



Williams, Marshall <marshall\_williams@fws.gov>

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## [EXTERNAL] BNSF Sandpoint Connector Project - response to draft T&Cs

14 messages

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**Broadhead, Craig** <Craig.Broadhead@jacobs.com>

Fri, Mar 29, 2019 at 4:29 PM

To: "Williams, Marshall" <marshall\_williams@fws.gov>, "Sugarman, Shelly CIV" <Shelly.H.Sugarman@uscg.mil>  
Cc: "Loftice, Nathan Joe" <Nathan.Loftice@bnsf.com>, "Swanson, Jeff A" <Jeff.Swanson@bnsf.com>, "Smith, Jason (Seattle)" <Jason.Smith6@jacobs.com>, "Swanson, Kristopher" <Kristopher.Swanson@bnsf.com>, "Fischer, Steven M CIV" <Steven.M.Fischer3@uscg.mil>, "Hurst, Austin" <Austin.Hurst@bnsf.com>, "Dunn, Brian CIV" <Brian.Dunn@uscg.mil>, "Bordenave, Pierre" <Pierre.Bordenave@jacobs.com>, "Keim, Matthew" <Matthew.Keim@bnsf.com>, "PaDelford, Sue S." <Sue.PaDelford@jacobs.com>, "Moore, James M CIV" <James.M.Moore2@uscg.mil>, "Kaitala, Dava" <Dava.Kaitala@bnsf.com>, "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>

Good afternoon Marshall –

Thank you for the opportunity to review the draft ITS, RPMs, and T&Cs for the Sandpoint Junction Connector project. The attached memo provides the results of our review. Please contact me any time for discussion or clarification of these items if needed, or if you need anything else for completion of consultation.

Talk to you soon,

**Craig Broadhead**

JACOBS | Inland Northwest Environmental Group Lead and Manager of Projects | 32 North 3<sup>rd</sup> Street, Ste. 304, Yakima WA 98901 | [REDACTED] Direct | [Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com) | [www.jacobs.com](http://www.jacobs.com)

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**From:** Sugarman, Shelly CIV <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>

**Sent:** Tuesday, March 26, 2019 1:06 PM

**To:** Smith, Jason (Seattle) <[Jason.Smith6@jacobs.com](mailto:Jason.Smith6@jacobs.com)>; Swanson, Kristopher <[Kristopher.Swanson@BNSF.com](mailto:Kristopher.Swanson@BNSF.com)>; Fischer, Steven M CIV <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>; Hurst, Austin <[Austin.Hurst@BNSF.com](mailto:Austin.Hurst@BNSF.com)>; Dunn, Brian CIV <[Brian.Dunn@uscg.mil](mailto:Brian.Dunn@uscg.mil)>; Bordenave, Pierre <[Pierre.Bordenave@jacobs.com](mailto:Pierre.Bordenave@jacobs.com)>; 'Keim, Matthew' <[Matthew.Keim@BNSF.com](mailto:Matthew.Keim@BNSF.com)>; PaDelford, Sue S. <[Sue.PaDelford@jacobs.com](mailto:Sue.PaDelford@jacobs.com)>; Seattle, ESPConf <[ESPConf.Seattle@jacobs.com](mailto:ESPConf.Seattle@jacobs.com)>; Moore, James M CIV <[James.M.Moore2@uscg.mil](mailto:James.M.Moore2@uscg.mil)>

**Cc:** Loftice, Nathan Joe <[Nathan.Loftice@BNSF.com](mailto:Nathan.Loftice@BNSF.com)>; Broadhead, Craig <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)>; Swanson, Jeff A <[Jeff.Swanson@BNSF.com](mailto:Jeff.Swanson@BNSF.com)>

**Subject:** [EXTERNAL] FW: [Non-DoD Source] BNSF Sandpoint Connector Project

Hello everyone – just got this from USFWS. Please take a look and let me know if you have any concerns by Friday. If you need more time, let me know and I'll let Marshall know. As stated below, this is not for public release.

Thanks,

Shelly Sugarman

**From:** Williams, Marshall <[marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)>  
**Sent:** Tuesday, March 26, 2019 3:35 PM  
**To:** Sugarman, Shelly CIV <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>; Fischer, Steven M CIV <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>; Moore, James M CIV <[James.M.Moore2@uscg.mil](mailto:James.M.Moore2@uscg.mil)>  
**Subject:** [Non-DoD Source] BNSF Sandpoint Connector Project

Shelly, et al; the draft BiOp is nearly through with internal review, and I wanted to share the draft/pre-decisional incidental take statement, reasonable and prudent measures, and the terms and conditions in case the USCG had comments.

Please let me know.

Regards, Marshall

--

Marshall L. Williams

Fish and Wildlife Biologist

U.S Fish & Wildlife Service

[11103 E. Montgomery Dr](#)

[Spokane, WA 99206](#)

eMail: [marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)

[REDACTED]

[REDACTED]

[REDACTED]

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 **2019-03-29\_Response\_DraftTCs\_BNSF\_SJCProject.pdf**  
315K

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**Williams, Marshall** <[marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)>

To: "Broadhead, Craig" <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)>

Cc: "Sugarman, Shelly CIV" <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>, "Loftice, Nathan Joe" <[Nathan.Loftice@bnsf.com](mailto:Nathan.Loftice@bnsf.com)>, "Swanson, Jeff A" <[Jeff.Swanson@bnsf.com](mailto:Jeff.Swanson@bnsf.com)>, "Smith, Jason (Seattle)" <[Jason.Smith6@jacobs.com](mailto:Jason.Smith6@jacobs.com)>, "Swanson, Kristopher" <[Kristopher.Swanson@bnsf.com](mailto:Kristopher.Swanson@bnsf.com)>, "Fischer, Steven M CIV" <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>, "Hurst, Austin"

Tue, Apr 2, 2019 at 9:18 AM

<Austin.Hurst@bnsf.com>, "Dunn, Brian CIV" <Brian.Dunn@uscg.mil>, "Bordenave, Pierre" <Pierre.Bordenave@jacobs.com>, "Keim, Matthew" <Matthew.Keim@bnsf.com>, "PaDelford, Sue S." <Sue.PaDelford@jacobs.com>, "Moore, James M CIV" <James.M.Moore2@uscg.mil>, "Kaitala, Dava" <Dava.Kaitala@bnsf.com>, "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>, Katy Fitzgerald <katy\_fitzgerald@fws.gov>, Christy JohnsonHughes <christy\_johnsonhughes@fws.gov>

Shelly, thank you for responding. Here are the answers to Jacob's questions and concerns on the T & Cs and the RPMs.

Amended statement in **Section to 2.9.1 Form and Amount or Extent of Take Anticipated** to read as follows:

However, ~~due to the fact that all the anticipated take stems from elevated underwater noise levels~~ we anticipate that all bull trout that experience these elevated noise levels will be harmed (injury or mortality) or harassed (disruption of normal behaviors) as described below:

Amended statement in **Section 2.9.3 Reasonable and Prudent Measures**:

2. Minimize and monitor incidental take caused by elevated underwater SPLs from impact driving and proofing of steel piles, and proper function and attenuation provided by bubble curtains ~~and isolation casing with limited~~ hydroacoustic monitoring.

**Section 2.9.4 Terms and Conditions (TCs):**

As an alternative to unattended pile strikes needed for comparative purposes, the USCG can provide proof that the bubble curtains are built to design specifications and have appropriate rates of air flow, etc, and this would be an acceptable alternative. Please provide an example of the text from previous consultations where this was done for the Service's review.

**6th bullet and sub-bulles, page 5:**

Testing on the on the main bridges only, and not the temporary bridges, is acceptable. Amended statement:

- The USCG shall conduct routine monitoring and document the effectiveness of the noise attenuation device with hydroacoustic monitoring for ~~each~~ permanent bridges in the action area for peak, SEL, and RMS at a distance of 10 m:

Variability in the level of attenuation is typical in pile driving projects - the intent of the testing is to ensure that the pile driving stays within the limits of take; this protects you and the listed species. The measurement are intended to be conducted across the duration of the construction project, but physical location has its merits as well, as this is often the cause in SPL variability. If you have a recommended hydroacoustic monitoring plan that has worked in the past and provides data that the project is not exceeding the areal extent specified for take, please provide your thoughts, we'll work with you on an alternative plan, as stated in this section.

**12th bullet, page 6:**

Trestle Creek is a critical spawning and rearing habitat on Lake Pend Oreille. It is essential to ensure that sound attenuation and elevated SPLs are not having an adverse behavioral effect that would prevent bull trout from staging and migrating into this critical spawning tributary. The extent of the hydroacoustic impacts (action area) are based on a theoretical calculation of sound attenuation and distance SPLs will travel through the water. It is acknowledged in the BA that underwater structures and depth of the water will impact the distance sound will travel, i.e. unique to the circumstances. Routine monitoring at the mouth of Trestle Creek will ensure that the project is not impacting this critical spawning tributary, and be verification of this. What routine monitoring looks like can be once a month when building the permanent bridges. If the first measurement indicates that hydroacoustic impacts are indeed a remote possibility, then perhaps monitoring is not necessary. We will work with you on an appropriate plan.

I'd be happy to discuss these edits, or address any additional concerns from these statements, and look forward to completing this consultation.

Sincerely, Marshall Williams

[Quoted text hidden]

To: "Williams, Marshall" <marshall\_williams@fws.gov>, "Sugarman, Shelly CIV" <Shelly.H.Sugarman@uscg.mil>  
Cc: "Loftice, Nathan Joe" <Nathan.Loftice@bnsf.com>, "Swanson, Jeff A" <Jeff.Swanson@bnsf.com>, "Smith, Jason (Seattle)" <Jason.Smith6@jacobs.com>, "Swanson, Kristopher" <Kristopher.Swanson@bnsf.com>, "Fischer, Steven M CIV" <Steven.M.Fischer3@uscg.mil>, "Hurst, Austin" <Austin.Hurst@bnsf.com>, "Dunn, Brian CIV" <Brian.Dunn@uscg.mil>, "Bordenave, Pierre" <Pierre.Bordenave@jacobs.com>, "Keim, Matthew" <Matthew.Keim@bnsf.com>, "PaDelford, Sue S." <Sue.PaDelford@jacobs.com>, "Moore, James M CIV" <James.M.Moore2@uscg.mil>, "Kaitala, Dava" <Dava.Kaitala@bnsf.com>, "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>, Katy Fitzgerald <katy\_fitzgerald@fws.gov>, Christy JohnsonHughes <christy\_johnsonhughes@fws.gov>

Thank you Marshall – we very much appreciate your timely review. Regarding the performance testing for the bubble curtain, the snapshot below is from 01EWF00-2016-F-0452, on a project near Anacortes, Washington. Let me know of any questions regarding the intent or how we implemented:

2. The USCG and BNSF shall conduct a performance test of the sound attenuation device prior to any impact pile driving or proofing. The performance test shall confirm calculated pressures and flow rates at each manifold ring.

Thanks also for the reply regarding Trestle Creek. Understanding this is a critical area for bull trout, we can ensure the Hydroacoustic Monitoring Plan includes this location. A couple of items for consideration is to define appropriate thresholds for disturbance at this location, to avoid subjectivity, and to define a scalable approach based on initial monitoring results. Looking forward to working with you on the plan –

Thanks again, and feel free to reach out with any further questions.

...Craig

[Quoted text hidden]

[Quoted text hidden]

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Smith, Carl F CTR <Carl.F.Smith@uscg.mil>

Fri, Apr 5, 2019 at 1:21 PM

To: "Broadhead, Craig" <Craig.Broadhead@jacobs.com>, "marshall\_williams@fws.gov" <marshall\_williams@fws.gov>

Cc: "Fischer, Steven M CIV" <Steven.M.Fischer3@uscg.mil>

Craig and Marshall:

Please revise the language on the "Terms and Conditions" or anywhere else in the BO that makes statements to the effect of "the Coast Guard **shall** ....". Instead you can replace this language with "The Coast Guard **will ensure**...."

Please reply that you understand this and will make these changes.

Thank you,

Carl F Smith, CTR

Project Manager/Environmental Reviewer

Waterways Management

U.S. Coast Guard District 13  
915 Second Avenue, Room 3510  
Seattle, WA 98174-1067

V: [REDACTED]

[REDACTED]

Email: [Carl.F.Smith@uscg.mil](mailto:Carl.F.Smith@uscg.mil)

[Quoted text hidden]

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**Williams, Marshall** <[marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)>

Fri, Apr 5, 2019 at 4:09 PM

To: "Smith, Carl F CTR" <[Carl.F.Smith@uscg.mil](mailto:Carl.F.Smith@uscg.mil)>, Shelly Sugarman <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>

Cc: "Broadhead, Craig" <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)>, "Fischer, Steven M CIV" <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>

Hi Carl, I have received your email, and understand your request. I presume that you want the change because the USCG will not be doing the actual monitoring, but it will be delegated to a third party, hence the "ensure" language. But that's an assumption, so I'd prefer to have the USCG provide the basis for the request.

Just so we're on the same page: The Service consults with an action agency, but the Biological Opinion is a Service document, not a USCG document. The Terms and Conditions are non-discretionary and so the regulatory language of "shall" is appropriate in this section (Shall is not used else where in the document.) Please note that the Service is not concerned with whether the USCG sends a sailor out to do the monitoring, or has a third party do it (e.g. BNSF, or Jacobs, etc) -- but the USCG is however, responsible in seeing that it's done.

Thank you, Marshall Williams

[Quoted text hidden]

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**postmaster@doi.gov** <[postmaster@doi.gov](mailto:postmaster@doi.gov)>

Sun, Apr 7, 2019 at 4:30 PM

To: [marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)

### Delivery has failed to these recipients or groups:

[Broadhead, Craig \(Craig.Broadhead@jacobs.com\)](mailto:Craig.Broadhead@jacobs.com)

The server has tried to deliver this message, without success, and has stopped trying. Please try sending this message again. If the problem continues, contact your helpdesk.

### Diagnostic information for administrators:

Generating server: [eis.doi.gov](http://eis.doi.gov)

[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)

#550 4.4.7 QUEUE.Expired; message expired ##

Original message headers:

Received: from [mail-yw1-f72.google.com](http://mail-yw1-f72.google.com) (209.85.161.72) by [gsmtpp1.doi.gov](http://gsmtpp1.doi.gov)  
(137.227.82.15) with Microsoft SMTP Server (TLS) id 14.3.435.0; Fri, 5 Apr  
2019 17:09:56 -0600

Received: by [mail-yw1-f72.google.com](http://mail-yw1-f72.google.com) with SMTP id 68so5622946ywb.20 for  
<[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)>; Fri, 05 Apr 2019 16:09:54 -0700 (PDT)

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;

d=[fws.gov](http://fws.gov); s=bison;

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Fri, 05 Apr 2019 16:09:48 -0700 (PDT)  
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References: <34E862816955A04FB7424BAB23A97FF338D45623@USLAS0-MSG049.jacobs.com>  
<CAGSbyhXdb4aR5Ayx+aGuX7HMMrRHeMn3Vs\_WgcFQF90L11kxwg@mail.gmail.com>  
<34E862816955A04FB7424BAB23A97FF3445DEE9F@USLAS0-MSG049.jacobs.com>  
<80B651478A90F14FA821CB3001AFBEC718431084@EMO-EXCH-2304.main.ads.uscg.mil>  
In-Reply-To: <80B651478A90F14FA821CB3001AFBEC718431084@EMO-EXCH-2304.main.ads.uscg.mil>  
From: "Williams, Marshall" <marshall\_williams@fws.gov>  
Date: Fri, 5 Apr 2019 16:09:36 -0700  
Message-ID: <CAGSbyhWth7uosFuRq0gya2HEgyKue=UCeNlKkWK0JvVbCgL\_uQ@mail.gmail.com>  
Subject: Re: [EXTERNAL] BNSF Sandpoint Connector Project - response to draft T&Cs  
To: "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>, Shelly Sugarman  
<Shelly.H.Sugarman@uscg.mil>  
CC: "Broadhead, Craig" <Craig.Broadhead@jacobs.com>, "Fischer, Steven M CIV"  
<Steven.M.Fischer3@uscg.mil>  
Content-Type: multipart/related; boundary="0000000000004939320585d09567"  
X-Gm-Spam: 0  
X-Gm-Phishy: 0  
Return-Path: marshall\_williams@fws.gov

Final-Recipient: rfc822;Craig.Broadhead@jacobs.com

Action: failed

Status: 4.4.7

Diagnostic-Code: smtp;550 4.4.7 QUEUE.Expired; message expired

X-Display-Name: Broadhead, Craig

----- Forwarded message -----

From: "Williams, Marshall" <marshall\_williams@fws.gov>

To: "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>, Shelly Sugarman <Shelly.H.Sugarman@uscg.mil>

Cc: "Broadhead, Craig" <Craig.Broadhead@jacobs.com>, "Fischer, Steven M CIV" <Steven.M.Fischer3@uscg.mil>

Bcc:

Date: Fri, 5 Apr 2019 16:09:36 -0700

Subject: Re: [EXTERNAL] BNSF Sandpoint Connector Project - response to draft T&Cs

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Please reply that you understand this and will make these changes.

Thank you,

Carl F Smith, CTR

Project Manager/Environmental Reviewer

Waterways Management

U.S. Coast Guard District 13

915 Second Avenue, Room 3510

Seattle, WA 98174-1067

V: [REDACTED]  
[REDACTED]

Email: [Carl.F.Smith@uscg.mil](mailto:Carl.F.Smith@uscg.mil)

---

**From:** Broadhead, Craig <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)>

**Sent:** Wednesday, April 3, 2019 9:45 AM

**To:** Williams, Marshall <[marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)>; Sugarman, Shelly CIV <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>

**Cc:** Loftice, Nathan Joe <[Nathan.Loftice@bnsf.com](mailto:Nathan.Loftice@bnsf.com)>; Swanson, Jeff A <[Jeff.Swanson@bnsf.com](mailto:Jeff.Swanson@bnsf.com)>; Smith, Jason (Seattle) <[Jason.Smith6@jacobs.com](mailto:Jason.Smith6@jacobs.com)>; Swanson, Kristopher <[Kristopher.Swanson@bnsf.com](mailto:Kristopher.Swanson@bnsf.com)>; Fischer, Steven M CIV <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>; Hurst, Austin <[Austin.Hurst@bnsf.com](mailto:Austin.Hurst@bnsf.com)>; Dunn, Brian CIV <[Brian.Dunn@uscg.mil](mailto:Brian.Dunn@uscg.mil)>; Bordenave, Pierre <[Pierre.Bordenave@jacobs.com](mailto:Pierre.Bordenave@jacobs.com)>; Keim, Matthew <[Matthew.Keim@bnsf.com](mailto:Matthew.Keim@bnsf.com)>; PaDelford, Sue S. <[Sue.PaDelford@jacobs.com](mailto:Sue.PaDelford@jacobs.com)>; Moore, James M CIV <[James.M.Moore2@uscg.mil](mailto:James.M.Moore2@uscg.mil)>; Kaitala, Dava <[Dava.Kaitala@bnsf.com](mailto:Dava.Kaitala@bnsf.com)>; Smith, Carl F CTR <[Carl.F.Smith@uscg.mil](mailto:Carl.F.Smith@uscg.mil)>; Katy Fitzgerald <[katy\\_fitzgerald@fws.gov](mailto:katy_fitzgerald@fws.gov)>; Christy JohnsonHughes <[christy\\_johnsonhughes@fws.gov](mailto:christy_johnsonhughes@fws.gov)>

**Subject:** [Non-DoD Source] RE: [EXTERNAL] BNSF Sandpoint Connector Project - response to draft T&Cs

**Importance:** High

Thank you Marshall – we very much appreciate your timely review. Regarding the performance testing for the bubble curtain, the snapshot below is from 01EWF00-2016-F-0452, on a project near Anacortes, Washington. Let me know

of any questions regarding the intent or how we implemented:

2. The USCG and BNSF shall conduct a performance test of the sound attenuation device prior to any impact pile driving or proofing. The performance test shall confirm calculated pressures and flow rates at each manifold ring.

Thanks also for the reply regarding Trestle Creek. Understanding this is a critical area for bull trout, we can ensure the Hydroacoustic Monitoring Plan includes this location. A couple of items for consideration is to define appropriate thresholds for disturbance at this location, to avoid subjectivity, and to define a scalable approach based on initial monitoring results. Looking forward to working with you on the plan –

Thanks again, and feel free to reach out with any further questions.

...Craig

**From:** Williams, Marshall <[marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)>  
**Sent:** Tuesday, April 02, 2019 9:19 AM  
**To:** Broadhead, Craig <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)>  
**Cc:** Sugarman, Shelly CIV <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>; Loftice, Nathan Joe <[Nathan.Loftice@bnsf.com](mailto:Nathan.Loftice@bnsf.com)>; Swanson, Jeff A <[Jeff.Swanson@bnsf.com](mailto:Jeff.Swanson@bnsf.com)>; Smith, Jason (Seattle) <[Jason.Smith6@jacobs.com](mailto:Jason.Smith6@jacobs.com)>; Swanson, Kristopher <[Kristopher.Swanson@bnsf.com](mailto:Kristopher.Swanson@bnsf.com)>; Fischer, Steven M CIV <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>; Hurst, Austin <[Austin.Hurst@bnsf.com](mailto:Austin.Hurst@bnsf.com)>; Dunn, Brian CIV <[Brian.Dunn@uscg.mil](mailto:Brian.Dunn@uscg.mil)>; Bordenave, Pierre <[Pierre.Bordenave@jacobs.com](mailto:Pierre.Bordenave@jacobs.com)>; Keim, Matthew <[Matthew.Keim@bnsf.com](mailto:Matthew.Keim@bnsf.com)>; PaDelford, Sue S. <[Sue.PaDelford@jacobs.com](mailto:Sue.PaDelford@jacobs.com)>; Moore, James M CIV <[James.M.Moore2@uscg.mil](mailto:James.M.Moore2@uscg.mil)>; Kaitala, Dava <[Dava.Kaitala@bnsf.com](mailto:Dava.Kaitala@bnsf.com)>; Smith, Carl F CTR <[Carl.F.Smith@uscg.mil](mailto:Carl.F.Smith@uscg.mil)>; Katy Fitzgerald <[katy\\_fitzgerald@fws.gov](mailto:katy_fitzgerald@fws.gov)>; Christy JohnsonHughes <[christy\\_johnsonhughes@fws.gov](mailto:christy_johnsonhughes@fws.gov)>  
**Subject:** Re: [EXTERNAL] BNSF Sandpoint Connector Project - response to draft T&Cs

Shelly, thank you for responding. Here are the answers to Jacob's questions and concerns on the T & Cs and the RPMs.

Amended statement in **Section to 2.9.1 Form and Amount or Extent of Take Anticipated** to read as follows:

~~However, due to the fact that all the anticipated take stems from elevated underwater noise levels we anticipate that all bull trout that experience these elevated noise levels will be harmed (injury or mortality) or harassed (disruption of normal behaviors) as described below:~~

Amended statement in **Section 2.9.3 Reasonable and Prudent Measures:**

2. Minimize and monitor incidental take caused by elevated underwater SPLs from impact driving and proofing of steel piles, and proper function and attenuation provided by bubble curtains ~~and isolation casing~~ with limited hydroacoustic monitoring.

**Section 2.9.4 Terms and Conditions (TCs):**



As an alternative to unattended pile strikes needed for comparative purposes, the USCG can provide proof that the bubble curtains are built to design specifications and have appropriate rates of air flow, etc, and this would be an acceptable alternative. Please provide an example of the text from previous consultations where this was done for the Service's review.

**6th bullet and sub-bulleted, page 5:**

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- The USCG shall conduct routine monitoring and document the effectiveness of the noise attenuation device with hydroacoustic monitoring for ~~each~~ permanent bridges in the action area for peak, SEL, and RMS at a distance of 10 m:

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**12th bullet, page 6:**

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I'd be happy to discuss these edits, or address any additional concerns from these statements, and look forward to completing this consultation.

Sincerely, Marshall Williams

On Fri, Mar 29, 2019 at 4:29 PM Broadhead, Craig <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)> wrote:

Good afternoon Marshall –

Thank you for the opportunity to review the draft ITS, RPMs, and T&Cs for the Sandpoint Junction Connector project. The attached memo provides the results of our review. Please contact me any time for discussion or clarification of these items if needed, or if you need anything else for completion of consultation.

Talk to you soon,

**Craig Broadhead**

JACOBS | Inland Northwest Environmental Group Lead and Manager of Projects | 32 North 3<sup>rd</sup> Street, Ste. 304, Yakima WA 98901 | [REDACTED] Direct | [Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com) | [www.jacobs.com](http://www.jacobs.com)

---

**From:** Sugarman, Shelly CIV <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>  
**Sent:** Tuesday, March 26, 2019 1:06 PM  
**To:** Smith, Jason (Seattle) <[Jason.Smith6@jacobs.com](mailto:Jason.Smith6@jacobs.com)>; Swanson, Kristopher <[Kristopher.Swanson@BNSF.com](mailto:Kristopher.Swanson@BNSF.com)>; Fischer, Steven M CIV <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>; Hurst, Austin <[Austin.Hurst@BNSF.com](mailto:Austin.Hurst@BNSF.com)>; Dunn, Brian CIV <[Brian.Dunn@uscg.mil](mailto:Brian.Dunn@uscg.mil)>; Bordenave, Pierre <[Pierre.Bordenave@jacobs.com](mailto:Pierre.Bordenave@jacobs.com)>; 'Keim, Matthew' <[Matthew.Keim@BNSF.com](mailto:Matthew.Keim@BNSF.com)>; PaDelford, Sue S. <[Sue.PaDelford@jacobs.com](mailto:Sue.PaDelford@jacobs.com)>; Seattle, ESPConf <[ESPConf.Seattle@jacobs.com](mailto:ESPConf.Seattle@jacobs.com)>; Moore, James M CIV <[James.M.Moore2@uscg.mil](mailto:James.M.Moore2@uscg.mil)>  
**Cc:** Loftice, Nathan Joe <[Nathan.Loftice@BNSF.com](mailto:Nathan.Loftice@BNSF.com)>; Broadhead, Craig <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)>; Swanson, Jeff A <[Jeff.Swanson@BNSF.com](mailto:Jeff.Swanson@BNSF.com)>  
**Subject:** [EXTERNAL] FW: [Non-DoD Source] BNSF Sandpoint Connector Project

Hello everyone – just got this from USFWS. Please take a look and let me know if you have any concerns by Friday. If you need more time, let me know and I'll let Marshall know. As stated below, this is not for public release.

Thanks,

Shelly Sugarman

**From:** Williams, Marshall <[marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)>  
**Sent:** Tuesday, March 26, 2019 3:35 PM  
**To:** Sugarman, Shelly CIV <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>; Fischer, Steven M CIV <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>; Moore, James M CIV <[James.M.Moore2@uscg.mil](mailto:James.M.Moore2@uscg.mil)>  
**Subject:** [Non-DoD Source] BNSF Sandpoint Connector Project

Shelly, et al; the draft BiOp is nearly through with internal review, and I wanted to share the draft/pre-decisional incidental take statement, reasonable and prudent measures, and the terms and conditions in case the USCG had comments.

Please let me know.

Regards, Marshall

--

Marshall L. Williams

Fish and Wildlife Biologist

U.S Fish & Wildlife Service

11103 E. Montgomery Dr

Spokane, WA 99206

eMail: [marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)

[REDACTED]

[REDACTED]

[REDACTED]

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--

Marshall L. Williams

Fish and Wildlife Biologist

U.S Fish & Wildlife Service

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eMail: [marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)

[REDACTED]

[REDACTED]

[REDACTED]

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Marshall L. Williams

Fish and Wildlife Biologist

U.S Fish & Wildlife Service

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Spokane, WA 99206

eMail: [marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)

[REDACTED]

Re [EXTERNAL] BNSF Sandpoint Connector Project - response to draft T&Cs  
55K

postmaster@doi.gov <postmaster@doi.gov>  
To: marshall\_williams@fws.gov

Sun, Apr 7, 2019 at 4:30 PM

## Delivery has failed to these recipients or groups:

Smith, Carl F CTR (Carl.F.Smith@uscg.mil)

The server has tried to deliver this message, without success, and has stopped trying. Please try sending this message again. If the problem continues, contact your helpdesk.

### Diagnostic information for administrators:

Generating server: eis.doi.gov

Carl.F.Smith@uscg.mil

#550 4.4.7 QUEUE.Expired; message expired ##

Original message headers:

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Received: by mail-yb1-f197.google.com with SMTP id p12so5602972ybg.10 for <Carl.F.Smith@uscg.mil>; Fri, 05 Apr 2019 16:09:54 -0700 (PDT)

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MIME-Version: 1.0

References: <34E862816955A04FB7424BAB23A97FF338D45623@USLAS0-MSG049.jacobs.com>  
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<34E862816955A04FB7424BAB23A97FF3445DEE9F@USLAS0-MSG049.jacobs.com>  
<80B651478A90F14FA821CB3001AFBEC718431084@EMO-EXCH-2304.main.ads.uscg.mil>  
In-Reply-To: <80B651478A90F14FA821CB3001AFBEC718431084@EMO-EXCH-2304.main.ads.uscg.mil>  
From: "Williams, Marshall" <marshall\_williams@fws.gov>  
Date: Fri, 5 Apr 2019 16:09:36 -0700  
Message-ID: <CAGSbyhWth7uosFuRq0gya2HEgyKue=UCeNLkKWK0JvVbCgLuQ@mail.gmail.com>  
Subject: Re: [EXTERNAL] BNSF Sandpoint Connector Project - response to draft T&Cs  
To: "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>, Shelly Sugarman  
<Shelly.H.Sugarman@uscg.mil>  
CC: "Broadhead, Craig" <Craig.Broadhead@jacobs.com>, "Fischer, Steven M CIV"  
<Steven.M.Fischer3@uscg.mil>  
Content-Type: multipart/related; boundary="0000000000004939320585d09567"  
X-Gm-Spam: 0  
X-Gm-Phishy: 0  
Return-Path: marshall\_williams@fws.gov

Final-Recipient: rfc822;Carl.F.Smith@uscg.mil  
Action: failed  
Status: 4.4.7  
Diagnostic-Code: smtp;550 4.4.7 QUEUE.Expired; message expired  
X-Display-Name: Smith, Carl F CTR

----- Forwarded message -----

From: "Williams, Marshall" <marshall\_williams@fws.gov>  
To: "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>, Shelly Sugarman <Shelly.H.Sugarman@uscg.mil>  
Cc: "Broadhead, Craig" <Craig.Broadhead@jacobs.com>, "Fischer, Steven M CIV" <Steven.M.Fischer3@uscg.mil>  
Bcc:  
Date: Fri, 5 Apr 2019 16:09:36 -0700  
Subject: Re: [EXTERNAL] BNSF Sandpoint Connector Project - response to draft T&Cs

Hi Carl, I have received your email, and understand your request. I presume that you want the change because the USCG will not be doing the actual monitoring, but it will be delegated to a third party, hence the "ensure" language. But that's an assumption, so I'd prefer to have the USCG provide the basis for the request.

Just so we're on the same page: The Service consults with an action agency, but the Biological Opinion is a Service document, not a USCG document. The Terms and Conditions are non-discretionary and so the regulatory language of "shall" is appropriate in this section (Shall is not used else where in the document.) Please note that the Service is not concerned with whether the USCG sends a sailor out to do the monitoring, or has a third party do it (e.g. BNSF, or Jacobs, etc) -- but the USCG is however, responsible in seeing that it's done.

Thank you, Marshall Williams

On Fri, Apr 5, 2019 at 1:21 PM Smith, Carl F CTR <Carl.F.Smith@uscg.mil> wrote:

Craig and Marshall:

Please revise the language on the "Terms and Conditions" or anywhere else in the BO that makes statements to the effect of "the Coast Guard **shall** ....". Instead you can replace this language with "The Coast Guard **will ensure**....."

Please reply that you understand this and will make these changes.

Thank you,

Carl F Smith, CTR

Project Manager/Environmental Reviewer

Waterways Management

U.S. Coast Guard District 13

915 Second Avenue, Room 3510

Seattle, WA 98174-1067

Email: [Carl.F.Smith@uscg.mil](mailto:Carl.F.Smith@uscg.mil)

---

**From:** Broadhead, Craig <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)>

**Sent:** Wednesday, April 3, 2019 9:45 AM

**To:** Williams, Marshall <[marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)>; Sugarman, Shelly CIV <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>

**Cc:** Loftice, Nathan Joe <[Nathan.Loftice@bnsf.com](mailto:Nathan.Loftice@bnsf.com)>; Swanson, Jeff A <[Jeff.Swanson@bnsf.com](mailto:Jeff.Swanson@bnsf.com)>; Smith, Jason (Seattle) <[Jason.Smith6@jacobs.com](mailto:Jason.Smith6@jacobs.com)>; Swanson, Kristopher <[Kristopher.Swanson@bnsf.com](mailto:Kristopher.Swanson@bnsf.com)>; Fischer, Steven M CIV <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>; Hurst, Austin <[Austin.Hurst@bnsf.com](mailto:Austin.Hurst@bnsf.com)>; Dunn, Brian CIV <[Brian.Dunn@uscg.mil](mailto:Brian.Dunn@uscg.mil)>; Bordenave, Pierre <[Pierre.Bordenave@jacobs.com](mailto:Pierre.Bordenave@jacobs.com)>; Keim, Matthew <[Matthew.Keim@bnsf.com](mailto:Matthew.Keim@bnsf.com)>; PaDelford, Sue S. <[Sue.PaDelford@jacobs.com](mailto:Sue.PaDelford@jacobs.com)>; Moore, James M CIV <[James.M.Moore2@uscg.mil](mailto:James.M.Moore2@uscg.mil)>; Kaitala, Dava <[Dava.Kaitala@bnsf.com](mailto:Dava.Kaitala@bnsf.com)>; Smith, Carl F CTR <[Carl.F.Smith@uscg.mil](mailto:Carl.F.Smith@uscg.mil)>; Katy Fitzgerald <[katy\\_fitzgerald@fws.gov](mailto:katy_fitzgerald@fws.gov)>; Christy JohnsonHughes <[christy\\_johnsonhughes@fws.gov](mailto:christy_johnsonhughes@fws.gov)>

**Subject:** [Non-DoD Source] RE: [EXTERNAL] BNSF Sandpoint Connector Project - response to draft T&Cs

**Importance:** High

Thank you Marshall – we very much appreciate your timely review. Regarding the performance testing for the bubble curtain, the snapshot below is from 01EWF00-2016-F-0452, on a project near Anacortes, Washington. Let me know of any questions regarding the intent or how we implemented:

2. The USCG and BNSF shall conduct a performance test of the sound attenuation device prior to any impact pile driving or proofing. The performance test shall confirm calculated pressures and flow rates at each manifold ring.

Thanks also for the reply regarding Trestle Creek. Understanding this is a critical area for bull trout, we can ensure the Hydroacoustic Monitoring Plan includes this location. A couple of items for consideration is to define appropriate thresholds for disturbance at this location, to avoid subjectivity, and to define a scalable approach based on initial monitoring results. Looking forward to working with you on the plan –

Thanks again, and feel free to reach out with any further questions.

...Craig

**From:** Williams, Marshall <marshall\_williams@fws.gov>

**Sent:** Tuesday, April 02, 2019 9:19 AM

**To:** Broadhead, Craig <Craig.Broadhead@jacobs.com>

**Cc:** Sugarman, Shelly CIV <Shelly.H.Sugarman@uscg.mil>; Loftice, Nathan Joe <Nathan.Loftice@bnsf.com>; Swanson, Jeff A <Jeff.Swanson@bnsf.com>; Smith, Jason (Seattle) <Jason.Smith6@jacobs.com>; Swanson, Kristopher <Kristopher.Swanson@bnsf.com>; Fischer, Steven M CIV <Steven.M.Fischer3@uscg.mil>; Hurst, Austin <Austin.Hurst@bnsf.com>; Dunn, Brian CIV <Brian.Dunn@uscg.mil>; Bordenave, Pierre <Pierre.Bordenave@jacobs.com>; Keim, Matthew <Matthew.Keim@bnsf.com>; PaDelford, Sue S. <Sue.PaDelford@jacobs.com>; Moore, James M CIV <James.M.Moore2@uscg.mil>; Kaitala, Dava <Dava.Kaitala@bnsf.com>; Smith, Carl F CTR <Carl.F.Smith@uscg.mil>; Katy Fitzgerald <katy\_fitzgerald@fws.gov>; Christy JohnsonHughes <christy\_johnsonhughes@fws.gov>

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has worked in the past and provides data that the project is not exceeding the areal extent specified for take, please provide your thoughts, we'll work with you on an alternative plan, as stated in this section.

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I'd be happy to discuss these edits, or address any additional concerns from these statements, and look forward to completing this consultation.

Sincerely, Marshall Williams

On Fri, Mar 29, 2019 at 4:29 PM Broadhead, Craig <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)> wrote:

Good afternoon Marshall –

Thank you for the opportunity to review the draft ITS, RPMs, and T&Cs for the Sandpoint Junction Connector project. The attached memo provides the results of our review. Please contact me any time for discussion or clarification of these items if needed, or if you need anything else for completion of consultation.

Talk to you soon,

**Craig Broadhead**

JACOBS | Inland Northwest Environmental Group Lead and Manager of Projects | 32 North 3<sup>rd</sup> Street, Ste. 304, Yakima WA 98901 [REDACTED] Direct | [Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com) | [www.jacobs.com](http://www.jacobs.com)

---

**From:** Sugarman, Shelly CIV <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>

**Sent:** Tuesday, March 26, 2019 1:06 PM

**To:** Smith, Jason (Seattle) <[Jason.Smith6@jacobs.com](mailto:Jason.Smith6@jacobs.com)>; Swanson, Kristopher <[Kristopher.Swanson@BNSF.com](mailto:Kristopher.Swanson@BNSF.com)>; Fischer, Steven M CIV <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>; Hurst, Austin <[Austin.Hurst@BNSF.com](mailto:Austin.Hurst@BNSF.com)>; Dunn, Brian CIV



<[Brian.Dunn@uscg.mil](mailto:Brian.Dunn@uscg.mil)>; Bordenave, Pierre <[Pierre.Bordenave@jacobs.com](mailto:Pierre.Bordenave@jacobs.com)>; 'Keim, Matthew' <[Matthew.Keim@BNSF.com](mailto:Matthew.Keim@BNSF.com)>; PaDelford, Sue S. <[Sue.PaDelford@jacobs.com](mailto:Sue.PaDelford@jacobs.com)>; Seattle, ESPConf <[ESPConf.Seattle@jacobs.com](mailto:ESPConf.Seattle@jacobs.com)>; Moore, James M CIV <[James.M.Moore2@uscg.mil](mailto:James.M.Moore2@uscg.mil)>  
**Cc:** Loftice, Nathan Joe <[Nathan.Loftice@BNSF.com](mailto:Nathan.Loftice@BNSF.com)>; Broadhead, Craig <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)>; Swanson, Jeff A <[Jeff.Swanson@BNSF.com](mailto:Jeff.Swanson@BNSF.com)>  
**Subject:** [EXTERNAL] FW: [Non-DoD Source] BNSF Sandpoint Connector Project

Hello everyone – just got this from USFWS. Please take a look and let me know if you have any concerns by Friday. If you need more time, let me know and I'll let Marshall know. As stated below, this is not for public release.

Thanks,

Shelly Sugarman

**From:** Williams, Marshall <[marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)>  
**Sent:** Tuesday, March 26, 2019 3:35 PM  
**To:** Sugarman, Shelly CIV <[Shelly.H.Sugarman@uscg.mil](mailto:Shelly.H.Sugarman@uscg.mil)>; Fischer, Steven M CIV <[Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil)>; Moore, James M CIV <[James.M.Moore2@uscg.mil](mailto:James.M.Moore2@uscg.mil)>  
**Subject:** [Non-DoD Source] BNSF Sandpoint Connector Project

Shelly, et al; the draft BiOp is nearly through with internal review, and I wanted to share the draft/pre-decisional incidental take statement, reasonable and prudent measures, and the terms and conditions in case the USCG had comments.

Please let me know.

Regards, Marshall

--

Marshall L. Williams

Fish and Wildlife Biologist

U.S Fish & Wildlife Service

11103 E. Montgomery Dr

Spokane, WA 99206

eMail: [marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)

[REDACTED]

[REDACTED]

[REDACTED]

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--

Marshall L. Williams

Fish and Wildlife Biologist

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[REDACTED]

[REDACTED]

[REDACTED]

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--

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[REDACTED]

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 **Re [EXTERNAL] BNSF Sandpoint Connector Project - response to draft T&Cs**  
55K

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**Williams, Marshall** <[marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)>  
To: "Broadhead, Craig" <[Craig.Broadhead@jacobs.com](mailto:Craig.Broadhead@jacobs.com)>

Mon, Apr 8, 2019 at 7:44 AM

Resend. I received a message delivery failure. mw

----- Forwarded message -----

**From: Williams, Marshall** <[marshall\\_williams@fws.gov](mailto:marshall_williams@fws.gov)>

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[Quoted text hidden]

[Quoted text hidden]

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**Fischer, Steven M CIV** <Steven.M.Fischer3@uscg.mil>

Mon, Apr 8, 2019 at 9:25 AM

To: "Williams, Marshall" <marshall\_williams@fws.gov>, "Sugarman, Shelly CIV" <Shelly.H.Sugarman@uscg.mil>

Cc: "Broadhead, Craig" <Craig.Broadhead@jacobs.com>, "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>

Shelly have you seen this type of Language in other Coast Guard Lead EAs across the Country the "Coast Guard shall conduct a performance test..."?

Thanks

Steve

[Quoted text hidden]

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**Williams, Marshall** <marshall\_williams@fws.gov>

Mon, Apr 8, 2019 at 10:00 AM

To: "Fischer, Steven M CIV" <Steven.M.Fischer3@uscg.mil>

Cc: "Sugarman, Shelly CIV" <Shelly.H.Sugarman@uscg.mil>, "Broadhead, Craig" <Craig.Broadhead@jacobs.com>, "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>

Here you go...from 2016: 0IEWFW00-2016-F-0452

1. The USCG and BNSF shall submit a hydroacoustic monitoring plan to the Service's Washington Fish and Wildlife Office in Lacey, Washington (Attn: Ryan McReynolds, Federal Activities Branch), at least 30 days in advance of conducting any impact pile driving or proofing. The hydroacoustic monitoring plan shall follow the latest version of the Fisheries Hydroacoustic Working Group's Underwater Noise Monitoring Plan Template.
2. The USCG and BNSF shall conduct a performance test of the sound attenuation device prior to any impact pile driving or proofing. The performance test shall confirm calculated pressures and flow rates at each manifold ring.
3. The USCG and BNSF shall ensure that a qualified individual is present during all impact pile driving and proofing to observe and report any indications of dead, injured, or distressed fish.

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**Williams, Marshall** <marshall\_williams@fws.gov>

Wed, Apr 10, 2019 at 8:00 AM

To: "Broadhead, Craig" <Craig.Broadhead@jacobs.com>

Cc: "Sugarman, Shelly CIV" <Shelly.H.Sugarman@uscg.mil>, "Loftice, Nathan Joe" <Nathan.Loftice@bnsf.com>, "Swanson, Jeff A" <Jeff.Swanson@bnsf.com>, "Smith, Jason (Seattle)" <Jason.Smith6@jacobs.com>, "Swanson, Kristopher" <Kristopher.Swanson@bnsf.com>, "Fischer, Steven M CIV" <Steven.M.Fischer3@uscg.mil>, "Hurst, Austin" <Austin.Hurst@bnsf.com>, "Dunn, Brian CIV" <Brian.Dunn@uscg.mil>, "Bordenave, Pierre" <Pierre.Bordenave@jacobs.com>, "Keim, Matthew" <Matthew.Keim@bnsf.com>, "PaDelford, Sue S." <Sue.PaDelford@jacobs.com>, "Moore, James M CIV" <James.M.Moore2@uscg.mil>, "Kaitala, Dava" <Dava.Kaitala@bnsf.com>, "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>

Shelly/Craig;

Here is a modified Trestle Creek monitoring plan for the T & Cs, for your review.

USCG shall measure peak, SEL, and RMS sound pressure levels in water that is at least 8 meters deep near the mouth of Trestle Creek during the daytime, and when no pile driving activities are underway to determine background sound levels. The background SPL for this location, for comparison during pile driving, will either be 150 dB RMS, or the actual measured RMS, which ever is higher. Sound pressure levels will again be measured at this location when construction of permanent Bridge 3.9 commences to determine if SPLs exceed background levels. If it is found that SPLs exceed background levels, the USCG will reinstate consultation with the Service to determine if they will impede immigration and emigration from critical spawning and rearing habitat. If SPLs do not exceed background levels, no further monitoring of this site is necessary for the duration of the Project.

Regards, mw  
[Quoted text hidden]

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**Fischer, Steven M CIV** <Steven.M.Fischer3@uscg.mil> Wed, Apr 10, 2019 at 1:34 PM  
To: "Williams, Marshall" <marshall\_williams@fws.gov>  
Cc: "Broadhead, Craig" <Craig.Broadhead@jacobs.com>, "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>, "Sugarman, Shelly CIV" <Shelly.H.Sugarman@uscg.mil>

Mr. Williams: Regarding the language that the USCG requests be used in the USFWS BO for this project, the USCG has the following basis for our request:

Although the USCG is the lead federal agency, we do not own the project. Therefore, we will not actually be conducting the actions prescribed by USFWS. However, we are responsible for seeing that the actions are done. Therefore, language to the effect of "The USCG shall **ensure** the action is done is more correct and appropriate than stating the USCG **shall do** the action.

Below are a few examples from other bridge projects with excerpts from federal agency BO's showing the language we prefer, so that you are aware our request is typical, appropriate, and not precedent setting.

### **BNSF Wind River Bridge - NMFS Biological Opinion**

#### 2.8.3 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 or incidental take (50 CFR 402.02). The **BNSF must:**

1. Minimize incidental take (injury) of juvenile salmon and steelhead rearing in the action area by minimizing the number of impact pile driver strikes used to proof 30 inch diameter steel temporary bridge piles.
2. Minimize incidental take (harassment) of adult salmon and steelhead migrating into the Wind River by ensuring that there are significant blocks of time each day when there is no impact pile driving.
3. Minimize incidental take (death) of juvenile salmon and steelhead from piscivorous predators by minimizing the amount of time that the temporary bridge piling remain in place to provide predators ambush cover.
4. Prepare and provide NMFS with a plan describing how incidental take on listed species in the action area will be monitored. Prepare and provide NMFS a report documenting the results of incidental take monitoring.

### **BNSF Little White Salmon River Bridge - NMFS Biological Opinion**

#### 2.8.3 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 or incidental take (50 CFR 402.02). The **BNSF must:**

1. Minimize incidental take (injury) of juvenile salmon and steelhead rearing in the action area by minimizing the number of impact pile driver strikes used to proof 24 inch diameter steel temporary bridge piles.

### **BNSF Little White Salmon River Bridge- USFWS Biological Opinion**

## 17 TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the ESA, the USGS must comply with the following terms and conditions, which implement the RPM described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

1. To implement RPM 1, the **USGS shall ensure that:**

a. The amount and extent of take is monitored by preparing a report identifying any incidental take associated with project activities and describing conservation measures implemented to minimize take. The report shall include a description of construction activities conducted, the duration of all construction activities, conservation measures implemented, and the following:

### **Lewis And Clark Bridge (Oregon DOT project with FHWA as lead agency) NMFS Biological Opinion)**

#### 2.8.4 Terms and Conditions

1. To implement reasonable and prudent measure #1 (conservation measures for transportation and restoration projects), the **Oregon Division shall ensure that:** a. Every action funded or carried out under this opinion will be administered by the Oregon Division consistent with conservation measures 1 through 6. b. For each action involving compensatory mitigation, erosion and pollution control, fish passage, or site restoration, conservation measures 9 through 24, as appropriate, will be added as conditions of funding. c. For each action involving construction, conservation measures 25 through 37, as appropriate, will be added as conditions of funding.

Steve Fischer

13th Coast Guard District

Waterways Management (dpw)

Bridge Program Administrator/Chief

**From:** Williams, Marshall <marshall\_williams@fws.gov>

**Sent:** Friday, April 5, 2019 4:10 PM

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[Quoted text hidden]

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**Williams, Marshall** <marshall\_williams@fws.gov>

To: "Fischer, Steven M CIV" <Steven.M.Fischer3@uscg.mil>

Cc: "Broadhead, Craig" <Craig.Broadhead@jacobs.com>, "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>, "Sugarman, Shelly CIV" <Shelly.H.Sugarman@uscg.mil>

Wed, Apr 10, 2019 at 1:53 PM

Mr. Fisher, the Service can live with "shall ensure" language as long as it's acknowledged that the USCG is responsible (as above). The Service however can not tell a third party (BNSF) what to do. It is unfortunate that this oversight was put in to other Biological Opinions.

If we can get an answer back soonest on the modified language for the Trestle Creek Monitoring that I sent earlier today, I'll try and get this finalized with the Assistant State Supervisor tomorrow, or Friday (she's currently out sick.)

[Quoted text hidden]

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**Fischer, Steven M CIV** <Steven.M.Fischer3@uscg.mil>

Wed, Apr 10, 2019 at 2:03 PM

To: "Williams, Marshall" <marshall\_williams@fws.gov>

Cc: "Broadhead, Craig" <Craig.Broadhead@jacobs.com>, "Smith, Carl F CTR" <Carl.F.Smith@uscg.mil>, "Sugarman, Shelly CIV" <Shelly.H.Sugarman@uscg.mil>

Thanks Marshall, We will look at the Trestle Creek modified language and get back to you soon.

Thanks

Steve

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