UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
BIN C15700
Seattle, WA 98115-0070

August 15, 2003

Mr. Chris Christopher
State Maintenance Engineer
Washington State Department of Transportation
Maintenance and Operations Program
Post Office Box 47300
Olympia, Washington 98504-7300

Re: 4(d) Rule Submittal for Limit No. 10 - Routine Road Maintenance

Dear Mr. Christopher:

NOAA's National Marine Fisheries Service (NOAA Fisheries) has evaluated the Washington State Department of Transportation (WSDOT), application for Limit 10, (Routine Road Maintenance) submitted under the 4(d) Rule (July 10, 2000, 65 FR 42422). After evaluating the Regional Road Maintenance submittal package with respect to the Limit 10 criteria, we concur with your conclusion (found on page 136 of the Biological Review) that the WSDOT's Routine Road Maintenance Program and Plan, together with supporting documentation, adequately addresses all of the relevant 4(d) criteria. Therefore, NOAA Fisheries finds that your program will adequately conserve the listed species.

The approval does not apply to pesticide, herbicide or fertilizer applications. This finding applies through the end of the calendar year 2008, at which time you may want to resubmit your program for qualification, incorporating any appropriate changes in management practices and effects analysis that may be possible due to advances in scientific understanding between now and then, and the results of the monitoring and evaluation program you include on pages 1.18 to 1.32 of the Regional Road Maintenance Endangered Species Act Program Guidelines. Specifically, your Program includes a provision for monitoring the adequacy of Best Management Practices (BMPs), development or implementation of checklists, review of implemented BMPs and their effectiveness, and the evaluation of BMP performance through adaptive management. Additionally, scientific research will serve to verify the effectiveness of BMPs and to recommend changes to BMPs based on the latest technologies. As conditions of your continuing qualification:

1. A representative of your agency with road maintenance knowledge, technical expertise and the authority to implement program changes will participate in the Regional Forum;

2. The Regional Forum will submit biennial reports to NOAA Fisheries on the status of all ten elements of the Regional Program. At a minimum, the reports will include the following:

   - Status reports and updates for each program element.
   - Training program, review and updates.
   - Review of scientific research.
   - Implementation review.
   - Adaptive Management reports, including recommended changes to the Guidelines.

   Reports shall be sent to:

   NOAA Fisheries, Washington State Office
   510 Desmond Drive SE, Suite 103
   Lacey, WA 98503

   Periodically, NOAA Fisheries may evaluate the Regional Road Maintenance Program for its effectiveness in maintaining and achieving program implementation that provides for the conservation of listed species. Whenever warranted, NOAA Fisheries will identify to the Regional Forum ways in which the program needs to be altered or strengthened. If any agency does not change to respond adequately to the new information in the shortest amount of time feasible, but not longer than one year, NOAA Fisheries will publish notification in the Federal Register, announcing intention to disqualify the program under Limit 10;

3. Agencies will identify known or discovered chronic sediment deposit locations and potential sources of excess sediment, making the information available to agency watershed planning groups, regulatory agencies, and/or agency Capital Improvement Plan programs for permanent solutions;

4. Shore defense activities require the issuance of a Hydraulic Project Approval (HPA) by the Washington Department of Fish and Wildlife (WDFW). Agencies will commit to incorporate into the design of shore defense activities the relevant considerations as stated in the Integrated Streambank Protection Guidelines or its equivalent, as required by WDFW in the HPA.

Take prohibitions under section 9 of the Endangered Species Act (ESA) and applicable 4(d) rules will not apply to the routine road maintenance practices carried out by the WSDOT in accordance with that plan, and are implemented in accordance with the requirements of this letter.

Thank you for the time your staff has invested in developing the Regional Road Maintenance ESA Program and submittal package. NOAA Fisheries looks forward to working collaboratively with you to recognize management programs that conserve and meet the biological requirements of salmonids, and to strengthen other programs toward conservation of listed salmonids. For implementation follow-up or any other questions, please contact Laura Hamilton at (360) 753-5820 of the Washington State Habitat Branch.

Sincerely,

D. Robert Lohn
Regional Administrator

cc: Ken Berg, USFWS
Kathy Brown, King County
Sandy Stephens, WSDOT