



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, WA 98115

April 7, 2009

David G. Shaff, Administrator
City of Portland Water Bureau
1120 S.W. Fifth Avenue, Room 600
Portland, Oregon 97203

Dear Mr. Shaff,

Enclosed is Permit No. 13812 issued to the City of Portland (City), under the authority of Section 10 of the Endangered Species Act (ESA). Permit No. 13812 authorizes incidental take of threatened Lower Columbia River (LCR) Chinook salmon (*Oncorhynchus tshawytscha*), Columbia River (CR) chum salmon (*O. keta*), LCR coho salmon (*O. kisutch*), and LCR steelhead (*O. mykiss*) associated with the operation and maintenance of the Bull Run water supply system in the Sandy River basin, Oregon, as described in the City's Bull Run Water Supply Habitat Conservation Plan (HCP). Currently, eulachon (*Thaleichthys pacificus*) is an unlisted species that is adequately addressed in the HCP, and is a therefore covered species. Incidental take for unlisted covered species will be authorized as appropriate under the provisions of Condition 8 without further action by the City provided the City adheres to all eulachon conditions from the time of signature until listing occurs and continues thereafter.

The National Marine Fisheries Service (NMFS) has determined that if the City's activities in the Bull Run watershed and the Sandy River basin are conducted as described in the HCP, and in compliance with the terms and conditions of the Implementing Agreement (IA) and the Permit, the expected take will be appropriately minimized and mitigated for and will not appreciably reduce the likelihood of survival or recovery of the aforementioned species.

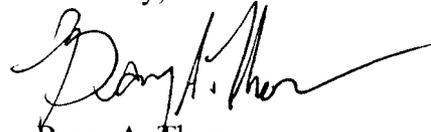
The authorization granted by this permit is subject to full and complete compliance with, and implementation of, the HCP and IA. The term of this permit is for the duration of the HCP and expires April 6, 2059.

As per the terms of the unlisted species provisions of the IA, should any additional anadromous species that were unlisted at the time of Permit issuance become listed under the Endangered Species Act, the new species will be added to this permit according to provisions in section 13.0 of the IA and section 2.5 of the Biological Opinion.



If you do not comply with the terms and conditions of the Permit, or if you cannot provide adequate funding for the HCP, the incidental take of LCR Chinook salmon, CR chum, LCR coho salmon, LCR steelhead, and eulachon is not authorized. If you have any questions, please contact Dr. Kim Kratz, the State Director at the Oregon State Habitat Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry A. Thom". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Barry A. Thom
Acting Regional Administrator

Enclosure

bcc: F/NWR - CHRON File,
F/NWR4 - File copy, Munn, B. Meyer (electronic copy)

S:\Doc_Rec_Mgmt\Read File\Biological Opinions\2008\NMFS_Bull Run Water Supply_Sandy River Opinion and
ITP\2008_12-19_draft ITP_0123-HCO2008.doc

NATIONAL MARINE FISHERIES SERVICE
PERMIT FOR INCIDENTAL TAKE OF THREATENED SPECIES

Permit Number: 13812

Expiration Date: Fifty years from the date of signing this Permit

Permit Holder: Portland Water Bureau
City of Portland
1120 SW 5th Avenue
Portland, OR 97204

Permit Holder Contact: Administrator
Portland Water Bureau
1120 SW 5th Avenue
Portland, OR 97204

Reporting Requirements: As described in section 9.1 of the Habitat Conservation Plan (HCP) and section 7.1.3 of the Implementation Agreement (IA).

Authorization: The City of Portland (City) is hereby authorized incidental take of Lower Columbia River (LCR) Chinook salmon (*Oncorhynchus tshawytscha*), Columbia River (CR) chum salmon (*O. keta*), LCR coho salmon (*O. kisutch*), and LCR steelhead (*O. mykiss*), associated with the operation and maintenance of the Bull Run water supply system in the Sandy River basin, Oregon, subject to the provisions of the IA for the Bull Run HCP, the provisions of Section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. § 1531-1543), National Marine Fisheries Service (NMFS) regulations governing ESA-listed species permit (50 C.F.R. Parts 222.301-222.309), and the conditions hereinafter set forth. The period of the permit is 50 years.

Abstract: With this incidental take permit, NMFS authorizes the City incidental take of LCR Chinook salmon, CR chum, LCR coho salmon, and LCR steelhead associated with the City's covered activities in the Sandy River basin, pursuant to Section 10(a)(1)(B) of the ESA. Eulachon (*Thaleichthys pacificus*), an unlisted species, is a covered species in the HCP, and is also covered under this Permit. Incidental take of unlisted covered species will be authorized as appropriate under the provisions of Condition 8.

The Bull Run HCP utilizes a combination of conservation measures that are expected to minimize and mitigate, to the maximum extent practicable, the impacts of take of the anadromous fish species addressed in the HCP and associated with the continued operation of the City's water supply system. The HCP includes 49 measures to protect and improve habitat and to avoid or minimize the impacts of the Bull Run water supply system. As a whole, the measures were designed to address the flow, temperature and habitat impacts of the water supply system. The HCP also includes monitoring, research and adaptive management programs with a focus on the biological outcomes of the implementation of each measure. The HCP defines reporting and meeting requirements, and if needed, changes in the conservation measures.

Incidental Take: Covered activities that may cause incidental take of listed species will be conducted throughout the area covered by the HCP (Chapter 7 of the HCP). Covered lands include those lands and facilities with and/or potentially affected by covered activities within the hydrologic boundary of the Sandy River basin in Clackamas and Multnomah counties, Oregon. Covered activities are City activities associated with covered lands and facilities to the extent they affect covered species, including operation, maintenance and repair of the water system; implementation of habitat conservation, research, and monitoring; and incidental land management related to the water system and HCP implementation.

The NMFS anticipates that an undetermined number of listed species may be taken in these areas as a result of covered activities over the 50-year term of the permit. The incidental take of these species is expected to be in the form of harm, harassment, kill, and injury. Activities that will occur in the HCP area that will result in take will include salvage efforts during in-water activities and through adverse changes in habitat conditions during implementation of HCP measures. The incidental take will occur throughout the term of the HCP, and is not quantifiable because of the uncertainty of location and timing of the activities as well as the distribution and abundance of individuals of each listed species within the action area of the species at the time of implementation. In the section 7 biological opinion, NMFS defined minimum and maximum flows, water temperature in the lower Bull Run River, and 170 miles of stream affected by HCP activities are thresholds for reinitiating consultation. Exceeding any of these limits will exceed the permitted take.

No Surprises: The City is granted the “No Surprises” assurances as codified at 50 C.F.R. § 222.307(g) at the time this permit is issued. In the event that any judicial decision or determination, including without limitation the decision from the District Court for the District of Columbia in Spirit of the Sage, et al. v. Norton, et al., 98-CV-1873 (D.D.C. 2003), may hold that the Department of Commerce’s “No Surprises” assurances rule (or similar successive rule) is vacated, unenforceable or enjoined for any reason or to any extent, the “No Surprises” assurances applicable to this permit shall be enforceable only to the degree allowed by any such decision or determination; provided that the remainder of the permit, IA, and HCP shall remain in full force and effect to the maximum extent permitted by law. In the event that the “No Surprises” assurances rule may be vacated, unenforceable or enjoined by such decision or determination but is later reinstated, the “No Surprises” assurances provision shall likewise be automatically reinstated and apply to the entire term of the permit. If, in response to any such judicial decision or determination, the “No Surprises” assurances rule is revised, the “No Surprises” assurances shall be automatically amended in a manner consistent with the revised rule so as to afford the maximum protection to the City of Portland consistent with the revised rule.

Conditions:

1. The provisions of this permit may be amended as provided in section 11.0 of the IA.
2. The City may not transfer or assign this permit to any other person(s), as person is defined in Section 3(12) of the ESA. This permit is not in force or effective if transferred or assigned to any other person.

3. This permit does not authorize the City or any other person to take ESA-listed species in the territorial waters of another country without the consent of that country. The City is responsible for securing consent from that country and complying with that country's appropriate laws.
4. A copy of this permit, including the accompanying HCP and related agreements, must be available to City personnel at the City's office in the Bull Run watershed. All applicable provisions of this permit must be presented and clearly explained to all authorized officers, employees, contractors, or agents of the City conducting authorized business.
5. The City of Portland, in effecting the take authorized by this permit, is considered to have accepted the terms and conditions of this permit and to be prepared to comply with the provisions of this permit, the applicable regulations, and the ESA.
6. Upon request by NMFS, the City must allow NMFS, or any other person(s) duly designated by NMFS, to inspect the City's records and facilities if such records and facilities pertain to (i) activities for which take of listed species is authorized by this permit, (ii) ESA-listed species covered by this permit, or (iii) NMFS' responsibilities under the ESA.
7. The City is responsible for the activities of any individual who is operating under the authority of this permit. Such activities include capturing, handling, releasing, transporting, maintaining, and caring for any fish authorized to be taken by this permit.
8. The permit will take effect for listed covered species on the effective date of a rule under Section 4(d) of the ESA prohibiting take of the species. For unlisted covered species, the permit will take effect upon the listing of a species as endangered, and for a species listed as threatened, on the effective date of a rule under Section 4(d) of the ESA prohibiting take of the species as long as all provisions for covered species have been, and continue to be, implemented as described in the HCP.
9. Activities conducted pursuant to the permit shall not jeopardize an ESA-listed species. In the event that after permit issuance, unforeseen circumstances arise or new information becomes available, and such circumstances or information lead NMFS to believe that the effects of the City's activities on a covered species will be more severe than originally analyzed under the ESA Section 7 intra-service consultation performed at the time of permit issuance, NMFS shall proceed as follows. First, it shall utilize its resources to conserve the species. Second, it shall work with the City to voluntarily reduce the effects of covered activities on the species. Third, the occurrence of unforeseen circumstances or the new information shall trigger reinitiation of Section 7 consultation on the permit, and NMFS shall document its analysis of the new effects in a biological opinion. Conservation measures undertaken by NMFS or the City shall be considered in the analysis. If

reinitiation of consultation results in a finding that the covered activities are likely to jeopardize the species, then NMFS will (i) consult with the City to identify a reasonable and prudent alternative (RPA) and modify the HCP accordingly; or (ii) remove that species from the ITP, after which any prohibitions against take would apply.

10. This permit does not cover activities that may affect any site, building, structure, or object that is included in, or eligible for inclusion in, the National Register of Historic Places until completion of any procedural steps that may be required under Section 106 of the National Historic Preservation Act with regard to that activity.
11. Upon locating any dead, injured, or sick individuals of any listed species covered by this permit, the City shall, within three working days, notify NMFS' Oregon State Habitat Office, in Portland, Oregon (503-231-2202). Instructions for proper handling and disposition of such specimens will be issued at that time. Care must be taken in handling sick or injured specimens to ensure effective treatment and care, and in the handling of dead specimens to preserve biological material in the best possible state. This condition does not apply to spawned-out carcasses.
12. The fee in 50 CFR 222.307(d)(5) to cover the cost of issuance of this permit has been waived.

Issued by:  Date: April 7, 2009
Barry A. Thom
Acting Regional Administrator
Northwest Region