

# Joint Public Notice

## Proposal to Modify and Reissue a Regional General Permit with Washington Department of Ecology/Environmental Protection Agency or Tribal Water Quality Certification and Coastal Zone Management Consistency Concurrence

**US Army Corps of Engineers**  
Regulatory Branch  
Post Office Box 3755  
Seattle, WA 98124-3755  
Telephone (206) 764-6695  
Attn: Erin Legge, Project Manager

**WA Department of Ecology**  
SEA Program  
Post Office Box 47600  
Olympia, WA 98504-7600  
Telephone (360) 407-6068  
Attn: SEA Program, Federal Permit  
Coordinator

**Public Notice Date: October 2, 2015**  
**Expiration Date:** November 1, 2015

Reference No.: CENWS-RGP6  
Name: Regional General Permit 6

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Interested parties are hereby notified that, in accordance with 33 CFR 325.3(b), the Seattle District of the U.S. Army Corps of Engineers (Corps) is proposing to issue Regional General Permit (RGP) 6 that would authorize the work described herein, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The original RGP 6 was issued on February 14, 2005, and revised on July 9, 2007.

**PERMIT TITLE:** The modified RGP is entitled: “*Structures in Inland Marine Waters of Washington State*”

**PERMIT NUMBER:** CENWS-RGP6 (NWS-2002-1291)

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Seattle District  
Regulatory Branch, CENWS-OD-RG  
P.O. Box 3755  
Seattle, Washington 98124-3755

**LOCATION OF AUTHORIZED ACTIVITIES:** The proposed RGP would be applicable in inland marine waters of Washington State only.

**WORK:** The RGP text and the formatting of the appendices have been revised and reformatted. Significant changes to the previous RGP are summarized below and the modified draft of RGP 6 is available online at the Corps webpage. Go to: [www.nws.usace.army.mil](http://www.nws.usace.army.mil), select (“Regulatory Branch, Permit Information”, “Permitting” then “Regional General Permits”).

- Page 1: RGP 6 authorizes the construction of new overwater residential structures only, maintenance or modification of existing structures must be permitted under a separate authorization.
- Page 1: Additional types of work to be covered under RGP 6 include the following: mooring buoys, marine rails, open-frame stairways, bluff-to-beach trams, watercraft lifts, as well as work and fill necessary to complete compensatory mitigation.
- Page 2: A percentage of all structures and mitigation sites authorized by RGP 6 will be inspected annually.
- Pages 2-3: The following documentation is required in order to assess existing conditions at a proposed project site: photographs of the project area, bank and shoreline taken at low tide; and assessments of the substrate and submerged aquatic vegetation.

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- Page 3: Lists of online resources and templates available to help applicants provide a complete application. In order to keep the RGP 6 user-friendly and current, we have exported some of the contents of the RGP to our website.
- Pages 9-16: The “*Conservation and Construction Specifications*” have changed and are now included in Appendix A, “*Regional General Permit (RGP) Application Form*”.
- Page 17: Compensatory mitigation is now required for all new overwater structures, as outlined in Appendix B, “*Compensatory Mitigation Requirements and Calculations*”.
- Pages 24: Appendix C, “*Glossary*” has been expanded to include the following terms: conservation banking, in-lieu fee program, major estuary zones, mitigation banks, mooring buoys, service area, site protection mechanism, submerged aquatic vegetation, and additional overwater structures are listed.

**PURPOSE:** The purpose of this RGP is to expedite the authorization of recurring activities that are similar in nature and have minor individual and cumulative adverse impact on the aquatic environment. Use of this RGP would reduce the amount of paperwork and time required to authorize qualifying projects by making available for public use an already issued Department of the Army general permit that will likely include a concluded Endangered Species Act Section 7 consultation, Essential Fish Habitat consultation, Federal, Tribal, or State water quality certification, and coastal zone management consistency concurrence.

The proposed RGP contains provisions intended to protect the environment, endangered species, and cultural resources. Work that would not comply with the provisions of the RGP would not be authorized by this permit and may require Department of the Army authorization by a standard individual permit. Moreover, compliance with the provisions of this RGP would not in itself guarantee that the work is authorized by this RGP. Activities that appear to comply with the provisions of this RGP but would have an unacceptable adverse impact on the public interest would not be authorized by this permit.

**ENDANGERED SPECIES:** The Endangered Species Act of 1973 (ESA), as amended, requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) and/or U.S. Fish and Wildlife Service (USFWS), pursuant to Section 7 of the ESA, on any action, or proposed action, permitted, funded, or undertaken by the agency that may affect a species listed as threatened or endangered under the ESA, or its designated critical habitat. The Corps has determined that activities that would be authorized by this RGP may affect federally listed species and, therefore, will consult with the NMFS and USFWS.

**ESSENTIAL FISH HABITAT:** The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). EFH has been designated for Pacific salmon, groundfish, and coastal pelagic species in Puget Sound. If the Corps determines that issuance of this RGP may adversely affect EFH for federally managed fisheries in Washington waters, the Corps will initiate consultation with the NMFS. EFH consultation will be conducted in conjunction with ESA consultation.

**CULTURAL RESOURCES:** The locations of activities that might be authorized by the proposed RGP are not known and, therefore, the District Engineer cannot determine at this time whether any of the activities that would be authorized by the proposed RGP may affect an historic property listed, or eligible for listing, in the National Register of Historic Places (NRHP). However, if issued, the proposed RGP would not authorize any activity that may affect historic properties listed, or eligible for listing, in the NRHP until the provisions of 33 CFR 325, Appendix C, have been satisfied. A prospective permittee would be required to notify the District Engineer if the proposed activity may affect an historic property that is listed, eligible for listing, or may be eligible for listing in the NRHP, and would not be authorized to conduct the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized.

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The District Engineer invites responses to this public notice from Federal, State, and local agencies, historical and archeological societies, Indian tribes, and other parties with knowledge of, or concerns with, historic properties.

**PUBLIC HEARING:** Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

**EVALUATION:** The decision whether to issue the proposed permit will be based on an evaluation of the probable impact, including cumulative impacts of the authorized activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposal. Any comments received will be considered by the Corps in determining whether or not to issue the proposed permit. Comments are used to help the Corps assess likely impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and the overall public interest of the activity.

The evaluation of the likely impact of the proposed on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act. This evaluation will include an alternatives analysis.

**ADDITIONAL EVALUATION:** Under Section 401 of the Clean Water Act (CWA), an activity involving a discharge into waters of the U.S. authorized by a federal permit or license must receive certification from the affected certifying agency or tribe. Thus, activities in Washington State requiring a Section 404 permit from the Corps also requires Section 401 certification from the Washington Department of Ecology (Ecology), the Environmental Protection Agency (EPA), or a 401 certification-authorized Tribe. Section 401 certification signifies that the certifying entity has reasonable assurance that the project will comply with all applicable Federal, State, or Tribal effluent limitations and water quality standards, as well as other applicable aquatic resource protection requirements.

In Washington State, two agencies and seven tribes have 401 certification authority. The EPA has 401 certification authority for activities on most Native American Indian Tribal lands and on Federal lands with exclusive jurisdiction within the State of Washington. To date, the EPA has granted six tribes around the Puget Sound (Lummi, Port Gamble S'Klallum, Makah, Puyallup, Swinomish, 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 public and private lands in the State.

Ecology must also determine if the activities authorized by the proposed RGP will comply with Chapters 173-225 of the Washington Administrative Code and the requirements of the U.S. Coastal Zone Management Act (16 U.S.C. 1452 et seq.) and the implementing regulations (15 CFR 923-930), whether the activities that would be authorized will be consistent with the State's Coastal Zone Management program.

COMMENT AND REVIEW PERIOD: Conventional mail or e-mail comments on this public notice will be accepted and made part of the record and will be considered in determining whether it would be in the public interest to authorize this proposal. In order to be accepted, e-mail comments must originate from the author's e-mail account and must include on the subject line of the e-mail message the permit applicant's name and reference number as shown below. They must also include the commenter's name, address and telephone number. All comments must reach this office no later than the expiration date of this public notice to ensure consideration.

CORPS COMMENTS: All e-mail comments should be sent to: erin.l.legge@usace.army.mil. Conventional mail comments should be sent to U.S. Army Corps of Engineers, Regulatory Branch, Attention: Ms. Erin Legge, P.O. Box 3755, Seattle, Washington 98124-3755.

ECOLOGY COMMENTS: Any person desiring to present views on the project pertaining to a request for water quality certification under Section 401 of the CWA and/or Coastal Zone Management consistency concurrence, may do so by submitting written comments to the following address: Department of Ecology, Attention: SEA Program – Federal Permit Coordinator, P.O. Box 47600, Olympia, Washington 98504-7600, or email to: ecyrefedpermits@ecy.wa.gov.

EPA COMMENTS: Any person desiring to present views on the project pertaining to a request for water quality certification under Section 401 of the CWA and/or Coastal Zone Management consistency concurrence, may do so by submitting written comments to the following address: U.S. EPA, Region 10, Attention: Mr. Michael Szerlog, at 1200 Sixth Avenue, Suite 900 (ETPA-083), Seattle, Washington 98101.

TRIBAL COMMENTS: The list below provides the names of Native American Tribes on Puget Sound that have been authorized by EPA to administer the Clean Water Act Section 303(c) Water Quality Standards and Implementation Plans (WQS) and/or the Section 401 Certification Program on their respective tribal lands. Any person desiring to present views pertaining to WQS and/or 401 Certification on tribal land may send comments to the appropriate address:

Port Gamble S'Klallam Tribe  
ATTN: Mr. Ronald Charles and Ms. Marie Heber  
31912 Little Boston Road Northeast  
Kingston, Washington 98346

Lummi Business Council  
ATTN: Ms. Evelyn Jefferson and Mr. James Hillaire  
2616 Kwina Road  
Bellingham, Washington 98226-9298

Tulalip Tribes of Washington  
ATTN: Mr. Richard Young  
6406 Marine Drive  
Tulalip, Washington 98271-9775

Confederated Tribes and Bands of the Yakama Nation  
P.O. Box 151  
Toppenish, Washington 98948-0151  
(Pending EPA authorization)

Swinomish Tribe  
11404 Moorage Way  
La Conner, Washington 98257-9450

Comments should be received no later than the expiration date of this public notice to ensure that they can be considered. Include in your letter or email subject line the following project name: **RGP 6 (September 30, 2015)**

Enclosures: Draft Regional General Permit 6, dated September 30, 2015