



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Refer to NMFS No.:
2011/01964

August 8, 2011

Kevin P. Moynahan
Chief, Regulatory Branch
Portland District, Corps of Engineers
P.O. Box 2946
Portland, Oregon 97208-2946

JSACE-EUGENE

AUG 10 2011

RECEIVED

Re: Non-concurrence and additional information request for the Lukens bank stabilization, Siuslaw River (6th field HUC 171002060804), mile 1.75 near Florence, Lane County, Oregon (Corps No.: NWP-2011-141).

Dear Mr. Moynahan:

This letter acknowledges National Marine Fisheries Service's (NMFS) receipt of your May 13, 2011 letter requesting concurrence with your determination under section 7(a)(2) of the Endangered Species Act (ESA) and section 305 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This consultation concerns the possible effects of the proposed issuance of a Corps of Engineers (Corps) permit under section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act to stabilize a riverbank at 16 Sea Watch Court in Florence, Oregon. The applicant proposes the installation of a sediment retention system to stabilize the riverbank.

Currently the site is suffering from severe erosion from the Siuslaw River and the discharge of groundwater eroding the riverbank and threatening a home. Previously, the site had been stabilized by installing a sheet pile wall higher on the slope and riprap and gabion baskets in the tidal zone. This repair did not address the erosion of sand by discharge of groundwater and the bank failed again in 2010. The proposed action is designed to re-stabilize the failing riverbank, protect the threatened home, and eliminate sand erosion due to groundwater discharge.

The proposed action consists of bank re-shaping and re-sloping using heavy equipment. To construct the stabilization structure, the applicant will place heavy-duty filter fabric, up to 600 cubic yards of riprap, and pea-gravel. The applicant will place riprap along 200 linear feet of the riverbank and up to the highest measured tide line at 10.5 feet. Riprap will extend above this to between 20 and 30 feet.

Exhibit M



The Siuslaw River is home to several salmonid species including ESA-listed Oregon Coast (OC) coho salmon (*Oncorhynchus kisutch*). Southern distinct population segment (southern) North American green (*Acipenser medirostris*) sturgeon also inhabit the Siuslaw River. The Siuslaw River is designated critical habitat for OC coho salmon and they use it for adult and juvenile migration and juvenile rearing. Southern green sturgeon adults and sub-adults use the Siuslaw River for growth and development. The Siuslaw River is not designated critical habitat for southern green sturgeon. The site is likely currently providing for use by rearing OC coho salmon juveniles.

Based on information provided by the Corps, NMFS does not concur with the finding that the proposed project will not adversely affect OC coho salmon for the following reasons: (1) installation of riprap will create a sterile environment reducing habitat complexity and the available sheltering and feeding habitats for juvenile OC coho salmon; (2) primary constituent elements (PCEs) of critical habitat including forage and natural cover will be permanently degraded from the placement of riprap; (3) elevated concentrations of suspended sediments are reasonably certain to adversely affect juvenile OC coho salmon; and (4) the proposed action will adversely affect the water quality PCE of OC coho salmon critical habitat. Based on these effects, the project has the potential of adversely affecting OC coho salmon, their designated critical habitat, and essential fish habitat (EFH). Accordingly, NMFS requests that the Corps initiate formal consultation for this action.

The NMFS has not received all of the information necessary to initiate this consultation as outlined in the regulations governing interagency consultations for the ESA at 50 CFR section 402.14(c) (initiation of formal consultation) and for EFH at 50 CFR 600.920(g) (EFH assessments). The initiation letter insufficiently describes the project and expected effects of the project. To complete the initiation package, please provide the following information:

1. Please confirm the total linear distance of the riprap along the riverbank is 200 feet, or provide the correct linear distance of the riprap.
2. Please provide a diagram that clearly shows the elevations of the mean high water and mean low water in relation to the highest measured tide.
3. Riprap is sterile in the aquatic environment and provides very little habitat function. Incorporation of large woody debris with rootwads into the proposed action would help to provide structure and increase the habitat value of the completed stabilization structure for OC coho salmon. Please answer the following questions:
 - a. Has the applicant considered incorporating large woody debris with rootwads to minimize the impact of riprap to OC coho salmon and their designated critical habitat?
 - b. If not, will the applicant incorporate large woody debris with rootwads into their design to minimize the impacts of riprap to OC coho salmon and their designated critical habitat?

- c. If not, please provide an explanation of why the applicant will not incorporate large woody debris into their design providing reasoning based on the behavioral, physical, and habitat needs of OC coho salmon.

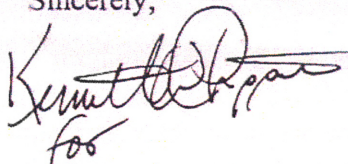
The NMFS requests the above information to evaluate potential adverse effects from the proposed action. Overall, NMFS has concerns regarding adverse effects to OC coho salmon and their designated critical habitat; southern green sturgeon and their designated critical habitat; southern distinct population segment (southern) Pacific eulachon (*Thaleichthys pacificus*); and EFH for Pacific salmon, groundfish, and coastal pelagic species from the proposed action.

Until the Corps addresses these information needs, consultation will not proceed. Consultation on the proposed action will resume upon receipt of the requested information, if it is determined that the information is sufficient to complete consultation. If the additional information necessary to evaluate the effects of the proposed action on ESA-listed species and EFH is unavailable, the Corps has two options: (1) With your agreement, the consultation may be discontinued until sufficient information is available for a complete analysis; or (2) the NMFS can complete its analysis with the available information, giving the benefit of the doubt to the species. The consequence of completing consultation while giving the benefit of the doubt to the species depends on the significance of the missing data. Moreover, if additional data become available that differs from what was considered during consultation, reinitiation of consultation may be necessary.

We will notify you when we receive this additional information. Our notification letter will also outline the dates within which consultation should be complete and the consultation document delivered on the proposed action.

If you have questions regarding this letter or how to continue with the consultation process, please call Jeff Young, fisheries biologist in the Oregon Coast Branch of the Oregon State Habitat Office, at 541.957.3389.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Tehan", with a stylized flourish at the end.

Michael P. Tehan
Assistant Regional Administrator
Habitat Conservation Division

cc: Brian Wilson, Corps



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
EUGENE FIELD OFFICE
1600 EXECUTIVE PARKWAY, SUITE 210
EUGENE, OREGON 97401-2156

REPLY TO
ATTENTION OF:

May 11, 2011

Operations Division
Regulatory Branch
Corps No. NWP-2011-141

Ms. Patricia and Mr. Richard Lukens
16 Seawatch Court
Florence, Oregon 97439

Dear Ms. and Mr. Lukens:

The U.S. Army Corps of Engineers (Corps) received your request for Department of Army (DA) authorization to stabilize an eroding streambank located at your property 16 Seawatch Court, in Florence, Lane County, Oregon (Section 15, Township 18 South, Range 12 West). Your project has been assigned Corps No. NWP-2011-141. Please refer to this number in all future correspondence.

The proposed work may be authorized by Nationwide Permit No.13 (Bank Stabilization). Before authorizing work under our statutory authorities, the Corps must ensure a project complies with other applicable Federal laws and regulations, such as the Endangered Species Act (ESA), Section 401 of the Clean Water Act (CWA), and the National Historic Preservation Act (NHPA). All actions will be coordinated with the appropriate Native American Tribes. Dependent upon the location and nature of the project and its potential to affect protected species, the Corps will coordinate with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) under ESA. In most instances, the Corps will coordinate directly with those agencies, but we may require additional information from you to complete the coordination and consultation.

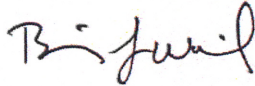
Because the proposed work may affect Oregon Coast Coho salmon (*Oncorhynchus kisutch*), Chinook salmon (*Oncorhynchus tshawytscha*), green sturgeon (*Acipenser medirostris*), species protected under the ESA, we will need to consult with NMFS. The Corps cannot complete our evaluation and you may not begin work until this requirement has been fulfilled.

Working before obtaining a DA permit is a violation of Federal laws. Receipt of a permit from the Oregon Department of State Lands (DSL) does not obviate the requirement for obtaining a DA permit prior to commencing the proposed work.

Exhibit N

If you have any questions regarding your application, please contact me at the letterhead address, by telephone at (541) 465-6765, or email brian.j.wilson@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "B. J. Wilson".

Brian J. Wilson
Project Manager
Regulatory Branch

Copy Furnished:

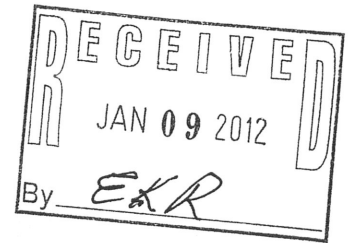
GeoScience, Inc. (Schlieder)
Oregon Department of State Lands (Kiryuta)
Oregon Department of Environmental Quality (Adams)
Oregon Department of Land Conservation and Development (Hickner)



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
EUGENE FIELD OFFICE
1600 EXECUTIVE PARKWAY SUITE 210
EUGENE OR 97401-2156

REPLY TO
ATTENTION OF:

May 11, 2011



Operations Division
Regulatory Branch
Corps No. NWP-2011-141

Kim Kratz, Ph.D.
National Marine Fisheries Service
Oregon State Habitat Office
1201 NE Lloyd Boulevard, Suite 1100
Portland, Oregon 97232-2182

Dear Dr. Kratz:

The U.S. Army Corps of Engineers (Corps) is evaluating an application from Ms. Patricia and Mr. Richard Lukens for bank stabilization work along the Siuslaw River. The project is located on the Siuslaw River, RM 1.75, in Florence, Lane County, Oregon (Section 15, Township 18 South, Range 12 West). The Corps is evaluating the proposal under our regulatory authority found in Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

The Corps has determined Oregon Coast Coho salmon (*Oncorhynchus kisutch*), and green sturgeon (*Acipenser medirostris*), species protected by the Endangered Species Act and their critical habitat may be affected by the proposed project. The Corps believes these species will not be adversely affected. We do not believe Essential Fish Habitat (EFH), as designated by Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) will be adversely affected.

The purpose of this letter is to request NMFS concurrence with our determination as required under Section 7 of the ESA and consultation for adverse impacts to EFH as required under the MSA.

The proposed project involves stabilizing an eroding bank which is threatening a sheet pile structure that supports a home. Sand and bank materials are being eroded by tidal fluctuations and subsurface flows undermining the structural integrity of the sheet pile wall. If not repaired, further erosion would occur ultimately resulting in undermining to the existing homestead.

The home sits on top of the bank approximately 50 feet above the river with an overall bank slope of approximately 1.25H:1V. In 1997, a catastrophic bank failure occurred resulting in the installation of a sheet pile seawall near the top of the bank and well above the ordinary high water mark. Riprap and a two-tiered gabion basket buttress were placed at the toe of the

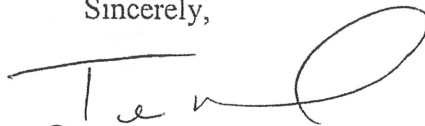
Exhibit O

bank to further stabilize the slope. By 2010 groundwater flows discharging along the face of the slope had destabilized the slope, exposing the sheet-pile wall beyond the maximum rating for which it was designed. The two-tiered gabion basket buttress and riprap material have been pushed into the river.

The applicant proposes to reshape and rebuild the slope to rebury the exposed sheet pile wall to its design depth. Up to 600 cubic yards of native substrate will be removed and up to 600 cubic yards of riprap will be placed to rebury the sheet pile wall to its design depth. Geotextile fabric wrapped around pea gravel will be laid on the shelf at the base of the slope to assist with rock placement retention. An excavator and conveyer machine will work from the upland portions of slope. All work will be done during low tide when the shelf is exposed and out of the active channel to reduce any chance of turbidity with all fill discharged on a shelf above the channel bottom but below the high tide line. At no time during construction are any equipment and/or work expected to be in the active channel. Due to the immediate need for stabilization, the applicant proposes to conduct the work as soon as possible and before the recommended in-water work window. Project details and drawings are provided in the Enclosure.

The Corps is considering using a Nationwide Permit to authorize these activities. If you require further information regarding this project, please contact Mr. Brian Wilson at the letterhead address, by telephone at (541) 465-6765, or email brian.j.wilson@usace.army.mil. Thank you for your assistance and attention to this matter.

Sincerely,



Kevin P. Moynahan
Chief, Regulatory Branch

Enclosure

Copy Furnished:

Applicant (Lukens)
GeoScience, Inc. (Schlieder)

GeoScience, Inc.

April 12, 2011

Mr. Brian Wilson

USACE

via email: brian.j.wilson@usace.army.mil

Mr. Jason Kirchner

ODFW

via email: jason.a.kirchner@state.or.us

RE: ADDENDUM FOR LUKENS, SEA WATCH PLACE, NWP-2011-141, 46763-RF

Dear Brian and Jason:

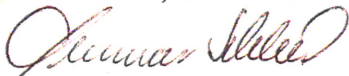
Per our discussion at the site on April 7, 2011, I am submitting this addendum to the Joint Permit Application for Richard and Patricia Lukens (NWP-2011-141, and 46763-RF). In the application it was stated that most of the work would be performed from land and only a small portion might require use of a barge. Recent discussion with the contractor for this project, show that ALL work on this project can be performed from land, and that the barge will not be necessary. The contractor has recently purchased a conveyor which can be utilized to move excavated material on the slope and deliver pea-gravel to the work area. This eliminates the requirement to use a barge.

At the meeting it was indicated that this new development might have significant impact on the possibility of performing the work outside thenormal in-water work period. Due to the excessive exposure of the sheet-pile wall at the top of the slope, which retains the material supporting the west side of the house, and the continuing removal of sand at the toe of the slope, it appears necessary to conduct mitigative action prior to the start of the next scheduled in-water work period. Whereas much of the work will occur above ordinary high water (OHW), a smaller portion of the work must, by necessity be conducted on the slope within the zone between ordinary low water (OLW) and OHW. Performing this work after the portion which can be done outside OHW would result in significantly greater disturbanceto the work area, as it would force the equipment to be driving in the area between OLW and OHW.

Therefore, it would be greatly appreciated if it were possible to schedule both portions of the work (above and below OHW) at the same time, given the fact that all work can be done from land. If you have any questions regarding this matter, please do not hesitate to contact me at (541) 607-5700.

Sincerely,

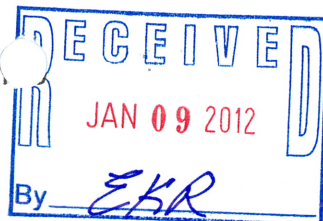
GeoScience, Inc.



Gunnar Schlieder, Ph.D., CEG

Exhibit P

Department of State Lands
775 Summer Street NE, Suite
Salem, OR 97301-1279
☎ 503-986-5200



Permit No.:
Permit Type:
Waterway:
County:
Expiration Date:

46763-RF
Removal/Fill
Siuslaw Estuary
Lane
May 4, 2012

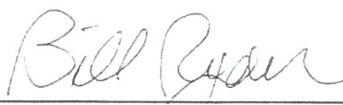
RICHARD AND PATRICIA LUKENS

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE ATTACHED COPY OF THE APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder shall obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, the Department of State Lands makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee shall defend and hold harmless the State of Oregon, and its officers, agents, and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the applicant must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940. This permit does not relieve the permittee of an obligation to secure appropriate leases from the Department of State Lands, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact the Department of State Lands, 503-986-5200.

Eric D. Metz, Southern Region Manager
Wetlands & Waterways Conservation Div.
Oregon Department of State Lands


Authorized Signature
BILL RYAN, ASSISTANT DIRECTOR

May 4, 2011
Date Issued

Exhibit Q



Oregon

John A. Kitzhaber, MD, Governor

Department of Fish and Wildlife

North Coast Watershed District

Newport Field Office

2040 SE Marine Science Drive

Newport, OR 97365

(541) 867-4741

(541) 867-0311

www.dfw.state.or.us



January 30, 2012

Wendy Farley Campbell
Senior Planner
City of Florence
250 Highway 101
Florence, OR 97439

RE: PC 12 04 CUP 03 Lot 16 Sea Watch Estates Revetment Placement

Dear Wendy:

I have reviewed this project proposal and have met on site with Richard Lukens (Applicant/ Landowner), Gunnar Schlieder (Geo Sciences), and Brian Wilson (Army Corp). I have the following comments/ recommendations to assist in minimizing impacts to Oregon's fish, wildlife, and habitat resources.

The in water work period for the Siuslaw estuary is November 1- February 15, but a variance outside of this period will be allowed as a house structure is in danger. I recommend that the project get completed as quickly as possible outside of the work window and at the lowest tides. I would also like to know how many days the project will take and which days it will be implemented prior to beginning work. All work should be conducted from land as documented in the 4/12/11 addendum for Lukens, Sea Watch Place, NWP-2011-141, 46763-RF. Deep water habitat is adjacent to this site so I recommend that rip rap placement not extend past the existing rock toe footprint into the estuary.

Riparian planting should be completed between the new rip rap line and the existing sheet pile wall. Planting should only consist of Oregon coast native plants such as willow, salal, grasses, and evergreen huckleberry. The introduction of non-native plants and animals to the estuary and surrounding ecosystem via construction equipment is an increasing concern so all equipment should arrive on site clean, and thoroughly pressure washed.

Sincerely,

Jason Kirchner
ODFW Habitat Protection Biologist

Exhibit R