UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802

September 4, 2025 **Refer to NMFS No:** WCR-2020-00688

Katerina Galacatos, Ph.D.
Chief, South Branch, Regulatory Division
Department of the Army
San Francisco District, Corps of Engineers
450 Golden Gate Avenue
San Francisco, California 94102

Re: Extension Request and Revised Incidental Take Statement for the U.S. Army Corps of Engineers' Programmatic Bio-Engineered Bank Stabilization Permitting Program

Dear Dr. Galacatos:

On June 16, 2025, NOAA's National Marine Fisheries Service (NMFS) received your request for a one-year extension of the U.S. Army Corps of Engineers' (Corps) "Programmatic Bio-Engineered Bank Stabilization Permitting Program" (hereafter 'Program') to July 1, 2026. The Corps and NMFS completed a programmatic consultation under Section 7 of the Endangered Species Act (ESA) and the essential fish habitat (EFH) provisions in Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for the Program's five-year term, which was formalized by NMFS in a combined biological opinion and EFH response signed on July 1, 2020 (opinion). The Program covers certain bio-engineered bank stabilization activities permitted by the Corps, enabling the authorization of these projects while meeting the requirements of the ESA and the MSA. The opinion includes an incidental take statement (ITS) with reasonable and prudent measures and non-discretionary terms and conditions necessary to avoid, minimize, or monitor incidental take of listed species. The opinion issued by NMFS to the Corps concluded the Program is not likely to jeopardize the continued existence of, and is not likely to destroy or adversely modify the designated critical habitat of the following federally listed salmonids:

Northern California (NC) steelhead (*Oncorhynchus mykiss*),
Central California Coast (CCC) steelhead (*O. mykiss*),
Southern-Central California Coast (S-CCC) steelhead (*O. mykiss*),
Southern Oregon/Northern California (SONC) coho salmon (*O. kisutch*),
Central California Coast (CCC) coho Salmon (*O. kisutch*), and
California Coastal (CC) Chinook salmon (*O. tshawytscha*).

NMFS also provided the results of our review of the likely effects on EFH for Pacific Coast Salmon designated under the MSA. We concluded that the Program would adversely affect the EFH of Pacific Coast Salmon in the action area and included conservation recommendations.

NMFS has reviewed the implementations that the Corps has authorized under the Program for the past five years. Since the issuance of the opinion, the amount of incidental take by Program activities has been considerably less than anticipated. The opinion assumed that approximately 20 projects would be authorized annually as implementations under the Program (100 total projects in five years). Your letter

states that since July 1, 2020, the San Francisco District has authorized 24 projects under the Program, which is 24 percent of the total number of implementations that were anticipated and considered in the opinion over a 5-year duration. Each action included in the Program met the suitability criteria, and the amount or extent of incidental take at a project level was consistent with, or less than, the effects described in the opinion. Consequently, the extent of effects on listed species and their habitat were less than the overall Program levels anticipated in the opinion and ITS.

The Corps does not propose any changes to authorizing projects as implementations under the Program. NMFS expects that the Program will continue to include the implementation of avoidance and minimization measures, and reasonable and prudent measures to minimize the amount or extent of incidental take of listed salmonids resulting from fish relocation, dewatering, or instream construction activities. Additionally, no new species have been listed or critical habitat designated in the Program's action area since the issuance of the opinion. Based on the above, NMFS agrees with the Corps that a one-year extension of Program implementations still falls within the scope, magnitude, and duration of effects analyzed in the opinion, and that a one-year extension does not warrant reinitiation of consultation.

In addition, NMFS has considered the Program's existing effects on listed salmonids, and has determined that the Corps may continue to administer the Program in perpetuity without a specified timeline until incidental take limits are exceeded or other reinitiation criteria are met. Compared with a predetermined timeline, the general criteria for reinitiation of ESA consultation, general criteria for reinitiation of EFH consultation, and the Program-specific reinitiation criteria described in the opinion and in the revised ITS (enclosed) provide more relevant limits on the Program's effects on listed salmonids, critical habitat, and EFH as they occur in real time. The original 5-year timeline in the opinion can be replaced with an open-ended timeline based on existing reinitiation criteria that occur in 5-year increments, with the current 5-year increment beginning July 1, 2025. The annual limits for incidental take in the ITS can be removed and converted to 5-year limits, as they are already considered in that manner in the opinion. Ongoing Program administration until any of the reinitiation criteria are met in any 5-year increment will not constitute a change that would have any different effects on listed salmonids, critical habitats, or EFH than those NMFS has already considered in the opinion. Similarly, the basis for the opinion's jeopardy and adverse modification analysis would not be altered by this modification. Thus, the Corps' ongoing Program administration until any of the reinitiation criteria are met in any 5-year increment is not likely to jeopardize the continued existence of, and is not likely to destroy or adversely modify the designated critical habitat of the federally listed salmonids included above.

Based on this modification to the Program's administration, NMFS has revised the ITS in the enclosure. The annual limits for incidental take in the original ITS have been removed and converted to 5-year limits. The revised ITS is enclosed and replaces the original ITS enclosed to the July 1, 2020 biological opinion. Regarding incidental take of listed salmonids, the opinion considers 5-year program limits for the incidental take for each species, and these take limits will continue to serve as reinitiation criteria. With ongoing Program implementation, these incidental take limits and reinitiation criteria will continue to apply in 5-year increments.

The Corps must substitute the revised ITS for the original ITS, as the original ITS is no longer in effect. No changes have been made to the body of the biological opinion and the opinion remains in effect. However, under 50 CFR 402.16(a): "Reinitiation of consultation is required and shall be requested by the federal agency, where discretionary federal involvement or control over the action has been retained or is

authorized by law and: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) If new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) If a new species is listed or critical habitat designated that may be affected by the identified action.

We have also reviewed the effects of these modifications on EFH, and have concluded that these changes to the administration of the Program do not present any new adverse effects on EFH that were not already considered in the 2020 consultation. The Corps must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations (50 CFR 600. 920(l)).

Annual reporting will support the Corps' and NMFS' ongoing real-time assessment of the effects of the Program's implementation on listed salmonids, critical habitat, and EFH. To maintain annual tracking of Program effects, NMFS expects that the Corps will continue to provide the Annual Program Report to NMFS according to the reporting process presented in Section 1.3.3 (Program Reporting, p. 12) of the opinion. At the completion of every 5-year increment, the Corps and NMFS will assess the following: number of projects and Supplemental Conservation Measures implemented; amount of fish captured and relocated; and mortality rates of listed salmonids.

In summary, NMFS agrees with the Corps' determination that reinitiation of the ESA section 7 and EFH consultations are not warranted to continue the Program for an additional year, and with this letter NMFS provides a revised ITS and notifies the Corps that Program administration may continue in perpetuity without reinitiation of the ESA and EFH consultations until any of the reinitiation criteria are met in any 5-year increment. Program tracking will continue to occur through annual reporting by the Corps. The current 5-year increment will include a start date of July 1, 2025, and will conclude July 1, 2030, and is expected to continue in this manner in 5-year increments in perpetuity.

We anticipate working with the Corps on future refinements of this Program as needed in the next iteration of the Program. If you have any questions or would like to discuss, please contact Brian Meux of my staff at (707) 575-1253 or brian.meux@noaa.gov.

Sincerely,

Penny Ruvelas
Assistant Regional Administrator
California Coastal Office

Enclosure

cc: Frances Malamud-Roam, USACE (frances.p.malamudroam@usace.army.mil)
Copy to E-File FRN 151422WCR2020SR00050

2.9 Incidental Take Statement (Revised September 4, 2025; replaces ITS enclosed to the biological opinion issued July 1, 2020.)

Section 9 of the ESA and Federal regulations pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without a special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm" is further defined by regulation to include significant habitat modification or degradation that actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering (50 CFR 222.102). "Incidental take" is defined by regulation as takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant (50 CFR 402.02). Section 7(b)(4) and section 7(o)(2) provide that taking that is incidental to an otherwise lawful agency action is not considered to be prohibited taking under the ESA if that action is performed in compliance with the terms and conditions of this ITS.

2.9.1 Amount or Extent of Take

In the biological opinion, NMFS determined that incidental take is reasonably certain to occur as follows:

> During each 5-year increment of the proposed action, up to 5,000 juveniles of each steelhead DPS (NC, CCC, and S-CCC), 5,000 juveniles of each coho salmon ESU (SONCC and CCC), and 50 CC Chinook salmon may be captured and relocated. Of these captured and relocated fish, no more than two percent may be injured or killed.

NMFS also anticipates incidental take of listed salmonids resulting from channelization of portions of streams. As noted in the Effects section, the amount of take resulting from channelized conditions caused by the proposed action at each future project site is difficult to estimate. Therefore, the habitat surrogate chosen to monitor the extent of this take is the length of bio-engineered streambank restored per project (streambank length must be less than 3x the active channel width), and the number of projects implemented per year (20). Furthermore, if supplemental conservation measures or bio-engineering techniques are not implemented per the proposed action, take would be considered exceeded.

2.9.2 Effect of the Take

In the biological opinion, NMFS determined that the amount or extent of anticipated take, coupled with other effects of the proposed action, is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

2.9.3 Reasonable and Prudent Measures

"Reasonable and prudent measures" are nondiscretionary measures that are necessary or appropriate to minimize the impact of the amount or extent of incidental take (50 CFR 402.02).

NMFS believes the following reasonable and prudent measures are necessary and appropriate to minimize take of NC steelhead, CCC steelhead, S-CCC steelhead, SONCC coho salmon, CCC coho salmon, and CC Chinook salmon:

1. Measures shall be taken to minimize the amount or extent of incidental take of listed salmonids resulting from fish relocation, dewatering, or instream construction activities.

2.9.4 Terms and Conditions

The terms and conditions described below are non-discretionary, and the Corps or any applicant must comply with them in order to implement the reasonable and prudent measures (50 CFR 402.14). The Corps or any applicant has a continuing duty to monitor the impacts of incidental take and must report the progress of the action and its impact on the species as specified in this incidental take statement (50 CFR 402.14). If the entity to whom a term and condition is directed does not comply with the following terms and conditions, protective coverage for the proposed action would likely lapse.

The following Terms and Conditions implement Reasonable and Prudent Measure 1:

a. The applicant shall retain a qualified biologist with expertise in the areas of anadromous salmonid biology, including handling, collecting, and relocating salmonids; salmonid/habitat relationships; and biological monitoring of salmonids. The applicant shall ensure that all fisheries biologists working on this project be qualified to conduct fish collections in a manner which minimizes all potential risks to ESA-listed salmonids. Electrofishing, if used, shall be performed by a qualified biologist and conducted according to the NOAA Fisheries Guidelines for Electrofishing Waters Containing Salmonids Listed under the Endangered Species Act, June 2000.

b. The fisheries biologist shall monitor the construction site during placement and removal of cofferdams to ensure that any adverse effects to salmonids are minimized. The biologist shall be on site during all dewatering events in anadromous fish streams to ensure that all ESA-listed salmonids are captured, handled, and relocated safely. The fisheries biologist shall notify NMFS staff Brian Meux at (707) 575-1253 or brian.meux@noaa.gov, one week prior to capture activities in order to provide an opportunity for NMFS staff to observe the activities. During fish relocation activities the fisheries biologist shall contact NMFS staff at the above number, if mortality of federally listed salmonids exceeds two percent of the total for each species collected, at which time NMFS will stipulate further measures to reduce the take of salmonids.

c. If ESA-listed fish are handled, it shall be with extreme care and they shall be kept in water to the maximum extent possible during rescue activities. All captured fish shall be kept in cool,

shaded, aerated water protected from excessive noise, jostling, or overcrowding any time they are not in the stream and fish shall not be removed from this water except when released. To avoid predation the biologist shall have at least two containers and segregate young-of-year fish from larger age-classes and other potential aquatic predators. Captured salmonids will be relocated as soon as possible to a suitable instream location where suitable habitat conditions are present to allow for survival of transported fish and fish already present.

d. Non-native fish that are captured during fish relocation activities shall not be relocated to anadromous streams, or areas where they could access anadromous habitat.

e. Pumps used to dewater the work area shall be equipped with screens that meet the following NMFS fish screening criteria:

- Perforated plate: screen openings shall not exceed 3/32 inches (2.38mm), measured in diameter.
- Woven Wire: screen openings shall not exceed 3/32 inches (2.38 mm measured diagonally).
- Screen material shall provide a minimum of 27% open area. Approach velocity shall not exceed 0.33 feet per second.