Ranch, which is poorly situated and impacts resource values, would be limited to walk-in access.

The NMFS concurs with the BLM's determination that the broad programmatic direction for the eight categories of actions and the three specific boat ramp actions contained in the Plan and described in the BA are not likely to adversely affect MCR steelhead or their designated critical habitat. The NMFS' concurrence is based on the following findings: 1) All instream work for the three boat ramp projects will occur during ODFW's preferred inwater work window when adult MCR steelhead are not present in the streams and eggs or alevins are not present in stream gravels; 2) the BLM states that the three boat ramp projects will be completed in accordance with PACFISH requirements; 3) mitigation measures for the three boat ramp projects listed in the BA are adequate to avoid impacts to MCR steelhead or their designated critical habitat; and 4) the BLM determined in the BA that all aquatic habitat indicators listed in NMFS' Matrix of Pathways and Indicators (MPI) would be maintained or improved for the boat ramp projects.

Additionally, since the broad programmatic direction in this Plan is not site specific, BLM will consult with NMFS on all individual actions (through individual, batched, or programmatic consultations), except for the three boat ramps identified above, that it funds, authorizes or carries out within areas occupied by MCR steelhead, to include any land or water use, site disturbance or construction activity of any type, that may affect the listed species or its designated critical habitat. Thus, the NMFS believes there is less than a negligible likelihood of incidental take of MCR steelhead or adverse effects to designated critical habitat occurring due to adoption of the proposed Plan-level programmatic direction for the eight categories of actions or construction of the three subject boat ramps.

The BLM must reinitiate this ESA consultation if: 1) New information reveals that effects of the action may affect listed species in a way not previously considered; 2) the action is modified in a way that causes an effect on listed species that was 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). The BLM may also be required to reinitiate consultation if the proposed action is not consistent with conservation measures developed through the pending consultation on land and resource management plans for Federal land management units in the Mid Columbia River Basins.

## **ESSENTIAL FISH HABITAT CONSULTATION**

The Pacific Fisheries Management Council (PFMC) is one of eight regional fishery management councils established under the Magnuson-Stevens Act. The PFMC develops and carries out fisheries management plans for salmon, groundfish and coastal pelagic species off the coasts of

Washington, Oregon and California, and recommends Pacific halibut harvest regulations to the International Pacific Halibut Commission.

As required by the Magnuson-Stevens Act, the PFMC described and identified Essential Fish Habitat (EFH) in each of its fisheries management plans. EFH includes "those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity." All streams, lakes, ponds, wetlands, and other water bodies currently, or historically accessible to salmon in Washington, Oregon, Idaho, and California are designated as EFH for salmon.

The Magnuson-Stevens Act also established an EFH consultation process. Federal agencies are required to consult with NMFS on all actions that may adversely affect EFH. The NMFS interprets the scope of these consultations to include actions by Federal agencies that occur outside designated EFH, such as upstream or upslope, but which nonetheless may have an adverse effect on habitat conditions necessary for the long-term survival of the species within EFH. The NMFS must provide conservation recommendations for any Federal or State activity that may adversely affect EFH. Within 30 days of receiving EFH conservation recommendations from the NMFS, Federal agencies must conclude EFH consultation by responding to NMFS with a written description of conservation measures the agency will use to avoid, mitigate or offset the impact of its action on EFH. If the Federal agency selects conservation measures which are inconsistent with the conservation recommendations of NMFS, the Federal agency must explain in writing its reasons for not following NMFS' recommendations.

The project area for the Plan occurs within the area designated as EFH for spring chinook salmon (*Oncorhynchus tshawytscha*), which were deemed not warranted for ESA listing on March 9, 1998 (63 FR 11482). Information submitted in the BA assessing the effects of the Plan is sufficient to conclude that the effects of this project on designated EFH for chinook salmon are likely to be within the range of effects considered in the ESA portion of this consultation. Based on that analysis, the NMFS finds that the Plan is unlikely to adversely affect EFH that has been designated for spring chinook salmon. Because the Plan is unlikely to adversely affect any designated EFH, the NMFS has no conservation recommendations to make at this time.

This concludes EFH consultation for the John Day River Management Plan. The BLM must reinitiate this EFH consultation for all projects requiring subsequent ESA consultation if discretionary Federal agency involvement or control over the action has been retained or is authorized by law and if: 1) New information reveals effects of the agency action that may affect designated EFH in a manner or to an extent not considered in this consultation; 2) the agency action is subsequently modified in a manner that causes an effect to designated EFH not considered in this consultation; or 3) new EFH is designated that may be affected by the action.

Questions regarding this letter should be directed to Rob Markle of my staff in the Oregon Branch Office at (503) 230-5419.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Deban". The signature is fluid and cursive, with a horizontal line above the "i" in "Michael".

for Donna Darm  
Acting Regional Administrator

cc: Diana Hwang, U.S. Fish and Wildlife Service  
Al Mauer, U.S. Fish and Wildlife Service  
Bonnie J. Wood, Malheur National Forest  
Leslie Weldon, Ochoco National Forest  
Tim Unterwegner, Oregon Department of Fish and Wildlife

## LITERATURE CITED

- NMFS (National Marine Fisheries Service). 1999. Biological Opinion on Ongoing and Proposed Bureau of Land Management Activities Affecting Middle Columbia River Steelhead, Central Oregon Resource Area, John Day River Basin, Oregon (OSB1999-0145). NMFS, Northwest Region, Seattle, Washington. November 30, 1999.
- NMFS (National Marine Fisheries Service). 2000. Section 7 Informal Consultation on Ongoing and Proposed Actions in the Central Oregon Resource Area, Prineville District, Bureau of Land Management, John Day River Basin (OSB2000-0128). NMFS, Northwest Region, Seattle, Washington. June 28, 2000.
- NMFS (National Marine Fisheries Service). 2001. Formal Section 7 Consultation and Essential Fish Habitat Consultation on the Effects of Livestock Grazing Allotments Administered by the Bureau of Land Management in the John Day River Basin, Oregon for 2000 and 2001 (OSB2000-0197). NMFS, Northwest Region, Seattle, Washington. January 17, 2001.