

## DRAFT FINDING OF NO SIGNIFICANT IMPACT

# Federal Participation in Watercraft Inspection Stations and Rapid Response Actions to Protect the Columbia River Basin Nevada and Wyoming

June 2020

The U.S. Army Corps of Engineers, Walla Walla District (Corps) has conducted an environmental analysis in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended. The Draft Supplemental Environmental Assessment dated May of 2020 considers the effects of geographic expansion of the Watercraft Inspection Stations program which addresses the threat of invasive quagga mussels (*Dreissena bugensis*) and zebra mussels (*Dreissena polymorpha*), together termed “dreissenids”, in the states of Nevada and Wyoming.

The SEA, incorporated herein by reference, evaluated two alternatives that could postpone the spread of dreissenids to reservoirs operated and maintained by the Corps within the Columbia River Basin by preventing their spread in the proposed project area. The preferred alternative, or recommended plan is the National Economic Development (NED) Plan and includes geographically expanding the existing cost-share program which is active in the states of Idaho, Montana, Oregon, and Washington to include watercraft inspections, monitoring, and rapid response efforts in Nevada and Wyoming. Also incorporated herein by reference are the Corps 2019 *Dreissenid Mussel Rapid Response Action Plan Programmatic Environmental Assessment*, the Corps 2019 *Draft Dreissenid Mussel Rapid Response Action Plan*, and the Corps 2017 *Final Integrated Letter Report and Programmatic Environmental Assessment for Federal Participation in Watercraft Inspection Stations in the Columbia River Basin*.

Two alternatives were evaluated in the Draft Supplemental Environmental Assessment; Alternative 1, the No Action Alternative (continue under the current cost share program with Idaho, Montana, Oregon, and Washington) and Alternative 2, the Proposed Action Alternative (geographically expand the cost-share program to include watercraft inspections and rapid response efforts in Nevada and Wyoming). The Corp’s obligation to consider alternatives in an Environmental Assessment is a lesser one than under an Environmental Impact Statement. Alternatives considered under NEPA must include, at least, the No Action Alternative (which provides a baseline from which to compare other alternatives) and the Proposed Action Alternative. It is acceptable to limit analysis to only these two alternatives when the federal action is a response to an authorization from Congress. Consequently, only the No Action and Proposed Action Alternative were analyzed.

For both alternatives, the potential effects to the following resources were evaluated:

	In-depth evaluation conducted	Brief evaluation due to minor effects	Resource unaffected by action
Aesthetics	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Air quality	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Aquatic resources/wetlands	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invasive species	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fish and wildlife habitat	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Threatened/Endangered species	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Historic properties	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other cultural resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floodplains	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hazardous, toxic & radioactive waste	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Hydrology	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Land use	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Navigation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Noise levels	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Public infrastructure	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Socio-economics	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Environmental justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Soils	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Tribal trust resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Climate change	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

All practical means to avoid or minimize adverse environmental effects were analyzed and incorporated into the recommended plan. Best management practices (BMPs) as detailed in the *Dreissenid Mussel Rapid Response Action Plan Programmatic Environmental Assessment* would be implemented to minimize impacts.<sup>1</sup>

Pursuant to section 7 of the Endangered Species Act (ESA) of 1973, as amended, the U.S. Army Corps of Engineers determined that the recommended expansion of watercraft inspection stations and monitoring for dreissenids would have no effect on federally listed species or their designated critical habitat. The Corps determined that expansion of rapid response would potentially adversely affect federally listed species.

<sup>1</sup> 40 CFR 1505.2(C) all practicable means to avoid and minimize environmental harm are adopted.

In May 2018, in compliance with Section 7(a)(2) of the Endangered Species Act, the Corps prepared a Biological Assessment (BA) and initiated Section 7 consultation on the *Draft Dreissenid Mussel Rapid Response Action Plan* in the states of Idaho, Montana, Oregon, and Washington with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) (collectively “the Services”). This BA was amended in May 2020 to include the expansion to Nevada and Wyoming. The Corps determined the proposed action “may affect, and is likely to adversely affect” 19 ecologically significant units of salmon and steelhead under the jurisdiction of the National Marine Fisheries Service, 51 ESA-listed species under the jurisdiction of the US Fish and Wildlife Service, and critical habitat for all species while protecting the species and habitats from the severe risk of aquatic invasive species. The Corps also determined that the proposed action would result in no take of species protected under the Migratory Bird Treaty Act, no disturbance or take under the Bald and Golden Eagle Protection Act, no effect to yellow-billed cuckoo, and no effect on essential fish habitat pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act.

On October 23, 2018, the Corps requested formal programmatic framework consultation with NMFS and USFWS. Consultation will be complete when Biological Opinions from the Services are received and accepted by the Corps for implementation.

As of May 2020, consultation with the Services has not been completed, though the Corps expects that the Services will issue non-jeopardy Biological Opinions for activities in Nevada and Wyoming under the *Draft Dreissenid Mussel Rapid Response Action Plan* (Plan). The Services have indicated a reluctance to consult on the Plan due to the lack of specificity regarding where and when treatment activities would occur in the action area. The USFWS has indicated a preference the Corps follow emergency ESA consultation procedures if an infestation is discovered in the proposed action area. The Corps continues to request and pursue programmatic consultation as required under ESA. Congress has directed the Corps to work with the states to develop a rapid response plan, pursuant to Section 104 of the River and Harbor Act of 1958, as amended. It is specifically this requirement to develop a rapid response plan that has persuaded the Corps to request programmatic consultation.

If dreissenids are discovered in the proposed action area prior to the completion of programmatic consultation, the Corps would act to implement response actions under emergency ESA consultation procedures. Under emergency ESA consultation, the Corps would notify the Services of the location and details of the emergency action and receive measures to minimize impacts from the Services within 48 hours. The Corps would act according to the draft proposed Plan and implement the measures recommended by the Services, as well as the Best Management Practices and Conservation Measures listed in Section 4 of the *Dreissenid Mussel Rapid Response Action Plan Programmatic Environmental Assessment*. After treatment is complete, the Corps would identify any incidental take of a species or an adverse effect to critical habitat that resulted from the emergency response action and initiate formal consultation following normal procedures.

The Corps anticipates entering into a cost-share agreement with the states of Nevada and Wyoming (or an agent for those states) prior to completing consultation. Some preparatory elements of the Proposed Action Alternative, including equipment purchases and training, would need to be implemented prior to receiving Biological Opinions from the Services to ensure the states are prepared to respond to an infestation if discovered. These preparatory elements are outlined in Section 2.2.3 of the *Dreissenid Mussel Rapid Response Action Plan Programmatic Environmental Assessment*.

After initiation of consultation, Section 7(d) of the ESA prohibits federal agencies from making "any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. . . ." (16 U.S.C. § 1536(d)). Should a state request cost sharing for preparatory elements of the proposed action, the Corps may fund those actions if it determines they would not have any adverse effect on ESA listed species or critical habitat, or foreclose consideration of alternative measures. Such a determination would be documented in a memorandum for record. Additionally, preparatory actions that do not violate Section 7(d), as outlined above, would likely also qualify (individually or collectively) for a "No Effect" finding under the ESA.

Pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended, the Corps determined that the proposed action has no potential to cause effects on historic properties. However, if additional amenities requiring ground disturbing activities are requested, supplemental Section 106 review would be required before approval.

Section 402 of the Clean Water Act (CWA), the National Pollutant Discharge Elimination System (NPDES) program, pertains to discharge of pollutants. Aquatic pesticide application would require approval for use under a NPDES permit, either from the United States Environmental Protection Agency for treatments on Tribal Reservations, the Nevada Division of Environmental Protection, or the Wyoming Department of Environmental Quality.

Section 401 of the CWA requires that any federal activity that may result in a discharge of a pollutant or dredged or fill material to waters of the United States must first receive a water quality certification from the state in which the activity would occur. If a permit under either Section 402 or 404 is needed for an action, Section 401 Water Quality Certification is also needed. In this case, application of chemical treatments would be covered by existing programmatic general permits, not new permits and Section 401 Certification would not be required.

See Section 5 of the Draft Supplemental Environmental Assessment for a discussion of how the proposed action complies with other laws, regulations, and Executive Orders.

Technical and environmental criteria used in the formulation of alternative plans were those specified in the Water Resources Council's 1983 *Economic and*

*Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies.* All applicable laws, executive orders, regulations, and local government plans were considered in evaluation of alternatives.<sup>2</sup> Based on these reports, the reviews by other federal, state and local agencies, Tribes, input of the public, and the review by my staff, it is my determination that implementation of the recommended plan would not significantly affect the human environment; therefore, preparation of an Environmental Impact Statement is not required.

---

Date

---

Christian N. Dietz  
Lieutenant Colonel, Corps of Engineers  
District Commander

DRAFT

---

<sup>2</sup> 40 CFR 1505.2(B) requires identification of relevant factors including any essential to national policy which were balanced in the agency decision.