



U.S. Department
of Transportation

**Federal Highway
Administration**

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HEV-WA.1/588

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Water Quality Manager
WSDOT Maintenance and Operations Division
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**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