



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office  
510 Desmond Dr. SE, Suite 102  
Lacey, Washington 98503

MAR 16 2016

In Reply Refer To:  
01EWF00-2015-I-0296  
XRef: 01EWF00-2015-CPA-0030

Michelle Walker  
U.S. Army Corps of Engineers  
Seattle District  
ATTN: Regulatory Branch  
P.O. Box 3755  
Seattle, Washington 98124-3755

Dear Ms. Walker:

Subject: Tesoro Savage Petroleum Terminal (Vancouver Energy Project)  
Corps Number: NWS-2013-0962

This letter is in response to your request for informal consultation on the Tesoro Savage Petroleum Terminal located on Port of Vancouver (Port) property and the lower Columbia River, in Vancouver, Clark County, Washington. The U.S. Army Corps of Engineers – Seattle District (Corps) and Tesoro Savage Petroleum Terminal, LLC (Tesoro Savage) submitted a cover letter, Memorandum for the Services, and Biological Evaluation (BE; dated December 2014) on February 2, 2015. Additional information was requested by the U.S. Fish and Wildlife Service (Service) on April 16, 2015. On August 26, 2015, the Corps and Tesoro Savage submitted a BE Addendum (dated August 2015). The Corps and Tesoro Savage have provided information in support of “may affect, not likely to adversely affect” determinations for bull trout (*Salvelinus confluentus*) and designated bull trout critical habitat. This informal consultation has been completed in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)(ESA).

The Corps and Tesoro Savage have made “no effect” determinations for additional species and critical habitat that are known to occur in Clark County and the larger action area, which includes 104 linear miles of the lower Columbia River federal navigation channel (portions of Clark, Cowlitz, Wahkiakum, and Pacific Counties). Your determinations that the action will

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have no effect on these listed species and critical habitat rest with the federal action agency. The Service has no regulatory or statutory authority for concurring with “no effect” determinations, and no consultation with the Service is required. We recommend that the federal action agency document their analyses and maintain that documentation in their project files.

The Corps proposes to issue a permit(s) to Tesoro Savage addressing construction activities and proposed permanent structures and structural improvements located above and below the ordinary high water mark (OHWM) of the lower Columbia River. These permits would address structural improvements to existing Port facilities, including additional breasting, mooring, and load bearing piles, and new ground anchors, support trusses, grated walkways, and a 36-inch diameter oil transfer pipeline. Tesoro Savage proposes to rehabilitate and improve existing facilities at Berths 13 and 14 as part of constructing and operating a proposed 360,000 barrel per day crude-by-rail (CBR) marine terminal on Port property.

The Corps’ Memorandum for the Services, BE, and BE Addendum identify the following items of work:

- Rehabilitate and strengthen 50 existing breasting, mooring, and load bearing piles with new ground anchors, pile caps, and concrete reinforcement.
- Install, and then remove, up to 40 temporary 18- to 24-inch diameter steel pipe piles or H-piles.
- Remove an existing mooring dolphin and walkway, including approximately 15 existing 12- and 18-inch diameter steel pipe piles.
- Replace and improve existing grated walkways and associated support trusses.
- Install a new 36-inch diameter oil transfer marine terminal pipeline, 12-inch diameter return line, manifolds, and associated infrastructure on the rehabilitated dock(s).

Tesoro Savage will implement appropriate best management practices (BMPs) and conservation measures to avoid and minimize impacts to listed species and their habitat during construction. All work below the OHWM will be completed during the approved in-water work window (November 1 through February 28). Tesoro Savage will remove existing piles with a vibratory hammer or by direct-pulling; broken piles will be cut below the mudline. Tesoro Savage will install temporary steel pipe piles and H-piles with a vibratory hammer. No impact pile driving or proofing is proposed.

Tesoro Savage has described operational BMPs, including design and performance standards for the proposed CBR unloading facilities, crude storage facilities, transfer pipeline, and marine terminal facilities. Tesoro Savage has described a net reduction of total impervious surface area as a result of the proposed redevelopment (i.e., net reversion of existing impervious surfaces to landscaping or other pervious surfaces). Tesoro Savage has also indicated that runoff from all of

the facility's pollution generating impervious surfaces will be collected and treated prior to being discharged into the Columbia River. Runoff will discharge at existing outfalls located on Port Terminals 4 and 5.

The Corps and Tesoro Savage have identified vessel transport of crude oil along the lower Columbia River federal navigation channel as an interrelated or interdependent activity. However, the Corps and Tesoro Savage have also indicated that rail transport of crude to the proposed facility is not an interrelated or interdependent activity. No other pending actions or activities are contingent or dependent upon the proposed action. The Corps and Tesoro Savage have indicated that spills, resulting in a discharge of crude oil or other hazardous material to the lower Columbia River, are not reasonably certain to occur over the proposed 20-year term of operations.

Based on the information provided, we have concluded that effects to the federally listed bull trout and designated bull trout critical habitat will be insignificant. Therefore, we concur with your "may affect, not likely to adversely affect" determinations. Our conclusions are based on full and successful implementation of the conservation measures described in the BE and BE Addendum, and the following rationale:

#### **Bull Trout and Designated Bull Trout Critical Habitat**

The action area provides foraging, migrating, and overwintering (FMO) habitat for bull trout originating from core areas in Washington and Oregon. The action area includes designated bull trout critical habitat and provides eight of the nine primary constituent elements (PCEs) of critical habitat (PCE #s 1-5, and 7-9). The action area is far removed from the nearest bull trout core areas and local populations, but may still support low numbers of bull trout originating from the Clackamas River (Oregon) and Lewis River (Washington) bull trout core areas.

FMO habitat is essential to maintaining connectivity between core areas and local populations, and provides important bull trout foraging and overwintering opportunities. The action area is presumed to support adult and subadult bull trout at any time of year. However, the nearest documented bull trout spawning and early rearing habitats are located at a distance of more than 50 miles. PCE #6 (*suitable spawning substrates*) is not present in the action area and will not be affected.

The proposed action will have unavoidable temporary impacts to substrates, benthos, and water quality, and construction activities will result in measurable temporary disturbance (i.e., increased underwater sound levels and turbidity). However, the proposed action will result in little change to the features and footprint of existing overwater and in-water structures.

Temporary, construction-related exposures and effects will be limited in scale, intensity, and duration. With implementation of the included conservation measures, the Service concludes that exposures causing injury or mortality are extremely unlikely, and therefore considered discountable. Furthermore, we expect that any temporary effects to water quality and the sound

environment will be intermittent, of short duration, and will not measurably disrupt normal bull trout behaviors (i.e., the ability to successfully feed, move, and/or shelter). Temporary impacts to bull trout prey resources will not be measurable at the scale of the action area.

The proposed action will not have measurable long-term or indirect effects to the bull trout, its habitat, or prey resources, and will not prevent bull trout from successfully foraging, migrating, and overwintering in the action area. The Service concludes that the proposed action's long-term and indirect effects to the bull trout, its habitat, and prey resources will be insignificant.

The proposed action will have no effects to PCE #s 1, 5, 6, 7, and 9. The proposed action's foreseeable direct and indirect effects to PCE #s 2, 3, 4, and 8 will not be measurable, and are therefore considered insignificant:

- (PCE #2) *Migratory habitats with minimal physical, biological, or water quality impediments.*
- (PCE #3) *An abundant food base.*
- (PCE #4) *Complex aquatic shoreline environments and processes.*
- (PCE #8) *Water quality such that normal reproduction, growth, and survival are not inhibited.*

Construction activities will result in elevated underwater sound levels and temporary impacts to water quality, including elevated turbidity of limited physical extent and duration. However, any measurable temporary effects to the function of migratory habitat will occur when bull trout are not likely to be present. The proposed action will have no measurable adverse effects (direct or indirect; short- or long-term) to function of the migratory habitat, the bull trout prey base, complex shoreline environments, or water quality.

### **Conservation Recommendations**

Section 7(a)(1) of the ESA directs federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. The Fish and Wildlife Coordination Act also provides an opportunity for the Service to offer recommendations and comments to federal action agencies for the purpose of conserving fish and wildlife species and habitats beyond those currently listed under the ESA. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

The Service provided scoping comments for the Tesoro Savage Vancouver Energy Project to both the Corps and Washington Energy Facility Site Evaluation Council (EFSEC)(FWS Ref. No. 01EWF00-2015-CPA-0030; letter dated July 30, 2015). More recently, we provided comments and recommendations to the EFSEC based on our review of the Public Notice and Draft Environmental Impact Statement (EIS) for the Tesoro Savage Vancouver Energy Project (FWS Ref. No. 01EWF00-2015-CPA-0030; letter dated January 22, 2016).

The Service has significant concerns regarding the long-term impacts of the Tesoro Savage Vancouver Energy Project. The Service believes that the current proposal would have significant adverse impacts to fish, wildlife, and tribal trust resources. Content included in the

Draft EIS strongly suggests that the Tesoro Savage Vancouver Energy Project would have unavoidable and significant adverse impacts, as defined under the Washington State Environmental Policy Act, to Cultural Resources and Reserved Treaty Rights, Environmental Health, Air, and Water. Our concerns include the following:

1. The EFSEC has acknowledged serious questions about the adequacy of the near shore ground improvements proposed by Tesoro Savage as mitigation for known geologic hazards (liquefaction and lateral spreading).
2. The EFSEC has indicated it may be necessary for the Washington Department of Ecology to reconsider and verify the appropriate regulatory contingency spill planning volume, to ensure that secondary containment is sized appropriately for above-ground storage tanks that would be vulnerable to both flood and geologic hazards.
3. The EFSEC has acknowledged known and unknown geologic hazards, and more than 200 at-grade crossings (including numerous "under-protected" crossings in the cities of Spokane, Cheney, Lyle, Pasco, Mesa, Bingen, and White Salmon, Washington), where rail derailments and spills would be more likely to occur along the inland rail transportation corridor. The EFSEC has also acknowledged that Geographic Response Plans have not been established for large areas of the inland rail transportation corridor in Washington, and a survey of first responders finds that most fire/emergency departments and agencies report inadequate training, materials, and other resources to respond to spills.

It is our understanding that the EFSEC is in the process of completing adjudicative procedures with intervenors before the council. These intervenors include several treaty tribes and tribal organizations, cities and counties in Washington, and environmental advocacy and community interest groups.

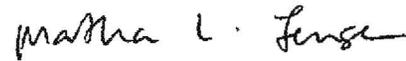
The Service recommends to the Corps that they not issue permits to Tesoro Savage, in support of any pending phase of this proposed action, until the EFSEC has determined what additional measures are available and will be required to adequately address known hazards and design deficiencies, has completed adjudicative procedures with intervenors, and has offered its recommendations for permit approval or denial to the Governor of Washington.

So that the Service may be informed of your decision, we request that the Corps respond in writing to this recommendation. Your response should be directed to the Federal Activities Branch at the Washington Fish and Wildlife Office in Lacey, Washington, or via email to the staff identified below.

This action should be reanalyzed if new information reveals effects of the action that may affect listed species or critical habitat in a manner, or to an extent, not considered in this consultation. This action should also be reanalyzed if subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in this consultation, and/or a new species is listed or critical habitat is designated that may be affected by the action.

If you have any questions about this letter or our shared responsibilities under the ESA, please contact Ryan McReynolds (360.753.6047; ryan\_mcreynolds@fws.gov) or Martha Jensen (360.753.9000; martha\_l\_jensen@fws.gov).

Sincerely,



*Eric* Eric V. Rickerson, State Supervisor  
Washington Fish and Wildlife Office

cc:

NMFS, Lacey, WA (S. Anderson)  
NMFS, Lacey, WA (J. Fisher)  
EFSEC, Olympia, WA (S. Posner)