



**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, WA 98115

Refer to NMFS No.:  
2011/01493

March 27, 2014

Lisa A. Northrop, Forest Supervisor  
Mt. Hood National Forest  
16400 Champion Way  
Sandy, Oregon 97055

Re: Re-initiation of the Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Consultation, Timberline Downhill Bike Park, Still Creek, Sand Canyon, Glade and West Fork Salmon River Sub-Watersheds (HUCs 170800010201, 170800010202, 170800010101), Mt. Hood National Forest, Clackamas County, Oregon

Dear Ms. Northrop:

This letter is intended to follow up on the recent exchange of e-mails between you and Ken Phippen<sup>1</sup> regarding the re-initiation of consultation for the Timberline Downhill Bike Park (Park) on the Mt. Hood National Forest (MHNF) under both the Endangered Species Act (ESA) and section 305 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and to more formally and specifically define the basis for the determination to engage in further consultation regarding the Proposed Action at this time.

On April 8, 2011, NMFS received your request for written concurrence that the effects of the Proposed Action are not likely to adversely affect (NLAA) species listed as threatened or endangered under the ESA or their designated critical habitat. On June 13, 2011, NMFS issued written concurrence with the Forest Service's determination regarding the effects of the Proposed Action on ESA-listed species and critical habitat, and concluded essential fish habitat consultation under the MSA as well.

<sup>1</sup> E-mail and reply from Ken Phippen, NMFS, to Lisa Northrop, MHNF (March 6, 2014) (concurring re-initiation of the consultation for the Timberline Downhill Bike Park was appropriate).



More recently, on December 23, 2013, NMFS received a copy of a Notice of Intent to Sue for Violations of Section 7 of the ESA relating to the proposed action. This Notice alleges that NMFS' June 13, 2011, concurrence is legally flawed. In addition, on January 16, 2014, the Forest Service provided a monitoring report for restoration work at the proposed Park site.<sup>2</sup>

Upon receiving the 60-Day Notice, NMFS determined that it would be appropriate to re-examine the NLAA concurrence issued on June 13, 2011 that is the subject of the Notice. In addition, both agencies considered whether the monitoring report included any information that would trigger the re-initiation of consultation under 50 C.F.R. § 402.16 and concluded it did not. The NMFS nevertheless informed the Forest Service on March 6, 2014, of its determination that re-initiation of consultation would be appropriate based upon its re-examination of the June 2011 NLAA concurrence in which it noted one or more ways in which it may not have accurately expressed the rationale for the NLAA determination. In light of this determination, NMFS inquired if the Forest Service would have any objections to proceeding with further consultation. You indicated shortly thereafter that the Forest Service has no such objections and, on the basis of the agencies' concurring on the appropriateness of engaging in further consultation regarding the Proposed Action at this point in time, NMFS intends to move forward accordingly, notwithstanding that doing so is not required by any of the regulatory re-initiation triggers and the lack of a finding that any such trigger is activated under present circumstances. See 50 C.F.R. § 402.16.

Upon considering revisions it could make to the June 2011 NLAA following the agencies' joint determination to engage in additional consultation, NMFS ultimately has come to the conclusion that preparation of a biological opinion would be the most appropriate course of action to follow in the re-initiation process. In particular, NMFS is concerned that the effects of the Proposed Action may not be within those that may properly be the basis of an NLAA concurrence under current agency policy and/or direction.

The NMFS appreciates the willingness of the Forest Service to engage in additional consultation on the Proposed Action in light of the foregoing. In addition, further consultation will provide an additional opportunity for the agencies to consider any potential relevance of the information in the monitoring report to the potential effects of the Proposed Action, as well as any other new information of potential relevance to the likely effects of the action. Finally, recent discussions with Forest Service staff have allowed NMFS to arrive at a more complete understanding of the baseline conditions within the project watershed, including the distribution within the project watershed of threatened Lower Columbia River (LCR) steelhead (*Oncorhynchus mykiss*) and their designated critical habitat, all of which would also be available for consideration in further consultation regarding the Proposed Action, and potentially allow for a more refined analysis of project effects.

<sup>2</sup> Phase 1 of the Restoration Activities associated with Timberline Ski Area Mountain Bike Trails and Skills Park: Progress Report. December 2013. Prepared by Greg Warner. USDA Forest Service, Mt. Hood National Forest, Zigzag Ranger District, Zigzag, Oregon.

Therefore, in light of and consistent with the above, with this letter NMFS is informing the Forest Service that we intend to proceed with and complete this re-initiation as a formal consultation and will prepare a biological opinion. The biological opinion will describe and analyze the environmental baseline, the effects of the proposed action, and cumulative effects. The NMFS believes it has sufficient information to proceed with consultation, but if we require any clarification we will contact the Forest Service. The NMFS intends to coordinate with the Forest Service throughout the process, including discussing any potential reasonable and prudent measures that may seem appropriate to minimize adverse effects on LCR steelhead.

If you have questions about this letter or about how to continue with the consultation process, please call Ken Phippen, Oregon Coast Branch Chief within the Oregon Washington Coastal Area Office, at 541.957.3385.

Sincerely,

Kim Kratz, PhD  
Assistant Regional Administrator  
Oregon Washington Coastal Area Office