

# SLOPES Programmatic Consultation

For: Kootenai Valley Resource Initiative  
Date: 19 July 2021

## ENDANGERED SPECIES ACT SECTION 7 CONSULTATION

### BIOLOGICAL OPINION

for

U. S. Army Corps of Engineers  
Standard Local Operating Procedures for Endangered Species (SLOPES) for  
Selected Nationwide Permit Activities Affecting Bull Trout and Kootenai River  
White Sturgeon in Western Montana and Northern Idaho

TAILS Number: 06E11000-2020-F-0181

#### Action Agency:

U. S. Army Corps of Engineers  
Walla Walla District  
Walla Walla, Washington

#### Consultation Conducted by:

U. S. Fish and Wildlife Service  
Montana Ecological Services Office  
Kalispell, Montana

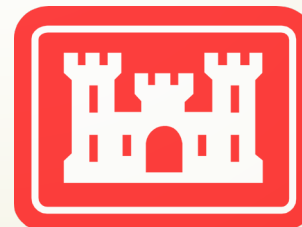
And

U. S. Fish and Wildlife Service  
Northern Idaho Field Office  
Spokane, Washington

February 18, 2020

**Ryan Bart**

U.S. Fish and Wildlife Service  
Northern Idaho Field Office



**US Army Corps  
of Engineers®**

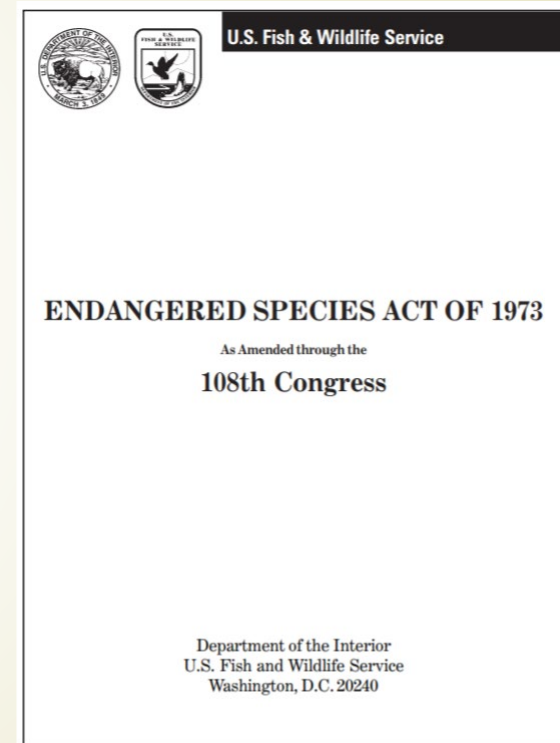
**William Schrader**

U.S. Army Corps of Engineers  
Regulatory Division

# Endangered Species Act


## Under Section 7(a)(2):

Federal action agencies are required to consult with the U.S. Fish and Wildlife Service to ensure no actions are likely to jeopardize listed species or destroy critical habitat.









# ESA Consultation Process

- Federal action agencies determine the effects of a proposed project in a “biological assessment.”
  - FWS either concurs or not with the determinations.
  - If federally-listed species are likely to be taken, then FWS prepares a “biological opinion.”
  - Consultation is needed for all projects federally permitted, approved or funded.
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# Programmatic Consultation

-  Allow federal agencies to consult on routine actions in a large geographic area
-  Expedites the ESA Consultation Process
-  Eliminates or streamlines requirement of a Biological Assessment
-  Reduces Costs for Everyone



# SLOPES Programmatic

- **S**tandard **L**ocal **O**perating **P**rocedures for **E**ndangered **S**pecies
  - For selected USACE Nationwide Permit activities affecting bull trout and Kootenai River white sturgeon
- Service issued initial Biological Opinion for SLOPES May 2013
- SLOPES was renewed February 2020
- Covers all of Boundary County

# SLOPES Species

## Kootenai River White Sturgeon

- Endangered
- Endemic to Kootenai River
- Long lived late maturing



## Bull Trout

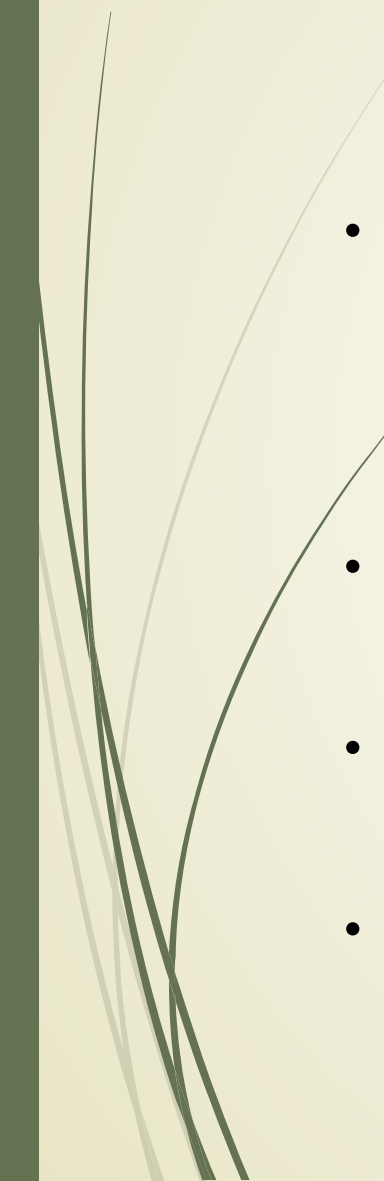
- Threatened
- Fluvial and adfluvial
- Clean and cold water







# Activities Covered by SLOPES

- **Maintenance Activities**
    - Repair or replacement of existing structure or fill
    - Minor deviation allowed to meet current construction standards
  - **Utility Lines**
    - Typically buried cables or pipes for residential use
  - **Minor Discharges and Excavation**
    - Any activity discharging less than 25 cubic yards
  - **Temporary Construction, Access, and Dewatering**
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# Activities Covered by SLOPES

- **Bank Stabilization**
  - Using vegetation, soil, large wood, rock, or structure (i.e., barbs), with a preference for bioengineering.
  - Must be vegetated regardless of materials
- **Linear Transportation**
  - New road construction, road repair, crossings, etc.
- **Restoration, Establishment, and Enhancement**
  - Broad category; any activity with the purpose of improving natural habitats.



# Conservation Measures

(Appendix E of the programmatic)

1. NWP Conditions
2. Project Design
3. In-Water Work Timing
4. Work Area Isolation
5. Erosion Control Measures
6. Pollution and Invasive Species Control Measures
7. Site Restoration



# Highlighted Conservation Measures

- Compliance with Nationwide Permit Conditions
- Work will be done in the dry, if possible, or otherwise isolated: Work will be done during work windows
- Buffers for staging/refueling will be set at the necessary distance to prevent introduction of chemical contaminants
- Riprap material will be keyed into the bank, limited to below Ordinary High Water Mark (OHWM), and include native woody vegetation



# Work Windows

## Kootenai River White Sturgeon

- August 1-April 1 in channel disturbances

## Bull Trout

- **Rivers**
  - FMO July 1 and September 30
  - SR May 1 and August 31
- **Lakes**
  - In the dry during lake draw down period



# Excluded or Prohibited Activities

- **General**
  - Performing in-water work without isolation
  - Revegetating with non-native species
  - Unscreened intakes, or establishment of new intakes and outfalls
  - Barriers to fish passage at low flows
  - Temporary bypass channel over 300 feet (must be piped), and bypassing over 300 feet for more than 30 days
  - New seawall, retaining wall, or bulkheads
  - Pond construction in streams or wetlands
  - Large dam removal (>10' head)
  - Relocating more than 300 linear feet of channel



# Excluded or Prohibited Activities

- **Utility Lines**
  - Oil and gas exploration or production
  - Upgrades for service area expansion
  - Foundations for transmission towers
  - Wet trenching
- **Linear Transportation**
  - New roads within 300 feet of streams occupied by bull trout or Kootenai River white sturgeon
  - New bridge abutments below OHWM
  - Culverts without grade controls
  - Leaving unutilized old bridge components in place upon new bridge construction



# Excluded or Prohibited Activities

- **Bank Stabilization**

- Use of concrete, cable, or chains
- Stabilizing over 300 linear feet of bank
- Discharging more than 1 cubic yard per linear foot below OHWM
- Excavating more than 10 cubic yards below OHWM
- End-dumping rock
- Placing rock above OHWM
- Barbs extending beyond  $\frac{1}{4}$  channel width

- **Mainstem Kootenai River**

- All activities prohibited except for the following:  
Bioengineering bank stabilization with minimal use of rock (above restrictions also apply).





# Variance

- If the effects of a project are within the evaluation and take limits of SLOPES but not exactly as described in the covered activities, the following must be included in the pre-project checklist:
  1. Justification for the proposed variance.
  2. Description of additional actions necessary to offset any likely adverse effects of the variance, as appropriate.
  3. An explanation of how the resulting effects are within the range of effects considered in this SLOPES.



# Variance

- USFWS will decide on the request, in writing, within 30 days of receipt. If variance is denied, the project will require:
  - Conforming to the SLOPES activity categories and excluded activities as described.
  - Redesign and resubmission of new variance request to address concerns identified by USFWS.
  - Individual consultation (either formal or informal)
- A variance may allow for some excluded or prohibited activities, such as exceeding length limits on bank stabilization.

# QUESTIONS?

## U.S. Fish and Wildlife Service

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## U.S. Army Corps of Engineers

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