



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd Boulevard, Suite 1100
Portland, Oregon 97232-1274

November 19, 2025

Sent Via Email

Brian Knutsen, Attorney
Wild Fish Conservancy
1300 S.E. Stark Street, Suite 202
Portland, Oregon 97214

Dear Mr. Knutsen,

The NOAA National Marine Fisheries Services (NMFS) acknowledges receipt of your letter of September 8, 2025, concerning the “Notice of Intent to Sue for Violations of Section 7 of the Endangered Species Act Associated with Funding Lower Columbia River Hatcheries Under the Mitchell Act” (Notice). We appreciate the opportunity to respond to the Notice and to engage further to address the concerns identified in your Notice. We regret that our response was delayed during the recent government shutdown, as staff associated with this matter were furloughed starting October 1, 2025, but with the resumption of normal operations on November 13, 2025 we are pleased to provide the following response.

Your claims primarily concern the Biological Opinion issued December 30, 2024, for NOAA’s National Marine Fisheries Service’s Continued Implementation of the Mitchell Act FEIS Preferred Alternative and Administration of Mitchell Act hatchery funding (2024 Opinion). Several of the points in your letter, as we understand them, allege a lack of sufficient information or explanation for why the 2024 Opinion reached a no-jeopardy conclusion for the continued funding of hatcheries.

In general, our response is that some clarification to the 2024 Opinion may be advisable. We recognize that the continued implementation of the Mitchell Act FEIS Preferred Alternative is a complex matter involving an array of hatchery programs, which have been or are being reformed in phases. As described in the 2024 Opinion and notification letters concerning the reinitiation of the 2017 Mitchell Act Biological Opinion, NMFS determined that the third phase of the 2017 Opinion, which would have extended its effectiveness for hatchery programs which met all of the reform provisions, had not been met in all cases.

The solution was to reinitiate consultation and institute a long-term approach. For all hatchery programs which successfully phased in their reform measures, the expectation is to continue those operations. For the few programs which did not implement the changes, the plan identified for the 2024 Opinion was similarly a long-term plan for operations with the specific reform



measures required by NMFS. There are no overarching implementation phases, but there are time periods identified in which hatchery programs must meet performance goals.

NMFS' view of the 2024 Opinion is that this is the long-term plan for successfully limiting the impacts and risks of hatcheries in the Lower Columbia River. The transition period is essentially over, and the 2024 Opinion has no set expiration date. Future changes to the programs will be considered in light of NMFS' regulations for reinitiating consultation at 50 CFR 402.14.

We offer this in light of your Notice's questions about how the 2024 Opinion succeeds the 2017 Opinion. As far as the adequacy of the 2024 Opinion, we do not share your general views of alleged flaws. However, as mentioned above, we plan to re-issue the 2024 Opinion with added clarification, both in explaining the analysis and, barring a conclusion of jeopardy or adverse modification of critical habitat, in selecting the most appropriate incidental take measures or surrogates. We realize that your clients and the public at large are very interested in the use of hatcheries as a salmon management tool, and for this broad array of programs, it is important that the actions, their effects on threatened and endangered species, and ultimately NMFS' conclusions can be readily understood.

As noted above, NMFS staff are just returning from furlough status, but we hope to take the next step with this 2024 Opinion shortly. We will share a copy of the revised Biological Opinion with you once it is signed, as well as a guide to the changes made from the 2024 Opinion. At that time, if your clients would like to discuss any matter which they consider unresolved from the Notice, we will be available and look forward to meeting with you.

Sincerely,



Nancy Munn
Assistant Regional Administrator
West Coast Region
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