



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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



In Reply Refer to:
FWS/R1/2022-0035813

Jacalen Printz, Chief Regulatory Branch
Seattle District, U.S. Army Corps of Engineers
ATTN: Rory Lee, Kylie Webb
4735 E. Marginal Way South, Building 1202
Seattle, Washington 98134-2388

Dear Ms. Printz:

Subject: SPARO Aquatics (NWS-2020-1058)

This letter is in response to your April 19, 2022, request for our concurrence with your determination that the proposed action located off Vashon Island, King County, Washington, “may affect, but is not likely to adversely affect” federally listed species. We received your letter, Joint Aquatic Resources Permit Application, Biological Evaluation, project drawings, and other supplemental materials, providing information in support of “may affect, not likely to adversely affect” determinations, on April 19, 2022. We requested additional information on June 3, 2022, and received from the U.S. Army Corps of Engineers (Corps) the final information necessary to complete consultation on June 3, 2022.

Project Description:

The Corps proposes to issue a permit(s) to the applicant for establishment and operation of an approximately 10-acre kelp and shellfish farm in the Puget Sound (Colvos Passage) at the southwest corner of Vashon Island. The mariculture farm will cultivate and produce sugar kelp (*Saccharina latissima*), Manila clams (*Ruditapes philippinarum*), mussels (Blue Mussels/*Mytilus trossulus* or *M. galloprovincialis*), Pacific oysters (*Crassostrea gigas*), and possibly scallops (*Chlamys* or other). The cultivation site or area will be entirely subtidal, open water

PACIFIC REGION 1

IDAHO, OREGON*, WASHINGTON,
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*PARTIAL

approximately 300 feet offshore, between depths of 30 feet and 80 feet. Depending on substrate conditions, helical screw or pre-cast concrete anchors will be installed. Longlines will be suspended in the water column, above the seafloor, for kelp, clam, and muscle culture. Oysters will be cultivated in on-bottom cages or socks, attached to longlines. No nets will be used or deployed.

Seeding will take place annually, in November. Longlines, cages, socks, and anchors will be routinely checked and maintained. Kelp will be harvested annually, by hand from a small boat; shellfish will be harvested by hand from a small boat, approximately every two years. Harvests will generally occur in March or April.

Specifically, you requested informal consultation pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA) for the federally listed species and critical habitat identified below:

- Bull trout (*Salvelinus confluentus*)
- Marbled murrelet (*Brachyramphus marmoratus*)

The Corps has determined that the action will have “no effect” on additional listed species and designated critical habitat that are known to occur in King County. The determination of “no effect” to listed resources rests with the action agency. The U.S. Fish and Wildlife Service (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 action agency document their analyses on effects to listed species, and maintain that documentation as part of the project file.

Sufficient information has been provided to determine the effects of the proposed action and to conclude whether it would adversely affect federally listed species and/or designated critical habitat. Our concurrence is based on information provided by the action agency, best available science, and complete and successful implementation of the conservation measures included by the action agency.

EFFECTS SPECIFIC TO BULL TROUT AND MARBLED MURRELET

I. Exposure to Bull Trout

Exposures are extremely unlikely (discountable) because of the following:

- The action is located in south Puget Sound (Colvos Passage), south of Vashon Island, where, at present, bull trout occurrence is rare. The cultivation site or area will be entirely subtidal, between depths of 30 feet and 80 feet. Exposure to this action is extremely unlikely.

II. Effects to Marbled Murrelet

Effects will not be measurable (insignificant) and will not significantly disrupt normal behaviors (i.e., the ability to successfully feed, move, and/or shelter) and are therefore considered insignificant because of the following:

- The action will result in temporary impacts to water quality, including potential temporary increases in turbidity. These effects will be intermittent and limited in physical extent and duration.
- Long-term use and operations of the mariculture and shellfish aquaculture facility will result in increased sound levels or other temporary stressors that could disturb the species. However, the action is not expected to significantly disrupt normal species behaviors (i.e., the ability to successfully feed, move, and/or shelter).

Effects to Bull Trout and Marbled Murrelet Habitat and their Prey

With successful implementation of the conservation measures included by the action agency as part of the proposed action, we expect that the effects of the action will neither measurably degrade nor diminish habitat functions or prey resources in the action area. Therefore, effects from the action are considered insignificant.

- The action is located approximately 300 feet offshore in subtidal marine waters, at depths of -30 feet to -80 feet mean lower low water.
- Construction activities and proposed permanent features may impact habitat that supports the species and/or their prey. These impacts will be limited in physical extent and/or duration and will not measurably degrade habitat functions, including prey resources that are important to the species within the action area:
 - The action includes preparing, seeding, maintaining, and harvesting of planted shellfish and mariculture plots, resulting in measurable impacts to intertidal substrates, the native benthic invertebrate community, submerged aquatic vegetation (macroalgae), and water quality. However, these effects will be intermittent and limited in physical extent and duration. And, the action includes conservation measures, and/or a restoration component, which at least partially offset the action's unavoidable impacts to habitat and prey.
 - The action may result in some shading or direct impacts to submerged aquatic vegetation. However, impacts are expected to be minor, and the project is not expected to result in long-term destruction or permanent removal of prey resource habitat.

- The action is located in or adjacent to documented surf smelt (*Hypomesus pretiosus*), Pacific herring (*Clupea pallasii*), and sand lance (*Ammodytes hexapterus*) spawning habitat. The action may have impacts to prey resources for the species. However, the action will not result in the permanent, net loss of spawning habitat for prey or prey productivity. The action will have little or no impact on intertidal spawning habitats.
- The action may provide water quality benefits. Foreseeable temporary and short-term impacts will be limited in physical extent, intensity, and duration and will not prevent the species from successfully foraging and migrating in the action area.

CONCLUSION

This concludes consultation pursuant to the regulations implementing the ESA (50 CFR 402.13). Our review and concurrence with your effect determinations is based on implementation of the project as described. It is the responsibility of the federal action agency to ensure that the projects they authorize or carry out are in compliance with the regulatory permit and ESA. If a permittee or the federal action agency deviates from the measures outlined in a permit or project description, the federal action agency has the obligation to reinitiate consultation and comply with section 7(d).

Conservation Recommendation

The Service recommends the following to the Corps, to avoid and minimize impacts to listed species and their habitat (including prey resources):

- The following Regional Special Condition should be included in the Corps permit or authorization: When performing other activities onsite, the grower shall routinely inspect for and document any fish, bird, or mammal found entangled in the gear, nets, or other equipment. In the event that any fish, birds, or mammals are found entangled, the grower shall: 1) provide immediate notice (within 24 hours) to the Washington Department of Fish and Wildlife (all species), Services (ESA listed species), and/or Marine Mammal Stranding Network (marine mammals); 2) attempt to release the individuals without harm; and 3) provide a written and photographic record of the event, including dates, species identification, number of individuals, and final disposition to the Corps and Services. Contact the U.S. Fish and Wildlife Service Law Enforcement Office at (425)-883-8122 with any questions about the preservation of specimens.

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 staff and supervisor identified below.

This project should be re-analyzed and re-initiation may be necessary if 1) 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, 2) if the action is 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 3) a new species is listed or critical habitat is designated that may be affected by this project.

This letter constitutes a complete response by the Service to your request for informal consultation. A record of this consultation is on file at the Washington Fish and Wildlife Office, in Lacey, Washington. If you have any questions about this letter or our shared responsibilities under the ESA, please contact the consulting biologist or supervisor identified below.

U.S. Fish and Wildlife Service Consultation Biologist(s):

Sam Betances (sam_betances@fws.gov)

Ryan McReynolds (ryan_mcreynolds@fws.gov)

Sincerely,

for Brad Thompson, State Supervisor
Washington Fish and Wildlife Office

cc:

SPARO Aquatics (M. Spranger)