



**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

July 12, 2007

NMFS Tracking No.:  
2007/04423

Paul Cereghino  
Restoration Ecologist  
NOAA Fisheries, Restoration Center Northwest  
510 Desmond Drive, Ste 103  
Lacey, WA 98503

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Allen and Jones Creek Channel Restoration Project (HUC 171100110201, Upper Snohomish River).

Dear Mr. Cereghino:

This correspondence is in response to your request for consultation under the Endangered Species Act (ESA). Additionally, this letter serves to meet the requirements for consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

### **Endangered Species Act**

The Restoration Center Northwest submitted a Biological Evaluation (BE) to the National Marine Fisheries Service (NMFS) for the above referenced project on June 18, 2007. The Restoration Center Northwest requested NMFS' concurrence with the following determinations: (1) "may affect, not likely to adversely affect" Puget Sound Chinook (*Oncorhynchus tshawytscha*) salmon (PS Chinook) and (2) "may affect, not likely to adversely affect" for Puget Sound Steelhead (*O. mykiss*) (PS Steelhead). PS Chinook was listed as threatened under the ESA on March 24, 1999 (50 CFR 223 and 224). The Puget Sound steelhead (*O. mykiss*) (PS Steelhead) Distinct Population Segment (DPS) was listed as threatened under the ESA on June 11, 2007 (72 FR 26722). This consultation with the Restoration Center Northwest is conducted under section 7(a)(2) of the ESA, and its implementing regulations, 50 CFR 402.

The Restoration Center Northwest proposes fund Tulalip Landfill Natural Resource Trustees (Trustees) to restore the historical alignment (pre-1938) of segments of Jones and Allen Creeks, and create more natural channel morphology as the two streams flow through the Qwuloolt restoration site in Marysville, Washington. The purpose of project is to restore historical alignments, restore and enhance available off-channel and in-stream aquatic habitat, restore a more natural wetland hydro-period to areas currently drained by agricultural ditches, and enhance on-site sediment retention potential.



The project includes excavating new channels and filling existing channels and drainage ditches. Work on Allen Creek includes excavating a backwater channel that will extend the remnant historical stream channel 1,415 feet, generating approximately 1,300 cubic yards of excavated material. The design alternative was developed to allow for future opportunities to connect Allen Creek through the newly excavated channel. The connection is not currently feasible because it requires the acquisition of additional properties. The excavated material will be used to fill a north-south drainage ditch with approximately 520 cubic yards of material. Approximately 780 cubic yards of excavated fill will be placed to construct the proposed backwater channel. The action area is Allen and Jones Creeks.

Work on Jones Creek includes replacing approximately 1,900 feet of existing linear stream channel with a more sinuous 2,500 foot channel. The excavation of the new channel is expected to generate approximately 3,750 cubic yards of material. The current linear channel will require approximately 3,185 cubic yards of filling. In addition to the main channel, a small tributary channel will be excavated generating roughly 410 cubic yards of material to connect an existing upstream tributary in the Sunnyside area to the relocated Jones Creek stream system. The tributary currently flows in several on-site drainage ditches, which will be filled with 675 cubic yards with excavated material. The excess 300 cubic yards of material will be placed along the channel margins to replicate the development of a fluvial levee, provide topographic relief on the wetland surface, and reduce the need to handle and transport excavated soil materials.

Excavation is planned to occur during the dry season to minimize the effect of fluvial flow on erosion and downstream transport of sediment when water is introduced to the new channels. The material to be removed is composed mostly of sand and silt. Excavated material will be placed on site to fill old channels and agricultural ditches, using an excavator and/or backhoe. To minimize sediment transport all exposed soil will be planted with native vegetation and/or specified seeding and erosion control measures will be implemented until the area has been successfully planted and inspected.

The newly excavate channel segments of Allen and Jones Creek will extend the existing remnant tidal channel and enhance current wetland functioning by providing additional backwater and rearing habitat. Also, this will enhance habitat by increasing channel and backwater area for salmon rearing. The filling of agricultural ditches will restore a more natural hydrology and decrease the potential for the linear ditch system to be scoured by tidal action after levee removal. After the levee is removed re-vegetation will be allowed to occur naturally when habitat becomes stabilized. The ultimate goal of the restoration project is to restore tidal influence to the entire area, therefore increasing the quality and quantity of estuarine wetlands and associated habitat, and provide enhanced transitional habitat. Future actions involve removing the levee system and disengaging/removing the tide gate on Allen Creek.

**Species Determination, Puget Sound Chinook (PS Chinook)**

The NMFS analyzed the potential impacts of the project on PS Chinook and determined that the impacts will be discountable and insignificant.

The effects will be discountable because PS Chinook are not expected to be present during construction. Juvenile PS Chinook will have migrated to sea prior to the construction period and adult PS Chinook will not access the area because there are no spawning grounds.

Juvenile PS Chinook salmon may use Allen and Jones Creeks for rearing and/or high flow refuge, however, their presence is rare because the downstream tidegate restricts passage. If a few Chinook salmon do occur in the action area, the effects are expected to be insignificant. Temporary impacts, such as vehicle and equipment transport, are proposed to occur within the jurisdictional water and wetland area, but potential impacts to the site will be short-term and minimized by the implementation of Best Management Practices (BMPs), which include control of erosion and preservation of wetland conditions. There is a potential for temporary increase in sediment loading during construction as part of the channel excavation, but will be decreased by performing excavation during the dry season and hydroseeding the disturbed area. Furthermore, the channel will not be engaged until vegetative cover is sufficient to stabilize the newly graded slopes.

Because all potential adverse effects are discountable or insignificant, NMFS concurs with the Restoration Center Northwest determination of “may affect, not likely to adversely effect” for PS Chinook.

**Species Determination, Puget Sound Steelhead (PS Steelhead)**

The NMFS analyzed the potential impacts of the project on PS Steelhead and determined that the impacts will be discountable and insignificant.

The effects will be discountable because PS Steelhead are not expected to be present during construction. Adult PS Steelhead will not access the action area because there are no spawning grounds and juveniles generally rear farther upstream.

Juvenile PS Steelhead may occasionally use Allen and Jones Creeks for rearing and/or high flow refuge, however, their presence is considered uncommon because the downstream tidegate restricts passage. If a few PS Steelhead salmon do occur in the action area, the effects are expected to be insignificant. Temporary impacts, such as vehicle and equipment transport, are proposed to occur within the jurisdictional water and wetland area, but potential impacts to the site will be short-term and minimized by the implementation of Best Management Practices (BMPs), which include control of erosion and preservation of wetland conditions. There is a potential for temporary increase in sediment loading during construction as part of the channel excavation, but will be

decreased by performing excavation during the dry season and hydro-seeding the disturbed area. Furthermore, the channel will not be engaged until vegetative cover is sufficient to stabilize the newly graded slopes.

Because all potential adverse effects are discountable or insignificant, NMFS concurs with the Restoration Center Northwest determination of “may affect, not likely to adversely effect” for PS Steelhead.

### **Magnuson-Stevens Fishery Conservation and Management Act**

Federal agencies are required, under section 305(b)(2) of the MSA and its implementing regulations (50 CFR 600 Subpart K), to consult with NMFS regarding actions that are authorized, funded, or undertaken by that agency that may adversely affect Essential Fish Habitat (EFH). The MSA section 3 defines EFH as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” If an action would adversely affect EFH, NMFS is required to provide the Federal action agency with EFH conservation recommendations (section 305(b)(4)(A)). This consultation is based, in part, on information provided by the Federal agency and descriptions of EFH for Pacific coast groundfish, coastal pelagic species, and Pacific salmon contained in the Fishery Management Plans developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce.

The proposed action is described in a memo dated May 9, 2007 from the applicant and project drawings. The proposed action includes habitats, which have been designated as EFH for various life stages of Chinook, coho (*O. kisutch*) and pink (*O. gorbuscha*) salmon.

*The EFH Conservation Recommendations:* Because the conservation measures that the Restoration Center Northwest included as part of the proposed action to address ESA/EFH concerns are adequate to avoid, minimize, or otherwise offset potential adverse effects to the EFH of the species, conservation recommendations pursuant to MSA (section 305(b) (4) (A)) are not necessary. Since NMFS is not providing conservation recommendations at this time, no 30-day response from the Restoration Center Northwest is required (MSA section 305(b) (4) (B)).

This concludes consultation under the MSA. If the proposed action is modified in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS’ EFH conservation recommendations, the Restoration Center Northwest will need to reinitiate consultation in accordance with the implementing regulations for EFH at 50 CFR 600.920(l).

If you have questions regarding either the ESA or EFH consultation, please contact Brianna Blaud of the Washington State Habitat Office at (206) 526-4749, or by electronic mail at [Brianna.Blaud@noaa.gov](mailto:Brianna.Blaud@noaa.gov).

Sincerely,

A handwritten signature in black ink that reads "Matt Imzebaugh for". The signature is written in a cursive, flowing style.

D. Robert Lohn  
Regional Administrator

cc: Jennifer Steger, Restoration Center Northwest  
Tim McDowell, USFWS

