US Army Corps of Engineers
Seattle District

Joint Public Notice

Proposal for a Wetland Mitigation Bank

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Public Notice Date: December 15, 2008
Expiration Date: January 14, 2009
Reference No.: NWS-2008-1519-SO

Name: Lummi Nation Wetland & Habitat Mitigation Bank

Interested parties are hereby notified that the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) are considering a proposal to establish the Lummi Nation Wetland and Habitat Mitigation Bank (WHMB), in Whatcom County, Washington.

BANK SPONSOR – Lummi Indian Business Council
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LOCATION – The Lummi Nation WHMB is proposed to be located at three sites known as the Lummi Delta, Nooksack Delta, and the Blockhouse sites. The project locations are identified on the attached Figure 1. The three sites are entirely within the boundaries of the Lummi Indian Reservation (Reservation). The Reservation is located in northwest Washington, in the southwest corner of Whatcom County, just south of the City of Ferndale and west of the City of Bellingham in Water Resource Inventory Area 1 (Nooksack River Watershed), as shown in Figure 2. The Reservation is bordered on the west by Georgia Strait and Lummi Bay and on the south by Hale Passage and Bellingham Bay.

The Lummi Nation currently owns or is partial owner of some of the property within the proposed bank boundaries, while some parcels have multiple owners. The Lummi government intends to eventually acquire all of the land that lies within the WHMB boundaries. Specific information on each of the three sites follows:

The Lummi Delta Site includes about 400 acres in the delta of the Lummi River in the northwest portion of the Reservation, between North Red River Road and the river. The site includes ten parcels (parcel numbers 4-B,

6-A, 6-B, 6-C, 6-D, 7-A, 3-B, 11, 11-A, and 5-B), of which seven have multiple owners. All parcels are designated as "trust land" meaning that the land is subject to the trust responsibility of the United States to Indians and Indian tribes. Parcel 4-B is in Tribal Trust, meaning that it is wholly owned by the Lummi Nation. This accounts for approximately 10% of the area in the Lummi Delta Site. The remaining parcels are in Individual Native Trust and are owned by one or more parties, including tribal members and non-Lummi owners. The Lummi Nation is currently partial owner of three of those parcels – 11, 11-A and 5-B.

The Nooksack Delta Site includes 1,000 acres in the delta of the Nooksack River in the southeast corner of the Reservation. The site includes 15 parcels, six of which are currently owned by the Lummi Nation. The remaining nine parcels are in Individual Native Trust and are owned byone or more parties, all of which are tribal members. This site includes about 400 acres of land that is not divided into parcels and has formed as a result of the delta depositing sediment and extending further seaward. Including this more recently formed land and the six parcels listed below, the Lummi Nation owns about 70% of the land within the boundaries for the site. The Nooksack Delta Site includes the following parcels:

Nooksack Delta Site Parcels

Tribal Trust Parcels (Lummi Nation Ownership)	Individual Native Trust Parcels
380217999905	380218345325/26-B
380217290290	380218420340/27-BA
380218420455	380218490400/25-B
380218B	380218440280/27-BB
380219500360	380218426213/42-B
380219C	380217060250/24-B
	380217060450/22-B
	380217060365/23-B
	380217140370/23-BA

The Blockhouse Site includes about 350 acres and consists of two sites referred to as Area A and Area B. Area A is located south of the Lummi River, between Hillaire Road and Lummi Bay. Area A includes two parcels: parcel T-1004 is owned by the Lummi Nation as Tribal Trust land and parcel 7AB is in Individual Native Trust and has multiple owners, both tribal members and non-Lummi owners. Area B is located east of Area A near the Kwina Road/Haxton Way intersection. It includes parcel T-1017, which is owned by the Lummi Nation, and parcel 31-F, which is in Individual Native Trust and is owned by a tribal member. The Lummi Nation currently owns about 85% of the land that comprises the Blockhouse Site.

MITIGATION BANKING – Wetland mitigation banks provide an alternative to traditional, concurrent, compensatory wetland mitigation. Mitigation banks offer an opportunity to implement compensatory mitigation at a regional scale in advance of impacts. "Credits" are established at mitigation banks by restoring, creating, enhancing and, in some circumstances, preserving wetlands and other natural resources. These credits can then be sold to permit applicants who need to offset the adverse environmental effects of projects with unavoidable wetland impacts that would occur within the banks' designated "service area". The document that addresses the bank process is the Mitigation Banking Instrument (MBI). The MBI is a contract that is created in cooperation with the Interagency Review Team (IRT), which includes federal, state and local agencies. The MBI contains the legal contract between the bank sponsor and IRT agencies, and the technical and procedural elements of constructing, operating, and maintaining the bank. Prior to development of the MBI, a prospectus is submitted to the IRT agencies to determine the general feasibility of the bank. This public notice is requesting comments on the prospectus.

PROJECT DESCRIPTION – The three sites within the Lummi Nation WHMB provide the opportunity to restore, enhance, and preserve about 1,800 acres of wetland area. The existing land use and proposed work for each site is described as follows:

Lummi Delta Site: The Lummi Delta Site is primarily used for agricultural purposes and is dominated by herbaceous vegetation. The site is currently about 400 acres in size with 123 acres of diked freshwater wetland and 37 acres of estuarine intertidal and subtidal wetlands. The majority of the site is cut off from tidal inundation by a sea wall/dike and overbank flooding of the Lummi River is limited by levees. The design of the Lummi Delta Site is based on restoring daily tidal inundation to the area, which will re-establish and rehabilitate a total of about 390 acres of wetlands. This will be accomplished by removing portions of the levees along the Lummi River and the sea wall/dike along Lummi Bay and removing the existing tide gate at the downstream end of the northern distributary channel. Removing sections of the dikes will rehabilitate the existing palustrine emergent wetlands by opening them to a direct tidal influence during higher tidal conditions and convert the existing fresh/brackish wetlands to saline/brackish tidally influenced wetlands. Direct tidal influence will also result in the re-establishment of saline/brackish wetlands in the areas that were formerly wetlands but that are now uplands.

Nooksack Delta Site: The Nooksack Delta Site is mostly forested and shrub-dominated floodplain with emergent tidal wetlands at the southern end. Primary uses are fishing and other recreational activities. The site is about 1,100 acres and includes about 750 acres of freshwater or brackish wetland (forested, shrub and emergent), 260 acres of saline emergent wetland, and 60 acres of river channel. The Nooksack Delta Site is not diked, remains in a relatively natural condition, and already has high ecological function. Therefore, design efforts in the Nooksack Delta Site will focus on enhancing 290 acres of wetland, through removing and managing invasive plant species and increasing native plant species diversity by underplanting with native conifers, and preserving 680 acres of existing high-quality wetland.

Blockhouse Site: The Blockhouse site is about 350 acres and includes 190 acres of freshwater shrub and emergent wetlands. Some of the site was historically used for a small military facility and some portions were once farmed. The two areas that make up the Blockhouse Site are greater than 1,000 feet apart, but have a direct hydrologic connection through a large channel. Modifications to the existing tidegate that controls the outflow of the channel will affect the hydrologic regime of both areas. Restoring tidal flux to the Blockhouse Site is expected to rehabilitate about 170 acres of disturbed wetlands and re-establish 140 acres of wetlands by returning tidal hydrology to areas that were historically wetlands.

A more detailed description of the proposal is available in *Lummi Nation Wetland and Habitat Mitigation Bank Prospectus,* dated October 2008. This prospectus is available for inspection at the above-listed Corps office and can be downloaded at the following Internet address:

www.nws.usace.army.mil (click on Regulatory in list on the left and then choose Public Notices)

SERVICE AREA – The service area of a mitigation bank is the geographic area over which credits may be used for compensatory mitigation. The proposed service area for the Lummi Nation WHMB is generally the portions of Watershed Resources Inventory Area 1 (WRIA 1) downstream from the confluence of the North Fork, Middle Fork, and South Fork Nooksack River. The WRIA 1 sub-basins at the headwaters of streams in the Cascade Mountains and areas that cross the international boundary and/or discharge to the Fraser River system are not included in the service area. Included in the service area are tidally influenced shoreline wetlands down to the elevation of Mean Lower Low Water (MLLW) along the edge of WRIA 1 from the Canadian border south to the mouth of the Skagit River. Sub-basins contained within the service area include: Samish Bay, Lummi/Eliza Islands, Lake Whatcom, Lummi Peninsula/Portage Island, Lummi Bay, Silver/Nooksack Channel and Delta, Squalicum, Ten Mile, Lower Mainstem Nooksack, Birch Bay, Drayton Harbor, Lynden North, and Point Roberts. Figure 3 depicts the proposed service area for the Lummi Nation

WHMB. We are seeking comments on the proposed service area. The proposed service area may be increased or decreased based on public comments and comments from the IRT.

PURPOSE – The purpose of the Lummi Nation WHMB is to provide compensatory mitigation for aquatic resource impacts occurring on the Lummi Indian Reservation and on nearby lands outside of the reservation. It is intended to provide for long-term mitigation needs for tribal members, the tribal government, and the general public. Within the Reservation boundaries, the WHMB may be used to compensate for impacts to "Lummi Nation Waters" and "Waters of the United States", including wetlands, which result from activities authorized under Lummi Code of Laws (LCL) Title 17 and Sections 401 and 404 of the Federal Clean Water Act. For off-reservation lands, the WHMB may provide compensation for aquatic resources that are designated as "Waters of the United States" under the Clean Water Act, as "Waters of the State" as defined by the Revised Code of Washington (RCW) 90.48.020, and as critical areas under local government ordinances and codes. The use of bank credits as future compensatory mitigation would depend on case-by-case approval by the involved regulatory agencies after determining that the use of bank credits would be consistent with all applicable rules and policies of the agencies.

ADDITIONAL INFORMATION – The bank sponsor will work with a multi-agency IRT to develop the Mitigation Bank Instrument in accordance with 33 CFR Part 325 and 332 *Compensatory Mitigation for Losses of Aquatic Resources; Final Rule*, dated April 10, 2008, and applicable state, local, and other federal requirements.

Construction of the Lummi Nation WHMB would involve the discharge of dredged and fill material into waters of the United States, which requires Department of the Army authorization under Section 404 of the Clean Water Act. Based on a preliminary evaluation of this proposal by the Corps, it appears the proposed bank may be eligible to be authorized under Nationwide Permit 27, which authorizes qualifying wetland and riparian restoration and creation activities.

ENDANGERED SPECIES – Pursuant to the requirements of Endangered Species Act of 1973 (ESA), the Corps must assess the potential impacts of its actions on species listed, or proposed for listing, as threatened or endangered under the ESA. The Canada lynx (*Lynx canadensis*), threatened; marbled murrelet (*Brachyramphus marmoratus*), threatened; northern spotted owl (*Strix occidentalis caurina*), threatened; bull trout (*Salvelinus confluentus*), threatened; Puget Sound steelhead trout (*Oncorhynchus mykiss), threatened;* Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*), threatened; southern resident killer whale (*Orcinus orca*), endangered; humpback whale (*Megaptera novaeangliae*), endangered; and Steller sea lion (*Eumetopias jubatus*), threatened are known to occur in the vicinity of the project area. In addition, there is critical habitat in the vicinity of the project area for marbled murrelet, bull trout, Puget Sound Chinook salmon, and southern resident killer whale. Upon receiving comments in response to this public notice, the Corps will evaluate the potential impact of the proposed action on these species and any designated critical habitat for federally listed species.

ESSENTIAL FISH HABITAT – The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed action, permitted, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). The Corps has determined that EFH for Pacific salmon, coastal pelagic fish and groundfish occurs in the action area. Upon receiving comments in response to this public notice, the Corps will evaluate the potential impact of the proposed action on EFH for federally-managed fisheries in Washington waters. The Corps' final determination relative to project impacts and the need for mitigation measures is subject to review by, and coordination with, the NMFS.

CULTURAL RESOURCES: The District Engineer will review the latest published version of the National Register of Historic Places, lists of properties determined eligible and other sources of information.

A historic properties investigation will be conducted within the proposed bank site area and will be coordinated with the Tribal Historic Preservation Office of the Lummi Nation. The District Engineer invites responses to this public notice from Native American Nations or tribal governments; Federal, State, and local agencies; historical and archeological societies; and other parties likely to have knowledge of or concerns with historic properties in the area. This public notice initiates consultation under Section 106 of the National Historic Preservation Act (36 CFR 800.4[a][3]), with any Tribe that has information or concerns with historic properties in the proposed permit area.

EVALUATION – The Corps and EPA are soliciting comments from interested parties, including public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to identify project aspects that need to be addressed during the bank review process and in the development of the MBI. Public comments will assist in developing facts upon which to base a decision by IRT member agencies as to whether or not to authorize the proposed mitigation bank. For accuracy and completeness of the record, all comments should be submitted in writing with sufficient detail to furnish a clear understanding of the reasons for that support or opposition.

COMMENT AND REVIEW PERIOD – Conventional mail or e-mail comments on this proposal 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. 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 reference number NWS-2008-1519-SO. All e-mail comments should be sent to gail.m.terzi@usace.army.mil at the Corps and/or rave-perkins.krista@epa.gov at EPA. Conventional mail comments should be sent to either of the addresses at the top of this public notice. Both conventional mail or e-mail comments must include the "Lummi Nation Wetland and Habitat Mitigation Bank, NWS-2008-1519-SO" and the commenter's name, address, and phone number. All comments, whether conventional mail or e-mail must reach this office, no later than the expiration date of this public notice to ensure consideration.

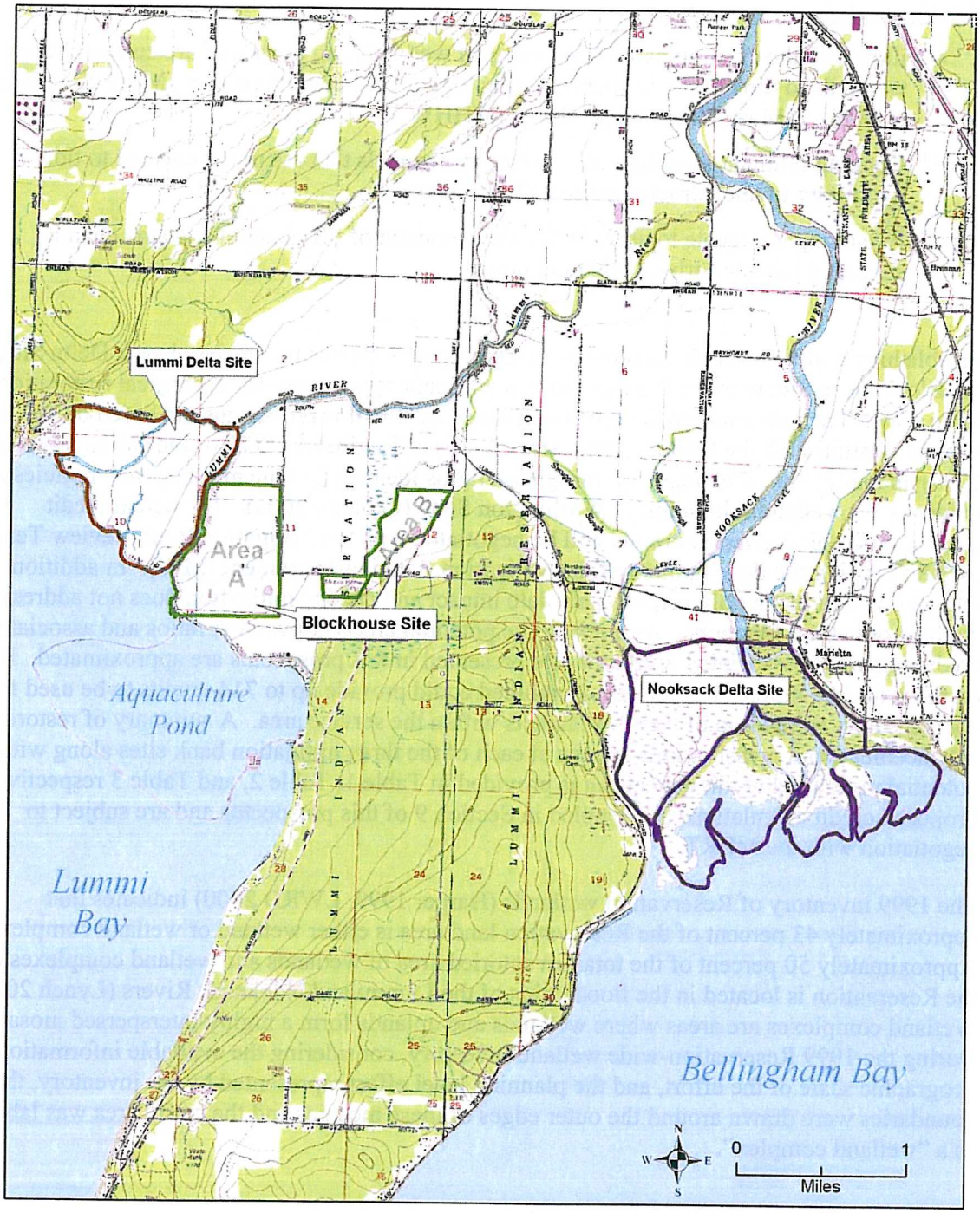

Figure 1. Lummi Nation Wetland and Habitat Mitigation Bank Sites

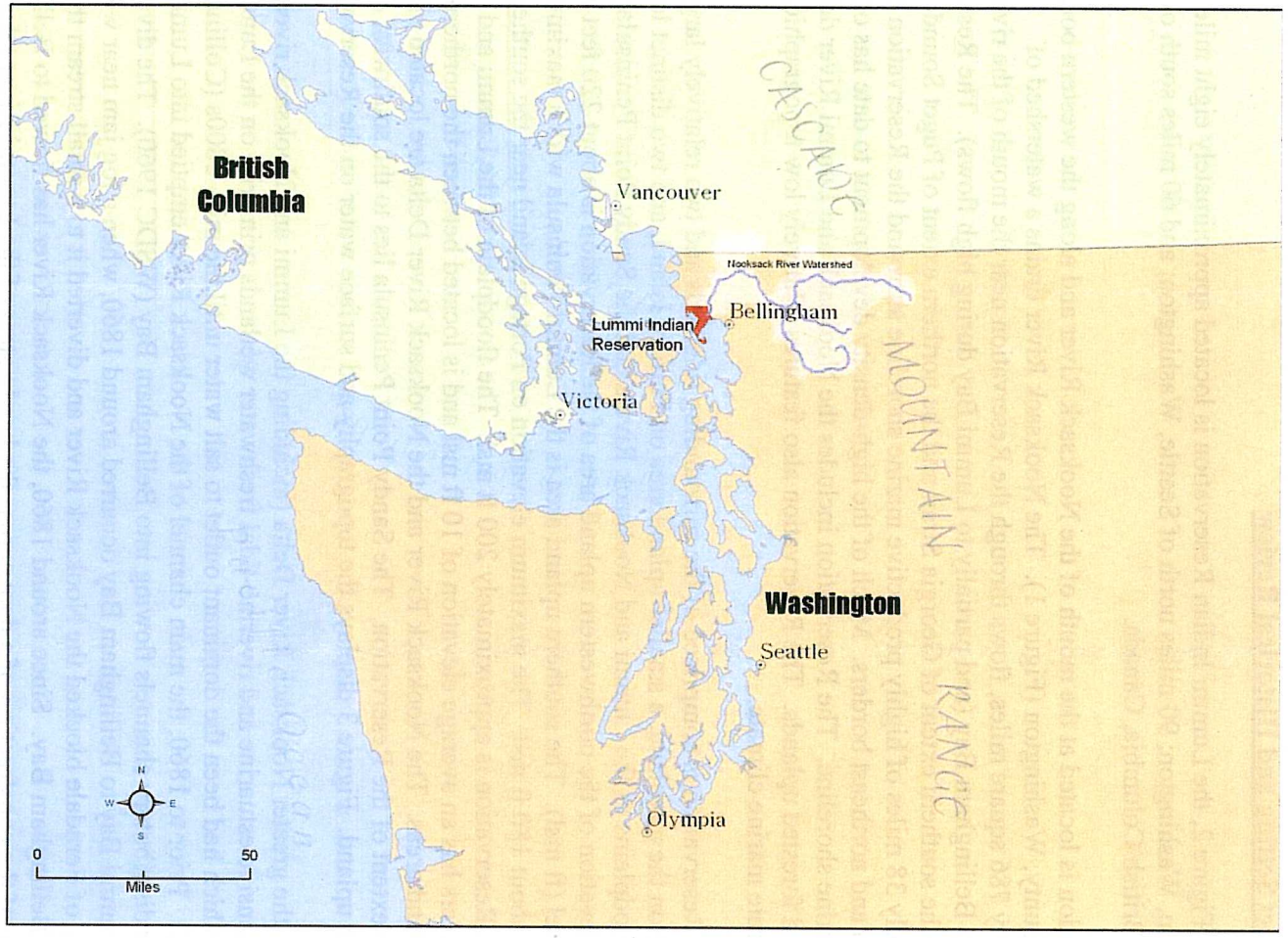

Figure 2. Regional Location of the Lummi Indian Reservation

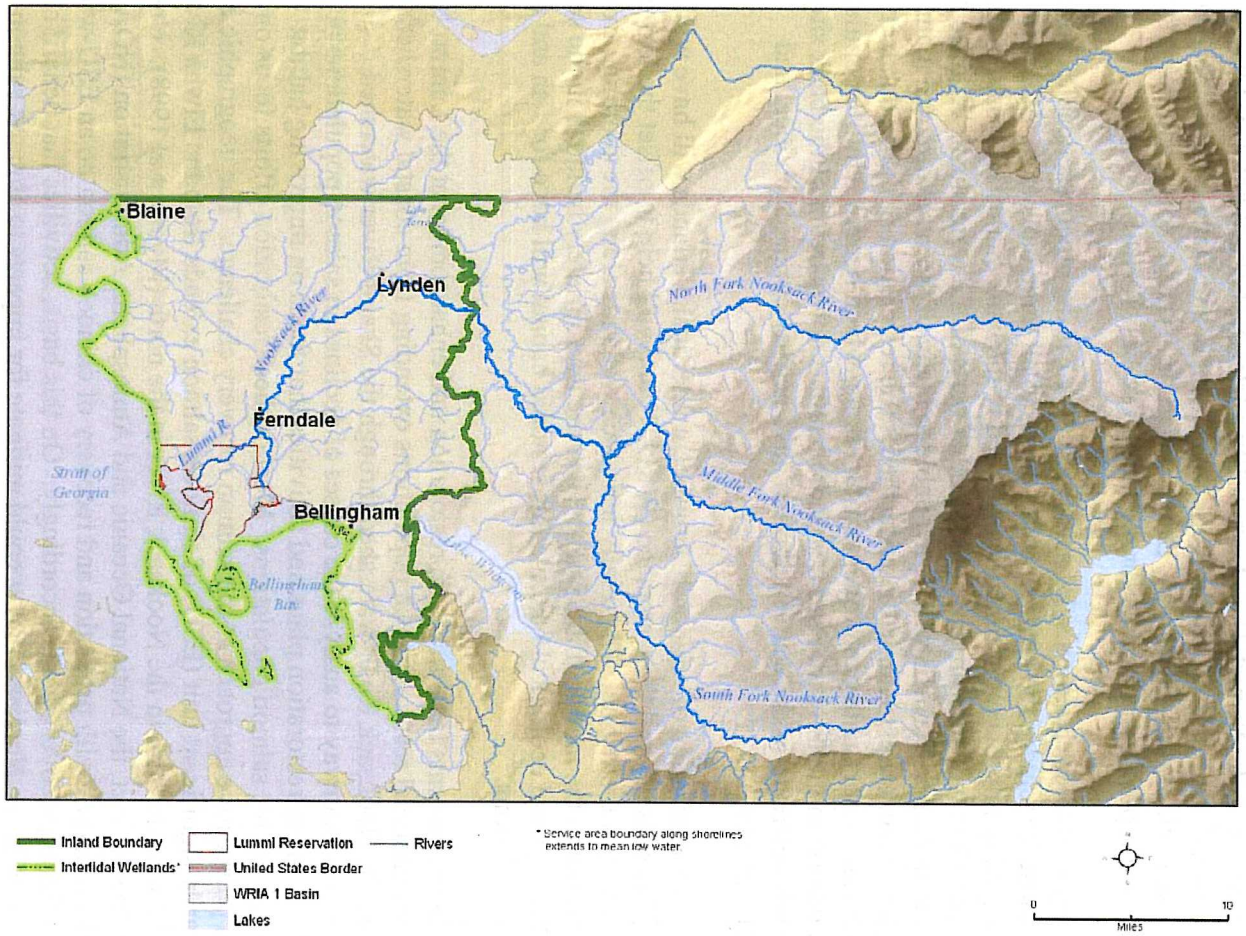

Figure 3. Proposed Service Area for the Lummi Nation WHMB