



UNITED STATE DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
West Coast Region  
1201 NE Lloyd Boulevard, Suite 1100  
Portland, OR 97232-1274

January 23, 2019

Ms. Michele DeHart  
Fish Passage Center  
847 NE 19<sup>th</sup> Avenue, Suite 250  
Portland, OR 97213

Dear Ms. DeHart,

On January 19, 2018, the National Marine Fisheries Service (NMFS) issued a Determination of Take for Research Purposes (Determination) for the Smolt Monitoring Program and Comparative Survival Study (9-18-FPC47). This Determination authorized the take of listed salmonids to complete this study, pursuant to the Endangered Species Act (ESA). The Determination detailed annual reporting and re-authorization requirements. On November 27, 2018, we received the Fish Passage Center's 2018 reports pursuant to the Determination. On December 14, 2018, we received your complete application to renew the Determination for the 2019 Smolt Monitoring Program and Comparative Survival Study. On December 22, 2018, the federal government experienced a partial lapse in appropriations. Non-essential NMFS employees were furloughed, and we consequently have yet to complete consideration of your 2019 application.

Under Section 558(c) of the Administrative Procedure Act (“APA”), if a permittee submits a “timely and sufficient application” for the renewal of its Program in accordance with NMFS’s requirements, the prior Determination will remain valid until NMFS makes a decision on the permittee’s renewal request.<sup>a</sup> Granting an extension of the prior Determination allows important research to continue uninterrupted, while ensuring that we meet the legal requirements of the ESA and APA. We interpret the “sufficient application” to be the formal submittal from the Fish Passage Center requesting renewal of the prior Determination of Take. We interpret a “timely” application for consideration to be an application submitted before January 1 of the upcoming research year.

The Fish Passage Center submitted a “timely” application requesting a Determination for the 2019 Smolt Monitoring Program and Comparative Survival Study. We have therefore concluded that the 2018 Determination is extended pending our final decision on your 2019 application. It should be noted that the extension of the 2018 Determination applies only to projects as they were described in the approved 2018 study, and only to the extent that the study involves research or monitoring of an ongoing, multi-year nature.

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<sup>a</sup> The language of APA Section 558(c) states that “[w]hen [a] licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.” 5 U.S.C. § 558(c). Here, the Determination of Take constitutes a “license” for a “continuing activity” due to the annual nature of the reauthorization.



Once appropriations are restored and the partial government shutdown ends, this extension will be superseded by a 2019 Determination of Take. If you have any questions please contact Dr. Scott Rumsey at (503) 789-1219, or at [scott.rumsey@noaa.gov](mailto:scott.rumsey@noaa.gov).

Sincerely,



Barry A. Thom  
Regional Administrator

cc: Michele Weaver – ODFW  
Ritchie Graves, Blaine Bellerud – NMFS