State of Washington
DEPARTMENT OF FISH AND WILDLIFE
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August 19, 2016

Seattle District, Corps of Engineers
Regulatory Branch, ATTN: Karen Urelius
Post Office Box 3755
Seattle, Washington 98124-3755

Dear Ms. Urelius:

SUBJECT: COMMENTS ON SEATTLE DISTRICT 2017 NATIONWIDE PERMIT GENERAL REGIONAL CONDITIONS AND SPECIFIC REGIONAL CONDITIONS

Washington Department of Fish and Wildlife (WDFW) would like to thank the Seattle District, U.S. Army Corps of Engineers (Corps) for allowing us to participant in the inter-agency work group reviewing the proposed general and specific regional conditions for the nationwide permits (NWPs). WDFW acknowledges that the regional conditions proposed by the Seattle District improve aquatic resource protection. This improved protection reflects the values of the citizens of Washington State who recognize that protecting, restoring and sustaining freshwater, estuary, nearshore, marine, and upland habitats is vital to our economy and our overall quality of life.

WDFW reviewed the Special Public Notice dated June 20, 2016 for the proposed reissuance of the nationwide permits and offers the following comments. We have discussed many of these comments with the work group.

GENERAL REGIONAL CONDITIONS (GRCs)

Aquatic Resources Requiring Special Protection

We request the Seattle District consider adding native seagrass beds and floating kelp beds to the list of aquatic resources requiring special protection. The Puget Sound Nearshore Partnership Report Kelp and Eelgrass in Puget Sound states that kelp and eelgrass are marine organisms of sufficient importance in Washington's waters. The following paragraph from the document summaries the importance.

"Both kelp and eelgrass serve a wide variety of ecological functions in nearshore ecosystems, and are critically linked to other Valued Ecosystem Components (VECs). Both are highly productive, annually producing large amounts of carbon that fuel nearshore food webs,

principally through detritus pathways. Both also provide critical three-dimensional structure in otherwise two-dimensional environments, and many other marine organisms use this structure. Shellfish, such as crabs and bivalves, use eelgrass beds for habitat and nursery areas and feed indirectly on the carbon fixed by the plants. Fishes such as juvenile salmonids use eelgrass beds as migratory corridors as they pass through Puget Sound; the beds provide both protection from predators and abundant food, such as the small crustaceans associated with eelgrass. The Great Blue Heron and other marine-associated birds feed extensively on the many small invertebrates and fishes that inhabit eelgrass beds. Some forage fish species, critical in other nearshore food webs, lay their eggs selectively on eelgrass. Kelp similarly provide food and refuge for a wide variety of invertebrates (including valued sea urchins and abalone) and fishes, especially juvenile rockfishes. Even orca whales are seen foraging in kelp beds, presumably consuming salmon there."

Citation

Mumford, T.F. 2007. Kelp and Eelgrass in Puget Sound. Puget Sound Nearshore Partnership Report No. 2007-05. Published by Seattle District, U.S. Army Corps of Engineers, Seattle, Washington.

New Bank Stabilization in Tidal Waters of the Salish Sea

We support the Seattle District's decision not to authorize new bank stabilization in the Salish Sea by a NWP. The construction of bulkheads and seawalls has become a significant environmental issue in the Puget Sound region. Years of scientific study has led to the determination that hard armor profoundly influences coastal processes, alters coastal ecology, and reduces the resilience of the coast to rising sea level. Many alternatives to hard armor exist for managing risk to structures and infrastructure posed by coastal erosion, including: the use of best management practices, structure relocation, and implementation of "soft shore protection" project designs.

Requiring individual permits for new bank stabilization allows the Corp to concur with the project proponent's opinion that shore protection is needed and the technique chosen best suits the conditions at a given site.

Citation

Johannessen, J., A. MacLennan, A. Blue, J. Waggoner, S. Williams, W. Gerstel, R. Barnard, R. Carman, and H. Shipman, 2014. Marine Shoreline Design Guidelines. Washington Department of Fish and Wildlife, Olympia, Washington.

Crossings of Waters of the United States

WDFW supports the proposed incorporation of the 2012 Note 1 as a regional general condition. Requiring the stream-simulation design method or a design method which achieves equivalent stream-simulation results ensures the NWP will complement the State Hydraulic Code rules (Chapter 220-660 WAC) in most instances.

Stream Loss

WDFW supports requiring individual permits for activities that result in the loss of perennial stream beds or the loss of greater than 300 linear feet of intermittent and/or ephemeral stream beds. In addition, WDFW requests that the Seattle district consider requiring PCN for the loss of 300 feet or less of intermittent and/or ephemeral stream beds. Ephemeral and intermittent streams comprise a large proportion of the drainage network in many parts of Washington State. As tributaries to larger rivers these play a significant role in the transport and processing of debris, sediment and other materials at the watershed scale. Fish streams may or may not have flowing water all year; they may be perennial or intermittent. Coho spawn in the upper portions stream networks, where intermittent streams are common. Residual pools in intermittent streams provide a refuge for juvenile Coho during dry periods; smolts that overwintered in intermittent streams were larger than those from perennial streams. Movement of juvenile Coho into intermittent tributaries from the mainstem illustrates the importance of maintaining accessibility for entire stream networks. Ephemeral and intermittent streams are also habitat for amphibians including salamanders listed as priority species in Washington. Furthermore, non-natal rearing of juvenile Chinook salmon is documented in intermittent tributaries. During winter floods, juvenile Chinook move into flooded side channels, floodplains, and small, intermittent streams.

Citations

Ebersole, J.L., P.J. Wigington, J.P. Baker, M.A. Cairns, and M. Robbins Church, 2006. Juvenile Coho salmon growth and survival across stream network seasonal habitats. Transactions of the American Fisheries Society 135:1681–1697.

P.J. Wigington Jr, J.L. Ebersole, M.E. Colvin, S.G. Leibowitz, B. Miller, B. Hansen, H.R Lavigne, D. White, J.P. Baker, M.R. Church, J.R. Brooks, M.A. Cairns and J.E. Compton, 2006. Coho salmon dependence on intermittent streams. Frontiers in Ecology and the Environment 4(10): 513-518

Maslin, P., J. Kindopp, M. Lennox and C. Storm, 1999. Intermittent streams as rearing habitat for Sacramento River Chinook salmon (Oncorhynchus tshawytscha) 1999 update. Update Internet Report.

Beamer, E.M., W.T. Zackey, D. Marks, D. Teel, D. Kuligowski, and R. Henderson. 2013. Juvenile Chinook salmon rearing in small non-natal streams draining into the Whidbey Basin. Skagit River System Cooperative, LaConner, WA

Mitigation

WDFW supports the inclusion of mitigation as a regional general condition. This helps ensure the 2008 Clean Water Act Section 404 Compensatory Mitigation Requirements are transparent to the public.

NATIONWIDE SPECIFIC REGIONAL CONDITONS (SRCs)

Maintenance

WDFW requests the Seattle District consider requiring a PCN for slip-lining a culvert that crosses waters of the U.S. where salmonid species are present or could be present. Re-lining a fish passage blocking culvert allows the barrier to remain in place rather than being corrected to provide passage.

Bank Stabilization

WDFW requests the Seattle Districts consider adding a specific regional condition that states "A PCN must be submitted to the Corps in accordance with Regional General Condition 1, Regional General Condition 5 and NWP General Condition 32 (Pre-Construction Notification) for new or maintenance bank stabilization activities. An alternative is to include this as a note.

Commercial Shellfish Aquaculture Activities

Commercial shellfish cultivation has taken place in Washington waters since the mid-1800s and has evolved in terms of the species farmed, methods used, product markets, and acreage under cultivation. Today Washington State is the nation's leading producer of farmed clams, oysters, and mussels.

In recognition of the importance of shellfish aquaculture, the Governor launched the Washington Shellfish Initiative in 2011. The initiative is a partnership between state and federal government, Tribes, the shellfish aquaculture industry and non-government entities.

WDFW appreciates the opportunity to work with the Seattle District to develop specific regional conditions that support the Washington Shellfish Initiative and protect valuable aquatic habitats.

Living Shorelines

Proponents of the Marine Shoreline Design Guidance and shore friendly programs like Green Shores rely on streamlined permit processes such as NWPs to help incentivize these programs. Proponents of these programs have contacted WDFW about the Seattle District's proposal to revoke this NWP for use in tidal waters in accordance with RGC 3. They are concerned that revoking this NWP will disincentive these programs. WDFW requests that the Seattle District add a note in the User Guide that states "NWP 13 can be used to replace hard shoreline armor with soft-shore protection techniques" to clarify there is another NWP that does apply.

General Comment

WDFW encourages the Corps to retain applicable notes and the National and Regional Pre-Construction requirements in the User's Guide for Nationwide Permits in Washington State. These add clarity to the NWP program and application process.

Thank you for the opportunity to provide comments on the proposed NWP Regional Conditions. If you have questions regarding our comments, please contact me at (360) 902-2602.

Sincerely,

Randi Thurston
Protection Division Manager
Habitat Program

RT:rt:

cc: Jeff Davis, DFW
Margen Carlsen, DFW
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