



PORT GAMBLE S'KLALLAM TRIBE
NATURAL RESOURCES DEPARTMENT
31912 Little Boston Rd. NE – Kingston, WA 98346

August 18, 2016

To Whom It May Concern,

Thank you for the opportunity to comment on the proposed 2017 re-issuance of the Corps' Nationwide Permits (NWP) on behalf of Port Gamble S'Klallam Tribe. The Port Gamble S'Klallam Tribe is the successor in interest to Indian bands and tribes signatory to the 1855 Treaty of Point No Point, 12 Stat. 933.¹ The tribe is concerned that the proposed permits may affect treaty rights, including the right to access traditional harvest areas and the protection of habitat necessary to produce fish. The Tribe reserves the right to harvest throughout the Usual and Accustomed Area which includes Hood Canal, Admiralty Inlet, Strait of Juan de Fuca and the waters surrounding the San Juan Islands.

We would like to reiterate that nationwide permits must be reviewed to ensure permitted actions have no more than minimal adverse effect both individually and cumulatively. The cumulative impacts of forestry, agriculture and urban development have impaired salmonid habitat throughout the Puget Sound and caused the decline of harvestable stocks. We would appreciate additional information to show how established NWP limits and thresholds ensure no more than minimal adverse effect and we are especially concerned where treaty rights may be affected.

We support the comments submitted by Point No Point Treaty Council and Northwest Indian Fisheries Commission.

NWP 3 – Maintenance

In the context of "Bank Stabilization," these activities should be considered a new event and should be required to undergo an individual permit. Bank stabilization projects which require repeated maintenance are likely altering the rates of water and sediment flow that sustain streambanks and shorelines, and should be redesigned to allow a balance of natural watershed and coastal processes. With soft armoring techniques, banks are allowed to adjust to changes in water and sediment flow. If a project is maintained like it is a static streambank or shoreline than it is effectively hard armoring. Bank armoring reduces habitat complexity important for rearing juveniles, by reducing side-channel formation and floodplain connection, diminishing the Tribe's treaty protected right to take fish.

NWP 7 – Outfall Structures and Associated Intake Structures

¹ *United States v. Washington*, 459 F. Supp. 1020, 1039 (W.D. Wash. 1978) (hereinafter *Boldt II*).



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Outfall structures should not discharge to sensitive aquatic habitats including eel grass beds, forage fish spawning grounds, or shellfish beds. The degradation of habitats important for forage fish and rearing juvenile salmonids diminishes the Tribe's treaty protected right to take fish. The potential for outfalls to cause shellfish bed closures would affect the Tribe's right to access traditional harvest areas where closures occurred.

NWP 10 – Mooring Buoys

Mooring buoys within the Salish Sea should require an individual permit to more carefully consider cumulative and treaty right impacts. The number of mooring buoys per acre must be less than 10 to protect shellfish beds from closure per the National Shellfish Sanitation Program and Washington Department of Health regulations. In addition, mooring buoys may interfere with tribal net fishing where nets are strung up to 900 feet out from the shoreline. An individual permit is necessary to carefully consider the impact of mooring buoys on these two resources. We are also concerned about the potential impacts to eel-grass beds, forage fish spawning grounds and geoduck tracts.

Mooring buoys should be inventoried to establish where cumulative impacts are locally significant and to ensure an effective permitting process. In waters with tidelands owned by Washington Department of Natural Resources, agency coordination will be necessary to enforce buoy permits. Buoys should also be considered for consistency with county Shoreline Master Plans. Illegal buoys must be identified and removed. If contract services are used for the permitting and installation of mooring buoys, the contractor could identify and remove any surrounding illegal buoys as part of the permit requirement. In the 2012 issuance of NWPs, a regional condition prohibited the use of NWP 10 for any water body designated as closed or threatened by the Washington Department of Health, but this condition does not protect water bodies from the risk of unexpected closures due to the large number of unpermitted buoys.

In Marine Area 12 near Seabeck, the addition of mooring buoys has begun to interfere with the tribal net fishery where nets become entangled with buoys and line. Tribal set nets are anchored to the shoreline and aligned perpendicular to the shoreline to catch passing fish. The Tribe's right to access fishing areas is greatly reduced where the density of buoys obstructs access to or entangles with fishing nets. The mooring buoys also obstruct access to shellfish harvest areas and interfere with fishing vessels. In Mystery Bay, a shellfish bed within the Tribe's Usual and Accustomed Area was closed by Washington Department of Health when it was classified as "marina" due to the presence of greater than 10 boats per acre causing a loss of the Tribe's treaty right to access traditional harvest areas.

NWP 12 – Utility Line Activities



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Utility lines crossing under stream beds should be sunk deeply enough that lines are not exposed by erosion in the event of a channel regrade. With culvert replacement in favor of stream simulation design, channel profiles will adjust which can inadvertently introduce new fish passage barriers when utilities are exposed. In addition, where possible, utilities should be sited alongside existing road crossings. Where a utility line is excavated by erosional processes, it would likely create a fish passage barrier. We are concerned that the broad jurisdiction of some utilities may be more complex than ordinary road-stream crossings and the utility may delay or avoid fixing the problem. Anadromous fish require the ability to migrate upstream to spawn, and barriers to migration diminish the Tribe's treaty protected right to take fish.

NWP 13 – Bank Stabilization

NWP 13 should be revoked and bank stabilization should require an individual permit to consider alternatives to armoring and alternatives in armoring design. Soft armoring techniques should be used in favor of hard armoring to maintain dynamic watershed processes such as sediment and wood supply, transport and deposition. A linear foot limit is not appropriate due to the complex and often unexpected adverse effects of bank armoring in dynamic systems. The risk of increased bank stabilization in response to climate change related increases in streamflow or sea-level also support the use of an individual permit.

The 2012 NWP 13 was conditioned by Regional General Condition 4. The extensive details required by this condition suggest an individual permit is needed. We are encouraged by the revocation of NWP 13 for tidal waters of the Salish Sea. We propose the revocation of NWP 13 for the watershed of the Puget Sound in favor of individual permits. In the event that a change to individual permits is not possible, we oppose the authorization of maintenance with this NWP.

Bank armoring reduces habitat complexity important for rearing juveniles, by reducing side-channel formation and floodplain connection, diminishing the Tribe's treaty protected right to take fish.

NWP 14 – Linear Transportation Projects

NWP 14 permitted projects should include any artificial grade control structures associated with the existing crossing. Culvert replacements often initiate vertical channel adjustments occurring over hundreds of meters. The Corps' should require permittees to identify all artificial grade control structures within the extent that regrade typically occurs. The presence of additional grade control structures impedes the ability of a stream to adjust and recover to a



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natural hydraulic geometry necessary to transport water and sediment loads and sustain fish habitat. Additionally, these structures are also likely fish passage barriers. Anadromous fish require the ability to migrate upstream to spawn, and barriers to migration diminish the Tribe's treaty protected right to take fish.

NWP 52 – Water Based Renewable Energy Generation Pilot Projects

The use of floating solar installations is an inappropriate use of waters of the Salish Sea and should be prohibited or heavily conditioned. Floating structures interfere with light transmission and current and alter the behavior of organisms in the marine environment. The changes in behavior may effect species interactions and reduce the availability of fish in traditional harvest areas and diminish the Tribe's treaty protected right to take fish.

Regional General Condition 1 – Aquatic Resources Requiring Special Protection

The Corps should include headwater wetlands in its category of aquatic resources requiring special protection. These wetlands provide important base streamflow. Lower base streamflows lead to increased water temperature, lower dissolved oxygen and higher metabolic rates of fish, increased fish energy-intake needs and threaten fish survival.

Loss of intermittent and ephemeral streambeds

Certain NWPs (NWPs 29 – Residential Developments, 39 – Commercial and Institutional Developments, 42 - Recreational Facilities) are conditioned by a 300-foot limit to the loss of intermittent and ephemeral streambeds. This loss is too high. Intermittent streambeds are utilized by fishes important for tribal harvest. Furthermore, the intermittent nature of a stream is not permanent, as beaver activity may impound water which provides perennial flow.

Sincerely,

Sam Phillips