US Army Corps
of Engineers
Seattle District

SPECIAL PUBLIC NOTICE

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Final Regional Conditions and Water Quality Certification and Coastal Zone Management Consistency Decisions for the 2012 Nationwide Permits in Washington State and the 2012 Nationwide Permit User's Guide

The Seattle District of the U.S. Army Corps of Engineers (Corps) is issuing final regional conditions for the 2012 Nationwide Permits (NWPs) and publishing Coastal Zone Management (CZM) Consistency responses from the Washington State Department of Ecology (Ecology) and Section 401 Water Quality Certification decisions from Ecology, Region 10 of the U.S. Environmental Protection Agency (EPA), and the nine Tribes in Washington (Chehalis, Lummi Nation, Port Gamble S'Klallam, Kalispel, Makah, Puyallup, Spokane, Swinomish, and Tulalip tribes) with Section 401 certification authority in the enclosed *2012 Nationwide Permit User's Guide in Washington State (User's Guide)*.

The information in the *2012 Nationwide Permit User's Guide* attached to this special public notice forms the basis by which the NWP program will be implemented in Washington State until the 2012 NWPs are revised, rescinded, or revoked. Any future actions or revisions affecting the NWPs will be announced by special public notice and a revised *User's Guide* will be published. Please check our website for the most up-to-date version of the *User's Guide* www.nws.usace.army.mil, select "Regulatory/Permitting".

Pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899, the Secretary of the Army, acting through the U.S. Army Corps of Engineers, is responsible for administering a Regulatory Program (33 CFR, Parts 320-331) that requires permits for certain activities in waters of the United States, including wetlands.

Under Section 404, the Corps regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Under Section 10, the Corps regulates structures and/or work in or affecting the course, condition, or capacity of navigable waters of the United States. Activities requiring Corps authorization that are similar in nature and have minimal individual and cumulative environmental impacts may qualify for authorization by general permit, such as a nationwide permit. On February 21, 2012, the Corps published in the *Federal Register* the final notice of issuance of the Nationwide Permits, effective March 19, 2012.

The Seattle District has coordinated with Federal, State, and tribal representatives to develop final regional conditions. The public review process helped the Corps develop reasonable and enforceable regional conditions that make sense to the regulated public, provide a reasonable level of resource protection, and are relatively efficient to implement. The 2012 NWPs are scheduled to expire after five years, on March 18, 2017. The *User's Guide* describes the final regional conditions and other requirements for using the 2012 NWPs in Washington State.

US Army Corps
of Engineers
Seattle District

Effective Date: June 15, 2012

User's Guide For Nationwide Permits in Washington State

Includes:
National Conditions
Seattle District Regional General Conditions
401 Certification General Conditions
401 Water Quality Certifications
Coastal Zone Management Act Consistency Determinations

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INTRODUCTION

Pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers (Corps), is responsible for administering a Regulatory Program that requires permits for certain activities in waters of the United States, including wetlands. Under Section 404, the Corps regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Under Section 10, the Corps regulates structures and/or work in or affecting the course, condition, or capacity of navigable waters of the United States.

Activities requiring Corps authorization that are similar in nature and have minimal individual and cumulative environmental impacts may qualify for authorization by a general permit, such as a nationwide permit. On February 21, 2012, the Corps issued 50 nationwide permits (the "2012 NWPs"). On March 18, 2012, the Seattle District issued regional conditions for the 2012 NWPs. This User's Guide lists national and regional conditions as well as Coastal Zone Management (CZM) Consistency responses from the Washington State Department of Ecology (Ecology) and Section 401 Water Quality Certification decisions from Ecology, Region 10 of the U.S. Environmental Protection Agency (EPA), and the nine Tribes in Washington (Chehalis, Lummi Nation, Port Gamble S'Klallam, Kalispel, Makah, Puyallup, Spokane, Swinomish, and Tulalip tribes) with Section 401 certification authority.

The information in this User's Guide forms the basis by which the NWP program will be implemented in Washington State until the 2012 NWPs are revised, rescinded, or revoked. The 2012 NWPs are scheduled to expire on March 18, 2017.

PRE-CONSTRUCTION NOTIFICATION

Most NWP actions require that the applicant submit a Pre-Construction Notification (PCN) to the Corps, prior to commencing any work. In the Seattle District, a PCN can be submitted in the form of a completed Joint Aquatic Resources Permit Application (JARPA) (http://www.epermitting.wa.gov/site/alias__resourcecenter/jarpa_jarpa_form/9984/jarpa_form.aspx). Per Nationwide Permit General Conditions 18 and 20, submittal of a PCN and receipt of written approval from the Corps before work commences is required for all NWP activities which involve the potential to affect a threatened or endangered species and/or historic properties. Because of the numerous threatened or endangered species and/or their critical habitat in waters of the U.S. in Washington State, if you will be performing an activity in fish bearing waters of the U.S. in Washington State, you should submit a PCN and receive written approval from the Corps before work can commence, even if the work meets the requirements of an Endangered Species Act (ESA) programmatic consultation. Also, because of the large number of native American Tribes currently and historically utilizing fish bearing waters of the U.S. in Washington State, there is a high potential for the presence of historic properties in and near waters of the U.S.; therefore, if you will be performing an activity in waters of the U.S. in Washington State, you should submit a PCN and receive written approval from the Corps before work can commence.

SECTION 401 WATER QUALITY CERTIFICATION

Under Section 401 of the CWA, an activity involving a discharge into waters of the U.S. authorized by a federal permit must receive water quality certification (WQC) from the appropriate certifying agency or Tribe. The issuance of a WQC means that the activity will comply with the water quality standards and any established effluent limitations of the certifying agency or Tribe.

Under 33 USC 1341, a Section 401 water quality certification is required for construction or operation of facilities which may result in any discharge into the navigable waters. Per Ecology, this "discharge"

may include the re-suspension of sediments. In certain circumstances, Ecology has determined that there may be such a "discharge" of this nature for Section 10 only activities and 401 WQC is required. The Corps NWP verification letter will discuss any 401 WQC requirements and provide appropriate agency contact information to the permittee. It is the permittee's responsibility to ensure they have the appropriate 401 WQC prior to starting work.

In Washington State, two agencies and nine tribes currently have 401 WQC authority. The EPA has 401 certification authority in Indian Country. Indian County includes reservation lands, trust lands, and Dependent Indian Communities. Dependent Indian Communities refers to a limited category of Indian lands that are neither reservation or trust lands that satisfy the following two requirements (1) they are set aside by the federal government for the use as Indian land and (2) they must be under federal superintendence. To date, the EPA has granted nine tribes (Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, Spokane Tribe of Indians, Swinomish Tribe and Tulalip Tribes) 401 certification authority over activities on their respective tribal lands. Ecology is authorized to make 401 certification decisions for activities on all other federal, public, and private lands in Washington State.

Please refer to Appendix B for more information on Section 401 determinations.

COASTAL ZONE MANAGEMENT ACT CONSISTENCY

The Coastal Zone Management Act (CZM) requires States to review all federal permits for consistency with the State's coastal management program. In Washington State, Ecology is the agency responsible for CZM review in Washington's 15 coastal counties:

Clallam	Kitsap	Skagit
Grays Harbor	Mason	Snohomish
Island	Pacific	Thurston
Jefferson	Pierce	Wahkiakum
King	San Juan	Whatcom

Ecology reviews proposed projects to determine if the project activities are consistent with Washington's Coastal Zone Management Program's Enforceable Policies. For certain projects as described in this document you may need to submit a CZM Certification of Consistency Form. This form can be found at our website at www.nws.usace.army.mil, select Regulatory Permitting, then select Forms.

ENDANGERED SPECIES ACT

The National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) (collectively, the Services) have listed or proposed many species of plants, fish, birds, and other animals in waters of the U.S. in Washington State as endangered or threatened under the ESA. In addition, the habitat for some of these species has been designated as critical for their conservation.

In accordance with Section 7 of the ESA, the Corps consults with the Services on any work proposed in an application for a Department of the Army permit – including nationwide permits – that may affect an ESA-listed species or its designated critical habitat. To expedite the consultation process and comply with this law, the Corps requests applicants to prepare a biological evaluation (BE) or biological assessment (BA) of the work they propose. A BE/BA is an assessment of the impacts a proposed project will have on listed and/or proposed-for-listing ESA species and designated and/or proposed critical habitat. More detailed ESA related information including how to prepare and submit a BE/BA, details on programmatic consultations, and Specific Project Information Forms are posted at

Seattle District's web page, www.nws.usace.army.mil (select Regulatory/Permits, then Permit Guidebook, Endangered Species). Applicants may also contact the Seattle District at (206) 764-3495 for assistance.

The ESA procedures discussed above are required for all work affecting or potentially affecting ESA-listed species or designated critical habitat. These procedures apply regardless of the nature, scope, or environmental impact of the work. Please refer to NWP General Condition 18 (Endangered Species) and General Condition 31 (Pre-Construction Notification) for additional requirements and procedures. Applicants should be aware that Section 7 coordination and/or consultation may add substantial time to the permit application review process.

OTHER RELATED FEDERAL LAWS AND REQUIREMENTS

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to determine how a proposed project may affect recorded or undiscovered cultural resources and/or historic properties within the permit area. Section 106 directs federal agencies with jurisdiction over a proposed federal undertaking (i.e., federal permit) to take into account the effect of the undertaking on any historic property listed, or eligible for listing, in the National Register of Historic Places. Compliance with Section 106 is a requirement of all NWP verifications pursuant to NWP General Condition 20 (Historic Properties) and Seattle District Regional General Condition 6 (Cultural Resources and Human Burials).

A cultural resource/historic property survey, conducted by a professional archaeologist, may be necessary before a NWP verification can be completed. Applicants should be aware that Section 106 coordination and/or consultation may add substantial time to the permit application review process.

Magnuson-Stevens Act

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) govern marine fisheries management in the U.S. The MSA mandates the identification of Essential Fish Habitat (EFH) for federally managed species as well as the development of measures to conserve and enhance the habitat necessary for fish to carry out their life cycles. The MSA requires federal agencies to consult with NMFS before authorizing, funding, or conducting an activity that may adversely affect EFH. When consulted, NMFS provides guidance, in the form of conservation recommendations, to help federal agencies minimize the impact of their actions on EFH. Compliance with the MSA is a requirement of all NWP verifications in Washington State pursuant to Seattle District Regional General Condition 7 (Essential Fish Habitat).

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act authorizes the Secretary of the Interior, through the U.S. Fish and Wildlife Service, to assist and cooperate with federal, state, and public or private agencies and organizations in the conservation and rehabilitation of wildlife whenever the waters of a stream or other waterbody would be impounded, diverted, deepened, or otherwise controlled or modified. The Act requires proponents to also consult with the state wildlife resources agency and, when appropriate, NMFS. This coordination helps conserve our wildlife resources by preventing or reducing the loss of those resources and, whenever possible, improving those resources.

Wild and Scenic Rivers

The National Wild and Scenic Rivers System was created by Congress in 1968 to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations. The Act is notable for safeguarding the special character of these rivers, while also recognizing the potential for their appropriate use and

development. If you are working in a designated wild and scenic river, additional coordination with the U.S. Forest Service and/or the National Park Service is required. In the Seattle District, the following systems have been designated as wild and scenic river systems:

Skagit River System (Skagit County): The segment of the Skagit River from the pipeline crossing at Sedro Woolley upstream to and including the mouth of Bacon Creek; the Cascade River from its mouth to the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the boundary of the Glacier Peak Wilderness Area at Mill Creek; the Sauk River from its mouth to its junction with the South Fork of the Sauk to the boundary of the Glacier Peak Wilderness Area.

Klickitat River (Klickitat County): From the confluence with Wheeler Creek near the town of Pitt, to the confluence with the Columbia River.

White Salmon River (Klickitat County): From its confluence with Gilmer Creek near the town of B Z Corner to its confluence with Buck Creek.

RELATED STATE LAWS AND REQUIREMENTS

Hydraulic Project Approval

Pursuant to Washington's Hydraulic Code, the Washington State Department of Fish and Wildlife (WDFW) requires a Hydraulic Project Approval (HPA) for any work that would affect the bed or flow of state waters including all work in salt water or fresh water, which often includes wetlands. For more information, please visit http://wdfw.wa.gov/hab/hpapage.htm or contact the WDFW at Washington Department of Fish and Wildlife, 600 Capitol Way North, Olympia, WA, 98501-1091; (360) 902-2200.

Activities On State-Owned Aquatic Lands

All projects proposed to occur on state-owned aquatic lands require separate authorization from the Washington Department of Natural Resources (WDNR). The WDNR is the manager of 2.6 million acres of state-owned aquatic lands. WDNR's administrative rules (WAC 332-30-107 (6)) require that substantial and/or irreversible impacts to state-owned aquatic lands be fully mitigated. For further information, contact the WDNR's Aquatic Resources Division at (360) 902-1100 or visit their Leasing & Land Transactions webpage at http://www.dnr.wa.gov/BusinessPermits/Leasing/Pages/Home.aspx.

Marine Sanctuaries and Estuarine Reserves

The WDNR presently manages six aquatic reserves in Washington State located at Cherry Point in Whatcom County, Cypress Island in Skagit County, Fildago Bay in Skagit County, Maury Island in King County, Protection Island in Jefferson County, and Smith and Minor Islands in Island County. Applicants with projects occurring on state-owned aquatic lands within designated aquatic reserve boundaries must be in compliance with the site specific management plan. For further information contact the WDNR's Aquatic Resources Division at (360) 902-1100 or view their Aquatic Reserves Program website at
http://www.dnr.wa.gov/ResearchScience/Topics/AquaticHabitats/Pages/aqr_rsve_aquatic_reserves_program.aspx.

State Clean Up Sites

Any activity or work authorized under these NWPs will not preclude the permittee from cleanup-related liabilities where this work is undertaken at a cleanup site designated under the Model Toxics Control Act.

OTHER IMPORTANT INFORMATION

Wetland Delineations

Wetland delineations are an important component of any jurisdictional determination involving wetlands. Wetland delineations must be conducted in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and all applicable regional supplements and guidance, including the Arid West Regional Supplement Version 2.0 dated September 2008 and the Western Mountains, Valleys, and Coast Regional Supplement Version 2.0 dated May 2010, or the most recent approved version. Please refer to *Components of a Complete Wetland Delineation Report* for more details. This document can be found on our webpage at www.nws.usace.army.mil, select Regulatory/Permits, then Forms.

A wetland should also be assessed using the *Washington State Wetland Rating System*, which assigns a wetland into one of four categories based on the type and extent of functions it performs, sensitivity to disturbance, rarity, and practicability of being replaced. A wetland rating can provide important information to regulatory agencies reviewing permit applications. Documents and forms for both the eastern and western Washington rating systems are available at Ecology's webpage: www.ecy.wa.gov/programs/sea/wetlands/ratingsystems/index.html.

Mitigation

Mitigation is a sequential process that requires applicants to first avoid and minimize impacts to waters of the U.S, prior to providing compensatory mitigation. Compensatory mitigation is used to offset losses that cannot be otherwise avoided or minimized. A compensatory mitigation plan is used to compensate for the unavoidable loss of waters of the U.S. (wetlands, streams, rivers, etc) and to ensure that those losses minimize adverse effects to the aquatic environment. Mitigation plans must be prepared in accordance with the Federal Compensatory Mitigation for Losses of Aquatic Resources Final Rule (33 CFR Parts 325 and 332, April 10, 2008). In the Seattle District, you can meet this requirement for wetland compensatory mitigation by preparing your mitigation plan in accordance with the Washington State Department of Ecology Publication #06-06-011a, Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance and Part 2: Developing Mitigation Plans (Version 1), dated March 2006. This publication is available at Ecology's webpage: http://www.ecy.wa.gov/biblio/0606011b.html.

Tribal Rights

In the geographic limits of the Seattle District there are over 30 federally-recognized Tribes. Many of these Tribes have "usual and accustomed fishing grounds" (U and A). The Seattle District must determine if a proposed project may affect the U and A of a Tribe as required by NWP General Condition 17 (Tribal Rights). If a project may affect the U and A of a Tribe, these concerns must be addressed before a permit can be issued. Please be aware that this can add significant time to the processing of your application.

Dredged Material Management Program

The Corps' Dredged Material Management Program is consulted for all proposed activities involving excavation or dredging of a water of the U.S. Based on this consultation, you may have to provide additional information regarding the chemical and biological content of the proposed excavated or dredged material as part of your permit application.

Navigable Waters of the United States

Section 10 of the Rivers and Harbors Act requires Corps authorization for most structures and/or work in or affecting navigable waters of the U.S. A list of navigable waters in Washington State is available at: www.nws.usace.army.mil (select Regulatory/Permits, then Permit Guidebook, Streams, Rivers, and Tidal Waters).

SEATTLE DISTRICT REGIONAL GENERAL CONDITIONS

Permittees must comply with all applicable Seattle District regional general conditions in order for their NWP authorization to be valid.

1. **Aquatic Resources Requiring Special Protection.**

Activities resulting in a loss of waters of the United States in a mature forested wetland, bog, bog-like wetlands, aspen-dominated wetlands, alkali wetlands, wetlands in a dunal system along the Washington coast, vernal pools, camas prairie wetlands, estuarine wetlands, and wetlands in coastal lagoons cannot be authorized by a NWP, except by the following NWPs:

NWP 3 – Maintenance
NWP 20 – Oil Spill Cleanup
NWP 32 – Completed Enforcement Actions
NWP 38 – Cleanup of Hazardous and Toxic Waste

In order to use one of the above-referenced NWPs in any of the aquatic resources requiring special protection, you must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) and obtain written approval before commencing work.

2. **Commencement Bay**. The following NWPs may not be used to authorize activities located in the Commencement Bay Study Area (Figure 1) requiring Department of the Army authorization:

NWP 12 – Utility Line Activities (substations)
NWP 13 – Bank Stabilization
NWP 14 – Linear Transportation Projects
NWP 23 – Approved Categorical Exclusions
NWP 29 – Residential Developments
NWP 39 – Commercial and Institutional Developments
NWP 40 – Agricultural Activities
NWP 41 – Reshaping Existing Drainage Ditches
NWP 42 – Recreational Facilities
NWP 43 – Stormwater Management Facilities

3. **New Bank Stabilization Prohibition Areas in Tidal Waters of Puget Sound.** Activities involving new bank stabilization in tidal waters in Water Resource Inventory Areas 8, 9, 10, 11, and 12 (within the specific area identified on Figure 2) cannot be authorized by a NWP.

NOTE: *For the purposes of this condition, replacement of existing, currently serviceable, previously authorized bank stabilization within the original footprint is not considered "new" bank stabilization.*

4. **Bank Stabilization**. Any project including new or maintenance bank stabilization activities requires Pre-Construction Notification to the District Engineer in accordance with NWP General Condition 31 for Pre-Construction Notification. This requirement does not apply to maintenance work exempt by 33 CFR 323.4 (a)(2). Each notification must also include the following information:

a. Need for the work, including the cause of the erosion and the threat posed to structures, infrastructure, and/or public safety. The notification must also include a justification for the need to

place fill or structures waterward of the line of the Corps' jurisdiction (typically, the ordinary high water mark or mean higher high water mark).

b. Current and expected post-project sediment movement and deposition patterns in and near the project area. In tidal waters, describe the location and size of the nearest bluff sediment sources (feeder bluffs) to the project area and current and expected post-project nearshore drift patterns in the project area.

c. Current and expected post-project habitat conditions, including the presence of fish, wildlife and plant species, submerged aquatic vegetation, spawning habitat, and special aquatic sites (e.g., vegetated shallows, riffle and pool complexes, or mudflats) in the project area.

d. In rivers and streams, an assessment of the likely impact of the proposed work on upstream, downstream and cross-stream properties (at a minimum the area assessed should extend from the nearest upstream bend to the nearest downstream bend of the watercourse). Discuss the methodology used for determining effects. The Corps reserves the right to request an increase in the reach assessment area to fully address the relevant ecological reach and associated habitat.

e. For new bank stabilization activities in rivers and streams, describe the type and length of existing bank stabilization within 300 feet up and downstream of the project area. In tidal areas, describe the type and length of existing bank stabilization within 300 feet along the shoreline on both sides of the project area.

f. Demonstrate the proposed project incorporates the least environmentally damaging practicable bank protection methods. These methods include, but are not limited to, the use of bioengineering, biotechnical design, root wads, large woody material, native plantings, and beach nourishment in certain circumstances. If rock must be used due to site erosion conditions, explain how the bank stabilization structure incorporates elements beneficial to fish. If the Corps determines you have not incorporated the least environmentally damaging practicable bank protection methods and/or have not fully compensated for impacts to aquatic resources, you must submit a compensatory mitigation plan to compensate for impacts to aquatic resources.

g. A planting plan using native riparian plant species unless the applicant demonstrates a planting plan is not appropriate or not practicable.

5. **Crossings of Waters of the United States.** Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts, requires pre-construction notification to the District Engineer in accordance with NWP General Condition 31 for Pre-Construction Notification. This requirement does not apply to maintenance work exempt by 33 CFR 323.4 (a)(2). Each notification must also include the following information:

a. Need for the crossing.

b. Crossing design criteria and design methodology.

c. Rationale behind using the specific design method for the crossing.

NOTE 1: *If stream simulation design method is not used to design the proposed watercourse crossing, the PCN must include justification for utilizing a different method. The stream simulation design method can be found in the "Fish Passage Technical Assistance Design of Road Culverts for Fish Passage"* which can be found at WDFW's website: http://wdfw.wa.gov/conservation/habitat/fish_passage/guidance_standards.html.

NOTE 2: *If you have a Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife, WDFW can typically provide you with the crossing design criteria and methodology they utilized as part of their HPA review.*

6. **Cultural Resources and Human Burials.** Permittees must immediately stop work and notify the District Engineer within 24 hours if, during the course of conducting authorized work, human burials, cultural resources, or historic properties, as identified by the National Historic Preservation Act, are discovered. Failure to stop work in the area of discovery until the Corps can comply with the provisions of 33 CFR 325 Appendix C, the National Historic Preservation Act, and other pertinent laws and regulations could result in a violation of state and federal laws. Violators are subject to civil and criminal penalties.

7. **Essential Fish Habitat.** An activity which may adversely affect essential fish habitat, as identified under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), may not be authorized by NWP until essential fish habitat requirements have been met by the applicant and the Corps. Non-federal permittees shall notify the District Engineer if essential fish habitat may be affected by, or is in the vicinity of, a proposed activity and shall not begin work until notified by the District Engineer that the requirements of the essential fish habitat provisions of the MSA have been satisfied and the activity is authorized. The notification must identify the type(s) of essential fish habitat (e.g., Pacific salmon, groundfish, and/or coastal-pelagic species) managed by a Fishery Management Plan that may be affected. Information about essential fish habitat is available at NOAA's website: www.nwr.noaa.gov.

8. **Vegetation Protection and Restoration.** Permittees must clearly mark all construction area boundaries before beginning work. The removal of native vegetation in riparian areas and wetlands, and the removal of submerged aquatic vegetation in estuarine and tidal areas must be avoided and minimized to the maximum extent practicable. Areas subject to temporary vegetation removal shall be replanted with appropriate native species by the end of the first planting season following the disturbance except as waived by the District Engineer. If an aquaculture area is permitted to impact submerged aquatic vegetation under NWP 48, the aquaculture area does not need to be replanted with submerged aquatic vegetation.

9. **Access**. You must allow representatives of this office to inspect the authorized activity at any time deemed necessary to ensure the work is being, or has been, accomplished in accordance with the terms and conditions of your permit.

10. **Contractor Notification of Permit Requirements**. The permittee must provide a copy of the nationwide permit verification letter, conditions, and permit drawings to all contractors involved with the authorized work, prior to the commencement of any work in waters of the U.S.

2012 NATIONWIDE PERMIT SPECIFIC TERMS AND CONDITIONS

The 2012 Nationwide Permits are listed below. For each NWP, we include: (1) a summary of pre-construction notification (PCN) requirements, (2) Seattle District's regional permit-specific conditions, (3) State, EPA, and Tribal 401 Certification decisions, including any permit-specific 401 Certification conditions, and (4) the State's CZM consistency responses, including any permit-specific CZM consistency conditions. Please note that typically only one agency or Tribe will have 401 Certification authority over a given project, depending on the location of the project. Please refer to Appendix B for further information.

In addition to complying with the terms and permit-specific conditions listed below, permittees must comply with all applicable National, Regional, State, EPA, and Tribal General Conditions listed in this document.

1. Aids to Navigation

The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

401 Certification – Not required by EPA or Tribes with 401 authority. Certified by Ecology.

CZM Consistency Response – Concur.

2. Structures in Artificial Canals

Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

401 Certification – Not required by EPA or Tribes with 401 authority. Certified by Ecology.

CZM Consistency Response – Concur.

***NOTE**: Designated Artificial Canals in Seattle District are Birch Bay Village at Birch Bay, Lagoon Point Association at Whidbey Island, Mariners Cove at Whidbey Island, Newport Shores at Lake Washington, Sandy Point at Lummi Bay, Shelter Bay at Swinomish Channel, Twin Bridge Marine Park at Swinomish Channel, and Willow Grove Boat Launch Basin at Willow Grove Island in the Columbia River.*

3. Maintenance

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and/or the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. The placement of new or additional riprap must be the minimum necessary to protect

the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) crossing of a water of the U.S. (Regional General Condition 5)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
f) an affect or potential to affect listed historic properties (National General Condition 20)
g) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

Agency Notification: *Agency notification is required for NWP 3 if bank stabilization work is proposed beyond the original footprint. The Corps will provide the project description and drawings to the Environmental Protection Agency, U.S. Fish and Wildlife Service, and Washington State Department of Natural Resources and allow them a 10 calendar day response period. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification.*

NOTE 1*: To facilitate and expedite our review of the applicability of this NWP to your project, submit information on previous Corps authorizations, current state of the existing structure or fill, and current and proposed use of structure or fill.*

NOTE 2*: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

***NOTE 3**: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

***NOTE 4**: The Seattle District, other federal, state and local agencies and tribes are concerned about the potential cumulative environmental impacts of bank stabilization projects. The Seattle District will carefully review all applications involving bank stabilization activities and use its discretionary authority to require Department of the Army authorization by standard individual permit for any project that would have more than a minimal individual or cumulative adverse impact on the aquatic environment.*

State 401 Certification – Certified, subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activities are below the OHWM with new work being proposed outside the original footprint.

2. The proposed project or activity increases the original footprint of the structure by more than 1/10th acre in wetlands. Note 1: "Original footprint" refers to the configuration of the structure or filled area within the last two years. Note 2: This may include causing surrounding wetlands to be drained.

3. The project or activity includes adding a new structure, such as a weir, flap gate/tide gate, or culvert to the site.

EPA 401 Certification – Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. An individual 401 certification is required for projects authorized under this NWP if:

1. The project or activity would extend beyond the original project footprint (either along the shoreline or below MHHW or OHWM), or

2. Any activity requiring excavation or dredging in open water.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur, subject to the following condition: When individual 401 review is triggered, a CZM Certificate of Consistency form must be submitted for project located within the 15 coastal counties (See State General 401 Condition 3 (Notification)).

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities

Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 Pre-Construction Notification for grading, berm construction, placement of substrate, and other activities involving a discharge of dredged or fill material.

2. The commercial harvest of clams by means of hydraulic escalator harvester equipment is not authorized by this NWP.

NOTE 1*: Shellfish seeding activities are not authorized by NWP 4. The discharge of shells, shell fragments, gravel, etc, may be authorized by NWP 48.*

NOTE 2*: This NWP does not apply to fish hatcheries, net pens, or other structures for aquaculture activities to propagate non-motile species such as mussels and oysters.*

State 401 Certification – Certified. Permittee must meet Ecology 401 General Conditions.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur.

5. Scientific Measurement Devices

Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)
e) construction of weirs and flumes that do not meet Washington Department of Fish and Wildlife fish passage design criteria (NWP 5, Regional Condition 2)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. Devices and any structures or fills associated with the devices must be completely removed within 30 days upon completion of the use of the device to measure and record scientific data and the site restored to its original condition.

2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 for Pre-Construction Notification for the construction of weirs and flumes that do not meet Washington Department of Fish and Wildlife fish passage design criteria (see http://www.wdfw.wa.gov/hab/engineer/cm/culvert_manual_final.pdf).

3. The quantity of discharged material and the volume of area excavated must not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line and the discharge will not cause the loss of more than 1/10th of an acre of waters of the U.S.

State 401 Certification – Certified. Permittee must meet Ecology 401 General Conditions.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur.

6. Survey Activities

Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 1/10-acre in waters of the U.S. Discharges and structures associated with the recovery of historic resources are not

authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 for Pre-Construction Notification for exploratory trenching activities and any project or activity involving oil or natural gas exploration.

2. The quantity of discharged material and the volume of area excavated must not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line and the discharge will not cause the loss of more than 1/10 of an acre of waters of the U.S.

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity involves oil or natural gas exploration.
2. The project or activity requires trenching in wetlands.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur, subject to the following condition: When individual 401 review is triggered, a CZM Certificate of Consistency form must be submitted for project located within the 15 coastal counties (See State General 401 Condition 3 (Notification)).

7. Outfall Structures and Associated Intake Structures

Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (NPDES) (Section 402 of the Clean Water Act). The

construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) and NWP 7 Regional Condition 1 listed below for notification requirements.

Regional Conditions –

1. The pre-construction notification must include the following information: location and size of any submerged aquatic vegetation beds in the project vicinity (a formal survey may be required) and location and size of forage fish spawning areas in the project vicinity (e.g., documented or potential Pacific sand lance (*Ammodytes hexapterus*), Pacific herring (*Clupea pallasi*), surf smelt (*Hypomesus pretiosus*),and Pacific eulachon (*Thaleichthys pacificus*)).

Agency Notification: *If the outfall is new, agency notification is required. The Corps will provide the project description and drawings to the Environmental Protection Agency and Washington State Department of Natural Resources and allow them a 10 calendar day response period. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification.*

***NOTE 1**: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

***NOTE 2**: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

***NOTE 3**: The survey should be conducted in the late summer to more accurately assess the full extent of the submerged aquatic vegetation.*

***NOTE 4**: To facilitate the review of your application, applicants should submit a copy of their NPDES compliance.*

State 401 Certification – Certified. Permittee must meet Ecology 401 General Conditions.

EPA 401 Certification – Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. Individual 401 certification required for projects authorized under this NWP if:

1. The projects having associated outfall to a special aquatic site (including mud-flat, vegetated shallows, wetland), or

2. The project or activities have an associated outfall to a special aquatic site (including mud-flat, vegetated shallows, wetland), or

3. The project or activities could affect submerged aquatic vegetation in marine waters or forage fish.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur.

8. Oil and Gas Structures on the Outer Continental Shelf

Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Bureau of Ocean Energy Management. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f), as well as 33 CFR 322.5(l) and 33 CFR part 334. Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

401 Certification – Not required by EPA or Tribes with 401 authority. Denied without prejudice by Ecology. Individual 401 is required by Ecology for all activities authorized under this NWP.

CZM Consistency Response – Object. Individual CZM Consistency Response must be obtained from the State for projects or activities in the 15 coastal counties. A CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

9. Structures in Fleeting and Anchorage Areas

Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose. (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

401 Certification – Not required by EPA or Tribes with 401 authority. Certified by Ecology.

CZM Consistency Response – Concur.

***NOTE**: Anchorage and fleeting areas in Seattle District are listed in the Coast Guard anchorage regulations, 33 CFR 110.228-230 (http://www.access.gpo.gov/nara/cfr/waisidx_05/33cfr110_05.html).*

10. Mooring Buoys

Non-commercial, single-boat, mooring buoys. (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. NWP 10 may not be used in any waterbody the Washington State Department of Health has designated as "closed" to shellfish harvesting (due to the number of boats moored in the waterbody). The Seattle District will publish the list of closed waterbodies in a Special Public Notice as waterbodies are added or removed from this list.

2. NWP 10 may not be used in any waterbody the Washington State Department of Health has designated as "threatened" due to the number of boats moored in the waterbody. This designation is made on an annual basis by the Washington State Department of Health. The Seattle District will publish the list of threatened waterbodies in a Special Public Notice as waterbodies are added or removed from this list.

***NOTE 1**: At the time of publication of this Special Public Notice, no waterbodies are listed as "closed" and Filucy Bay is listed as "threatened". Check with the Seattle District for the current list of "closed" or "threatened" waterbodies.*

***NOTE 2**: To minimize impacts and to expedite Endangered Species Act review, we recommend applicants complete and follow the terms and conditions detailed in the Programmatic Consultation Specific Project Information Form for Mooring Buoys located on* Seattle District's web page, www.nws.usace.army.mil (select Regulatory/Permits, then Permit Guidebook, Endangered Species). *This includes the completion and submittal of a survey of submerged aquatic vegetation (e.g., kelp and eelgrass). The appropriate survey protocols must be undertaken. These protocols can be found at the Washington State Department of Fish and Wildlife website. In addition, the Corps' programmatic ESA protocols require surveying a larger area encompassing 25 feet plus the length of the moored vessels from vegetated shallows.*

***NOTE 3**: Washington State Department of Natural Resources has specific guidance for installation of mooring buoys on state-owned aquatic lands entitled How Do I Authorize My Mooring Buoy? at: http://www.dnr.wa.gov/recreationeducation/howto/homeowners/pages/aqr_mooring_buoy.aspx. All projects proposed to occur on State-owned aquatic lands will require separate authorization from WDNR. For further information contact the WDNR's Aquatic Resources Division at (360) 902-1100 or Leasing & Land Transactions.*

401 Certification – Not required by EPA or Tribes with 401 authority. Certified by Ecology.

CZM Consistency Response – Concur.

11. Temporary Recreational Structures

Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

***NOTE**: To minimize impacts and to expedite ESA review, we recommend that temporary recreational structures do not exceed 4 per acre and floats be no larger than 400 square feet in total overwater coverage.*

401 Certification – Not required by EPA or Tribes with 401 authority. Certified by Ecology.

CZM Consistency Response – Concur.

12. Utility Line Activities

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 31.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 4: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) crossing of a water of the U.S. (Regional General Condition 5)
c) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
d) an affect or potential to affect listed historic properties (National General Condition 20)
e) impacts a designated critical resource waters (National General Condition 22)
f) mechanized land clearing in a forested wetland for a utility line right-of-way or for the construction of a substation (NWP 12 Notification Condition and NWP 12 Regional Condition 2);
g) a Section 10 permit is required;
h) the utility line exceeds 500 feet in waters of the U.S.;
i) the utility line is in waters of the U.S. and runs parallel to or along a stream bed;
j) the discharge will result in the loss of greater than 1/10 acre of waters of the U.S;
k) a permanent access road is constructed above grade for a distance of more than 500 feet;
l) or permanent access roads are constructed in waters of the United States with impervious materials (h – l are required by NWP 12 Notification Conditions)

See National General Condition 31 (Pre-Construction Notification) and NWP 12 Regional Condition 3 listed below for notification requirements.

Regional Conditions –

1. When backfilling trenches in wetlands, no more than 10 percent of the soil used to backfill the top 12 inches of the trench may consist of subsurface soil.

2. The permittee must submit a pre-construction notification to the District Engineer in accordance with National General Condition 31 (Pre-Construction Notification) for mechanized land clearing in a forested wetland for the construction of a substation.

3. A pre-construction notification must include drawings and/or a description of the measures that will be used to prevent permanent drainage of adjacent areas by the backfilled trench and/or along the buried utility line.

NOTE 1*: In waters subject to scour, permittee may be required to determine the scour level for the watercourse the utility line will cross and may be required to place the line below the scour level of the watercourse.*

NOTE 2*: The National Ocean Service (NOS) must be notified when the Corps authorizes a submerged utility line. The applicant must notify the NOS and the Corps in writing, at least 2 weeks before work begins and upon completion of the activity authorized by this permit. The notification of completion must include a drawing which certifies the location and configuration of the completed activity. Notifications to NOS should be sent to: NOAA/NOS, Office of Coast Survey, N/CS261, 1315 East-West Highway, Silver Spring, Maryland 20910-3283.*

NOTE 3*: Utility lines constructed under Section 10 navigable waters of the U.S. require a permit from the Corps.*

NOTE 4*: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 5*: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review required for projects or activities authorized under this NWP if:

1. The entire utility line project or activity impacts more than ½ acre of wetlands.

Note: *Projects or activities that need a FERC license will be required to obtain an Individual 401 Certification as part of the FERC license process.*

EPA 401 Certification – Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. Individual 401 certification required for projects authorized under this NWP if:

1. Any excavation or dredging activities affecting open water areas (e.g., trenching across streams), or

2. There are any permanent access roads, temporary structures or fill associated with the utility line activities, or

3. The entire scope of the project involves greater than 1/10 acre of impacts to aquatic resources.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur, subject to the following condition: When individual 401 review is triggered, a CZM Certificate of Consistency form must be submitted for project located within the 15 coastal counties (See State General 401 Condition 3 (Notification)).

13. Bank Stabilization

Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;

(c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;

(e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

(g) The activity is not a stream channelization activity.

This NWP also authorizes temporary structures, fills, and work necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Invasive plant species shall not be used for bioengineering or vegetative bank stabilization.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 31.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements:
Pre-Construction Notification required in all instances.

See Seattle District Regional General Condition 4 and National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

Agency Notification: *If an activity is greater than 300 feet in length or is in inland marine waters, agency notification is required. The Corps will provide the project description and drawings to the Environmental Protection Agency, U.S. Fish and Wildlife Service, and Washington State Department of Natural Resources and allow them a 10 calendar day response period. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification.*

***NOTE 1**: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

***NOTE 2**: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

***NOTE 3**: Fills for bank stabilization in special aquatic sites, including pool and riffle complexes, wetlands, and mudflats are discouraged.*

***NOTE 4**: The length of a bank protection project, especially in the case of barbs, is measured as the total length of shoreline/bank to be protected by the structure(s).*

***NOTE 5**: The Seattle District, other federal, state and local agencies and tribes are concerned about the potential cumulative environmental impacts of bank stabilization projects. The Seattle District will carefully review all applications involving bank stabilization activities and use its discretionary authority to require Department of the Army authorization by standard individual permit for any project that would have more than a minimal individual or cumulative adverse impact on the aquatic environment.*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions.

1. Individual 401 Certification is required for new, or expansion of existing, bank stabilization in marine and estuarine waters of Puget Sound.

2. Individual 401 review is required for projects or activities authorized under this NWP if:
    a. The project or activity is greater than 500 feet in length.

    b. The project or activity has not been designed and stamped by a Professional Engineer or Engineering Geologist.

    c. The project or activity exceeds an average of one cubic yard per running foot below the Ordinary High Water Mark or High Tide Line.

    d. The project or activity involves discharges of dredged or fill material into special aquatic sites.

EPA 401 Certification – Denied. Individual 401 certification is required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur, subject to the following condition: When individual 401 review is triggered, a CZM Certificate of Consistency form must be submitted for project located within the 15 coastal counties (See State General 401 Condition 3 (Notification)).

14. Linear Transportation Projects

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) crossing of a water of the U.S. (Regional General Condition 5)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)
g) loss of waters of the United States is greater than 1/10 acre (NWP 13 Notification Condition)
h) the discharge is in a special aquatic site (NWP 13 Notification Condition)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. Private linear transportation crossings placed in waters of the U.S. with footprints wider than 22 feet or longer than 200 feet are not authorized by this NWP. For the width requirement, "footprint" refers to the footprint of the width of the roadway fill prism.

2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) for linear transportation crossing activities in tidal waters.

***NOTE 1**: Applicants must provide information in the PCN about changes in base and peak flows and water quality impacts that would result directly or indirectly from the proposed linear transportation crossing as required by NWP General Conditions 9 (Management of Water Flows), 25 (Water Quality), and 31 (Pre-Construction Notification).*

***NOTE 2**: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

***NOTE 3**: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Certified subject to conditions. Permittee must meet State 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The entire linear transportation project or activity impacts more than ½ acre of wetlands or more than 1/3 acre of tidal waters.

2. The project includes fill related to a residential and/or commercial development.

EPA 401 Certification – Denied. Individual 401 certification is required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur, subject to the following condition: When individual 401 review is triggered, a CZM Certificate of Consistency form must be submitted for project located within the 15 coastal counties (See State General 401 Condition 3 (Notification)).

15. U.S. Coast Guard Approved Bridges

Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under Section 9 of the Rivers and Harbors Act of 1899 and other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) crossing of a water of the U.S. (Regional General Condition 5)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional conditions – None.

***NOTE 1**: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

***NOTE 2**: A list of navigable waters of the United States in Washington State is available at: http://www.nws.usace.army.mil/PublicMenu/documents/REG/Navigable_waters.pdf*

State 401 Certification – Certified.

***Note:** An Individual 401Certification will be required as part of the Coast Guard permit process.*

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur.

16. Return Water from Upland Contained Disposal Areas

Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs in an area that has no waters of the United States and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404

permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional conditions – None.

***NOTE**: The applicant must ensure that suspended contaminated sediments are not re-entering the waterways and impacting state-owned aquatic lands. All projects impacting State-owned aquatic lands will require separate authorization from WDNR. For further information contact the WDNR's Aquatic Resources Division at (360) 902-1100 or Leasing & Land Transactions.*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if

1. The project or activity is in or adjoining a cleanup site.

   ***Note**: To determine if your project is in or adjoining a cleanup site, visit Ecology's Cleanup Projects search tool at: https://fortress.wa.gov/ecy/gsp/SiteSearchPage.aspx.*

EPA 401 Certification – Denied. Individual 401 certification is required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur, subject to the following condition: When Individual 401 review is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

17. Hydropower Projects

Discharges of dredged or fill material associated with hydropower projects having: (a) less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances. See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional conditions – None.

***NOTE 1**: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

***NOTE 2**: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

***NOTE 3**: To facilitate the permit review process, applicants should submit documentation of their FERC license or exemption.*

State 401 Certification – Denied without prejudice.

EPA 401 Certification – Denied. Individual 401 certification is required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Object. An Individual CZM Consistency Response must be obtained from the State for projects or activities in the 15 coastal counties. A CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

18. Minor Discharges

Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

(a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

(b) The discharge will not cause the loss of more than 1/10-acre of waters of the United States; and

(c) The discharge is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) crossing of a water of the U.S. (Regional General Condition 5)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)
g) discharge or excavation volume exceeds 10 cubic yards below the plane of ordinary high water or high tide line (NWP 18 Notification Condition)
h) the discharge occurs in a special aquatic site (NWP 18 Notification Condition)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional conditions – None.

NOTE 1*: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 2*: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Certified. Permittee must meet Ecology 401 General Conditions.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur.

19. Minor Dredging

Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)
e) occurs in submerged aquatic vegetation, riffle and pool complexes, or mudflats (Regional Condition 1 listed below)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) for dredging proposed to occur in submerged aquatic vegetation, riffle and pool complexes, or mudflats.

***NOTE**: The applicant must ensure that suspended contaminated sediments are not re-entering the waterways and impacting state-owned aquatic lands. All projects impacting State-owned aquatic lands will require separate authorization from WDNR. For further information contact the WDNR's Aquatic Resources Division at (360) 902-1100 or Leasing & Land Transactions.*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity is in or adjoining a cleanup site.

***Note**: To determine if your project is in or adjoining a cleanup site, visit Ecology's Cleanup Projects search tool at: https://fortress.wa.gov/ecy/gsp/SiteSearchPage.aspx.*

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur, subject to the following condition: When Individual 401 review is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

20. Response Operations for Oil and Hazardous Substances

Activities conducted in response to a discharge or release of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) the Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or

oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional conditions –

1. For spill response training exercises in special aquatic sites, the discharge of dredged or fill material must not cause the loss of greater than ½ acre of waters of the U.S.

State 401 Certification – Certified. Permittee must meet Ecology 401 General Conditions.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur.

21. Surface Coal Mining Activities

Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations.

(a) Previously Authorized Surface Coal Mining Activities. Surface coal mining activities that were previously authorized by the NWP 21 issued on March 12, 2007 (see 72 FR 11092), are authorized by this NWP, provided the following criteria are met:

(1) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or as part of an integrated permit processing procedure by the Department of Interior, Office of Surface Mining Reclamation and Enforcement;
(2) The permittee must submit a letter to the district engineer requesting re-verification of the NWP 21 authorization. The letter must describe any changes from the previous NWP 21 verification. The letter must be submitted to the district engineer by February 1, 2013;
(3) The loss of waters of the United States is not greater than the loss of waters of the United States previously verified by the district engineer under the NWP 21 issued on

March 12, 2007 (i.e., there are no proposed expansions of surface coal mining activities in waters of the United States);

(4) The district engineer provides written verification that those activities will result in minimal individual and cumulative adverse effects and are authorized by NWP 21, including currently applicable regional conditions and any activity-specific conditions added to the NWP authorization by the district engineer, such as compensatory mitigation requirements; and

(5) If the permittee does not receive a written verification from the district engineer prior to March 18, 2013, the permittee must cease all activities until such verification is received. The district engineer may extend the February 1, 2013, deadline by so notifying the permittee in writing, but the permittee must still cease all activities if he or she has not received written verification from the Corps by March 18, 2013, until such verification is received.

(b) Other Surface Coal Mining Activities. Surface coal mining activities that were not previously authorized by the NWP 21 issued on March 12, 2007, are authorized by this NWP, provided the following criteria are met:

(1) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or as part of an integrated permit processing procedure by the Department of Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE);

(2) The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal individual and cumulative adverse effects. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and

(3) The discharge is not associated with the construction of valley fills. A "valley fill" is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

Notification: For activities under paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) crossing of a water of the U.S. (Regional General Condition 5)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)
g) activities under paragraph (b) of this NWP

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional conditions –

1. Reclamation to OSMRE standards must be completed within 5 years of the completion of mining in individual mining pits.

2. Permittees must provide compensatory mitigation for both temporal and permanent losses of aquatic ecosystem functions in waters of the U.S. See Nationwide Permit General Condition 22 for mitigation requirements.

3. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

***NOTE**: The applicant must ensure that contaminated water being generated during these operations is not reaching open and impacting state-owned aquatic lands. All projects impacting State-owned aquatic lands will require separate authorization from WDNR. For further information contact the WDNR's Aquatic Resources Division at (360) 902-1100 or Leasing & Land Transactions.*

State 401 Certification – Denied without prejudice. Individual 401 Certification is required for all projects or activities authorized under this NWP.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Object. An Individual CZM Consistency Determination must be obtained from the State for projects or activities in the 15 coastal counties. A CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

22. Removal of Vessels

Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 31.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the "Historic Properties" general condition is completed. (Sections 10 and 404)

Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with general condition 18, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the likelihood that submerged vessels may be historic properties.

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) crossing of a water of the U.S. (Regional General Condition 5)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)
g) the vessel is listed or eligible for listing in the National Register of Historic Places
h) the activity is conducted in a special aquatic site (h and i required by NWP 22 Notification Condition)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional conditions – None.

***NOTE 1**: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

***NOTE 2**: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Certified. Permittee must meet Ecology 401 General Conditions.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur.

23. Approved Categorical Exclusions

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the

activity (see general condition 31). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at: http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/GuidanceLetters.aspx Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) in all instances. The notification must include a statement/form verifying the proposed work is categorically exempt. The statement/form must be signed by an official of the Federal agency that issued the categorical exemption.

***NOTE 1**: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

***NOTE 2**: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Certified subject to conditions. Individual 401 review is required for projects or activities authorized under this NWP if

1. The project or activity has fill impacts to waters of the state greater than ½ acre.

EPA 401 Certification – Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. An individual 401 certification is required for projects authorized under this NWP if:

1. The project or activities have fill impacts greater than 1/10 acre, or

2. Involve fill in fish bearing streams or greater than 300 linear feet in ephemeral or intermittent streams.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

24. Indian Tribe or State Administered Section 404 Programs

Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Section 10)

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.

Note 2: Those activities that do not involve an Indian Tribe or State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.4(b).

***NOTE**: This NWP is not used in Washington State.*

25. Structural Discharges

Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a separate section 10 permit if located in navigable waters of the United States. (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) crossing of a water of the U.S. (Regional General Condition 5)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

***NOTE**: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Certified. Permittee must meet Ecology 401 General Conditions.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied

without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur.

26. [Reserved]

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with

the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting. For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see general condition 31), except for the following activities:

(1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;

(2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Sections 10 and 404)

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances, except those listed in the "Notification" section above.

See National General Condition 31 (Pre-Construction Notification) NWP 27 Regional Condition 1 listed below for notification requirements.

Regional Conditions –

1. For projects subject to pre-construction notification, the notification must explain why the loss is necessary and show how it would be fully offset by the beneficial impacts of the project. The notification must describe pre-project site conditions (including photographs), general wetland and other aquatic functions the site provides, benefits anticipated from project construction, and proposed maintenance and monitoring plans.

2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) for any proposed project located in a Department of the Army permit compensatory mitigation site, Comprehensive Environmental Response, Compensation and Liability Act (Superfund) site, Resource Conservation and Recovery Act hazardous waste clean-up site, or Washington State Model Toxics Control Act clean-up site.

NOTE 1: *Restoration projects involving shellfish seeding must use shellfish naturally present within the watershed (native shellfish) to be considered a restoration proposal under NWP 27.*

NOTE 2*: If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 3*: Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

NOTE 4*: Please refer to WDFW's Stream Habitat Restoration Guidelines (wdfw.wa.gov/publications/01374/wdfw01374.pdf) to help ensure the restoration design is appropriate.*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity involves fill in tidal waters.
2. The project or activity affects ½ acre or more of wetlands.

EPA 401 Certification – Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. An individual 401 review is required for projects authorized under this NWP if:

1. The project or activities impact greater than ½ acre, or
2. Any activity in tidal wetlands or waters, or
3. Any project that involves shellfish seeding activities.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

28. Modifications of Existing Marinas

Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) in all instances.

401 Certification – Not required by EPA or Tribes with 401 authority. The applicant must contact Ecology to determine if Certification is required.

***Note**: To determine if your project is in or adjoining a cleanup site, visit Ecology's Cleanup Projects search tool at: https://fortress.wa.gov/ecy/gsp/SiteSearchPage.aspx.*

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

29. Residential Developments

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2-acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) and NWP 29 Regional Condition 1 listed below for notification requirements.

Regional Conditions –

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.

2. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

NOTE 1: *We are concerned about the potential cumulative environmental impacts of multi-phase residential, commercial, institutional, and recreational development projects. We will carefully review all applications involving multi-phase development projects and use its discretionary authority to require Department of the Army authorization by a standard individual permit for any phase that would have more than a minimal individual or cumulative adverse impact on the aquatic environment. The Seattle District will consider the cumulative loss of more than ½ acre of waters of the United States to be a strong indicator that the cumulative adverse environmental impact of the proposed work and development project are more than minimal.*

NOTE 2: *To minimize impacts, we recommend that residential developments utilize low impact development methods, such as, but not limited to, pervious surfaces, rain gardens, and native landscaping.*

NOTE 3: *To facilitate our review of ESA impacts, please provide the amount of new impervious surfaces (including access roads, buildings, parking lots, etc), amount of new semipervious surfaces (i.e., landscaped areas), best management practices, proposed stormwater treatment and design criteria, and mitigation measures for stormwater impacts.*

NOTE 4: *If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 5: *Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The residential development has impacts to waters of the state greater than ¼ acre.

2. The project is a subdivision.

***Note**: "Subdivision" is the division or redivision of land into lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.*

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

30. Moist Soil Management for Wildlife

Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
d) an affect or potential to affect listed historic properties (National General Condition 20)
e) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

State 401 Certification – Certified. Permittee must meet Ecology 401 General Conditions.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup

Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur.

31. Maintenance of Existing Flood Control Facilities

Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline," as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged material must be placed in an area that has no waters of the United States or a separately authorized disposal site in waters of the United States, and proper siltation controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the

maintenance baseline. In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or best management practices as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 31). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the dredged material disposal site. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

State 401 Certification – Certified. Permittee must meet Ecology 401 General Conditions.

EPA 401 Certification – Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. An individual 401 certification is required for projects authorized under this NWP if levee maintenance activities involve native woody vegetation removal along salmon bearing streams or rivers.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur.

32. Completed Enforcement Actions

Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The unauthorized activity affected no more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements – Not applicable.

Regional Conditions – None.

State 401 Certification – Certified subject to the following condition: Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity has impacts to waters of the state greater than ¼ acre.

EPA 401 Certification – Certified.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

33. Temporary Construction, Access, and Dewatering

Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill

must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. Temporary fills may be left in place no longer than six months unless the permittee requests and receives a waiver from the District Engineer.

Agency Notification: *If an activity will require temporary fills to remain in place longer than six months, agency notification is required. The Corps will provide the project description and drawings to Washington State Department of Natural Resources and allow them a 10 calendar day response period. If so contacted by this agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification.*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. Temporary fills are placed in more than ½ acre of wetlands and left in place for more than 90 days.

2. Temporary fills are left in place for longer than six months.

EPA 401 Certification – Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. Individual 401 certification required for projects authorized under this NWP if the project or activity has temporary fills left in place for more than 90 days. The 90 day period begins when fill is initially placed in wetlands or other waters of the U.S.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

34. Cranberry Production Activities

Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 31.) (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

NOTE 1: *The boundaries of an "existing cranberry production operation" are verified by the Corps on a case-by-case basis. In most cases, these boundaries coincide with the boundaries of the existing contiguous cranberry operation property. A cranberry operator may modify up to 10 acres of waters of the U.S. during the lifetime of a cranberry operation provided there is no net loss of wetland acreage. An operator may continue to manipulate those 10 acres of wetlands to produce cranberries during each 5-year period the NWP is valid; however the operation may not be expanded beyond those 10 acres without authorization by standard individual permit.*

NOTE 2: *Mitigation may be required to compensate for temporal losses of wetland functions. Please refer to Seattle District's "Guidelines for Implementation of Compensatory Mitigation Requirements for Conversion of Wetlands to Cranberry Bogs" for additional information. These guidelines are available on the Internet at: www.nws.usace.army.mil (select Regulatory, then Regulatory Permits, Permit Guidebook, Chapter II.a.iii Nationwide Permits.)*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP unless the proposed project meets Condition 1 or 2 below:

1. The proposed expansion area:

   (a) At the time of the State's certification of this NWP, did not or currently does not include forested wetland with trees of 8 inch diameter or greater at Breast Height or provide 30 percent or greater of the areal canopy coverage of that wetland. The burden of proof is on the applicant to demonstrate that trees meeting the size requirements were not present;

   (b) Is not within 50 feet of the Pacific County Drainage Ditch 1; and

   (c) Is located within the geographic area as described below (see attached map, based on USGS maps 46124-G1-TF-024 (Grayland, WA – revised 1984) and 46124-F1-TB-024 (North Cove, WA – revised 1984): Beginning at the intersection of Smith

Road (aka Smid and/or Cranberry Road) and State Route 105 and running thence south and southeast along SR 105 to the intersection of SR 105 and Smith Anderson Road; thence north to the intersection of Smith Anderson Road and Lungren Road; thence north 1320.0 feet along Smith Anderson Road; thence west 450.0 feet; thence north 1690.0 feet; thence 13 degrees west of the northerly direction approximately 11,280.0 feet to the intersection of the east section line of Section 6 and the west section line of Section 5 (Township 15 North, Range 11 West Meridian) and Smith Road; thence west on Smith Road to the point of beginning.

2. Anywhere in Washington, the proposed expansion area has previously been used for cranberry production. Ecology will verify the expansion for these areas upon receipt of appropriate documentation that adequately demonstrates prior cranberry production in the proposed expansion area. Documentation may include one or more of the following:

(a) Evidence of the presence of old dikes around the boundary of the proposed expansion (dated photographs, dated video, topographic surveys);

(b) Old aerial photographs showing cranberry bogs within the proposed expansion area;

(c) Old maps drawn by registered engineers/surveyors showing the presence of cranberry bogs in the proposed expansion area; or

(d) Evidence that established plants of cultivated (not native) cranberry varieties are present within the proposed expansion area.

Note*: Applicants who do not meet the above criteria may still apply for 401 Certification. Certification will be granted by Ecology if it is determined that the proposed expansion will not cause significant degradation of wetland functions, or where adequate mitigation is proposed.*

EPA 401 Certification – Denied. Individual 401 certification is required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

35. Maintenance Dredging of Existing Basins

Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is deposited at an area that has no waters of the United States site and proper siltation controls are used. (Section 10)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) and NWP 35 Regional Condition 1 listed below for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) in all cases. The notification shall include the results of any required sediment testing and identify the location of the upland disposal area(s). Applicants are strongly encouraged to contact the Seattle District's Dredged Material Management Office (telephone 206-764-3768) for specific sediment testing requirements early in the project planning process.

401 Certification – Not required by EPA or Tribes with 401 authority. The applicant must contact Ecology to determine if Certification is required.

***Note**: To determine if your project is in or adjoining a cleanup site, visit Ecology's Cleanup Projects search tool at: https://fortress.wa.gov/ecy/gsp/SiteSearchPage.aspx.*

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

36. Boat Ramps

Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

(a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge will result in minimal adverse effects;

(b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;

(c) The base material is crushed stone, gravel or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no waters of the United States; and,

(e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging must be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 31.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) crossing of a water of the U.S. (Regional General Condition 5)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)
g) discharges greater than 50 cubic yards (NWP 36 Notification Condition)
h) ramps wider than 12 feet (NWP 36 Regional Condition 1)
i) ramps located on beaches forage fish use for spawning (NWP 36 Regional Condition 1)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) for boat ramps wider than 12 feet or located on documented or potential surf smelt (Ammodytes hexapterus), Pacific herring (Clupea pallasi), sand lance (Hypomesus pretiosus), candlefish (Thaleichthys pacificus), or salmon spawning beaches, or if submerged aquatic vegetation is removed or disturbed. Spawning beach location information can be obtained from the StreamNet database (see http://www.streamnet.org) or the SalmonScape database (see http://wdfw.wa.gov/mapping/salmonscape/index.html) and other sources.

2. For contiguous properties under the same ownership, no more than one boat ramp per ownership may be authorized by this NWP.

3. The construction of poured-in-place concrete boat ramps is not authorized by this NWP.

Agency Notification: *If an activity will exceed 50 cubic yards or 20 feet in width, agency notification is required. The Corps will provide the project description and drawings to the Washington State Department of Natural Resources and allow them a 10 calendar day response period. If so contacted by this agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification.*

NOTE: *Applicants should site boat ramps to avoid impacting native woody riparian vegetation, special aquatic sites (e.g., wetlands mudflats, vegetated shallows, and riffle and pool complexes) and submerged aquatic vegetation when possible.*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity results in a discharge greater than 50 cubic yards into waters of the state.

2. The boat ramp exceeds 20 feet in width.

EPA 401 Certification – Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. Individual 401 review is required for projects authorized under this NWP if:

1. The project or activities have impacts to riparian areas, or

2. Exceeds 20 feet in width.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

37. Emergency Watershed Protection and Rehabilitation

Work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);

(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR Subchapter R), where the activity does not involve coal extraction; or

(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the prospective permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

State 401 Certification – Denied without prejudice. Individual 401 Certification required for all projects or activities under this NWP.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Object. An Individual CZM Consistency Determination must be obtained from the State for projects or activities in the 15 coastal counties. A CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

38. Cleanup of Hazardous and Toxic Waste

Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

NOTE: *To facilitate our review of the applicability of this NWP to your project, submit a copy of your court ordered remedial plan or related settlement with your permit application to the Corps.*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity affects more than ½ acre of wetlands.

2. The project or activity is not authorized though a Model Toxics Control Act (MTCA) order or a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) order.

EPA 401 Certification – Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. Individual 401 review is required for projects authorized under this NWP if the project or activities are not part of an EPA ordered cleanup.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied

without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

39. Commercial and Institutional Developments

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) and NWP 39 Regional Condition 1 listed below for notification requirements.

Regional Conditions –

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.

2. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

NOTE 1: *We are concerned about the potential cumulative environmental impacts of multi-phase residential, commercial, institutional, and recreational development projects. We will carefully review all applications involving multi-phase development projects and use its discretionary authority to*

require Department of the Army authorization by a standard individual permit for any phase that would have more than a minimal individual or cumulative adverse impact on the aquatic environment. The Seattle District will consider the cumulative loss of more than ½ acre of waters of the United States to be a strong indicator that the cumulative adverse environmental impact of the proposed work and development project are more than minimal.

NOTE 2: *To minimize impacts, we recommend that commercial developments utilize low impact development methods, such as, but not limited to, pervious surfaces, rain gardens, and native landscaping.*

NOTE 3: *To facilitate our review of ESA impacts, please provide the amount of new impervious surfaces (including access roads, buildings, parking lots, etc), amount of new semipervious surfaces (i.e., landscaped areas), best management practices, proposed stormwater treatment and design criteria, and mitigation measures for stormwater impacts.*

NOTE 4: *If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 5: *Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Permittee must meet Ecology 401 General Conditions. Certified subject to the following condition: Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity affects ¼ acre or more of wetlands.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

40. Agricultural Activities

Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written

determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Section 404)

Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act Section 404(f)(1)(C) exemption because of the recapture provision at Section 404(f)(2).

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

State 401 Certification – Certified subject to the following condition: Permittee must meet Ecology 401 General Conditions and individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity involves fill or mechanized clearing impacting more than 1/10 acre of wetlands.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

41. Reshaping Existing Drainage Ditches

Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the

same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (See general condition 31.) (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) crossing of a water of the U.S. (Regional General Condition 5)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)
g) reshaping of more than 500 linear feet of drainage ditch (NWP 41 Notification Condition)
h) permanent sidecasting of excavated material into waters of the U.S. (Regional Condition 1).

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) for activities that involve the permanent sidecasting of excavated material into waters of the U.S.

2. Upon completion of the work, all exposed soil surfaces shall either be hydro-seeded or planted with appropriate native herbaceous species.

NOTE 1: *The applicant should plant native woody vegetation along excavated ditches that provide salmonid habitat.*

NOTE 2: *This NWP does not authorize the conversion of waters of the U.S. to other uses such as impoundments or recovery areas for irrigation water.*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity discharges dredged or fill material into a ditch that receives water from or discharges water to a wetland within ½ mile of project site.

2. The project or activity occurs within a wetland.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

42. Recreational Facilities

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) and NWP 42 Regional Condition 1 listed below for notification requirements.

Regional Conditions –

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.

2. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

NOTE 1: *We are concerned about the potential cumulative environmental impacts of multi-phase residential, commercial, institutional, and recreational development projects. We will carefully review all applications involving multi-phase development projects and use its discretionary authority to require Department of the Army authorization by a standard individual permit for any phase that would have more than a minimal individual or cumulative adverse impact on the aquatic environment. The Seattle District will consider the cumulative loss of more than ½ acre of waters of the United States to be a strong indicator that the cumulative adverse environmental impact of the proposed work and development project are more than minimal.*

NOTE 2: *To minimize impacts, we recommend that recreational developments utilize low impact development methods, such as, but not limited to, pervious surfaces, rain gardens, and native landscaping.*

NOTE 3: *To facilitate our review of ESA impacts, please provide the amount of new impervious surfaces (including access roads, buildings, parking lots, etc), amount of new semipervious surfaces (i.e., landscaped areas), best management practices, proposed stormwater treatment and design criteria, and mitigation measures for stormwater impacts.*

NOTE 4: *If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 5: *Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Certified subject to the following condition: Permittees must meet Ecology 401 General Conditions and individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity affects ¼ acre or more of wetlands.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

43. Stormwater Management Facilities

Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; and the construction of low impact development integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches. This NWP also authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities. Note that stormwater management facilities that are determined to be waste treatment systems under 33 CFR 328.3(a)(8) are not waters of the United States, and maintenance of these waste treatment systems generally does not require a section 404 permit.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources requiring special protection (Regional General Condition 1)
b) new or maintenance bank stabilization activities (Regional General Condition 4)
c) crossing of a water of the U.S. (Regional General Condition 5)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)
g) new or expansion of existing stormwater management facilities (NWP 43 Notification Condition).

See National General Condition 31 (Pre-Construction Notification) and NWP 43 Regional Condition 1 listed below for notification requirements.

Regional Conditions –

1. The pre-construction notification must include a maintenance plan if periodic maintenance dredging is proposed.

2. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

NOTE 1: *The Seattle District will consider allowing compensatory mitigation in a stormwater management facility if: (1) hydrology is sufficient to support permanently vegetated wetlands; (2) maintenance of the facility will not disturb permanently vegetated wetlands; (3) sinuous edges, islands, vegetation class and open water interspersion are incorporated into the design; and (4) water quality treatment is incorporated upstream of the compensatory mitigation area.*

NOTE 2: *NWP 43 may not be appropriate in areas of seasonal high groundwater that will interfere with a stormwater management facility's ability to retain/detain stormwater.*

NOTE 3: *If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 4: *Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity includes a Category I, II, or III (with a habitat score ≥20) wetland as part of a stormwater or flow control system.

***Note**: Including a Category I or II wetland in a stormwater treatment or flow control system is considered an impact that will need to be mitigated according to the rules of wetland mitigation.*

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

44. Mining Activities

Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

2. Reclamation, when required by the Washington State Department of Natural Resources (DNR), must be achieved with 2 years of completion of mining in individual mining pits.

3. Permittees must provide compensatory mitigation for temporal losses of aquatic ecosystem functions in waters of the U.S. See Nationwide Permit General Condition 23 for mitigation requirements.

4. This NWP may only be used for aggregate mining activities in lower perennial streams that meet the following criteria:

a. Aggregate may not be excavated from a vegetated bar or flowing water, or pushed across a wetted channel.

b. A 5-foot (horizontal) buffer must be left in a natural state along the river edge of the aggregate bar during excavation. After aggregate material is removed, the area must be graded to restore a natural appearance and not trap fish.

c. Aggregate material may be temporarily stockpiled within the channel above the plane of the water surface for up to 7 days. Aggregate material may not be stockpiled in wetlands or flowing water.

d. Aggregate material may not be disposed in the channel or where it could re-enter a water of the United States.

NOTE 1: *If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 2: *Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Denied without prejudice. Individual 401 Certification is required for all projects or activities under this NWP.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Object. An Individual CZM Consistency Determination must be obtained from the State for projects or activities in the 15 coastal counties. A CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

45. Repair of Uplands Damaged by Discrete Events

This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration or nourishment.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 31) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Sections 10 and 404)

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.) This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands.

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances, within 12 months of the date of the damage.

See National General Condition 31 (Pre-Construction Notification) and NWP 45 Notification Condition for notification requirements and content.

Regional Conditions – None.

NOTE 1: *Applicants should avoid fills in wetlands, mudflats, and pool and riffle complexes. Pool and riffle complexes are frequently created when erosion occurs. These pools provide important spawning, rearing and predator avoidance habitat.*

NOTE 2: *The length of a bank protection project, especially in the case of barbs, is measured as the total length of shoreline/bank to be protected by the structure.*

NOTE 3: *The Washington State Department of Fish and Wildlife also has jurisdiction over restoration of recently destroyed uplands. Work authorized under this NWP may also require approval from the Washington Department of Fish and Wildlife if the work will use, divert, obstruct, or change the natural flow or bed in salt or fresh waters of the State.*

NOTE 4: *On April 6, 2006, the U.S. Army Corps of Engineers, Northwestern Division issued guidance applicable in the Seattle District, on determining whether Department of the Army (DA) authorization may be necessary to replace upland areas lost as the result of storms, floods, and other discrete events. This guidance states in part:*

a. *If the new OHWM/HTL establishes below the old OHWM/HTL, no DA authorization is required for work to occur above (landward of) the new OHWM/HTL. If work is proposed to occur below (waterward of) the new OHWM/HTL, a DA authorization will be required.*
b. *If the new OHWM/HTL establishes above (landward of) the old OHWM/HTL, no DA authorization is required for work to occur above the new OHWM/HTL. If work is proposed to occur below (waterward of) the new OHWM/HTL, a DA authorization will likely be required for work in this area.*

This guidance is available on the Internet at: www.nws.usace.army.mil (select Regulatory, then Regulatory Permits, Permit Guidebook, Chapter II.a.iii Nationwide Permits.)

NOTE 5: *If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 6: *Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity will involve the placement of more than 25 cubic yards of dredged or fill material into waters of the United States.

2. The project or activity involves impacts to waters of the state greater than ½ acre.

EPA 401 Certification – Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. Individual 401 review is required for projects authorized under this NWP if:

1. The project or activity is greater than ½ acre, or

2. The project or activity requires restoration beyond the OHWM before the event occurred.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

46. Discharges in Ditches

Discharges of dredged or fill material into non-tidal ditches that are: (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) are determined to be waters of the United States. The discharge must not cause the loss of greater than one acre of waters of the United States.
This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Section 404)

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions – None.

NOTE: *Ditches constructed in and/or connecting waters of the U.S. may provide essential fish habitat for anadromous fish in Washington State. For information about EFH in Washington State, please refer to: http://wdfw.wa.gov/mapping/salmonscape/index.html.*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project or activity discharges dredged or fill material into a ditch that receives water or discharges water to a wetland within ½ mile of project site.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

47. [Reserved]

48. Commercial Shellfish Aquaculture Activities

Discharges of dredged or fill material in waters of the United States or structures or work in navigable waters of the United States necessary for commercial shellfish aquaculture operations in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is currently authorized to conduct commercial shellfish aquaculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any other easement, lease, deed, or contract which establishes an enforceable property interest for the operator. This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked. This NWP does not authorize:

(a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;

(b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; or,

(c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste.

This NWP also authorizes commercial shellfish aquaculture activities in new project areas, provided the project proponent has obtained a valid authorization, such as a lease or permit issued by an appropriate state or local government agency, and those activities do not directly affect more than 1/2-acre of submerged aquatic vegetation beds.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation; (2) the activity will include a species not previously cultivated in the waterbody; (3) the activity involves a change from bottom culture to floating or suspended culture; or (4) the activity occurs in a new project area. (See general condition 31.)

In addition to the information required by paragraph (b) of general condition 31, the pre-construction notification must also include the following information: (1) a map showing the boundaries of the project area, with latitude and longitude coordinates for each corner of the project area; (2) the name(s) of the cultivated species; and (3) whether canopy predator nets are being used. (Sections 10 and 404)

Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines "aquatic nuisance species" as "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters."

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps for work that results in any of the following:

a) any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional General Condition 7)
b) impacts to aquatic resources requiring special protection (Regional General Condition 1)
c) new or maintenance bank stabilization activities (Regional General Condition 4)
d) an affect or potential to affect listed historic properties (National General Condition 20)
e) impacts a designated critical resource waters (National General Condition 22)
f) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation
g) work that includes a species not previously cultivated in the waterbody
h) work that involves a change from bottom culture to floating or suspended culture
i) work in new project areas. (for f – i NWP 48 Notification Condition)

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. The commercial harvest of clams by means of hydraulic escalator harvester equipment is not authorized by this NWP.

Agency Notification: *For new or expansion activities, the Corps will provide the project description and drawings to the Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service and Washington State Department of Natural Resources and allow them a 10 calendar day response period. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification.*

NOTE 1: *Pre-Construction Notification is required in all cases (per Nationwide Permit General Condition 18, Endangered Species).*

NOTE 2: *Applicants applying for NWP 48 authorization for existing activities, must submit documentation showing that they were authorized to perform the activity and planted the area prior to March 18, 2007, for the work to be covered by the ESA Programmatic Consultation for Existing Shellfish Aquaculture Activities (www.nws.usace.army.mil, select Regulatory/Permitting/Permit Guidebook, Aquaculture. For the expansion of existing project areas or new project areas created after March 18 2007, applicants will need to complete individual ESA consultation.*

NOTE 3: *Per the existing Seattle District ESA Programmatic Consultation for Existing Shellfish Aquaculture Activities, if you are proposing any changes to the authorized work, such as changing the species or cultivation method, or increasing the gravel applied to special aquatic sites, you must*

submit a request for a permit modification and receive written approval from the Corps before you begin the revised work.

NOTE 4: *This NWP authorizes any property markers to demarcate the boundaries of the project area in tidal areas. The permittee must ensure that the markers are not a navigation hazard and must be in compliance with U.S. Coast Guard requirements.*

State 401 Certification – Certified subject to conditions. Permittee must meet Ecology 401 General Conditions. Individual 401 review is required for projects or activities authorized under this NWP if:

1. The project is a new or expanded geoduck operation, on private tidelands, that has not obtained a permit pursuant to an updated Shoreline Master Program (SMP). "Updated" means the SMP has been locally adopted, consistent with Ecology guidelines, after February 11, 2011. Contact Ecology for a list of these jurisdictions.

2. The project is a new or expanded geoduck operation, on state-owned aquatic lands, that has not applied for an aquatic lands lease from WA Department of Natural Resources.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Concur subject to the following condition: When individual 401 review by Ecology is triggered, a CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

49. Coal Remining Activities

Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining Reclamation and Enforcement (OSMRE), or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

As part of the project, the permittee may conduct new coal mining activities in conjunction with the remining activities when he or she clearly demonstrates to the district engineer that the overall mining plan will result in a net increase in aquatic resource functions. The Corps will consider the SMCRA agency's decision regarding the amount of currently undisturbed adjacent lands needed to facilitate the remining and reclamation of the previously mined area. The total area disturbed by new mining must not exceed 40 percent of the total acreage covered by both the remined area and the additional area necessary to carry out the reclamation of the previously mined area.

Notification: The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic resource functions to the district engineer and receive written authorization prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. Reclamation to OSMRE standards must be completed within 5 years of completion of mining in individual mining pits.

2. Permittees must provide compensatory mitigation for temporal loss of aquatic ecosystem functions in waters of the U.S. See Nationwide Permit General Condition 23 for mitigation requirements.

State 401 Certification – Denied without prejudice. Individual 401 Certification is required for all projects or activities under this NWP.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Object. An Individual CZM Consistency Determination must be obtained from the State for projects or activities in the 15 coastal counties. A CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

50. Underground Coal Mining Activities

Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining Reclamation and Enforcement (OSMRE), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 31.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. Reclamation to OSMRE, DOI or state agency standards must be completed within 5 years of completion of mining in individual mining pits.

2. Permittees must provide compensatory mitigation for temporal loss of aquatic ecosystem functions in waters of the U.S. See Nationwide Permit General Condition 23 for mitigation requirements.

3. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

State 401 Certification – Denied without prejudice. Individual 401 Certification required for all projects or activities under this NWP.

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Object. An Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

51. Land-Based Renewable Energy Generation Facilities

Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This permit does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

Note 1: Utility lines constructed to transfer the energy from the land-based renewable generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by NWP 12 or another Department of the Army authorization. If the only activities associated with the construction,

expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove utility lines, then NWP 12 shall be used if those activities meet the terms and conditions of NWP 12, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

Note 2: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

Agency Notification: *Agency notification is required for all activities authorized under this NWP. The Corps will provide the project description and drawings to the Environmental Protection Agency, U.S. Fish and Wildlife Service, and Washington State Department of Natural Resources and allow them a 10 calendar day response period. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification.*

NOTE 1: *If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 2: *Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Denied without prejudice. Individual 401 certification required.

Note*: Projects or activities that need a FERC license will be required to obtain an Individual 401 Certification as part of the FERC license process.*

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Object. An Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

52. Water-Based Renewable Energy Generation Pilot Projects

Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water-based wind or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

For the purposes of this NWP, the term "pilot project" means an experimental project where the renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site.

The discharge must not cause the loss of greater than 1/2-acre of waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322.2(b)), and the placement of the transmission line on the bed of a navigable water of the United States is not a loss of waters of the United States for the purposes of applying the 1/2-acre or 300 linear foot limits.

For each single and complete project, no more than 10 generation units (e.g., wind turbines or hydrokinetic devices) are authorized.

This NWP does not authorize activities in coral reefs. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR part 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR part 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the maximum extent practicable unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit. Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the NWP authorization if no FERC license is issued.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

Note 1: Utility lines constructed to transfer the energy from the land-based collection facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by NWP 12 or another Department of the Army authorization.

Note 2: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate approval from the Chief of Engineers under 33 U.S.C. 408.

Note 3: If the pilot project, including any transmission lines, is placed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the generation units and associated transmission line(s) to protect navigation.

Note 4: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Summary of National and Regional Pre-Construction Notification Requirements – Pre-construction notification (e.g., a permit application or JARPA) must be submitted to the Corps in all instances.

See National General Condition 31 (Pre-Construction Notification) for notification requirements.

Regional Conditions –

1. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

Agency Notification: *Agency notification is required for all activities authorized under this NWP. The Corps will provide the project description and drawings to the Environmental Protection Agency, U.S. Fish and Wildlife Service, and Washington State Department of Natural Resources and allow them a 10 calendar day response period. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification.*

NOTE 1: *If the proposed activity involves bank stabilization work, you must meet the requirements of Seattle District Regional General Conditions 3 and 4 for bank stabilization.*

NOTE 2: *Applicants proposing culvert crossings must comply with Regional General Condition 5 (Crossings of Waters of the United States).*

State 401 Certification – Denied without prejudice. Individual 401 certification required for all projects or activities under this NWP.

Note*: Projects or activities that need a FERC license will be required to obtain an Individual 401 Certification as part of the FERC license process.*

EPA 401 Certification – Denied. Individual 401 certification required.

Tribal 401 Certifications – Denied without prejudice by Confederated Tribes of the Chehalis Reservation, Kalispel Tribe of Indians, Lummi Nation, Makah Tribe, Port Gamble S'Klallam, Puyallup Tribe of Indians, and Tulalip Tribes over activities on their respective tribal lands. Partially denied without prejudice subject to General 401 Conditions by the Spokane Tribe on their tribal lands. Waived by the Swinomish Tribe on their tribal lands.

CZM Consistency Response – Object. An Individual CZM Consistency Response must be obtained from the State for projects or activities located in the 15 coastal counties. A CZM Certification of Consistency form must be submitted for projects located within the 15 coastal counties (see State General 401 Condition 3 (Notification)).

NATIONAL GENERAL NWP CONDITIONS

To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity,

including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation

to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district

engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards,

monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification.

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative

description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination:

(1) The district engineer will consider any comments from federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The

district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering

mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed federal project.

APPENDIX A: Figures 1 and 2

Figure 1: Commencement Bay Study Area (Regional General Condition 2)

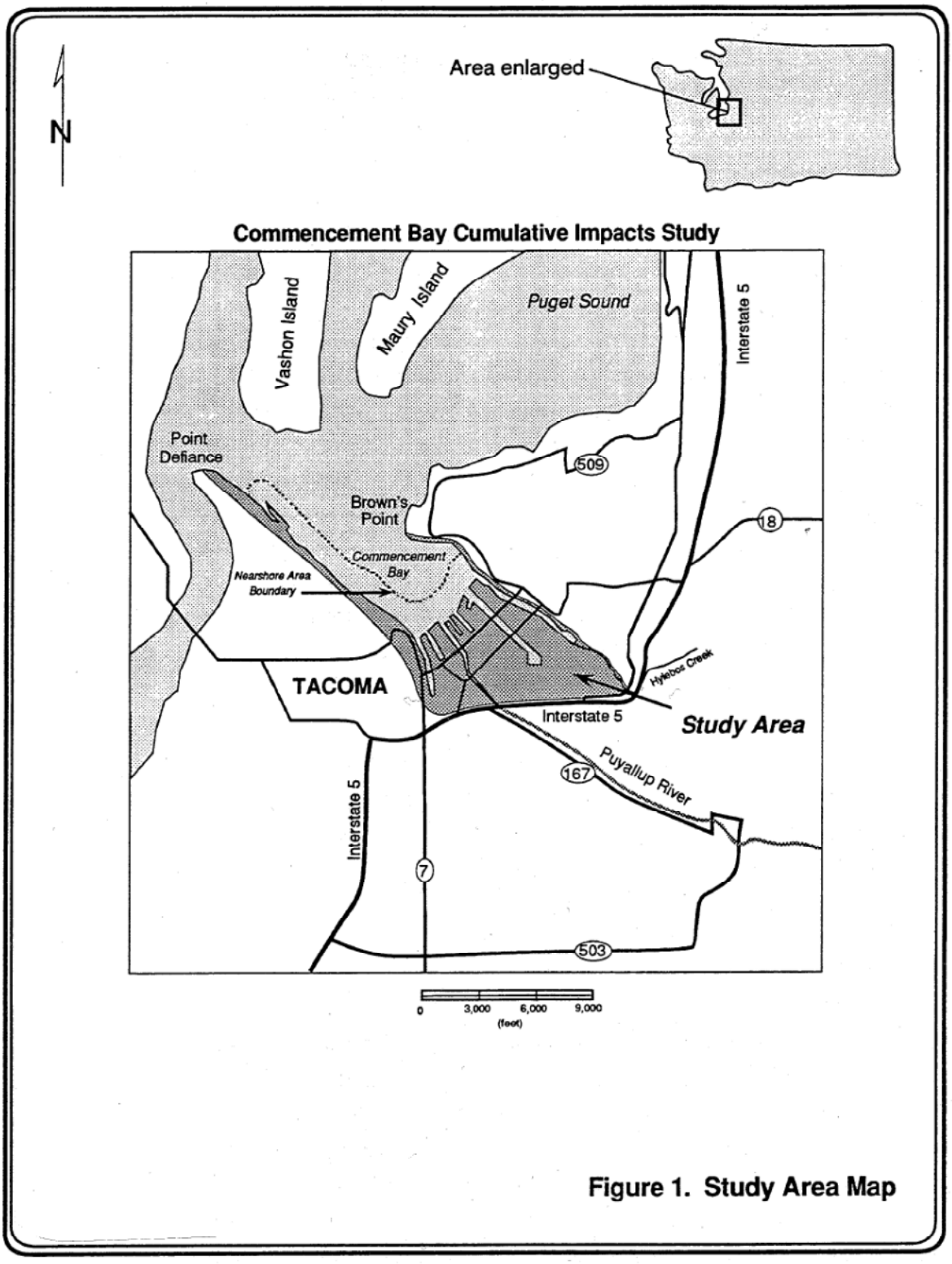
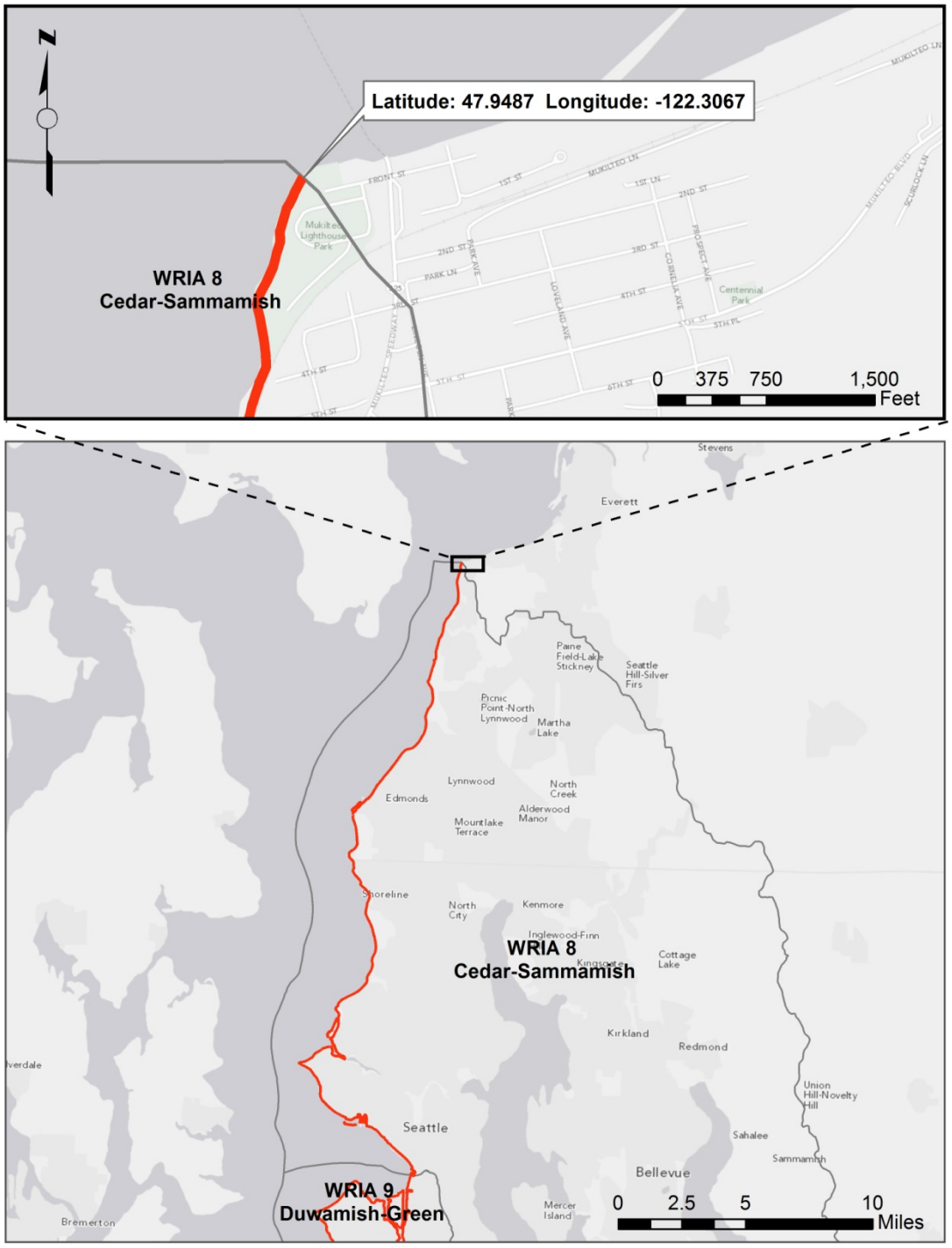


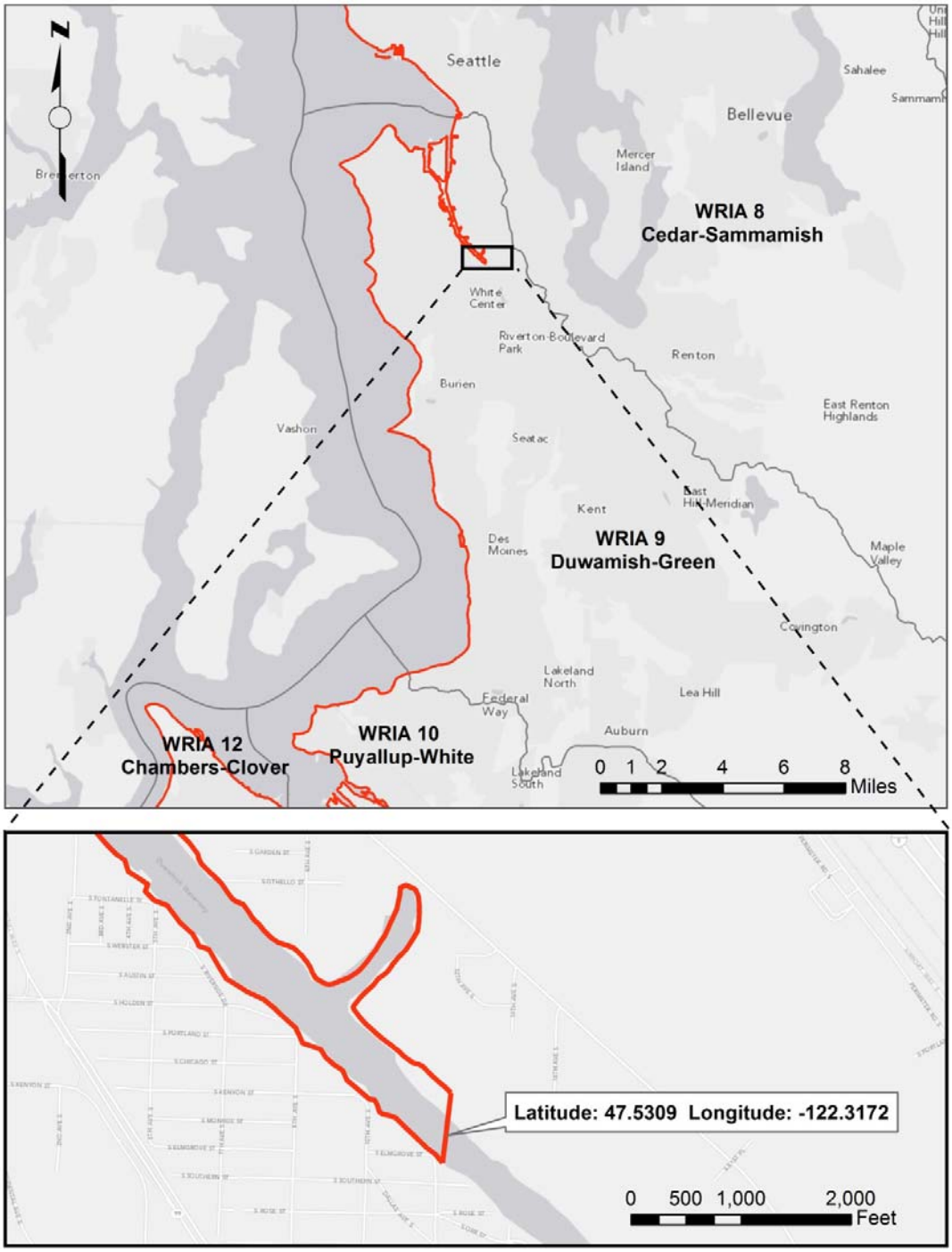
Figure 1. Study Area Map

Figure 2: Regional General Condition 3 Prohibition Limits in WRIAs 8, 9, 10, 11, and 12

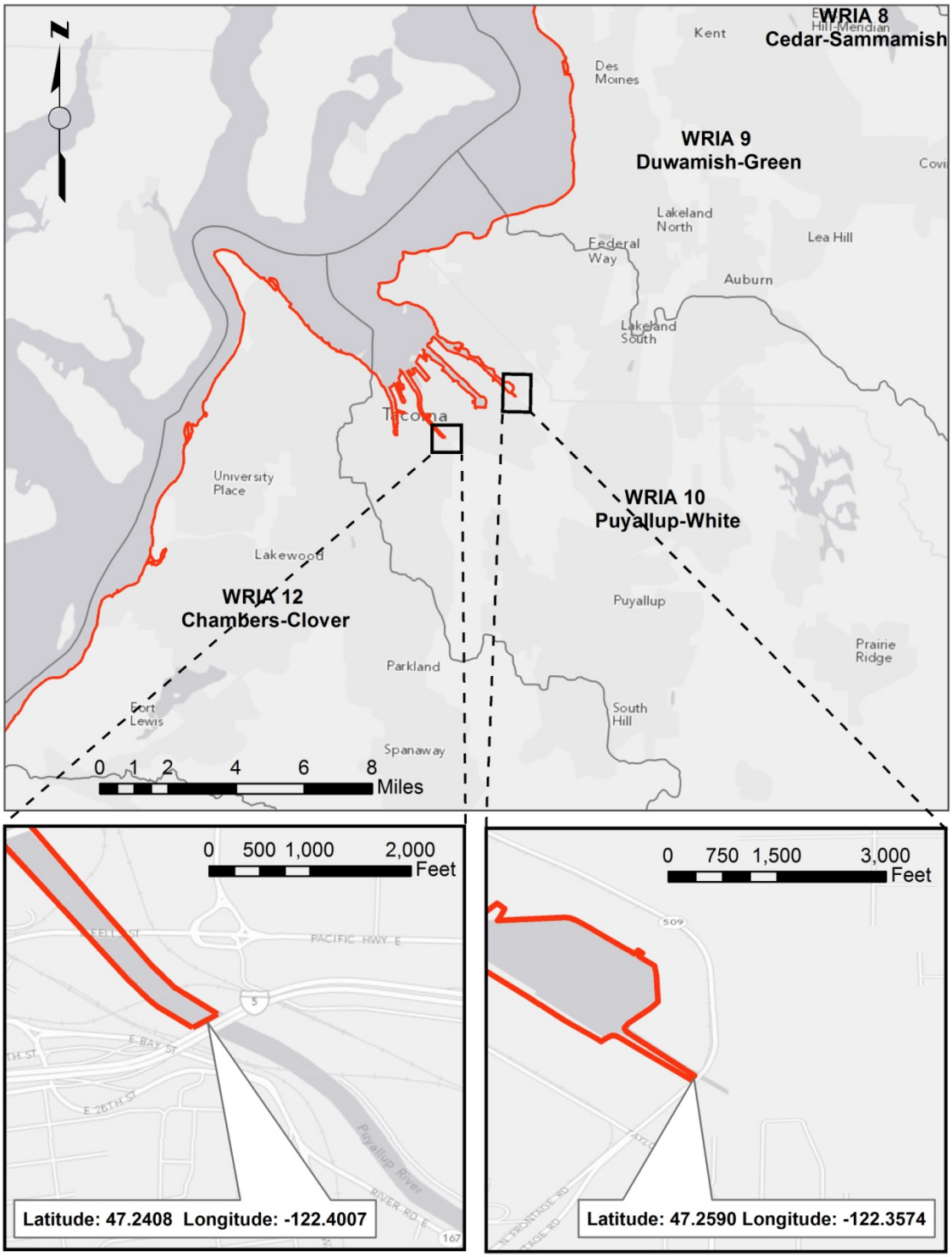
a. WRIA 8 Prohibition Limits



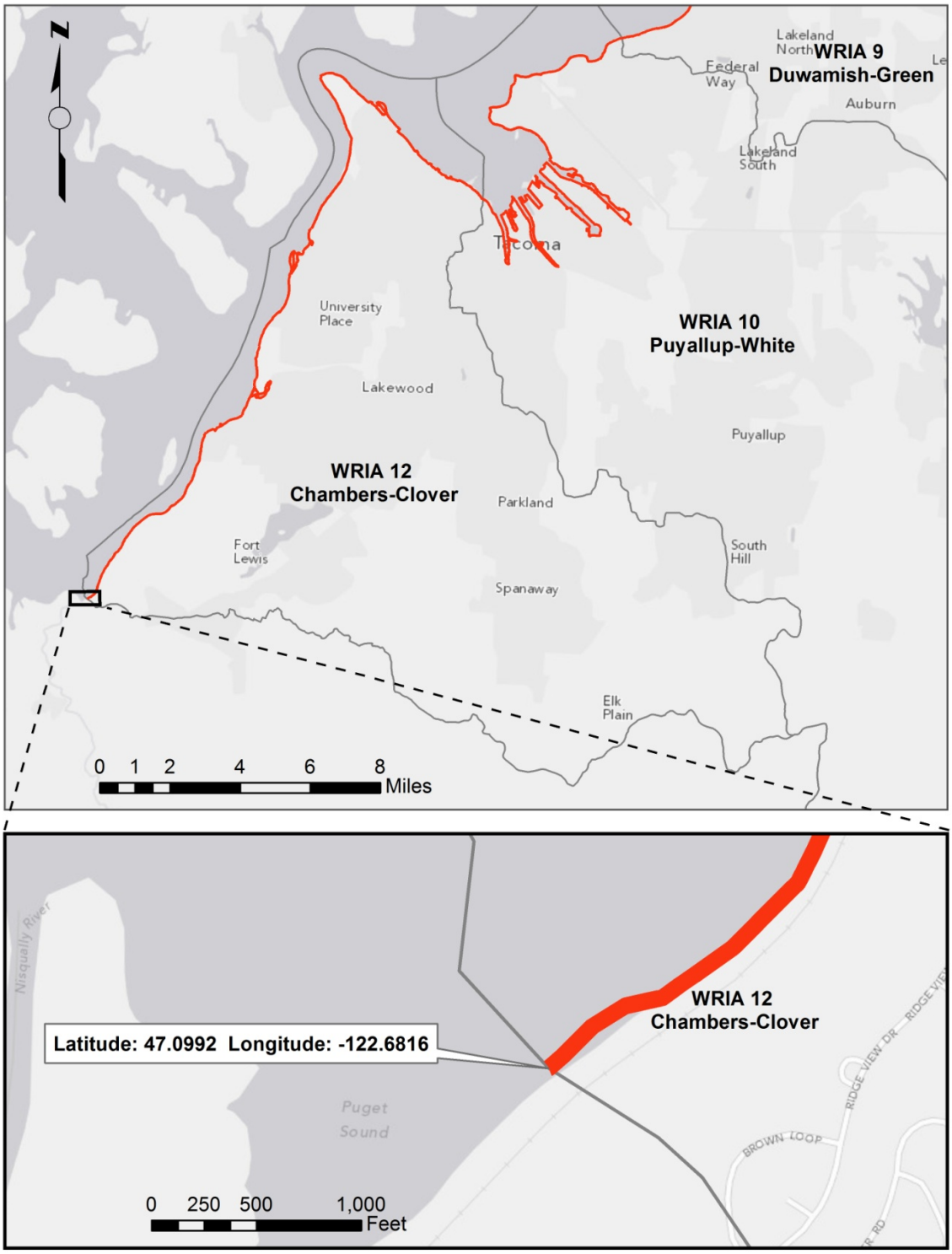
b. WRIA 9 Prohibition Limits



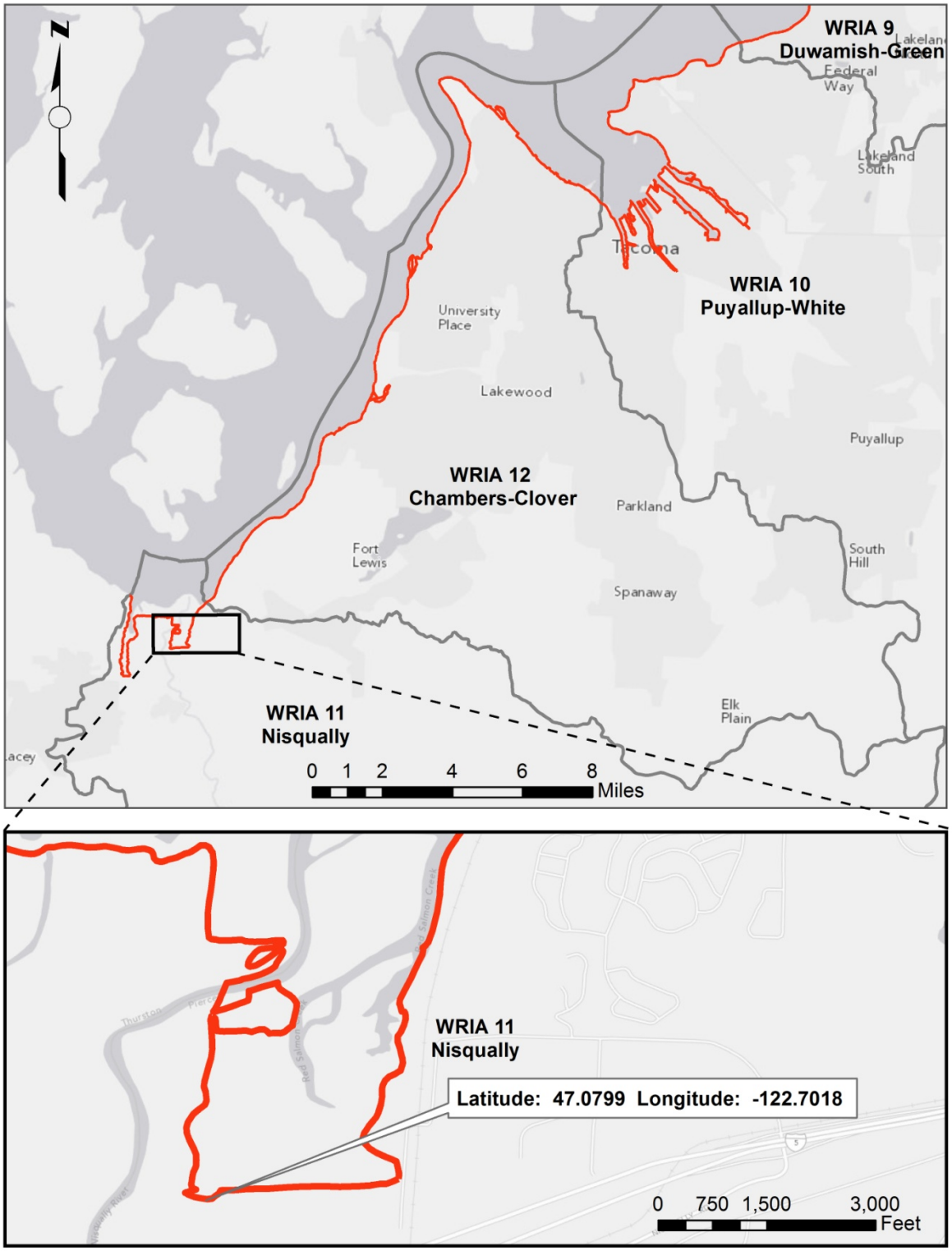
c. WRIA 10 Prohibition Limits



d. WRIA 12 Prohibition Limits



e. WRIA 11 Prohibition Limits



APPENDIX B: Section 401 Water Quality Certification

As part of the NWP issuance process, the Corps requested the 401 certifying entities to review the proposed NWPs and make 401 certification decisions on the NWPs. Each 401 certification decision takes one of three forms:

1. "Certified" means the 401 certification has been approved for all actions authorized by that NWP provided the permittee complies with all applicable national and regional NWP conditions and all applicable 401 certification conditions. The permittee is not required to contact the certifying agency for further authorization or approval.

2. "Certified subject to conditions" or "Partially denied without prejudice" means the 401 certification has been approved for some but not all actions authorized under that NWP. The certifying agencies and Tribes can provide a list of specific conditions that permittees must meet for 401 certification approval. Permit applicants may be required to submit a JARPA to the certifying agency for review. After review, the certifying agency will either issue a written verification ("letter of verification") that the project complies with the 401 certification conditions or will notify the permit applicant than an individual 401 certification is required.

3. "Denied" or "Denied without prejudice" means the 401 certification has been denied for all activities authorized by that NWP. All NWP applicants must submit a JARPA to the certifying agency to obtain an individual 401 certification before the NWP authorization is valid.

A 401 certification decision of "certified subject to conditions" or "denied without prejudice" does not necessarily mean a proposed project cannot be authorized by NWP. Rather, it means the proposed project requires individual review and approval by the certifying agency (i.e., state, EPA, or 401 certification-authorized Tribe) on a case-by-case basis. Individual 401 certification may result in additional conditions and/or mitigation requirements.

401 Certification Decisions

On February 24, 2012, the Corps requested the state (through Ecology), EPA, and the 401 certification-authorized Tribes to review the final NWPs published in the Federal Register on February 21, 2012 and provide their 401 certification decisions. Their responses to the Corps' request are as detailed in this document. Listed below is the contact information for the applicable 401 certifying agencies:

STATE: For further information or to apply for individual 401 certification, contact Ecology's Federal Permit Coordinator at (360) 407-6068 or mail to: Washington Department of Ecology, Attn: Federal Permit Coordinator, P.O. Box 47600, Olympia, Washington 98504-7600 or email: ecyrefedpermits@ecy.wa.gov.

EPA: For further information or to apply for individual 401 certification from the EPA, contact the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, ETPA-083, Seattle, Washington 98101-1128; telephone (206) 553-6686.

Confederated Tribes of the Chehalis Reservation: To apply for individual 401 certification from this Tribe, contact the Director, Department of Natural Resources, Confederated Tribes of the Chehalis Reservation, Post Office Box 536, Oakville, Washington 98568; telephone (360) 273-5911.

Kalispel Tribe of Indians: To obtain individual 401 certification from this Tribe, contact the Director, Department of the Fisheries and Water Resources Division, Kalispel Tribe of Indians, Post Office Box 39, Usk, Washington 99180-0039; telephone (509) 447-7272.

Lummi Nation: To obtain individual 401 certification from this Tribe, contact Water Resources Manager, Lummi Natural Resources Department, 2616 Kwina Road, Bellingham, Washington 98226-9298; telephone (360) 384-2212.

Makah Tribe: To obtain individual 401 certification from this Tribe, contact the Water Quality Specialist, Makah Fisheries, Makah Tribe, Post Office Box 115, Neah Bay, Washington 98357-0115; telephone (360) 645-3162.

Port Gamble S'Klallam Tribe: On May 31, 2012, this Tribe stated the Nationwide Permits are consistent with their federally Approved Water Quality Standards.

Puyallup Tribe of Indians: To obtain individual 401 certification from this Tribe, contact the Director of Natural Resources, Puyallup Tribe of Indians, 2002 East 28th Street, Tacoma, Washington 98404; telephone (253) 573-7850.

Spokane Tribe of Indians: The Tribe's 401 General Conditions require project proponents to submit their NWP applications to the Tribe for review and approval. Submit applications to the Water Control Board, ATTN: Brian Crossley, Spokane Indian Tribe of Indians, Post Office Box 480, Wellpinit, Washington, 99040; telephone (509) 626-4409.

Swinomish Tribe: The Swinomish Tribe waived the requirement obtain individual 401 certification from them for activities on their Tribal lands.

The Tulalip Tribes: To obtain individual 401 certification from this Tribe, contact the Tulalip Tribes Natural Resource Department, 6700 Totem Beach Road, Tulalip, Washington, 98271-9894; telephone (360) 651-4495.

State 401 Certification General Conditions

In addition to all the Corps national and regional conditions, the following 401 Water Quality Certification general conditions apply to all NWP categories certified or partially certified by the State of Washington.

1. **For in-water construction activities**. Individual 401 review is required for projects or activities authorized under NWPs that will cause, or be likely to cause or contribute to an exceedence of a State water quality standard (WAC 173-201A) or sediment management standard (WAC 173-204).

   ***Note**: State water quality standards are posted on Ecology's website: http://www.ecy.wa.gov/programs/wq/swqs/. Click "Surface Water Criteria" for freshwater and marine water standards. Sediment management standards are posted on Ecology's website: http://www.ecy.wa.gov/biblio/wac173204.html. Information is also available by contacting Ecology's Federal Permit staff.*

2. **Projects or Activities Discharging to Impaired Waters**. Individual 401 review is required for projects or activities authorized under NWPs if the project or activity will occur in a 303(d) listed

segment of a waterbody or upstream of a listed segment and may result in further exceedences of the specific listed parameter.

***Note**: To determine if your project or activity is in a 303(d) listed segment of a waterbody, visit Ecology's Water Quality Assessment webpage for maps and search tools, http://www.ecy.wa.gov/programs/wq/303d/2008/. Information is also available by contacting Ecology's Federal Permit staff.*

3. **Notification**. For projects or activities that will require Individual 401 review, applicants must provide Ecology with the same documentation provided to the Corps (as described in Corps Nationwide Permit General Condition 31, Pre-Construction Notification), including, when applicable:

   (a) A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, and any other Department of the Army permits used or intended to be used to authorize any part of the proposed project or any related activity.

   (b) Delineation of special aquatic sites and other waters of the United States. Wetland delineations must be prepared in accordance with the current method required by the Corps and shall include Ecology's Wetland Rating form. Wetland rating forms are subject to review and verification by Ecology staff.

   ***Note**: Wetland rating forms are available on Ecology's Wetlands website: http://www.ecy.wa.gov/programs/sea/wetlands/ratingsystems or by contacting Ecology's Federal Permit staff.*

   (c) A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted.

   Mitigation plans submitted for Ecology review and approval shall be based on the guidance provided in Wetland Mitigation in Washington State, Parts 1 and 2 (Ecology Publications #06-06-011a and #06-06-011b).

   (d) Coastal Zone Management Program "Certification of Consistency" Form if the project is located within a coastal county (Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom counties).

   ***Note**: CZM Certification of Consistency forms are available on Ecology's Federal Permit website: http://www.ecy.wa.gov/programs/sea/fed-permit/index.html or by contacting Ecology's Federal Permit staff.*

   (e) Other applicable requirements of Corps Nationwide Permit General Condition 31, Corps Regional Conditions, or notification conditions of the applicable NWP.

   ***Note**: Ecology has 180 days from receipt of applicable documents noted above **and** a copy of the final authorization letter from the Corps providing coverage for a proposed project or activity under the NWP Program to issue a WQC and CZM consistency determination response. If more than 180 days pass after Ecology's receipt of these documents, your requirement to obtain an individual WQC and CZM consistency determination response becomes waived.*

4. **Aquatic resources requiring special protection**. Certain aquatic resources are unique, difficult-to-replace components of the aquatic environment in Washington State. Activities that would affect these resources must be avoided to the greatest extent possible. Compensating for adverse impacts to high value aquatic resources is typically difficult, prohibitively expensive, and may not be possible in some landscape settings.

   Individual 401 review is required for activities in or affecting the following aquatic resources (and not prohibited by Regional Condition 1):

   (a) Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publications #04-06-025 and #04-06-015):
   - Estuarine wetlands
   - Natural Heritage wetlands
   - Bogs
   - Old-growth and mature forested wetlands
   - Wetlands in coastal lagoons
   - Interdunal wetlands
   - Vernal pools
   - Alkali wetlands

   (b) Fens, aspen-dominated wetlands, camas prairie wetlands, and marine water with eelgrass (*Zostera marina*) beds (except for NWP 48).

   (c) Category 1 wetlands

   (d) Category II wetlands with a habitat score greater or equal to 29 points. This State General Condition does not apply to the following Nationwide Permits:

   NWP 20 – Response Operations for Oil and Hazardous Substances
   NWP 32 – Completed Enforcement Actions

5. **Mitigation.** For projects requiring Individual 401 review, adequate compensatory mitigation must be provided for wetland and other water quality-related impacts of projects or activities authorized under the NWP Program.

   (a) Mitigation plans submitted for Ecology review and approval shall be based on the guidance provided in Wetland Mitigation in Washington State, Parts 1 and 2 (Ecology Publications #06-06-011a and #06-06-011b) and shall, at a minimum, include the following:

   i. A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.

   ii. The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded)

   iii. The rationale for the mitigation site that was selected

   iv. The goals and objectives of the compensatory mitigation project

v. How the mitigation project will be accomplished, including construction sequencing, best management practices to protect water quality, proposed performance standards for measuring success and the proposed buffer widths

vi. How it will be maintained and monitored to assess progress towards goals and objectives. Monitoring will generally be required for a minimum of five years. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.

vii. How the compensatory mitigation site will be legally protected for the long term.

Refer to Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Ecology Publication #06-06-011b) for guidance on developing mitigation plans.

Ecology encourages the use of alternative mitigation approaches, including advance mitigation and other programmatic approaches such as mitigation banks and programmatic mitigation areas at the local level. If you are interested in proposing use of an alternative mitigation approach, consult with the appropriate Ecology regional staff person. (see http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm)

Information on the state wetland mitigation banking program is available on Ecology's website: http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/index.html

Information on the state in-lieu fee wetland mitigation program is available on Ecology's website: http://www.ecy.wa.gov/mitigation.ilf.html

6. **Temporary Fills.** Individual 401 review is required for any project or activity with temporary fill in wetlands or other waters of the State for more than 90 days, unless the applicant has received written approval from Ecology.

   Note*: This State General Condition does not apply to projects or activities authorized under NWP 33, Temporary Construction, Access, and Dewatering*

7. **Stormwater discharge pollution prevention**: All projects that involve land disturbance or impervious surfaces must implement prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the state. For land disturbances during construction, the permittee must obtain and implement permits where required and follow Ecology's current stormwater manual.

   Note*: Stormwater permit information is available at Ecology's Water Quality website: http://www.ecy.wa.gov/programs/wq/stormwater/index.html.*
   Ecology's Stormwater Management and Design Manuals are available at: http://www.ecy.wa.gov/programs/wq/stormwater/municipal/StrmwtrMan.html.
   Information is also available by contacting Ecology's Federal Permit staff.

8. **State Certification for PCNs not receiving 45-day response.** In the event the U.S. Army Corps of Engineers does not respond to a complete pre-construction notification within 45 days, the applicant must contact Ecology for Individual 401 review.

EPA 401 Certification General Conditions

EPA 401 Certification general conditions apply to all NWP authorizations involving Section 404 activities in Indian Country (excluding the tribal lands of the Chehalis, Lummi Nation, Port Gamble S'Klallam, Kalispel, Makah, Puyallup, Spokane, Swinomish and Tulalip Tribes). Indian Country includes reservation lands, trust lands, and Dependent Indian Communities. Dependent Indian Communities refers to a limited category of Indian lands that are neither reservation or trust lands that satisfy the following two requirements (1) they are set aside by the federal government for the use as Indian land and (2) they must be under federal superintendence. In order for any NWP authorization to be valid in Washington State, permittees must comply with applicable 401 Certification general conditions.

A. Any activities in the following types of wetlands and waters of the United States will need to apply for an individual 401 certification: Mature forested wetlands, bogs, bog-like wetlands, wetlands in dunal systems along the Washington coast, coastal lagoons, vernal pools, aspen-dominated wetlands, alkali wetlands, camas prairie wetlands, estuarine wetlands, including salt marshes, and marine waters with eelgrass or kelp beds.

B. A 401 certification determination is based on the project or activity meeting established turbidity levels. The EPA will be using as guidance the state of Washington's water quality standards [WAC 173-201a] and sediment quality standards [WAC 173-204]. Projects or activities that are expected to exceed these levels or that do exceed these levels will require an individual 401 certification.

The water quality standards allow for short-term turbidity exceedances after all necessary Best Management Practices have been implemented (e.g., properly placed and maintained filter fences, hay bales and/or other erosion control devices, adequate detention of runoff to prevent turbid water from flowing off-site, providing a vegetated buffer between the activity and open water, etc.), and only up to the following limits:

Wetted Stream Width at Discharge Point	Approximate Downstream Point for Determining Compliance
Up to 30 feet	50 feet
>30 to 100 feet	100 feet
>100 feet to 200 feet	200 feet
>200 feet	300 feet
LAKE, POND, RESERVOIR	Lesser of 100 feet or maximum surface dimension

C. 401 certification of projects and activities under NWPs will use Washington State Department of Ecology's most recent stormwater manual or an EPA approved equivalent manual as guidance in meeting water quality standards.

D. For projects and activities requiring coverage under an NPDES permit, certification is based on compliance with the requirements of that permit. Projects and activities not in compliance with NPDES requirements will require individual 401certification.

E. Individual 401certification is required for projects or activities authorized under NWPs if the project will discharge to a waterbody on the list of impaired waterbodies (the 303(d) List) and the discharge

may result in further exceedance of a specific parameter the waterbody is listed for. The EPA shall make this determination on a case-by-case basis.

For projects or activities that will discharge to a 303(d)-listed waterbody that does not have an approved Total Maximum Daily Load (TMDL) or an approved water quality management plan, the applicant must provide documentation for EPA approval showing that the discharge will not result in further exceedance of the listed contaminant or impairment.

For projects or activities that will discharge to a 303(d)-listed waterbody that does not have an approved TMDL, the applicant must provide documentation for EPA approval showing that the discharge is within the limits established in the TMDL. The current list of 303(d)-listed waterbodies in Washington State will be consulted in making this determination and is available on Ecology's web site at: www.ecy.wa.gov/programs/wq/303d/2012/index.html

The EPA may issue 401 certification for projects or activities that would result in further exceedance or impairment if mitigation is provided that would result in a net decrease in listed contaminants or less impairment in the waterbody. This determination would be made during individual 401 certification review.

F. For projects requiring individual 401 certification, applicants must provide the EPA with the same documentation provided to the Corps, (as described in Corps' National General Condition 31, Pre-Construction Notification), including, when applicable:

(a) A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, any other U.S. Department of the Army permits used or intended to use to authorize any part of the proposed project or any related activity.

(b) Delineation of special aquatic sites and other waters of the United States. Wetland delineations must be prepared in accordance with the current method required by the Corps.

(c) A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted.

(d) Other applicable requirements of Corps National General Condition 31, Corps Regional Conditions, or notification conditions of the applicable NWP.

A request for individual 401 certification- review is not complete until the EPA receives the applicable documents noted above and the EPA has received a copy of the final authorization letter from the Corps providing coverage for a proposed project or activity under the NWP Program.

G. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

H. An individual 401 certification is based on adequate compensatory mitigation being provided for aquatic resource and other water quality-related impacts of projects or activities authorized under the NWP Program.

A 401 certification is contingent upon written approval from the EPA of the compensatory mitigation plan for projects and activities resulting in any of the following:

- impacts to any aquatic resources requiring special protection (as defined in EPA General Condition A or Corps General Regional Condition 1)
- any impacts to tidal waters or non-tidal waters adjacent to tidal waters (applies to NWP 14)
- Or, any impacts to aquatic resources greater than ¼ acre.

Compensatory mitigation plans submitted to the EPA shall be based on the Joint Agency guidance provided in *Wetland Mitigation in Washington State, Parts 1 and 2* (Ecology Publication #06-06-011a and #06-06-011b) and shall, at a minimum, include the following:

(1) A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.
(2) The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded)
(3) The rationale for the mitigation site that was selected
(4) The goals and objectives of the compensatory mitigation project
(5) How the mitigation project will be accomplished, including proposed performance standards for measuring success (including meeting planting success standard of 80 percent survival after five years), evidence for hydrology at the mitigation site, and the proposed buffer widths;
(6) How it will be maintained and monitored to assess progress towards goals and objectives.
(7) Completion and submittal of an "as-built conditions report" upon completion of grading, planting and hydrology establishment at the mitigation site;
(8) Completion and submittal of monitoring reports at years 3 and 5 showing the results of monitoring for hydrology, vegetation types, and aerial cover of vegetation.
(9) For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.
(10) Documentation of legal site protection mechanism (covenant or deed restriction) to show how the compensatory mitigation site will be legally protected for the long-term.

I. An individual 401 certification is required for any activity where temporary fill will remain in wetlands or other waterbodies for more than 90 days. The 90 day period begins when filling activity starts in the wetland or other waterbody.

J. An individual 401 is required for any proposed project or activity in waterbodies on the most current list of the following Designated Critical Resource Waters (per Corps General Condition 22).

K. An individual 401 certification is required for any proposed project that would increase permanent, above-grade fill within the 100-year floodplain (including the floodway and the flood fringe).

[***Note:*** The 100-year floodplain is defined as those areas identified as Zones A, A1-30, AE, AH, AO, A99, V, V1-30, and VE on the most current Federal Emergency Management Agency Flood Rate Insurance Maps, or areas identified as within the 100-year floodplain on applicable local Flood Management Program maps. The 100-year flood is also known as the flood with a 100-year recurrence interval, or as the flood with an exceedance probability of 0.01.]

Spokane Tribe of Indians 401 Certification General Conditions

Specific to the Spokane Tribe Reservation and the Tribal Water Quality Standards, the applicant must comply with the following when there could be a discharge to waters on the Spokane Indian Reservation:

1. The applicant shall be responsible for achieving compliance with the Spokane Tribal Water Quality Standards.

2. The applicant shall submit copies of applications materials to the Spokane Tribal Water Control Board for review and approval at the same time they are submitted to Army Corps of Engineers and prior to any disturbance activities.

3. The applicant shall comply with all Spokane Tribal Integrated Resource Management Plan (IRMP) guidelines for land use activities and disturbances.

4. The applicant shall allow the Tribal Water Control board and Interdisciplinary Team to inspect the area in question and adopt recommendations made throughout its operation.

5. Monitoring of the discharge shall occur at a level indicated by EPA and the Tribe, are subject to change, and shall be submitted to both entities.

APPENDIX C: 2012 NATIONWIDE PERMIT DEFINITIONS

National Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional

religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.
Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.
Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations,

each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody

determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

Seattle District Definitions

Alkali Wetlands: Alkali wetlands are characterized by the occurrence of shallow saline water. In eastern Washington these wetlands contain surface water with specific conductance that exceeds 3000 micromhos/cm. These wetlands provide the primary habitat for several species of migrant shorebirds and are heavily used by migrant waterfowl. They also have unique assemblage of plants and animals not found anywhere else in eastern Washington.

Aspen Wetland Forests: A wetland where quaking aspen (*Populus tremuloides*) is a dominant or co-dominant species among the "woody" vegetation. Aspen stands in a forest provide important habitat. Aspens regenerate through an underground root system; regeneration of aspen stands by sexually produced seeds is an unusual phenomenon.

Bioengineering techniques: Are generally defined as "soft" engineering treatments as opposed to "hard" engineering. Bioengineering techniques includes but it is not limited to root wads, live stakes, woody vegetation, herbaceous cover, soil reinforcement, coir bio-logs, fabric encapsulated soil banks, brush layering, and bank reshaping.

Bogs and Bog-like Wetlands: Wetlands with the following characteristics: hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; overstory of spruce, western hemlock, lodgepole pine, cedar, white pine, crabapple, or aspen; and may be associated with open water. [Adapted from the Forest Practices Board Manual dated July 1995 that implements WAC 222 (Forest Practices Rules) and as adopted in WAC 173-202 (Washington Forest Practices Rules and Regulations to Protect Water Quality).]

Camas prairie wetlands: Wetlands dominated by the herbaceous Camas plant (*Cammasia quamash*). These wetlands are typically found in Southwest Washington.

Coastal Dune: A coastal dune system is characterized by a set of dune forms recurring in a pattern over the landscape. In general, only the parallel ridge system occurs in the State of Washington. The parallel ridge system is characterized by several ridges arranged in a parallel series starting from the waterward fore dune and extending inland up to two kilometers. The fore dune is a ridge of sand parallel to the beach just above the limit of ordinary wave action. Often, the fore dune is not completely stabilized by vegetation. Swales occur between the closely spaced ridges. Some of these swales include depressional areas supporting wetland habitat and open water. The landward extent of the dune system is determined by topographic breaks, bluffs, soils developed on the beach or on dunes, etc.

Essential Fish Habitat: Waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.

Estuarine wetlands: Wetlands which form where a river outlets into a tidal water. These wetlands are typically dominated by salt or salt tolerant plant species.

Feeder bluffs: Also known as sea cliffs and coastal bluffs, are bluffs along the marine shoreline that are actively contributing, or feeding, sediment to beaches. Bluff sediment is the primary source of beach sediment in Puget Sound, whereas rivers and streams are a secondary source.

Forage Fish: Small fish that breed prolifically and serve as food for predatory fish.

Inland Marine Waters: For the purposes of the 2012 NWPs, inland marine waters are defined as tidally influenced waters within the state of Washington limited to the marine waters ranging from South Puget Sound and Hood Canal to and including the Strait of Juan de Fuca and the Strait of Georgia. This does not include the outer coast adjoining the Pacific Ocean or tidally influenced rivers (above river mile "zero") draining into these water bodies.

Kettle: A deep, bowl-shaped depression formed by glacial action during periods of glacial retreat. Kettles are almost always permanently ponded.

Marine Waters with Eelgrass Beds: Eelgrass *(Zostera marina)* beds are one of the "Saltwater Habitats of Special Concern" in Washington State (WAC 220-110-250(3)(a)). They serve essential functions in the developmental life history of fish.

Mature Forested Wetland: There are two definitions for mature forested wetlands, one for western and one for eastern Washington. In western Washington, 50 percent of the cover of the upper forest canopy must consist of evergreen trees older than 80 years or deciduous trees older than 50 years, or 50 percent of the forest canopy must consist of trees taller than 50'. Structurally, mature forested wetlands in western Washington must include a multi-layer community consisting of trees greater than 50 feet tall, trees between 20 feet and 49 feet tall, shrubs, and an herbaceous groundcover. Less than 25 percent of the cover in the herbaceous/ground cover or shrub class can be invasive exotic plant species. In Eastern Washington the average age of dominant trees in a mature forested wetland must be greater than 80 years or the average age of dominant trees in the forested wetland must be between 50 and 80 years. The same structural diversity requirements for western Washington apply to eastern Washington. Less than 50 percent of the dominant plants in one or more layers (canopy, young trees, shrubs, herbs) can be invasive exotic plants.

Native Species: Species that historically occur in a particular ecosystem and are not introduced.

Permanent Adverse Impacts: Resource losses that are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment and which result in an irreversible or irretrievable commitment of resources. Filling a wetland and covering it with a parking lot is an example of a permanent adverse impact; temporarily stockpiling excavated soil in a wetland is an example of a temporary adverse impact. In addition, a permanent adverse impact could be one where the magnitude and type of action and its resulting impact, even if short-term and temporary, results in specifically identifiable irreversible or irretrievable commitment of resources.

Riparian Corridors: Riparian corridors are the ecologically defined areas adjacent to flowing waters. They contain moist soils and plants adapted to wetter conditions. A riparian habitat area (RHA) is defined by the Washington State Department of Fish and Wildlife as the area adjacent to aquatic systems with flowing water (e.g., rivers, perennial or intermittent streams, seeps, springs) containing elements of both aquatic and terrestrial ecosystems that mutually influence each other. Riparian habitat encompasses the area beginning at the ordinary high water line and extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife.

Salt Marsh: Aquatic areas adjacent to salt water where the interstitial soil salinity is greater or equal to 0.5 parts per thousand at any time of year or where the plant community is comprised of at least 5 percent total cover of saline adapted plant species.

Special Aquatic Sites: Special aquatic sites include wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, and sanctuaries and refuges as defined in 40 CFR 230.40 through 230.45 (*Guidelines for Specification of Disposal Sites for Dredged or Fill Material*).

Specialized Seasonal Wetlands: Generally, the following four types of wetlands are seasonally flooded, palustrine, impounded wetlands characterized by vegetation adapted to rising and falling water levels. These wetlands are found in enclosed basins set on impervious soil layers where outflow is rare, groundwater exchanges minimal, depth of inundation shallow, and duration of inundation brief. Native plants have adapted to take advantage of the brief appearance of water to flower, fruit, and seed and may appear to be dead in the summer. In the State of Washington, these wetland types are predominately found in the eastern portion of the state. Identification of these wetlands can be difficult and may need to be delineated according to Chapter 5 *Difficult Wetland Situations* in the current, applicable regional supplement to the Corps of Engineers Wetland Delineation Manual.

a. Camas prairie wetlands: Aquatic systems found in seasonally wet areas such as seepages, depressions, prairies, meadows, hillsides (where moist), moist forests, and streamside areas which are often dry by late spring. The soil surface may be rich in organic matter but relatively impervious layers in the soil profile result in a perched hydrology. Camas prairie meadows support communities of common camas (*Camassia quamash*) and great camas (*C. leichtlinii*). Geographic distribution of these systems include Thurston, Lewis, Clark, Skamania, Klickitat, Island, and San Juan counties, and the Columbia plateau and prairie pothole regions (including the Moses Lake area and Grant and Spokane counties).

b. Playa: A large, shallow depression with no outlet that is intermittently ponded due to surface water ponding over a relatively impervious (usually high clay content) soil layer. Playas are typically less vegetated, more alkaline or saline, and larger than vernal pools. When ponded, playas can form large, shallow lakes that are valuable to migrating birds in otherwise arid regions.

c. Prairie pothole: A prairie pothole is normally a closed, shallow to medium depth, bowl-shaped depression formed during periods of ice age floods or glacial retreat by glacial action in areas subsequently dominated by prairie or “grassland” vegetation types. Prairie potholes, unlike vernal pools and playas, can remain permanently ponded. Plant communities tend to be dominated by perennial rather than annual species and, depending on depth and slope, may feature one or more of the following plant communities: sweet meadow, shallow marsh, deep marsh, and/or vegetated shallows (i.e., dominated by submerged aquatic species rather than emergent species).

d. Vernal pool: A vernal pool is usually a closed depression that ponds water in the cool, low evaporation periods of winter and spring in regions with cool moist winters, and dries out during the hot dry summers. Vernal pools are underlain with an impervious subsoil or near-surface parent material (e.g., high clay content horizon, durapan, or basalt) which effectively eliminates downward percolation. Evaporation and transpiration are the only significant source of water loss. Short-lived native annuals usually dominate this plant community. Vernal pools are typically inhabited by plant and animal species that are especially well-

adapted to this ephemeral environment. Some of the plant species may be considered rare. When ponded, vernal pools can provide foraging habitat to various species of migratory birds. "Classic" vernal pools are epiaquic (wet from the top down).

Water crossings: For the purpose of RGC 5, water crossings are typically roads or other fills constructed across a channel with the installation of a culvert to facilitate fish passage.

Wetlands in coastal lagoons: Wetlands in a shallow sound, channel, pond, or pool directly connected to tidal waters. These wetlands are typically dominated by salt or salt tolerant plant species.

Wetlands in dunal system along the Washington coast: Wetlands located within sandy, depressional areas between coastal dunes.

APPENDIX D: ABBREVIATIONS AND ACRONYMS

401 Certification	–	Section 401 Water Quality Certification
BE	–	Biological Evaluation
Corps	–	U.S. Army Corps of Engineers
CBSA	–	Commencement Bay Study Area
CZM	–	Coastal Zone Management
Ecology	–	Washington State Department of Ecology
EPA	–	U.S. Environmental Protection Agency
ESA	–	Endangered Species Act
HPA	–	Hydraulic Project Approval
JARPA	–	Joint Aquatic Resource Permit Application
NMFS	–	National Marine Fisheries Service
NPDES	–	National Pollution Discharge Elimination System
NRCS	–	Natural Resources Conservation Service
NWP	–	Nationwide Permit
PCN	–	Pre-Construction Notification
SPN	–	Special Public Notice
SPIF	–	Specific Project Information Form (ESA)
State	–	State of Washington
TMDL	–	Total Maximum Daily Load
USFWS	–	U.S. Fish and Wildlife Service
WDFW	–	Washington State Department of Fish and Wildlife
WDNR	–	Washington Department of Natural Resources
WDOT	–	Washington State Department of Transportation