



**Washington State  
Department of Transportation**

South Central Region  
2809 Rudkin Road  
Union Gap, WA 98903-1648  
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www.wsdot.wa.gov

July 13, 2023

Acting State Supervisor  
U.S. Fish & Wildlife Service  
Washington Fish and Wildlife Office  
510 Desmond Drive SE, Suite 102  
Lacey, Washington 98503-1263

RECEIVED  
JUL 13 2024

Kittitas County CDS

Attn: Leslie Durham

**Re: Consultation Reinitiation  
I-90 Eastbound Weigh Station (XL6141)  
Reference Number 2022-0056158**

Acting State Supervisor:

The Washington Department of Transportation (WSDOT) requests the reinitiation of informal consultation for the I-90 eastbound weigh station project. This project was submitted on June 27, 2022, as an individual informal consultation with the Programmatic Notification Form (PNF) as a reference biological assessment. The U.S. Fish and Wildlife Service issued a concurrence letter on September 15, 2022. The letter concurred with WSDOT's assessment that the project "*may affect, but is not likely to adversely affect*," the gray wolf, northern spotted owl, and Canada lynx.

Previous consultation updates included submitting an updated PNF on July 20, 2022, describing project changes. WSDOT is providing this letter to address additional modifications to the project design. The updates include roadway paving, conduit trenching, and the installation of luminaires, all of which are described in more detail below:

- The existing pavement on the eastbound (EB) off and on ramps will be replaced, and the EB on-ramp merge area will be extended within the current roadway prism.
- Approximately 750 feet of utility trenching will occur along the EB shoulder between milepost 80.58 and 80.74 within the roadway prism, and new luminaires will be installed in this area.
- Conduit trenching will occur EB between MP 78.81 and 79.58 to provide power and fiber for the Virtual Weigh-in-Motion System.
- Soil amendment will occur in the median to handle stormwater runoff.

These additional construction activities resulted in the following project updates:

- The existing pollution-generating impervious surface (PGIS) increased from 1 ac to 1.16 ac.
- The post-project PGIS increased from 6 ac to 6.16 ac.
- The temporary vegetation impact increased from 3 ac to 3.45 ac.
- The total vegetation impact increased from 8 ac to 8.45 ac.

The abovementioned updates expanded the original project footprint from an estimated 9 ac to 15 ac and outside of the previously provided Project Action Area (PAA). All the above details were included in the project update section of the PNF and within their respective sections. A new IPaC was obtained (6/26/2023), and impacts to all listed species potentially occurring in the PAA were reanalyzed. As a result, WSDOT determined that the expanded PAA and project activities may affect listed species in a way that was not previously considered or assessed.

- The project limits are now within 195 feet of 1.24 acres of mapped spotted owl habitat.
- Marbled murrelet are now on the IPaC and were a species not previously considered in the project's analysis of potential impacts to listed species.
  - Potential murrelet habitat occurs within 328 feet of the project footprint.

A habitat assessment of the 1.24 acres of spotted owl habitat occurring within 195 feet of the project footprint concluded that it was not suitable nesting habitat. Therefore, no suitable spotted owl nesting habitat occurs within the adverse effect distance threshold, and the effect determination of "*may affect, not likely to adversely affect*" remains unchanged. WSDOT has evaluated the project updates described above and determined that the project is still consistent with the conclusions of the USFWS concurrence letter for the species effect determinations for this project for all species considered initially.

However, because marbled murrelet was not on the original IPaC list, nor were project effects on the species initially considered, WSDOT understands that reinitiation of consultation for this project is necessary. This project "*may affect*" marbled murrelet because the project occurs within 70 miles of marine waters, and potentially suitable habitat within 0.25-miles of the project footprint will be exposed to elevated visual and noise disturbance stressors during the nesting season. However, this project is "*not likely to adversely affect*" marbled murrelet because the project occurs more than 55 miles from marine waters leading to a discountable chance of murrelet exposure from project activities.

WSDOT is submitting the updated PNF, seeking USFWS concurrence. It is our understanding that this will satisfy our responsibilities under Section 7(c) of the ESA.

Please email Kevin White at [whitek@wsdot.wa.gov](mailto:whitek@wsdot.wa.gov) if you require additional information or have any questions.

Sincerely,



**Mark Norman**  
WSDOT SCR Assistant Environmental Manager

*Attachments:*

Project Notification Form: USFW Notification Form (WorkOrder XL6141)\_6.26.2023.pdf  
IPaC list: Species List\_ Washington Fish and Wildlife Office (WorkOrder XL6141).pdf  
Spotted Owl Habitat Survey\_6.23.2023\_Ref 2022-0056158. pdf  
Project Figures\_Ref 2022-0056158.pdf



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Washington Fish And Wildlife Office

510 Desmond Drive Se, Suite 102

Lacey, WA 98503-1263

Phone: (360) 753-9440 Fax: (360) 753-9405



In Reply Refer To:

June 26, 2023

Project Code: 2023-0097636

Project Name: I-90 EB Weigh Station

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

#### To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological

evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

**Migratory Birds:** In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/birds/policies-and-regulations.php>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/birds/policies-and-regulations/executive-orders/e0-13186.php>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

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Attachment(s):

- Official Species List

## OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**Washington Fish And Wildlife Office**

510 Desmond Drive Se, Suite 102

Lacey, WA 98503-1263

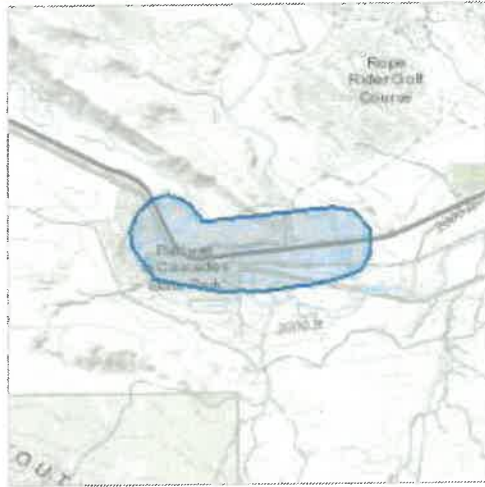
(360) 753-9440

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## PROJECT SUMMARY

Project Code: 2023-0097636  
Project Name: I-90 EB Weigh Station  
Project Type: Road/Hwy - New Construction  
Project Description: Construction of new weigh station.  
Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@47.18426375,-121.02458564555931,14z>



Counties: Kittitas County, Washington

## ENDANGERED SPECIES ACT SPECIES

There is a total of 8 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

## MAMMALS

| NAME  | STATUS                 |
|---|------------------------|
| <b>Canada Lynx</b> <i>Lynx canadensis</i><br>Population: Wherever Found in Contiguous U.S.<br>There is <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat.<br>Species profile: <a href="https://ecos.fws.gov/ecp/species/3652">https://ecos.fws.gov/ecp/species/3652</a>   | Threatened             |
| <b>Gray Wolf</b> <i>Canis lupus</i><br>Population: U.S.A.: All of AL, AR, CA, CO, CT, DE, FL, GA, IA, IN, IL, KS, KY, LA, MA, MD, ME, MI, MO, MS, NC, ND, NE, NH, NJ, NV, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, and WV; and portions of AZ, NM, OR, UT, and WA. Mexico.<br>There is <b>final</b> critical habitat for this species.<br>Species profile: <a href="https://ecos.fws.gov/ecp/species/4488">https://ecos.fws.gov/ecp/species/4488</a> | Endangered             |
| <b>North American Wolverine</b> <i>Gulo gulo luscus</i><br>No critical habitat has been designated for this species.<br>Species profile: <a href="https://ecos.fws.gov/ecp/species/5123">https://ecos.fws.gov/ecp/species/5123</a>  | Proposed<br>Threatened |

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**BIRDS**

| NAME  | STATUS     |
|---|------------|
| <b>Marbled Murrelet</b> <i>Brachyramphus marmoratus</i><br>Population: U.S.A. (CA, OR, WA)<br>There is <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat.<br>Species profile: <a href="https://ecos.fws.gov/ecp/species/4467">https://ecos.fws.gov/ecp/species/4467</a> | Threatened |
| <b>Northern Spotted Owl</b> <i>Strix occidentalis caurina</i><br>There is <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat.<br>Species profile: <a href="https://ecos.fws.gov/ecp/species/1123">https://ecos.fws.gov/ecp/species/1123</a>                              | Threatened |
| <b>Yellow-billed Cuckoo</b> <i>Coccyzus americanus</i><br>Population: Western U.S. DPS<br>There is <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat.<br>Species profile: <a href="https://ecos.fws.gov/ecp/species/3911">https://ecos.fws.gov/ecp/species/3911</a>     | Threatened |

**FISHES**

| NAME  | STATUS     |
|---|------------|
| <b>Bull Trout</b> <i>Salvelinus confluentus</i><br>Population: U.S.A., conterminous, lower 48 states<br>There is <b>final</b> critical habitat for this species. Your location overlaps the critical habitat.<br>Species profile: <a href="https://ecos.fws.gov/ecp/species/8212">https://ecos.fws.gov/ecp/species/8212</a> | Threatened |

**INSECTS**

| NAME  | STATUS    |
|---|-----------|
| <b>Monarch Butterfly</b> <i>Danaus plexippus</i><br>No critical habitat has been designated for this species.<br>Species profile: <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a> | Candidate |

**CRITICAL HABITATS**

There is 1 critical habitat wholly or partially within your project area under this office's jurisdiction.

| NAME   | STATUS |
|--|--------|
| <b>Bull Trout</b> <i>Salvelinus confluentus</i><br><a href="https://ecos.fws.gov/ecp/species/8212#crithab">https://ecos.fws.gov/ecp/species/8212#crithab</a> | Final  |

## **IPAC USER CONTACT INFORMATION**

Agency: Washington State Department of Transportation

Name: Kevin White

Address: 2809 Rudkin Road

City: Union Gap

State: WA

Zip: 98903

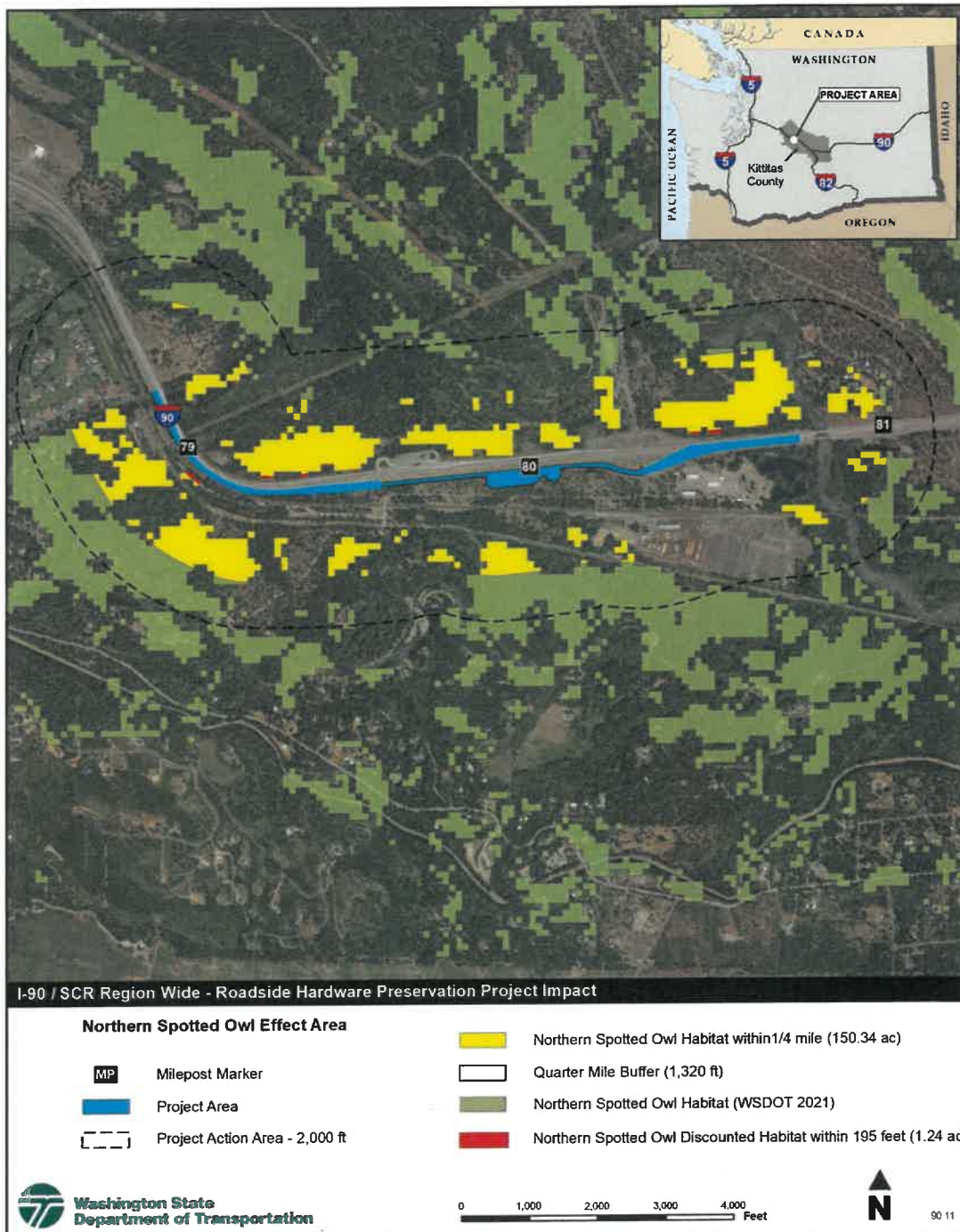
Email [whitek@wsdot.wa.gov](mailto:whitek@wsdot.wa.gov)

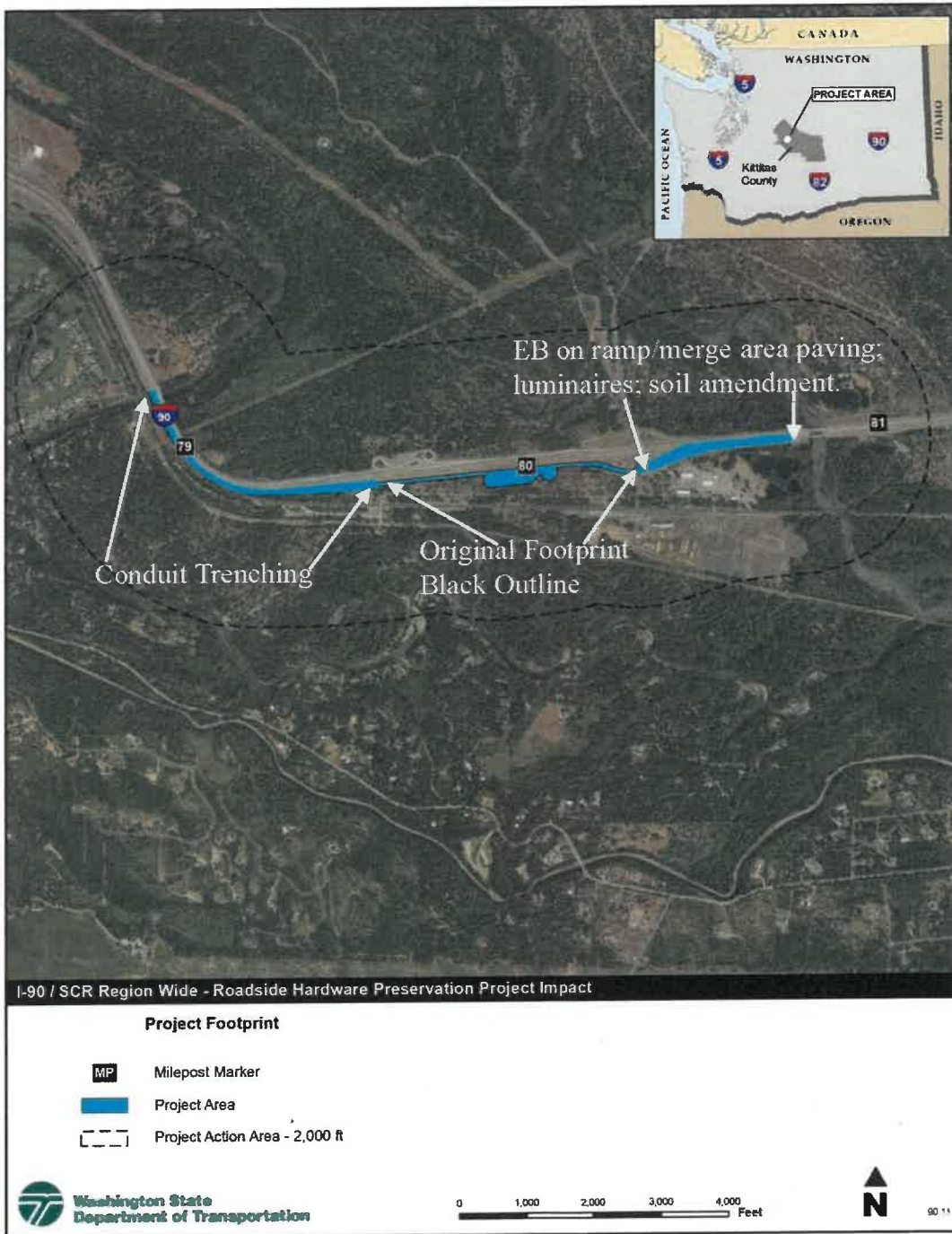
Phone: 5092600383

## **LEAD AGENCY CONTACT INFORMATION**

Lead Agency: Federal Highway Administration

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# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office  
500 Desmond Dr. S.E.  
Lacey, Washington 98503



In Reply Refer to:  
FWS/R1/2022-0056158-002

September 18, 2023

Mark Norman  
South Central Region Biology and Mitigation Lead  
Washington State Department of Transportation  
2809 Rudkin Road  
Union Gap, Washington 98903-1648

Dear Mr. Norman:

Subject: I-90 Eastbound Weigh Station (XL6141) – Kittitas County

On July 13, 2023, the U.S. Fish and Wildlife Service received your request for reinitiation of informal consultation on behalf of the Federal Highway Administration (FHWA), which will authorize the right-of-way revision plan for the project. We issued a prior concurrence letter for this project on September 15, 2022 (2022-0056158) concurring with the FHWA and Washington State Department of Transportation's (WSDOT) assessment that the project "may affect, but is not likely to adversely affect" northern spotted owl (*Strix occidentalis caurina*, spotted owl), Canada lynx (*Lynx canadensis*), and gray wolf (*Canis lupus*).

The current request included a Programmatic Notification Form under the Statewide Programmatic Consultation for the WSDOT Biological Opinion (Ref # 2022-0011119). As with the prior consultation, the Programmatic Notification Form was submitted as a reference Biological Assessment (BA) because the amount of pollution-generating impervious surface (PGIS) that will result from the project exceeds the limit allowable under the Biological Opinion. The reference BA, dated June 27, 2022, was resubmitted on July 6, 2023, with updates to the project description. The request included a "may effect, but not likely to adversely affect" determination for potential effects to spotted owl, Canada lynx, and gray wolf, as well as marbled murrelet (*Brachyramphus marmoratus*).

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### PACIFIC REGION 1

IDAHO, OREGON\*, WASHINGTON,  
AMERICAN SAMOA, GUAM, HAWAII, NORTHERN MARIANA ISLANDS

\*PARTIAL



The project is located along I-90 from milepost (MP) 78.81 to 80.74, approximately 3 miles west of the city of Cle Elum in Kittitas County, Washington. The WSDOT is proposing to demolish the abandoned west bound Washington State Patrol weigh scale and truck parking facility and construct a new Washington State Patrol weigh scale/inspection station, truck parking, and virtual weigh-in-motion facility near eastbound MP 80 (Bullfrog Road). The project is described in detail in the prior letter of concurrence and is incorporated by reference (2022-0056158).

The updates to the project description include the following:

- The existing pavement on the eastbound (EB) off and on ramps will be replaced, and the EB on-ramp merge area will be extended within the current roadway prism.
- Approximately 750 feet of utility trenching will occur along the EB shoulder between MP 80.58 and 80.74 within the roadway prism, and new luminaires will be installed in this area.
- Conduit trenching will occur along EB between MP 78.81 and 79.58 to provide power and fiber for the Virtual Weigh-in-Motion System.
- Soil amendment will occur in the median to handle stormwater runoff. All stormwater from new and replaced PGIS will be 100 percent infiltrated.
- The estimate of existing PGIS increased from 1 acre to 1.16 acres.
- The post-project PGIS increased from 6 acres to 6.16 acres.
- The temporary vegetation impact increased from 3 acres to 3.45 acres.
- The total vegetation impact increased from 8 acres to 8.45 acres.

The above updates expand the original project footprint from an estimated 9 acres to 15 acres and expands the Project Action Area (PAA). Given the expansion of the PAA, the WSDOT reanalyzed the project effects to listed species. As a result, the WSDOT determined that the expanded PAA and project activities may affect listed species in a way that was not previously considered or assessed.

- The expanded project limits are now within 195 feet of 1.24 acres of mapped spotted owl habitat.
- Marbled murrelets were not previously considered in the project analysis of potential impacts to listed species. The PAA, as expanded, now includes potential murrelet habitat within 0.25 mile of the project footprint.

Sufficient information has been provided to determine the effects of the proposed action and to conclude whether or not it would adversely affect federally listed species and/or designated critical habitat. Our concurrence is based on the information provided by the action agency, best available science, and complete and successful implementation of the agreed-upon conservation measures.

### **Gray Wolf and Canada Lynx**

Project effects to gray wolf and Canada lynx resulting from the expanded PAA remain the same as previously analyzed in the September 15, 2022, letter of concurrence, which is incorporated by reference (USFWS 2022). Therefore, these species will not be addressed further in this letter.

### **Northern Spotted Owl**

Additional project work has expanded the project footprint east and west, putting the project limits within 195 feet of 1.24 acres of mapped suitable spotted owl habitat. This habitat may be exposed to project disturbance during the early spotted owl nesting season. A qualified WSDOT biologist surveyed the mapped suitable spotted owl habitat within 195 feet of project activities on June 22, 2023, and documented the survey results in the reference BA which is incorporated by reference. Survey results documented that the 1.24 acres of mapped suitable habitat within 195 feet of project limits lacked potential nest trees because none had broken tops or deformities, the habitat surveyed lacked a multi-layered canopy, and the canopy cover was highly variable but averaged less than 60 percent cover overall. After reviewing the habitat survey, we concur with the WSDOT that the habitat surveyed within 195 feet of project activities is not suitable spotted owl nesting habitat. Therefore, the exposure of nesting spotted owls to disturbance from project activities during the early nesting season is considered discountable. Noise and visual disturbance may result in short-term disturbance or temporary displacement of spotted owls that may be moving through their home range. Such flush responses that occur away from an active nest site are considered to be insignificant, because the owls are simply moving away from a source of disturbance, rather than being forced to flush away from an active nest site. We expect that any temporary exposures will not result in measurable effects to northern spotted owls. Therefore, project effects to foraging and non-nesting owls during the early nesting season are considered insignificant.

### **Marbled Murrelet**

Additional project work has expanded the project footprint east and west, putting the project limits within 0.25 mile of mapped suitable murrelet habitat. The project is over 60 miles from marine waters and potentially suitable habitat within 0.25-mile of the project footprint will be exposed to elevated visual and noise disturbance stressors during the nesting season. Projects which impact suitable habitat between 55 and 70 miles from the marine environment must analyze habitat impacts using the same conditions that are used for murrelet habitat 0-55 mile from marine waters. Although the project will remove large trees, the forest stand where this will occur is predominantly ponderosa pine that has been previously logged resulting in an open canopy. Review of the habitat stand to be removed, as evidenced by information provided by the WSDOT biologist, has not matured sufficiently to provide structural complexity including platforms for murrelet nesting and as such is not considered suitable murrelet habitat. For these reasons, the risk of exposure of nesting murrelets to disturbance from construction activities is extremely unlikely and considered discountable.

This consultation was conducted in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). 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.

The U.S. Fish and Wildlife Service appreciates your efforts to protect listed species and the habitats on which they depend. If you have any further questions, or if we can be of further assistance, please contact Leslie Durham ([leslie\\_durham@fws.gov](mailto:leslie_durham@fws.gov)) or Adam Griesemer ([adam\\_griesemer@fws.gov](mailto:adam_griesemer@fws.gov)).

Sincerely,

ADAM GRIESEMER

Digitally signed by ADAM  
GRIESEMER  
Date: 2023.09.18  
15:41:28 -07'00'

for Brad Thompson, State Supervisor  
Washington Fish and Wildlife Office

cc:

Washington FHWA, Olympia, WA  
WSDOT, Union Gap, WA (K. White)  
WSDOT, Union Gap, WA (B. Blodgett)  
WSDOT, Olympia, WA (J. Dreier)  
WSDOT, Olympia, WA (B. Steusloff)