

Procedural Guidance

Regional Road Maintenance Program (RRMP) Projects with Federal Actions

NMFS issued a letter dated August 30, 2011 (Appendix A) to the Regional Forum clarifying that Federal agencies permitting or funding RRMP activities have no duty to consult with NMFS under ESA section 7(a)(2). This guidance describes the process that local agencies must follow to determine if a maintenance project's scope of work is within the Regional Road Maintenance ESA 4(d) Program.

The following requirements must be met by the local agency for coverage under the program:

1. The action is carried out by an approved participating agency under the Regional Road Maintenance ESA 4(d) Program (Appendix B).
2. The NMFS species, critical habitat, or Essential Fish Habitat (EFH) potentially occurring in the action area were addressed in one of the three previous consultations with NMFS under the ESA 4 (d) program (Appendix A). The Addendum II consultation was completed on September 15, 2014 (Appendix F). This consultation addressed Eulachon and three Puget Sound Rockfish. On March 21, 2018 NMFS completed consultation on critical habitat designated for Lower Columbia River coho and Puget Sound steelhead (Appendix G).
 - a. Note criteria provided in FHWA letter (Appendix E)
 - b. FHWA may request to review projects
3. The action is consistent with the definition of "maintenance" (Appendix C) within the Regional Road Maintenance Program which includes scheduled, non-scheduled and emergency activities that are needed to maintain the functional integrity of any part of the right-of-way structure defined in the program. Maintenance activities are not limited to an agency's budget process but include those activities that meet the definition, even if the maintenance is completed under a Capital Improvement Program (CIP), contract, other government agency, or by field crews. If the project includes in-water pile driving in fresh or marine waters, the project must go through Section 7 consultation.
4. The project applies the procedures of the Regional Road Maintenance Program Guidelines [Regional roadside maintenance | WSDOT \(wa.gov\)](#) including implementation of BMPs to achieve environmental outcomes.

The following process provides further clarification on how to determine whether the ESA consultation is complete (steps 3 and 4 above) and the necessary information to document that ESA consultation is complete for federal nexus actions.

Local agency determining maintenance is under the ESA 4(d) Program:

1. Is the action covered under one or more of the 15 Program Maintenance Categories RRMP 1.34 (Appendix C). In-water pile driving is excluded from this coverage.
 1. If yes continue on to step 2;
 2. If no, it is new development and the action requires Section 7 consultation
2. Does the action meet the definition of maintenance (Appendix C or RRMP page X)
 1. If yes continue on to step 3;
 2. If no it is new development and the action requires Section 7 consultation

3. Maintenance is mitigation for environmental impacts associated with initial construction (Appendix C or RRMP page Xi) (note 1 and 2 below)
4. Is work within a ROW or land dedicated for public use, ingress and egress (Appendix C), other public purposes (RRMP page Xii)
 1. If yes continue to step 5;
 2. If no, the action requires Section 7 consultation.
5. Can the action comply with part one BMP's of the appropriate Maintenance Category (RRMP 1.45- 1.101)?
 1. If yes continue to step 6;
 2. If no, the action requires Section 7 consultation.
6. Select environmental outcome category (RRMP 2.5- 2.19)
 1. If yes continue to step 7;
 2. If no, the action needs consultation.
7. Select part 2 BMP's for the project (RRMP 2.20- 2.168)
 1. If yes continue to step 8;
 2. If no, the action needs Section 7 consultation.
8. Perform adaptive management if anything is not working as designed (RRMP 1.22- 1.28) (note 3).

The local agency will provide along with the normal permitting documentation and the ESA form for Federal Nexus Actions, the following 3 documents:

1. Provide a copy of the Maintenance Category that addresses the action.
2. Staple the document above and a copy of your agency 4(d) approval letter with submittal paper work.
3. Provide a copy of the NMFS confirmation letter explaining ESA duties of other federal agencies dated August 30, 2011. Also fill out and include with the submittal a copy of the Documentation Template [for FHWA and Corps]. This template requires standard project description information and must document how the project fits within the RRMP 4(d) program.

Note 1: If permit conditions require that the maintenance activity install something new, as a condition of the permit for that activity, then the conditions are also covered by the consultation as a maintenance activity which is part of the program. Example: A permit condition requires installation of an energy disperser to protect the outfall to the 100 yr flood. This would be maintenance conditioned through permits and no other consultation is needed

Note 2: Engineering or design standards require a new or different design as part of the current standard for the activity and the conditions that may be placed on the activity are also covered by the consultation as maintenance activity which is part of the program. Example: A permit condition requires installation of a bridge instead of replacing a round culvert. The new bridge would be maintenance conditioned through permits and no other consultation is needed.

Note 3: If a BMP is failing to meet its purpose and intended environmental outcomes, then the BMP can be changed or modified under the adaptive management component

of the program which is covered by the consultation. Example: replacing a triangle check dam with a rock check dam would be maintenance conditioned through permits and no other consultation is needed.

Members of the RRMP negotiating team (Appendix D) are available to help respond to inquiries from RRMP agencies or Federal nexus agencies regarding maintenance approved within the Road Maintenance ESA 4(d) Program referenced in the letter.

Appendix A –



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, Washington 98115

August 30, 2011

Janine Johanson
King County Roads Maintenance
155 Monroe Ave NE
Renton WA 98056

Gregor Myhr
Water Quality Manager
WSDOT Maintenance and Operations Division
310 Maple Park Avenue SE
PO Box 47358
Olympia, WA 98504-7358

Re: Washington State Regional Road Maintenance Program (Regional Program), 4(d) Rule Limit 10ii relationship to the ESA section 7(a)(2) duties of other Federal Agencies.

Dear Ms. Johanson, Mr. Myhr, and members of the Regional Forum:

Presently, the Regional Forum and the National Marine Fisheries Service (NMFS) seek to clarify the Endangered Species Act (ESA) section 7(a)(2) responsibility of Federal agencies that are funding or permitting certain activities conducted under the purview of the Regional Program. In response to inquiries by Federal agencies to the Regional Forum regarding actions related to Regional Program activities, NMFS reviewed 50 CFR 223.203(b) (the 4(d) rule) and the record for the qualification and implementation of the Regional Program under that 4(d) rule (50 CFR 223.203(b)(10)(ii)), including consultations conducted with respect to the Program. As described below, NMFS has conducted three consultations on the Regional Program. There have been no significant changes in the status of the species, status of critical habitat, or baseline from conditions described in those consultations. NMFS concludes that the effects of Regional Program activities funded or permitted by Federal agencies are covered by those consultations. Therefore, Federal agencies permitting or funding Regional Program activities have no duty to consult with NMFS under ESA section 7 (a)(2) on their funding or permitting actions provided that (1) the underlying Regional Program activities are carried out by Regional Program participants according to the specific requirements and process in the Regional Program; and (2) the species or critical habitat at issue in the Federal funding or permitting action is addressed in the Regional Program under 50 CFR 223.203(b)(10)(ii) and/or were considered in one of NMFS Consultation Nos. 2003-00313, 2004-00647, or 2009-03290 as described below.

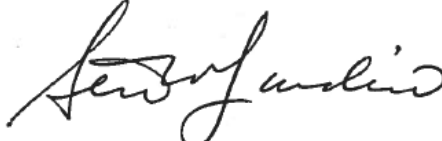
The NMFS conducted the consultations cited above for the initial qualification of the Regional Program under 50 CFR 223.203(b)(10)(ii) (2003), for the subsequent addition of new participants in the Regional Program (2004), and after the Regional Forum submitted a five-year program addendum required in the Regional Program (2009). The latter consultation also addressed species listed and critical habitat designated since the completion of the 2004 consultation. These consultations address the threatened salmonid ESUs and DPS in Washington State covered by 50 CFR 223.203(b): Puget Sound (PS), Lower Columbia River (LCR), SR fall-run, SR spring/summer-run, and Upper Willamette River (UWR) Chinook salmon (*Oncorhynchus tshawytscha*); Columbia River (CR) chum salmon (*O. keta*); LCR coho salmon (*O. kisutch*); and Snake River Basin (SRB), PS, LCR, UWR, and Middle Columbia River (MCR) steelhead (*O. mykiss*).

In NMFS Consultation Nos. 2003-00313, 2004-00647, and 2009-03290, NMFS found the Regional Program would not jeopardize these species and would not adversely affect designated critical habitat for each of those species (except those for which critical habitat was not yet designated (PS steelhead and LCR coho). NMFS also assessed the effects of the Regional Program on the three endangered ESUs of Upper Columbia River (UCR) spring-run Chinook salmon, UCR steelhead, and SR sockeye salmon. These three endangered salmonid ESUs migrate outside the geographic boundaries of their ESUs through a portion of the Regional Program's action area. These prior consultations concluded that the effects of Regional Program activities (primarily conducted in tributary watersheds) on endangered salmonids migrating through the middle and lower mainstem Columbia River would likely be insignificant or discountable, and thus not likely to adversely affect the UCR spring-run Chinook salmon, UCR steelhead, or SR sockeye salmon. Finally, in the 2009 consultation (No. 2009-03290), NMFS found that Regional Program had no effect on sperm whale, fin whale, sei whale, humpback whale, grey whale, Southern resident killer whale, Steller sea lion, leatherback sea turtle, olive ridley sea turtle, loggerhead sea turtle, green sea turtle, or Southern DPS green sturgeon.

Because the effects of activities conducted under the Regional Program have already been analyzed and determined to not likely to adversely affect, or to neither jeopardize any listed species nor to adversely affect critical habitat, Federal agencies that permit or fund activities carried out in the Regional Program need not conduct further consultation under ESA section 7(a)(2) on their actions with respect to Regional Program activities.

If you have any questions regarding the effects determination described above, please contact David Hirsh at the Washington State Habitat Office, (360) 753-9598, or email David.Hirsh@noaa.gov.

Sincerely,



William W. Stelle, Jr.
Regional Administrator

cc: Mark Eberlein, FEMA
Cindy Callahan, FHWA

Appendix B –

Jurisdictions that received 4 (d) approval from NOAA Fisheries.

1	City of Bellevue	11	King County	21	City of Poulsbo
2	City of Bremerton	12	Kitsap County	22	City of Renton
3	City of Burien	13	City of Lake Forest Park	23	City of Sammamish
4	Clallam County	14	City of Lakewood	24	City of Sea Tac
5	Clark County	15	City of Maple Valley	25	City of Shoreline
6	City of Covington	16	Mason County	26	Snohomish County
7	City of Edgewood	17	City of Mill Creek	27	City of Tacoma
8	City of Everett	18	City of Monroe	28	Thurston County
9	City of Kenmore	19	City of Newcastle	29	City of Univ. Place
10	City of Kent	20	Pierce County	30	WSDOT
31	Skagit County	32	Lewis County	33	Skamania County
34	Cowlitz County	35	City of Winlock	36	City of Sumner
37	Kitittas County				

APPLYING THE *GUIDELINES* TO ROAD MAINTENANCE

This Regional Program applies to roadway maintenance operations, utility maintenance, maintenance of stormwater facilities, and other right-of-way (ROW) structure maintenance within the ROW. Participants in the Regional Program need a clear understanding of what road maintenance is, how it minimizes impacts to habitat, and where it occurs.

DEFINITION OF ROAD MAINTENANCE

Activities that fall under the following definition of “maintenance” are covered under the Regional Program:

- Maintenance:** Repair and maintenance include activities that:
- (a) are conducted on currently serviceable structures, facilities and equipment beyond those that existed previously; and
 - (b) involve no expansion of or change in use of such structures, facilities, and equipment beyond those that existed previously; and
 - (c) do not result in significant negative hydrological impact.

Repair and maintenance include those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems or to replace dysfunctional facilities. Repair and maintenance also include replacing existing structures with different types of structures, PROVIDED THAT replacement is required to meet current engineering standards or by one or more environmental permits and the functioning characteristics of the original structure are not changed. An example would be replacing a collapsed, fish-blocking round or wooden culvert with a new box culvert under the same span or width of roadway.

As negotiated with the Services, the Regional Program specifies activities that have been determined to be adequately regulated and therefore can limit, reduce or eliminate the prohibition on take of threatened species.

The Regional Program does not apply to construction of new facilities or major expansion of existing facilities.

ROAD MAINTENANCE IS MITIGATION

Road maintenance reduces or eliminates impacts from vehicle use and road wear. Given the critical nature of the transportation system, road maintenance is not optional. It is required for several reasons (WAC 197-11-768 mitigation):

- Safety of the traveling public
- Preservation of infrastructure
- Mitigation for environmental impacts associated with initial construction, preservation, and maintenance during the life of the structure.

The *Guidelines* provide a road maintenance program that achieves the dual goals of operating a transportation system while conserving aquatic habitat conditions. An example of how road maintenance conserves habitat can be found in the road maintenance category “Cleaning Enclosed Drainage Systems.” Maintenance activities within the category contribute to the following conservation outcomes:

1. Street sweeping reduces sediments from entering storm drains and waterways.
2. Maintaining and cleaning enclosed drainage systems removes sediments.
3. Maintaining and cleaning oil/water separators reduces pollutants and sediments.
4. Maintaining and cleaning retention/detention facilities and connector ditches removes pollutants and sediments.
5. Repair and restoration of an enclosed drainage system facility ensures storage capacity.
6. Mowing bio-swales and cleaning water quality vaults removes pollutants and sediments.
7. Culvert repair and rehabilitation reduces erosion.
8. Outfall maintenance reduces erosion.

Each maintenance category within the *Guidelines* has activities that contribute to the conservation outcomes listed for that category.

RIGHT-OF-WAY STRUCTURE

Road maintenance activities occur within the right-of-way (ROW). ROW is the area of land dedicated for public use or secured by the public for purposes of ingress and egress to abutting property and other public purposes. ROW includes area maintained by public agencies through prescriptive rights. ROW structures include planned, designed, engineered and constructed features that together encompass many built systems. Typical ROW structures include, but are not limited to, the following:

- Open drainage system/sediment transport system.
- Closed drainage system/sediment transport system.
- Retention/detention/wetland systems/sediment transport system.
- Road surface/drainage and sediment transport system.
- Utilities.
- Stream system.
- The ROW itself, width, air space above- and underground.

An understanding of the ROW, its structures, and its relationship to water quality and habitat is critical to the successful implementation of the Regional Program.

Examples of systems and structures within the ROW include the following: roadway, drainage, sediment containment, retention/detention, water, sewer, gas, electrical, street lighting, traffic loops, and traffic signals.

The aboveground surface area of the ROW structure consists of the roadway shoulder, cuts, fills, ditches, channels, dikes, bridges, retention/detention, swales and constructed wetlands (intentional and incidental). The road surface directs water from the road, across the gravel or grass shoulder, across the inslope of the ditch, through the ditch to a swale or retention/detention area and then to an outlet.

The ROW structure also includes a sediment transport (stormwater) system. The function of this system is to remove sediment before it outfalls to a watercourse or stream. The roadway drainage system has built-in stormwater retention capacity. The road surface traps large amounts of fine material, where it can be removed by sweeping operations, thereby preventing sedimentation in watercourses or streams. Gravel or grass shoulders filter and trap sediments. Ditches hold and trap sediments frequently acting as long, narrow retention/detention ponds. Stormwater retention/detention facilities

and constructed wetlands hold and trap large amounts of sediment, reducing downstream sedimentation. The open drainage system is designed to trap sediments. Road maintenance removes these sediments before they pass through the system to a stream or watercourse.

Like an open drainage system, an enclosed drainage system transports sediment to built-in trapping and holding areas where the sediment can be removed before it reaches a stream or watercourse. An enclosed drainage system starts with the road surface or structure and directs water and sediment to inlets, catch basins, manholes, vaults, pipes, and retention/detention facilities. Inlets to the enclosed drainage system both limit the size of sediments and hold sediments. Catch basins, manholes, vaults, pipes, and retention/detention/constructed wetland facilities trap large quantities of sediments so they can be removed before they enter the outflow.

Road and utility maintenance activities occur within the road ROW structure. Figures 3-7 provide typical illustrations of the ROW structure, including the following:

- Figure 3: Typical ROW Structure
- Figure 4: Section A-A: Open Drainage System
- Figure 5: Section B-B: Enclosed Drainage System
- Figure 6: Section C-C: Retention/Detention Facility
- Figure 7: Section D-D: Stream Crossing Road.

RRMP 1.34 15 Maintenance Categories

READ THE *GUIDELINES*

It is important to read the entire *Guidelines* to gain a basic understanding of how BMPs can be useful in daily operations. Part 1, Program Element 10, BMPs and Conservation Outcomes and Part 2, Best Management Practices, are to be used **in tandem** to perform maintenance activities and implement BMPs. Road maintenance activities have been divided into 15 *Maintenance Categories* presented as separate sections in Part 1, Program Element 10, BMPs and Conservation Outcomes:

1. Roadway Surface.
2. Enclosed Drainage Systems.
3. Cleaning Enclosed Drainage Systems.
4. Open Drainage Systems.
5. Watercourses and Streams.
6. Stream Crossings.
7. Gravel Shoulders.
8. Street Surface Cleaning.
9. Bridge Maintenance.
10. Snow and Ice Control.
11. Emergency Slide/Washout Repair.
12. Concrete.
13. Sewer Systems.
14. Water Systems
15. Vegetation.

Each category includes activities, purpose, BMP outcomes, BMPs, and potential conservation outcomes. Some of the Part 1 BMPs are routine, while others require more detailed information. Those BMPs requiring more information are included in Part 2 in alphabetical order.

Appendix D –

Training and Outreach – Contact Information:

RRMP Agency Contacts	Contact Name	Contact Phone and Email
WSDOT Maintenance and Operations	Gregor Myhr	360-705-7853 myrhg@wsdot.wa.gov
King County Roads Division	Janine Johanson	206-205-7101 Janine.Johanson@kingcounty.gov
Pierce County Roads	Jeff Rudolph	253-798-7693 jrudolp@co.pierce.wa.us

Appendix E



U.S. Department
of Transportation
**Federal Highway
Administration**

Washington Division

Suite 501 Evergreen Plaza
711 South Capitol Way
Olympia, Washington 98501-1284
(360) 753-9480
(360) 753-9889 (FAX)
<http://www.fhwa.dot.gov/wadiv>

June 4, 2012

HEV-WA.1/588

Janine Johanson
King County Roads Maintenance
155 Monroe Ave NE
Renton, WA 98056

Gregor Myhr
Water Quality Manager
WSDOT Maintenance and Operations Division
310 Maple Park Avenue SE
PO Box 47358
Olympia, WA 98504-7358

**Washington State Regional Road
Maintenance Program (Regional Program),
4(d) Rule Limit 10ii and Coverage for
Federal Aid Funded Projects**

Dear Ms. Johanson, Mr. Myhr, and Regional Forum Members:

The Federal Highway Administration (FHWA) accepts the National Marine Fisheries Service (NMFS) conclusion, in their letter dated August 30, 2011, and addressed to the Regional Forum, that activities funded or authorized by FHWA that are conducted under the Regional Road Maintenance Program (RRMP) were analyzed under 50 CFR 223.203(b) (the 4[d] rule) and do not require consultation under section 7(a)(2) of the Endangered Species Act (ESA). The FHWA further clarifies these requirements for RRMP coverage of FHWA actions:

- 1) The action is performed by a jurisdiction approved for participation in the RRMP;
- 2) The action is consistent with the road maintenance activities described in the RRMP;
- 3) The project proponent follows the RRMP Procedural Guidance, including completion of the project-specific ESA 4(d) Coverage Form;
- 4) The action does not include any in-water pile driving;
- 5) The action's potential effects are consistent with the NMFS' RRMP consultation conclusions (*no effect* on listed marine mammals and Southern Distinct Population Segment [DPS] green sturgeon, *will not adversely affect* endangered salmon Evolutionarily Significant Units [ESUs] and designated critical habitats, and *will not jeopardize the continued existence* of threatened salmon ESUs).
- 6) The action has *no effect* on eulachon (*Thaleichthys pacificus*) Southern DPS and their critical habitat.
- 7) The action has *no effect* on Puget Sound Georgia Basin yelloweye rockfish (*Sebastes ruberrimus*), canary rockfish (*Sebastes pinniger*) and bocaccio (*Sebastes paucispinis*).

The Washington State Habitat Office of the NMFS provided clarification in their August 30, 2011 letter regarding federal actions consistent with the RRMP and associated ESA section 7(a)(2) responsibilities. In this letter, NMFS concluded that Federal agencies funding or permitting RRMP activities have no duty to consult with NMFS under ESA section 7(a)(2) provided that the activities are carried out by RRMP participants and that species or critical habitat potentially affected are addressed within the RRMP consultations completed by NMFS (NMFS Consultation Nos. 2003-00313, 2004-00647, and 2009-03290).

The NMFS consultations concluded that the RRMP *may adversely affect* but *would not jeopardize the continued existence* of threatened Puget Sound, Lower Columbia River, Snake River fall-run, Snake River spring/summer-run, and Upper Willamette River Chinook salmon (*Oncorhynchus tshawytscha*); Columbia River chum salmon (*O. keta*); Lower Columbia River coho salmon (*O. kisutch*); and Snake River Basin, Puget Sound, Lower Columbia River, Upper Willamette River, and Middle Columbia River steelhead (*O. mykiss*). NMFS concluded that the RRMP *would not adversely affect* designated critical habitat for listed salmonids. Also, for the endangered salmon ESUs, NMFS concluded the RRMP *would not adversely affect* Upper Columbia River spring-run Chinook salmon, Upper Columbia River steelhead, and Snake River sockeye salmon (*O. nerka*). Finally, NMFS concluded the RRMP *would have no effect* on listed marine mammals, sea turtles, and Southern DPS green sturgeon.

NMFS is currently consulting on the Southern DPS of eulachon, eulachon critical habitat, and Puget Sound Georgia Basin yelloweye rockfish, canary rockfish, and bocaccio, so RRMP activities that have effects on these species are currently not covered in the program. In addition, FHWA will evaluate actions involving bridge installation or bridge replacement on a case-by-case basis and approval will be granted based on site conditions and structure design. Most bridge replacement projects will be excluded from this coverage.

All projects and activities that may affect species under the jurisdiction of U.S. Fish and Wildlife Service will be required to complete consultation under section 7(a)(2) of the ESA.

Please contact Cindy Callahan at 360-753-9078 if you require additional information or have any questions about this letter.

Sincerely,



DANIEL M. MATHIS, P.E.
Division Administrator

cc: Bill Leonard, WSDOT Highways and Local Programs
Marion Carey, WSDOT ESO
Megan White, WSDOT ESO
David Hirsch, NMFS Lacey



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

NMFS Tracking No.:
WCR-2014-304

September 15, 2014

Janine Johanson
King County Roads Maintenance
155 Monroe Ave NE
Renton WA 98056

Gregor Myhr
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310 Maple Park Avenue SE
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Olympia, WA 98504-7358

Re: Endangered Species Act Section 7 Effects Determinations and Reinitiated Consultation
for the Washington State Regional Road Maintenance Program, 4(d) Rule Limit 10ii.

Dear Ms. Johanson and Mr. Myhr:

In 2003, the National Marine Fisheries Service (NMFS) qualified the Regional Road Maintenance Program (Regional Program) in Washington State, under 50 CFR 223.203(b)(10)(ii). NMFS completed consultations for that action (NMFS Consultation No. 2003-00313), and again in 2004 for the addition of several participants in the Regional Program (NMFS No. 2004-00647). Those consultations addressed effects of the proposed action on eight of the 14 ESUs addressed in the 4(d) Rule, and two additional ESUs (Snake River (SR) Fall-run and SR spring/summer-run Chinook), neither of which are included in the 4(d) Rule. Following those consultations, NMFS determined that the proposed action would not jeopardize any of the listed species, and by its nature as a 4(d) Rule program, the Regional Program would not cause prohibited take.

In 2008, the agencies participating in the Regional Program (Regional Forum) submitted a five-year report (2008 Addendum) in compliance with requirements in the Regional Program. At that time, NMFS considered the effects of qualifying the Regional Program under Limit 10ii as to the species listed and critical habitat designated in the 2004 consultation (2004-00647). In 2009, NMFS found that its action of qualifying the program under the 4(d) rule was not likely to adversely affect Puget Sound (PS) steelhead, Lower Columbia River (LCR) coho, or the critical habitat designated for the species considered in the previous two consultations. Furthermore, NMFS found that none of the species considered in NMFS 2003 and 2004 consultations, neither of the salmonid species listed in Washington State since those consultations, and none of the


critical habitat designated in 2005 is affected by any of the information presented in the 2008 addendum. NMFS also found that qualifying the Regional Program under 50 CFR 223.203(b)(10)(ii) had no effect on sperm whale, fin whale, sei whale, humpback whale, grey whale, Southern resident killer whale, Steller sea lion, leatherback sea turtle, olive ridley sea turtle, loggerhead sea turtle, green sea turtle, or Southern DPS green sturgeon.

The current consultation considered the effects of qualifying the Regional Road Maintenance Program (Regional Program) in Washington State, under 50 CFR 223.203(b)(10)(ii) on several species listed since 2008. These species include Southern Distinct Population Segment (DPS) Pacific Eulachon, Georgia Basin/Puget Sound Distinct Population Segment (DPS) Bocaccio, Georgia Basin /Puget Sound DPS Canary Rockfish, Georgia Basin/Puget Sound DPS Yelloweye Rockfish. NMFS also considered effects determinations for critical habitat designated for pacific eulachon, and proposed for rockfish. NMFS finds that the action has no effect on rockfish or their proposed critical habitat. NMFS finds that the action is not likely to adversely affect pacific eulachon or its designated critical habitat. These determinations and their bases are discussed in detail in the attached memos, provided for your reference.

The attached memos complete ESA section 7 consideration of the species listed since 2008 and for critical habitat both proposed and designated since 2008. For proposed critical habitat, the opinion included in the attached rockfish memo satisfies NMFS's responsibility to consult and there will be no need to reinitiate consultation when NMFS finalizes the designation.

If you have any questions regarding the consultation and conference described above, please contact David Hirsh of NMFS Oregon Washington Coastal Area Office, (206) 526-4506, or email David.Hirsh@noaa.gov.

Sincerely,


for William W. Stelle, Jr.
Regional Administrator

Appendix G



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd Blvd, Suite 1100
Portland OR, 97232

NMFS Tracking No.
WCR-2017-6744

March 21, 2018

Janine Johanson
King County Roads Maintenance
155 Momoe Ave NE
Renton, Washington 98056

Gregor Myhr
Water Quality Manager
WSDOT Maintenance and Operations
PO Box 47358
Olympia, Washington 98504-7358

Re: Endangered Species Act Section 7 Effects Determinations and Reinitiated Consultation
for the Washington State Regional Road Maintenance Program, 4(d) Rule Limit 10ii.

Dear Ms. Johanson and Mr. Myhr:

On April 13, 2017, NOAA's National Marine Fisheries Service (NMFS) received your Regional Road Maintenance Program's (RRMP) 5-year report and addendum as well as a biological evaluation of the effects to critical habitat designated in 2016 for Lower Columbia River (LCR) coho and Puget Sound (PS) steelhead. You also submitted a request for written concurrence that the RRMP is not likely to adversely affect (NLAA) PS Steelhead and LCR coho critical habitats designated under the Endangered Species Act (ESA). After reviewing the biological effects evaluation, and considering the original consultation record for the Regional Program, we have determined that the effects of qualifying the RRMP in Washington State, under 50 CFR 223.203(b)(10)(ii) on designated critical habitat for PS steelhead and LCR Coho are insignificant.

You also included the determination that the proposed action would not adversely affect Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Because this review is exclusively to evaluate the effects of limit 10 and the RRMP on subsequently designated critical habitat, the Limit 10 and the RRMP are not being modified by this review, no new effects to EFH are anticipated, and no additional EFH review is required.

WCR-2017-6744

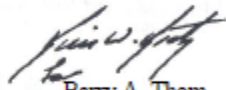


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Following additional review, NMFS does not concur with the NLAA ESA determinations, and believes that effects of the limit and the RRMP, as with the original consultation, will have some adverse effects on designated critical habitat. Therefore, formal consultation is necessary.

A complete record of this consultation is on file electronically at the Oregon Washington Coastal Office, please direct questions regarding this letter to Michael Grady of the Oregon Washington Coastal Office at (206) 526-4645, or by electronic mail at Michael.Grady@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry A. Thom".

Barry A. Thom
Regional Administrator

WCR-2017-6744

