



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
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NOV 19 2003

Christine Godfrey
Chief, Regulatory Branch
Construction/ Operations Division
New England District, Corps of Engineers
696 Virginia Road
Concord, Massachusetts 01742-2751

Ref: Transmittal of Final Biological Opinion and Response to Comments on Draft
F/NER/2002/00936

Dear Ms. Godfrey:

Enclosed is a biological opinion (Opinion) issued by the National Marine Fisheries Service (NOAA Fisheries) on the U.S. Army Corps of Engineers (ACOE) proposed continuation and modification of existing permits authorizing the installation and maintenance of net pens to raise finfish off the coast of Maine. The NOAA Fisheries national Section 7 tracking number is F/NER/2002/00936.

The Opinion is submitted in accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). This Opinion concludes that the proposed continuation and modification of existing permits authorizing the installation and maintenance of fish pens in the state of Maine (including incorporation of the special conditions to protect the Gulf of Maine Distinct Population Segment (DPS) of Atlantic salmon) may adversely affect but is not likely to jeopardize the continued existence of the endangered Atlantic salmon within the DPS. Please note that any changes to the proposed action, including any changes to the special conditions proposed to protect wild Atlantic salmon, may change the conclusion in this Opinion and would warrant further Section 7 consultation. No other federally-listed species is likely to be affected by the proposed action.

While the ACOE's proposed permit modifications do contain conditions for the protection of wild Atlantic salmon, the incorporation of these conditions does not eliminate the potential for the permitted activities to result in "take" of Atlantic salmon within the DPS; therefore, an Incidental Take Statement (ITS) has been issued with this Opinion. The anticipated incidental take from the existing aquaculture industry's marine sites that were the subject of this consultation (42 sites) is the detection at weirs or traps of up to 21 escaped fish per year, based on a three year rolling average. If the ITS is exceeded, consultation must be reinitiated. To validate the ITS, the ACOE must implement the non-discretionary Reasonable and Prudent Measures contained therein. Discretionary Conservation Recommendations are also included with this Opinion.



Reinitiation of this consultation is required if: (1) the amount or extent of taking specified in the ITS is exceeded; (2) new information reveals effects of these actions may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) project activities are subsequently modified in a manner that causes an effect to the listed species that was not considered in this Opinion; (4) significant changes to the proposed action are made that may change the conclusion in this Opinion; or (5) a new species is listed or critical habitat designated that may be affected by the identified actions. If any one of the conditions requiring reinitiation of consultation is triggered, the ACOE should contact NOAA Fisheries. Alternatively, NOAA Fisheries may provide written advice to the ACOE relative to the need to reinitiate consultation. Requests for reinitiation must be in writing and must contain sufficient information to record the nature of the change in the action or its effects and the rationale for any modifications.

Conclusion

NOAA Fisheries greatly appreciate your cooperation during this Section 7 consultation. If you have any questions concerning this Opinion, please contact Jessica Anthony of my staff at (978) 281-9328 ext 6532. We look forward to working with you in the future to ensure compliance with permit conditions and protection of the Atlantic salmon DPS.

Sincerely,



Patricia A. Kurkul
Regional Administrator

cc:

Jessica Anthony - NOAA Fisheries
Rick Bennett - USFWS
Wende Mahaney - USFWS