



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Damage Assessment Restoration Center NW
7600 Sand Point Way N.E., Bldg 1, Seattle, WA 98115

05/04/2006

Ms. Betsy Peabody
Puget Sound Restoration Fund
7000 NE Dolphin Drive
Bainbridge Island, WA 98110

RE: ESA/EFH consultation for LIBERTY BAY SUBSTRATE MODIFICATION

Dear Ms. Peabody,

The NOAA Restoration Center (RC) has awarded funds to your Olympia Oyster Restoration Project through the Community-based Restoration Program (CRP). This federal funding constitutes a federal nexus under the Endangered Species Act (ESA). Under section 7 of the ESA, consultation with NOAA Fisheries is required for any federal action that could affect ESA-listed marine species or their habitats. In addition, consultation is required under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for any federal action that could affect designated Essential Fish Habitat (EFH) for coho, pink and chinook salmon, groundfish, and coastal pelagic species.

In July of 2004, a NOAA Restoration Center Northwest Programmatic Biological Opinion was issued by the Northwest Region of NOAA Fisheries. This Opinion concludes that the restoration activities most commonly implemented with RC funding are not likely to jeopardize ESA-listed salmonid species in the Pacific Northwest. The Opinion provides non-discretionary terms and conditions intended to minimize the potential for incidental take of listed species. The document also includes measures intended to avoid and minimize potential impacts on EFH, and satisfies the consultation requirement for eligible activities under the MSA.

Your project has been reviewed by RC staff, and we have determined that the proposed activities are eligible for inclusion under the Biological Opinion. This means that if you follow the terms and conditions and meet the requirements outlined in this letter, you will satisfy your ESA/EFH consultation obligation for the RC-funded portion of your project. Please note that ESA/EFH coverage under this Biological Opinion does not satisfy any other federal, state or local laws or permit requirements.

Your obligations under the programmatic Biological Opinion are as follows:

As the responsible project manager, you must ensure that the terms and conditions attached to this letter are followed, in their entirety, as applicable to your project. If you do not understand any of the terms and conditions, or believe that they cannot be implemented for any reason, you must contact RC staff immediately and obtain guidance.



If before or during project implementation you become aware of new information or unforeseen circumstances such that the project cannot be completed according to the scope of effects or the terms and conditions in the Opinion, you must inform RC staff. You must stop all project operations, except for efforts to avoid or minimize resource damage, pending completion of an individual consultation on the project.

If at any time during or after project implementation you identify a sick, injured or dead specimen of a threatened or endangered species, you must notify the Vancouver Field Office of NOAA Fisheries Law Enforcement at (360) 418-4246. The finder must take care in handling of sick or injured specimens to ensure effective treatment, and in handling dead specimens to preserve biological material in the best possible condition for later analysis of cause of death. The finder also has the responsibility to carry out instructions provided by Law Enforcement to ensure that evidence intrinsic to the specimen is not disturbed unnecessarily.

Within 120 days of project completion (5 October 2006), you must provide a project completion report that describes your success in meeting the conservation measures, reasonable and prudent measures, and associated terms and conditions of the Opinion.

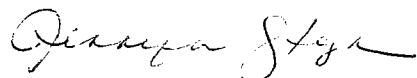
The following conservation measures and terms and conditions are applicable to your project. These sections of the Biological Opinion are enclosed with this letter.

Construction (7 pages)

Marine (1 page)

Once you have read, understood and made provisions to implement these measures, you are authorized to proceed with your project. If you have questions or need additional information, please contact Paul Cereghino at (206) 526-4670.

Sincerely,



Jennifer Steger
NW Regional Supervisor
NOAA Restoration Center

Cc Tristan Peters, Puget Sound Restoration Fund
Paul Cereghino, NOAA Restoration Center

PROJECT NOTIFICATION FORM

Olympia Oyster Restoration at Liberty Bay, WA ESA/EFH Consultation

1. Date
4 May 2006
2. RC project ID
NEW DIRECT SOLICITATION FY2006
3. Applicant
Puget Sound Restoration Fund
4. Location (County and 5th field HUC)
Liberty Bay, Kitsap County, Nearshore of 17110019-0101
5. Project Description
A barge and water pump will be used to place up to 300 yards of clean shell over approximately 1 acre of tidelands to provide settling substrate for native Olympia oyster in late May. Substrate samples will be taken over the remainder of the grant period to assess oyster settlement, survival and growth, and characterize changes in benthic community structure, but will be considered in combination with other low intensity program activities separately.
6. RC contact
Paul Cereghino, RC-NW, 206-526-4760, paul.r.cereghino@noaa.gov
7. Project
Olympia Oyster Restoration, Liberty Bay substrate enhancement
8. Type of activity
Shell placement
9. Proposed start and end dates
May 15, 2006 to June 5, 2006
10. Is the project area within the present or historic range of ESA-listed salmon or steelhead or a designated critical habitat, or otherwise likely to adversely affect likely to an ESA-listed salmon or steelhead or a designated critical habitat?
Puget Sound fall chinook are presumed to use this nearshore environment for rearing prior to ocean migration. The site is not located in proximity to a Chinook natal delta, and so is not assumed to be a high use area.
11. Was the project individually reviewed to ensure that all adverse effects to ESA-listed salmon and steelhead and their designated critical habitats are within the range of effects considered in the Opinion?
Yes. Project activities are limited to pump operation and shell placement in tidelands.

12. Which terms and conditions will be required?

<u>Terms and Conditions</u>	<u>Required</u>			
Project completion report	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO		
Site restoration report	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO		
Monitoring	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO		
Construction	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO		
 <u>Planning Conditions</u>			<u>Attached to Notification</u>	
Pollution and erosion control plan	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Work area isolation plan	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Site restoration plan	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Planning/habitat protection	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO		
Streambank stabilization	<input type="checkbox"/> YES	<input type="checkbox"/> NO		
Stream/wetland restoration	<input type="checkbox"/> YES	<input type="checkbox"/> NO		
Fish passage	<input type="checkbox"/> YES	<input type="checkbox"/> NO		
Livestock impact reduction	<input type="checkbox"/> YES	<input type="checkbox"/> NO		
Fish screens	<input type="checkbox"/> YES	<input type="checkbox"/> NO		
Native plant protection/establishment	<input type="checkbox"/> YES	<input type="checkbox"/> NO		
Marine habitat restoration	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO		

13. Requests for written approval attached to this notification? Check all that apply, attach a written explanation to support the request.

- Exploration or construction within 300-feet upstream of active spawning areas
- Exploration or construction in area with native submerged aquatic vegetation
- Timing of in-water work
- Fish passage (during construction)
- Soil disturbance and compaction (temporary access road or drill pad)
- Vehicle and material staging
- Work area isolation
- Transfer of ESA-listed fish

Yes, The BiOp limits in water work to either the WDFW or USACE fish window, whichever is most restrictive. This project will occur outside default nearshore fish window proposed by the USACE, and WDFW has declined to issue an HPA. The USACE will expect NMFS to make a determination related to in water work timing.

Subject: Re: Restoration BiOp written authorization requested

From: Dan Guy <Dan.Guy@noaa.gov>

Date: Thu, 11 May 2006 11:45:14 -0700

To: Paul R Cereghino <Paul.R.Cereghino@noaa.gov>

CC: Matthew Longenbaugh <Matthew.Longenbaugh@noaa.gov>, biop <RCBiop.nwr@noaa.gov>, Dan Guy <Dan.Guy@noaa.gov>

Paul:

I have reviewed the proposed action and work window. Given the location of shell placement, within the confines of Henderson Inlet, and the method of placement, I do not believe that impacts of this project will exceed that take quantification that has been acknowledged in the RC Restoration Programmatic consultation. The deviation from the normal approved work window is approved and the project can proceed under the direction of the RC.

Thank you for the opportunity to review and comment.

Dan Guy

Paul R Cereghino wrote:

Hello Dan and Matthew,

Attached are two project notifications for two oyster projects (PNF), one each in your respective territories. These folks will need authorization to complete in-water work (May 22-June 2 for Liberty Bay, and June 10-Aug 15 for Henderson Inlet.) WDFW declines to review these project types and the work would be done outside the USACE's work window, so the ball is in the NOAA court to approve timing.

Matthew:

Liberty Bay (next to Paulsbo), Betsy Peabody's shop at Puget Sound Restoration Fund got good settlement on their initial installation. They would like to spread an additional 100 yards of shell over a 1 acre area. Monitoring will focus on invertebrate community change and use underwater videography to characterize fish use.

Dan:

The Nature Conservancy, strongly involved in east coast shell fish work, is getting involved in shellfish restoration locally through conservation leasing of DNR tidelands. This is a experimental installation of around 200 bags worth (~3 yards) of shell piles and bagged culch at the mouth of Woodard Bay, Henderson Inlet, to look at survival and growth across an elevation gradient, and with and without a predator exclusion treatment. They wanted to have the flexibility to do work from June 10 - Aug 15 but their target window is June 10-June 25

Also attached are informal BE's for the bald eagle consultations that have more project information.

Thanks for your help. Please call if I can offer any additional information.

Paul