



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

JAN 27 2005

151422SWR1998AR33:IL

Lieutenant Colonel Philip T. Feir
Department of Army
San Francisco District, Army Corps of Engineers
333 Market Street
San Francisco, California 94105-2197

Dear Colonel Feir:

This letter acknowledges the National Oceanic and Atmospheric Administration's National Marine Fisheries Service's (NOAA Fisheries) receipt on December 20, 2004, of the U.S. Army Corps of Engineers (Corps) December 16, 2004, letter requesting initiation of consultation under section 7 of the Endangered Species Act (ESA) and for actions that may adversely affect essential fish habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These consultations concern the possible effects of your proposed permitting of Coast Seafoods' aquaculture operations in Humboldt Bay, Humboldt County, California. In the December 16, 2004, letter, the Corps included the following language to "serve as the basis" for the proposed ESA consultation:

[Coast Seafoods] Coast proposes to complete conversion of an additional 45 acres of its mariculture operations in Humboldt Bay. Currently, Coast has completed conversion of 255 acres of its mariculture operations from historic bottom culture of oysters (i.e., harvesting oysters with hydraulic dredge and a modified dragline-type dredge) to its current off-bottom methods of mariculture using long-line devices (primarily PVC pipe-stakes and rope) and rack-and-bag apparatus in navigable waters of the United States. The existing and proposed actions of Coast would include the planting, grow out (i.e., growth of oyster culture), and harvest of Pacific and Kumo oysters on approximately 300 acres of Humboldt bay tidelands at a given crop cycle through off-bottom culture methods using long-line devices (primarily PVC pipe-stakes and ropes) and rack-and-bag apparatus.

The "existing actions" described by the Corps in its December 16 letter refer to Coast Seafoods' current and continuing off-bottom planting, grow out, and harvesting of oysters on 255 acres in Humboldt Bay, and the "proposed actions" refer to future off-bottom planting, grow out, and harvesting of oysters on an additional 45 acres. The Corps also requested in its December 16 letter that:

[T]he Service [NOAA Fisheries] proceed with consultation and to prepare an ESA biological opinion and an essential fish habitat consultation report for the project within 135 days of receipt of this letter to conclude the consultation process. Of course, if your review of the administrative record should lead you to conclude that all requirements of the ESA can be



satisfied with ESA informal consultation rather than ESA formal consultation, please so inform the Corps.

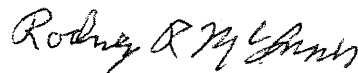
Based on our review of the proposed action to permit the continued and future expanded operations of Coast Seafoods, Inc. on 300 acres in Humboldt Bay, California, as well as the information that the Corps submitted with its December 16, 2004, letter, NOAA Fisheries agrees with the Corps' finding that the action warrants formal consultation under the ESA and also consultation under the MSA for EFH. NOAA Fisheries finds the likelihood of adverse effects is sufficient to proceed with development of a biological opinion and an EFH consultation. Although available information suggests long-line structures can result in a variety of beneficial effects, the potential adverse effects to eelgrass beds in areas designated as critical habitat are more than "discountable or insignificant", which are thresholds that trigger a likely to adversely effect critical habitat determination under the ESA (U.S. Fish and Wildlife Service and National Marine Fisheries Service Consultation Handbook, 1998). In a similar manner, potential adverse effects to eelgrass and other habitats identified and described as EFH would trigger a may adversely effect determination under the MSA (Sec. 305). Thus, NOAA Fisheries does not concur with the findings of the biological assessment regarding the likelihood of adverse effects to Southern Oregon/Northern California Coast (SONCC) coho salmon critical habitat and regarding adverse effects to EFH, and NOAA Fisheries will prepare a biological opinion and EFH consultation on the proposed action. The biological opinion will analyze any beneficial, as well as adverse, impacts from the action on Northern California (NC) steelhead, California Coastal (CC) Chinook salmon and SONCC coho salmon and also designated critical habitat for SONCC coho salmon. The EFH consultation will analyze impacts to EFH for Pacific salmon, groundfish, and coastal pelagics. NOAA Fisheries intends to integrate the formal ESA section 7 consultation and EFH consultation, including providing consultation documents in the time frames prescribed for formal ESA section 7 consultation.

Due to a recent proposal to designate critical habitat for NC steelhead and CC Chinook salmon, NOAA Fisheries recommends that the Corps, in accordance with 50 CFR § 402.10, request a conference opinion on proposed critical habitat. Conferencing on the proposed action now will avoid the need for reinitiation of consultation once the designation of critical habitat takes effect this summer.

NOAA Fisheries finds that adequate information has been provided to initiate formal ESA section 7 consultation and EFH consultation and we are hopeful that initiation of consultation will expedite the consultation process. However, NOAA Fisheries believes additional information will be needed to complete the consultation. For instance, we request that the Corps clarify the duration of the proposed permit. Other information needs will be identified during consultation.

NOAA Fisheries intends to communicate with the Corps and the applicant to assist in answering technical questions that may arise and intends to provide the Corps with preliminary draft consultation documents as they become available. If you have any questions concerning this letter, or these consultations, please contact Ms. Irma Lagomarsino at (707) 825-5160.

Sincerely,



Rodney R. McInnis
Regional Administrator