

**FINAL REGIONAL CONDITIONS,
401 WATER QUALITY CERTIFICATION CONDITIONS,
COASTAL ZONE MANAGEMENT CONSISTENCY RESPONSES,
FOR
NATIONWIDE PERMITS
FOR THE SEATTLE DISTRICT CORPS OF ENGINEERS
FOR THE STATE OF WASHINGTON**

Effective Date: 22 February 1997

TABLE OF CONTENTS

INTRODUCTION.....	6
ABBREVIATIONS USED IN THIS SPECIAL PUBLIC NOTICE.....	6
BACKGROUND.....	6
401 CERTIFICATION	7
THE CERTIFYING AGENCIES AND THE NWP PROGRAM.....	7
CZM CONSISTENCY RESPONSE.....	8
CZM CONSISTENCY RESPONSES AND THE NATIONWIDE PERMIT PROGRAM	9
DEFINITIONS OF 401 WATER QUALITY CERTIFICATION AND COASTAL ZONE	

MANAGEMENT CONSISTENCY DECISIONS.....	9
---------------------------------------	---

TABLE OF CONTENTS (Continued)

SHORT-TERM WATER QUALITY MODIFICATION	10
SHORELINE MANAGEMENT ACT	11
HYDRAULIC PROJECT APPROVAL	11
WETLAND DELINEATIONS	11
MITIGATION	11
SPECIAL AQUATIC SITES	11
STATE AQUATIC LAND.....	12
MARINE SANCTUARIES AND ESTUARINE RESERVES.....	12
STATE CLEAN-UP SITE	12
DEFINITION OF DISTRICT ENGINEER.....	12

**NATIONAL CONDITIONS
FOR NATIONWIDE PERMITS**

GENERAL CONDITIONS

1. NAVIGATION.....	13
2. PROPER MAINTENANCE	13
3. EROSION AND SILTATION CONTROLS	13
4. AQUATIC LIFE MOVEMENTS	13
5. EQUIPMENT.....	13
6. REGIONAL AND CASE-BY-CASE CONDITIONS	13
7. WILD AND SCENIC RIVERS.....	13
8. TRIBAL RIGHTS	13
9. WATER QUALITY CERTIFICATION	13
10. COASTAL ZONE MANAGEMENT	13

11. ENDANGERED SPECIES	14
12. HISTORIC PROPERTIES	14
13. NOTIFICATION	15
14. COMPLIANCE CERTIFICATION	20
15. MULTIPLE USE OF NATIONWIDE PERMITS	20

**NATIONAL CONDITIONS
FOR NATIONWIDE PERMITS (Continued)**

SECTION 404 ONLY CONDITIONS

1. WATER SUPPLY INTAKES	20
2. SHELLFISH PRODUCTION	20
3. SUITABLE MATERIAL	21
4. MITIGATION	21
5. SPAWNING AREAS	21
6. OBSTRUCTION OF HIGH FLOWS	21
7. ADVERSE EFFECTS FROM IMPOUNDMENTS	21
8. WATERFOWL BREEDING AREAS	21
9. REMOVAL OF TEMPORARY FILLS	21

**REGIONAL GENERAL CONDITIONS
FOR NATIONWIDE PERMITS**

1. MITIGATION OR RESTORATION	21
2. BOG SYSTEMS	21
3. REVEGETATION	22
4. NATIONAL WILD AND SCENIC RIVERS AND STUDY AREAS	22

5. COMMENCEMENT BAY	22
6. PROHIBITED WORK TIMES FOR FISH PROTECTION	23
7. PROHIBITED WORK TIMES FOR BALD EAGLE PROTECTION	23

NATIONWIDE PERMITS AND THEIR SPECIFIC REGIONAL CONDITIONS

NWP LEGEND.....	24
NWP 1. AIDS TO NAVIGATION.....	25
NWP 2. STRUCTURES IN ARTIFICIAL CANALS.....	25
NWP 3. MAINTENANCE	25
NWP 4. FISH AND WILDLIFE HARVESTING, ENHANCEMENT, AND ATTRACTION DEVICES AND ACTIVITIES	26
NWP 5. SCIENTIFIC MEASUREMENT DEVICES.....	27
NWP 6. SURVEY ACTIVITIES.....	27
NWP 7. OUTFALL STRUCTURES.....	28
NWP 8. OIL AND GAS STRUCTURES.....	30
NWP 9. STRUCTURES IN FLEETING AND ANCHORAGE AREAS	31
NWP 10. MOORING BUOYS.....	31
NWP 11. TEMPORARY RECREATIONAL STRUCTURES	31
NWP 12. UTILITY LINE BACKFILL AND BEDDING.....	32
NWP 13. BANK STABILIZATION	35
NWP 14. ROAD CROSSING.....	38
NWP 15. U.S. COAST GUARD APPROVED BRIDGES.....	40
NWP 16. RETURN WATER FROM UPLAND	

CONTAINED DISPOSAL AREAS.....	40
NWP 17. HYDROPOWER PROJECTS.....	41
NWP 18. MINOR DISCHARGES.....	42
NWP 19. 25 CUBIC YARD DREDGING.....	43

**NATIONWIDE PERMITS AND
THEIR SPECIFIC REGIONAL CONDITIONS (Continued)**

NWP 20. OIL SPILL CLEANUP.....	44
NWP 21. SURFACE MINING ACTIVITIES.....	44
NWP 22. REMOVAL OF VESSELS.....	45
NWP 23. APPROVED CATEGORICAL EXCLUSIONS	45
NWP 24. STATE ADMINISTERED SECTION 404 PROGRAMS	47
NWP 25. STRUCTURAL DISCHARGE	47
NWP 26. HEADWATERS AND ISOLATED WATERS DISCHARGES	48
NWP 27. WETLAND RESTORATION ACTIVITIES	51
NWP 28. MODIFICATIONS OF EXISTING MARINAS	53
NWP 29. SINGLE-FAMILY HOUSING.....	53
NWP 30. MOIST SOIL MANAGEMENT FOR WILDLIFE	56
NWP 31. MAINTENANCE OF EXISTING FLOOD CONTROL PROJECTS.....	56
NWP 32. COMPLETED ENFORCEMENT ACTIONS	58
NWP 33. TEMPORARY CONSTRUCTION AND ACCESS.....	59
NWP 34. CRANBERRY PRODUCTION ACTIVITIES	60
NWP 35. MAINTENANCE DREDGING OF EXISTING BASINS.....	64
NWP 36. BOAT RAMPS.....	64

NWP 37. EMERGENCY WATERSHED PROTECTION.....66
NWP 38. CLEANUP OF HAZARDOUS AND TOXIC WASTE.....66
NWP 39. RESERVED67
NWP 40. FARM BUILDINGS.....67

APPENDIX -- DEFINITION OF BOGS AND SALT MARSHES69

INTRODUCTION: This is a joint special public notice (SPN) issued by the U.S. Army Corps of Engineers (Corps) Seattle District, U.S. Environmental Protection Agency (EPA), the Puyallup Tribal Nation (Puyallup Tribe), and the Washington State Department of Ecology (Ecology) to announce final regional conditions, Section 401 Water Quality Certification (401 Certification) decisions, and Coastal Zone Management (CZM) Consistency Responses for the Corps Nationwide Permits. This public notice also explains how the Nationwide Permit (NWP) program will operate within the State of Washington (State). Regional conditions limit the use of certain nationwide permits such that they individually and cumulatively result in minimal impacts.

The permittee considering use of a NWP must compare the proposed project's features with the NWP's requirements and national conditions of the NWP, the regional conditions, and whether or not the 401 Certification and/or CZM Consistency Response have been denied. If the project is within the terms, national conditions, regional conditions, 401 Certification limits, and CZM concurrence for waters under State jurisdiction, the permittee may proceed with the project subject to any notification requirements.

ABBREVIATIONS USED IN THIS SPECIAL PUBLIC NOTICE:

- 401 Certification - Section 401 Water Quality Certification
- 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 (EPA)
- HPA - Hydraulic Project Approval from WDFW
- NRCS - Natural Resources Conservation Service
- NWP - Nationwide Permit
- PCN - Pre-Construction Notification
- Puyallup Tribe - Puyallup Tribal Nation
- SPN - special public notice
- State - State of Washington
- WDFW - Washington State Department of Fish and Wildlife

BACKGROUND: The Clean Water Act states, "No general permit . . . shall be for a period of more than five years . . .". On a national level, the Corps proposed to issue, reissue, and modify NWPs in a proposed rule published in the Federal Register Monday, June 17, 1996. Seattle District Corps announced this in Special Public Notices dated June 21, and July 29, 1996. Public Hearings were held nationally to obtain public comments on the NWPs. Seattle District held a hearing on August 21, 1996. The comment period for the actual NWPs closed September 3, 1996. Nationally, over 3500 comments were reviewed by Corps Headquarters in Washington DC.

In the State, the Seattle District Corps and the certifying agencies (EPA, Puyallup Tribe, Ecology) met with other Federal and State resource agencies over the past several months to develop these final regional conditions, 401 Certification and CZM Consistency Responses. The objectives of these agencies were to create conditions that are reasonable and enforceable, make sense to the regulated public, provide an adequate level of resource protection and are sensitive to the workloads of all parties involved.

A SPN announcing the proposed regional conditions, CZM Consistency Responses and 401 Certification conditions was published October 10, 1996 with the comment period ending November 12, 1996. A public hearing to receive comments on the proposed regional conditions, 401 Certifications and CZM Consistency Responses was held on Wednesday, October 30, 1996 at the Seattle District Corps. The hearing was sponsored jointly by the Corps, EPA, Puyallup Tribe, and Ecology.

On December 13, 1996, at the national level, the Corps published in the Federal Register in Part VII the Final Notice of Issuance, Reissuance and Modification of Nationwide Permits. These will be effective as of February 11, 1997. The current Nationwide Permits issued January 21, 1992 expired on January 21, 1997. With this SPN, the Seattle District Corps, EPA, Puyallup Tribe and Ecology set forth the parameters and conditions through which the agencies will implement the Nationwide Permits within the State. This SPN will be the basis through which the NWP program will operate until revised, rescinded or revoked. Any such actions will be announced through future public notices.

401 CERTIFICATION: Applicants wanting to do work that involves discharges to waters of the U.S. must apply for a Section 404 permit from the Corps. Section 401 of the Act requires that applicants for those permits must also receive 401 Certification from the appropriate certifying agency that the discharge meets aquatic protection regulations. This 401 Certification can cover both the construction and operation of the proposed project. Conditions of the 401 Certification become conditions of the Corps 404 permit. After the Corps has issued a Nationwide Permit for the proposed work, the applicant cannot do the work until the 401 Certification is approved, conditioned, or waived by the certifying agency.

THE CERTIFYING AGENCIES AND THE NWP PROGRAM: The three certifying agencies are: Ecology (for the State), EPA and the Puyallup Tribe. Each of the certifying agencies reviews the NWPs and determines their decisions for the time period NWPs are in effect (5 years except for NWP 26). If approved, no further permitting is required. If partially denied without prejudice, an individual certification from the certifying agency is required when the project meets the restrictions. If denied without prejudice, an individual certification is required for all activities under that NWP.

Since the State 401 Certification jurisdiction consists of all public and private lands in the State

except those under EPA or Puyallup Tribe jurisdiction (see below), the certifying agency that would apply to most applicants is Ecology. Ecology has reviewed each of the Nationwide Permits to determine whether a project that can be authorized under a specific Nationwide Permit by the Corps will meet the applicable state regulations. Their responses are as follows:

- o Approved NWPs 4, 5, 6, 15, 20, 22, 25, 30, 32, and 40;
- o Partially denied without prejudice NWPs 3, 7, 12, 13, 14, 18, 19, 23, 26, 27, 29, 33, 34, 36, and 38; and
- o Denied without prejudice NWPs 16, 17, 21, 31, and 37.

For projects covered under Nationwide Permits that require individual certification, Ecology has up to six months after receipt of necessary project information and issuance of an Ecology public notice to make its individual certification decision.

The **EPA** 401 Certification jurisdiction consists of Native American Indian Tribal land (excluding that of the Puyallup Nation) and Federal land with exclusive jurisdiction (North Cascades, Olympic, and Rainier National Parks) within the State of Washington.

EPA has reviewed each of the Nationwide Permits to determine whether a project that can be authorized under a specific Nationwide Permit by the Corps will meet the applicable EPA regulations. See Nationwide Permits And Their Specific Regional Conditions section for each EPA certification.

The **Puyallup Tribe** 401 Certification jurisdiction consists of the tribal lands of the Puyallup Tribe. The Puyallup Tribe has denied without prejudice all 401 Certifications for all Section 404 Nationwide permits.

CZM CONSISTENCY RESPONSE: Washington's 15 coastal counties are as follows:

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

In the above coastal counties, the proposed projects requiring the Federal permits listed above must also be found to be consistent with the State's CZM Program. For a proposal to be consistent with Washington's CZM Program, it must meet the requirements of the State Environmental Policy Act, the State Shoreline Management Act, the Federal Clean Water Act, and the Federal Clean Air Act. Ecology reviews proposed projects for consistency with the above laws and generally includes its CZM Consistency Response with its 401 Certification. The CZM Consistency Response must be made within six months, or it is considered waived and

the permittee may proceed if the NWP and 401 Certification requirements are met.

CZM CONSISTENCY RESPONSES AND THE NATIONWIDE PERMIT

PROGRAM: Ecology has reviewed each of the Nationwide Permits to determine whether a project is consistent with the CZM Program. Their responses are as follows:

- o Concur NWPs 1, 2, 4, 5, 6, 9, 10, 11, 15, 20, 22, 25, 30, 32, and 40;
- o Partially denied without prejudice NWPs 3, 7, 12, 13, 14, 18, 19, 23, 26, 27, 28, 29, 33, 34, 36, and 38; and
- o Denied without prejudice NWPs 8, 16, 17, 21, 31, 35, and 37.

DEFINITIONS OF 401 WATER QUALITY CERTIFICATION AND COASTAL ZONE MANAGEMENT CONSISTENCY RESPONSE

DECISIONS: The 401 Certification and the CZM Consistency Response statements in this public notice take three forms: 1. "approved" (or "concur" for the CZM Consistency Response); 2. "denied without prejudice"; and 3. "partially denied without prejudice".

1. "**Approved**" (or "**Concur**") means a project is authorized under the NWP and must meet the terms and conditions of the nationwide permit. For such permits, the 401 Certification and/or the CZM Consistency Response have been approved for all actions authorized by that NWP.
2. "**Denied without prejudice**" means that the 401 Certification and/or the CZM Consistency Response have been denied for that NWP and all activities potentially authorized under that particular NWP. An individual 401 Certification and/or CZM Consistency Response, or waiver, is required before work can be done under the NWP. For example, a permittee proposing a hydropower project (see NWP 17) would need an individual 401 Certification or waiver and, if located within a coastal zone county, an individual CZM Consistency Response or waiver (both from Ecology) before this NWP could be used. These would be required since the EPA, Puyallup Tribe, and the State have denied 401 Certification and CZM Consistency Response for NWP 17 -- Hydropower Projects.
3. "**Partially denied without prejudice**" means that the 401 Certification, or the CZM Consistency Response, or both have been denied for some of the activities that could be authorized under that particular NWP. A discussion of these limitations is found after each NWP in their 401 Certification and/or CZM Consistency Response sections. An individual 401 Certification and/or CZM Consistency Response as appropriate, or waiver, is required before work can be done under the NWP if the proposed activity exceeds the limitations of the 401 Certification and/or the CZM Consistency Response approval. For example, in NWP 12, a permittee proposing a utility line that would require excavation in any Category I

wetlands (defined in the 401 Certification section of NWP 12), or more than 1/2 acre or 500 linear feet of Category II wetlands, or an impact area greater than 40 feet wide, would need an individual 401 Certification, or waiver, from Ecology and, if located within the coastal zone, an individual CZM Consistency Response, or waiver, before this NWP could be used. These would be required since the State has denied the 401 Certification and the CZM Consistency Response for projects that do not meet the stated limits for NWP 12.

Neither "denied without prejudice" nor "partially denied without prejudice" mean that the proposed project will not be permitted. They mean that the EPA, Puyallup Tribe, or the State have decided such projects require individual review and approval. Additional conditions and/or mitigation may be required with the individual 401 Certification.

A **waiver** means that the EPA, Puyallup Tribe, or Ecology did not make its 401 Certification Decision and/or CZM Consistency Decision within the allowable time period of 180 days from the receipt of a complete application and issuance of a public notice from EPA, Puyallup Tribe or Ecology for a proposed project.

SHORT-TERM WATER QUALITY MODIFICATION: Ecology has issued a short-term water quality modification for projects that have been approved under a NWP and that may result in short-term exceedances of State water quality standards for turbidity and/or dissolved oxygen. Projects that will exceed the thresholds permitted in the short-term water quality modification will require an individual modification. The applicant should contact the appropriate Ecology regional office:

Northwest Regional Office (Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom counties) -- (206) 649-7000

Southwest Regional Office (Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum counties) -- (360) 407-6300

Central Regional Office (Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, and Yakima counties) -- (509) 575-2491

Eastern Regional Office (Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman counties) -- (509) 456-2926

SHORELINE MANAGEMENT ACT: Any work or activity authorized by nationwide permits and undertaken within Shorelines of the State is subject to review under the Shoreline Management Act, 90.58 RCW. Such work or activity must be conducted in accordance with the requirements of the shoreline master program of the applicable local government.

HYDRAULIC PROJECT APPROVAL: The Washington State Department of Fish and Wildlife (WDFW) requires a Hydraulic Project Approval (HPA) (under RCW 75.20) for work in waters of the State. To ensure compliance with HPA requirements, persons planning to conduct work under a NWP should contact WDFW at:

Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091
(360) 902-2200

WETLAND DELINEATIONS: Wetland Delineations must be done in accordance with the currently acceptable methodology. At present, this is the Corps 1987 Wetlands Delineation Manual and all applicable guidances. For agricultural lands, the Natural Resources Conservation Service (NRCS) has the lead for verifying or doing wetland delineations and determinations. They use the current edition of the National Food Security Act Manual and applicable guidance.

MITIGATION: Compensatory mitigation required by WDFW as part of an approved HPA or Ecology as part of a 401 Certification is authorized as a part of a Section 404 NWP and meets Section 404 Only Condition 4 -- Mitigation. This is done without taking away from volume and area limits of the NWP. When compensatory mitigation is approved, but not required by the Corps, it is considered to be in conformance with this mitigation condition.

For example, an HPA issued by WDFW for approval of a bank stabilization project covered under NWP 13 may be conditioned to require placing fill for habitat structures or excavating to open a side channel for fish use. The excavation or placement of fill may go beyond the allowable limits of NWP 13; however, because it is required as project mitigation, it is considered a part of the Corps' NWP authorization.

SPECIAL AQUATIC SITES: Special aquatic sites include wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, and sanctuaries and refuges as defined at 40 CFR 230.40 through 230.45 (EPA Guidelines for Specification of Disposal Sites for Dredged or Fill Material).

STATE AQUATIC LAND: Projects on State aquatic land may require separate

authorization from the Washington Department of Natural Resources. Applicants should call (360) 902-1100 for additional permit information.

MARINE SANCTUARIES AND ESTUARINE RESERVES: For all projects proposed for areas within federally designated Marine Sanctuaries or Estuarine Reserves, applicants must contact the agency official responsible for the management of that sanctuary or reserve. Presently, Washington has one marine sanctuary, the Olympic Coast National Marine Sanctuary. Very generally, it extends from the southern boundary of Copalis National Wildlife Refuge north to the U.S./Canada international boundary. The coastal boundary of the Sanctuary reaches to the mean higher high water line except when adjacent to either Indian reservations or State-owned land, where it extends only to mean lower low water, cutting across the mouths of any rivers. Contact:

Mr. Todd Jacobs
Olympic Coast National Marine Sanctuary Headquarters
138 West 1st Street
Port Angeles, WA 98362-2600
Phone: (360) 457-6622

Padilla Bay is a National Estuarine Research Reserve. Generally, it includes Padilla Bay and the northern portion of the Swinomish Channel. Contact:

Padilla Bay National Estuarine Research Reserve
ATTN: Director
1043 Bayview Edison Road
Mount Vernon, WA 98273

STATE CLEAN-UP SITE: Any activity or work authorized under these NWP's does not obviate the permittee from liabilities that may be incurred if such activity or work is undertaken within waters of the State designated as a State clean-up site under the Model Toxics Control Act.

DEFINITION OF DISTRICT ENGINEER: Administrator of the Seattle District Corps.

NATIONAL CONDITIONS FOR NATIONWIDE PERMITS

GENERAL CONDITIONS:

The following general conditions must be followed in order for any authorization by a NWP to be valid.

1. **Navigation.** No activity may cause more than a minimal adverse effect on navigation.
2. **Proper Maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **Erosion and Siltation Controls.** Appropriate erosion and siltation 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.
4. **Aquatic Life Movements.** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.
5. **Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps [Seattle District] or by the State or tribe in its Section 401 water quality certification.
7. **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 effect 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 in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)
8. **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.
9. **Water Quality Certification.** In certain states, an individual Section 401 water quality certification must be obtained or waived (see 33 CFR 330.4(c)).

10. **Coastal Zone Management**. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).
11. **Endangered Species**.
- (a) No activity is authorized under any NWP which is likely to 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, or which is likely to destroy or adversely modify the critical habitat of such species. Non-Federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.
 - (b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., a Federal Endangered Species Act Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at <http://www.fws.gov/~r9endspp/endspp.html> and http://kingfish.ssp.mnfs.gov/tmcintyr/prot_res.html#ES and Recovery, respectively.

[NOTE: See Regional General Condition 6 and 7 for details on regional conditions for threatened and endangered species.]

12. **Historic Properties**. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE [District Engineer] has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin 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. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

13. **Notification.**

- (a) **Timing:** Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a Pre-Construction Notification (PCN) as early as possible and shall not begin the activity:
- (1) Until notified 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) If notified by the District or Division Engineer that an individual permit is required; or,
 - (3) Unless 30 days (or 45 days for NWP 26 only) have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. 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 Notification:** The notification 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) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; 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; and
 - (4) For NWPs 14, 18, 21, 26, 29, 34, and 38, the PCN must also include a delineation of affected special aquatic sites, including wetlands (see paragraph 13.f.);
 - (5) For NWP 21, Surface Coal Mining Activities, the PCN must include an OSM [Department of the Interior, Office of Surface Mining] or State approved mitigation plan.
 - (6) For NWP 29, Single-Family Housing, the PCN must also include:
 - (i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;
 - (ii) A statement that the single-family housing activity is for a personal

residence of the permittee;

- (iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 0.5 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 0.5 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13.(f));
 - (iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;
- (7) For NWP 31, Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a Pre-Construction Notification (PCN) prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:
- (i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided that the approved flood control protection or drainage is not increased;
 - (ii) A delineation of any affected special aquatic sites, including wetlands; and
 - (iii) Location of the dredged material disposal site.
- (8) For NWP 33, Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

- (c) **Form of Notification:** The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b)(1)-(7) [sic; (8) also] of General Condition 13. A letter may also be used. [**NOTE:** The Seattle District Corps also accepts the completed Joint Aquatic Resource Permit Application (JARPA) form as notification.]

- (d) **District Engineer's Decision:** In reviewing the pre-construction notification 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. The prospective permittee may, optionally, submit a proposed mitigation plan with the pre-construction notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, the District Engineer will notify the permittee and include any conditions the DE deems necessary.

Any mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the District Engineer will expeditiously review the proposed mitigation plan, but will not commence a second 30-day (or 45-day for NWP 26) notification procedure. If the net adverse effects of the project (with the mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either:

- (1) 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;
- (2) That the project is authorized under the NWP subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level;
or
- (3) That the project is authorized under the NWP with specific modifications or conditions.

- (e) **Agency Coordination:** 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.
- (i) For NWP 14, 21, 26 (between 1 and 3 acres of impact), 29, 33, 37, and 38, the District Engineer will, upon receipt of a notification, provide immediately, e.g., facsimile transmission, overnight mail or other expeditious manner, a copy to the appropriate offices of the Fish and Wildlife Service, state natural resource or water quality agency, EPA, state Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 5 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. If so contacted by an agency, the District Engineer will wait an additional 10 calendar days (16 calendar days for NWP 26 PCNs) before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification. [NOTE: The Seattle District Corps requests one copy.]
- (ii) Optional Agency Coordination. For NWPs 5, 7, 12, 13, 17, 18, 27, 31, and 34, where a Regional Administrator of EPA, a Regional Director of USFWS, or a Regional Director of NMFS has formally requested general notification from the District Engineer for the activities covered by any of these NWPs, the Corps will provide the requesting agency with notification on the particular NWPs. However, where the agencies have a record of not generally submitting substantive comments on activities covered by any of these NWPs, the Corps district may discontinue providing notification to those regional agency offices. The District Engineer will coordinate with the resources agencies to identify which activities involving a PCN that the agencies will provide substantive comments to the Corps. The District Engineer may also request comments from the agencies on a case by case basis when the District Engineer determines that such comments would assist the Corps in reaching a decision whether effects are more than minimal either individually or cumulatively.
- (iii) Optional Agency Coordination, 401 Denial. For NWP 26 only, where the state has denied its 401 water quality certification for activities with less than 1 acre of wetland impact, the EPA regional administrator may request agency coordination of PCNs between 1/3 and 1 acre. The request may only include acreage limitations within the 1/3 to 1 acre range for which the state has denied water quality certification. In cases where the EPA has requested coordination of projects as described here, the Corps will forward the PCN to EPA only. The

PCN will then be forwarded to the Fish and Wildlife Service and the National Marine Fisheries Service by EPA under agreements among those agencies. Any agency receiving the PCN will be bound by the EPA timeframes for providing comments to the Corps.

- (f) **Wetlands Delineations:** Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(6)(iii) for parcels less than 0.5 acres in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 30-day period (45 days for NWP 26) will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.
- (g) **Mitigation:** Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:
 - (i) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes;
 - (ii) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, "in lieu fees" to organizations such as The Nature Conservancy, state or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands.Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to:
 - oReducing the size of the project;
 - oEstablishing wetland or upland buffer zones to protect aquatic resource values; and
 - oReplacing the loss of aquatic resource values by creating, restoring, and enhancing similar functions and values.

In addition, mitigation must address wetland impacts, such as functions and values, and cannot be simply used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (e.g., for NWP 26, 5 acres of wetlands cannot be created to change a 6-acre loss of wetlands to a 1 acre loss; however, 2 created acres can be used to reduce the impacts of a 3-acre loss).

- 14. **Compliance Certification.** Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

- a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
 - b. A statement that any required mitigation was completed in accordance with the permit conditions;
 - c. The signature of the permittee certifying the completion of the work and mitigation.
15. **Multiple Use of Nationwide Permits.** In any case where any NWP number 12 through 40 is combined with any other NWP number 12 through 40, as part of a single and complete project, the permittee must notify the District Engineer in accordance with paragraphs a, b, and c on the "Notification" General Condition number 13. Any NWP number 1 through 11 may be combined with any other NWP without notification to the Corps, unless notification is otherwise required by the terms of the NWPs. As provided at 33 CFR 330.6(c) two or more different NWPs can be combined to authorize a single and complete project. However, the same NWP cannot be used more than once for a single and complete project.

NATIONAL CONDITIONS FOR NATIONWIDE PERMITS

SECTION 404 ONLY CONDITIONS:

In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material into waters of the U.S., and must be followed in order for authorization by the NWPs to be valid:

1. **Water Supply Intakes.** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.
2. **Shellfish Production.** No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by NWP 4.
3. **Suitable Material.** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
4. **Mitigation.** Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e., on-site), unless the District Engineer approves a compensation plan that the District Engineer determines is more beneficial to the environment than on-site minimization or avoidance measures.

5. **Spawning Areas.** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
6. **Obstruction of High Flows.** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).
7. **Adverse Effects From Impoundments.** If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
8. **Waterfowl Breeding Areas.** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
9. **Removal of Temporary Fills.** Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

REGIONAL GENERAL CONDITIONS FOR NATIONWIDE PERMITS:

These conditions must be met for all projects authorized under NWP's in the State.

1. **Mitigation or Restoration.** Any activity or work authorized under these NWP's shall not adversely impact previously required Federal or State mitigation or restoration efforts.
2. **Bog Systems.** The use of NWP's is specifically prohibited in bog systems (as defined in the Appendix of this Public Notice), except for projects provided coverage under NWP 34 -- Cranberry Production Activities.

3. **Revegetation.** Upon completion of the work in a wetland area, the site shall be replanted with native wetland vegetation during the next appropriate planting season. The applicant shall take appropriate measures to ensure revegetation success, as defined below.

The removal or destruction of existing shoreline (marine) or riparian (freshwater) vegetation shall be held to the absolute minimum needed for construction. Immediately following construction, shorelines or riparian zones affected by construction shall be replanted with native vegetation. The applicant shall take appropriate measures to ensure the success of the revegetation effort.

Success is defined as 80% of the planted area being covered with native species five years after construction is completed. If the percent of cover of native species does not equal or exceed 80% at the end of this five-year period, remedial measures (e.g., replanting, soil amendments, additional monitoring, etc.) may be required until success is achieved.

Measures such as hydroseeding with annual or non-invasive grasses or groundcovers may be used for temporary erosion control.

4. **National Wild and Scenic Rivers and Study Areas.** The State and EPA have denied 401 Certification for all proposed projects in National Wild & Scenic River and Study Areas. An individual 401 Certification must be obtained for all projects in these areas, which currently include reaches of the following: the Klickitat, Skagit, Sauk, Suiattle, and White Salmon Rivers, and the Hanford Reach of the Columbia River.
5. **Commencement Bay.** An individual permit is required for activities in the Commencement Bay Study Area (CBSA) previously authorized by the following NWP:

- NWP 13 -- Bank Stabilization
- NWP 14 -- Road Crossing
- NWP 23 -- Approved Categorical Exclusions
- NWP 26 -- Headwaters and Isolated Waters Discharges

All other NWPs are still applicable within the CBSA.

The CBSA is located near the southern end of Puget Sound's main basin at Tacoma, Pierce County, Washington. The CBSA extends from Brown's Point around the bay to Point Defiance and includes the commercial waterways, wetlands, and any other jurisdictional waters. From Point Defiance, the line runs southeast to State Route 7 (Pacific Avenue), then south to the centerline of I-5; then east (northbound lanes) along I-5 to the Puyallup River. The boundary extends 200 feet on either side of the Puyallup River southeast to the Clark Creek Road (Melroy) Bridge. From the Puyallup River, the boundary extends east along I-5 to 70th Avenue E. The line then returns to Brown's Point to the northwest, following the 100-foot contour elevation above sea level located east of Hylebos Creek and Marine View Drive.

6. **Prohibited Work Times for Fish Protection.** For compliance with National General Condition 11, in-water construction activities are prohibited to protect three species of salmon listed as threatened and endangered under the Endangered Species Act as follows:

Columbia River

Mouth to Bonneville Dam	March 1 - October 30
Bonneville Dam to John Day Dam	March 15 - November 15
Upstream of John Day Dam	April 1 - November 30

Snake River

Mouth to Hells Canyon Dam (ID)	Mar 1 - Dec 15
--------------------------------	----------------

Exceptions to these prohibited work times can be made by request to the Corps and approved by the National Marine Fisheries Service.

Until specific timing restrictions are developed to protect salmonids and other fish species of concern in other river systems, please refer to the timing restrictions in the HPA for the project. Work outside the HPA timing restrictions must specifically be approved by WDFW and NMFS for waters with anadromous species or WDFW and USFWS for waters with resident species of fish.

7. **Prohibited Work Times for Bald Eagle Protection.** For compliance with National General Condition 11, the following construction activity prohibitions apply to protect bald eagles, listed as threatened under the Endangered Species Act:

- a. No construction activity authorized under a NWP shall occur within 1/4 mile of an occupied bald eagle nest, nocturnal roost site, or wintering concentration area, within the following seasonal work prohibition times.
- b. No construction activity authorized under a NWP shall occur within 1/2 mile BY LINE OF SIGHT of an occupied bald eagle nest or nocturnal roost site, within the following seasonal work prohibition times.

Work prohibition times: Bald eagle nesting occurs between January 1 and August 15 each year. Bald eagles are found at wintering areas between November 1 and March 31 each year. Exceptions to these prohibited work times can be made by request to the Corps and approved by the U.S. Fish and Wildlife Service (FWS).

Contact the FWS to determine if a bald eagle nest, nocturnal roost, or wintering concentration occurs near your proposed project:

West of Cascades: Olympia Office - (360) 753-9440

East of Cascades: Moses Lake - (509) 765-6125
or Spokane - (509) 891-6839

Mainstem of the Columbia River downstream from McNary Dam:

Portland - (503) 231-6179

LIST OF NATIONWIDE PERMITS:

Legend for NWP Section:

NWP number NAME OF NWP. National requirements and conditions of this nationwide. Words in parenthesis following each national NWP wording refer to the authorizing legislation as follows: (Section 10 [of the Rivers and Harbors Act - pertains to structures and work in navigable waters] and/or Section 404 [of the Clean Water Act - pertains to the discharge of dredged or fill material into waters of the U.S.]

Notification Requirement -- *Helps to identify requirements for notification of this NWP. (See expanded notification discussion in National General Condition 13).*

Regional Conditions -- *Restrictions placed on the use of this NWP in the State of Washington.*

EPA, State, and Puyallup Tribe 401 Certification -- *Status of the Clean Water Act 401 certification. (See previous 401 Certification discussion).*

CZM Consistency Response -- *Status of the CZM consistency response. (See previous CZM Consistency discussion).*

- 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 Part 66, Chapter I, Subchapter C). (Section 10)

Notification Requirement -- None

Regional Conditions -- None.

EPA, State, and Puyallup Tribe 401 Certification -- Not applicable.

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)

Notification Requirement -- None.

Regional Conditions -- None.

EPA, State, and Puyallup Tribe 401 Certification -- Not applicable.

CZM Consistency Response -- Concur.

- 3. MAINTENANCE.** 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, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This NWP authorizes the repair, rehabilitation, or replacement of those structures destroyed by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced or 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. Maintenance dredging

and beach restoration are not authorized by this NWP. (Sections 10 and 404)

Notification Requirement -- None.

Regional Conditions -- None.

EPA and Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification -- Partially denied without prejudice. *An individual certification is required for projects authorized under this NWP involving the extension, replacement, repair, or increase in capacity of a domestic wastewater outfall in marine waters that do not meet the conditions of Inter-Agency Permit Streamlining Document: Shellfish and Domestic Wastewater Discharge Outfall Projects (October 10, 1995) issued by the Washington Departments of Ecology, Fish and Wildlife, Health, and Natural Resources.*

CZM Consistency Response -- Partially denied without prejudice *subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

- 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; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP authorizes shellfish seeding provided this activity does not occur in wetlands or 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.). 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)

Notification Requirement -- None.

Regional Conditions -- *The commercial harvest of subtidal hardshell clams or intertidal softshell clams by means of a mechanical/hydraulic escalator type of equipment is not authorized by this NWP.*

State 401 Certification -- *Approved.*

EPA 401 Certification -- *Approved.*

Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- *Concur.*

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

- 5. SCIENTIFIC MEASUREMENT DEVICES.** Devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording 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 and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. (Sections 10 and 404)

Notification Requirement -- *Yes, for discharges between 10 and 25 cubic yards. See National General Condition 13 - Notification, for specific requirements.*

Regional Conditions -- *The PCN must also include a delineation of affected special aquatic sites.*

EPA and State 401 Certification -- *Approved.*

Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- *Concur.*

- 6. SURVEY ACTIVITIES.** Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey and sampling, and historic resources surveys. 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 is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads,

pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling muds and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

Notification Requirement -- None.

Regional Conditions -- None.

EPA and State 401 Certification -- Approved.

Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- Concur.

- 7. OUTFALL STRUCTURES.** Activities related to construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act), provided that the permittee notifies the District Engineer in accordance with the "Notification" general condition. (Also see 33 CFR 330.1(e)). Intake structures per se are not included--only those directly associated with an outfall structure. (Sections 10 and 404)

Notification Requirement -- Yes. *Notification required for all uses of this NWP. See National General Condition 13 - Notification, for specific requirements.*

Regional Conditions -- None.

EPA and Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification -- Partially denied without prejudice. *All projects receiving coverage under this NWP are subject to the following conditions. If a project will not meet these conditions, an individual 401 Certification is required.*

1. *The NWP authorizes outfall construction only and does not authorize the discharge of effluent from the outfall. No effluent shall be discharged until the applicant has received a National Pollutant Discharge Elimination System permit, waiver, or other applicable approval from the appropriate*

Federal, State or local authority.

2. *Certification of this outfall line does not authorize the applicant to exceed any applicable State water quality standards (WAC 173-201A) or sediment quality standards (WAC 173-204), except as provided for in a National Pollutant Discharge Elimination System permit or other applicable approval. Furthermore, nothing in this certification shall absolve the applicant from liability for contamination and subsequent cleanup of surface waters or sediments as a result of effluent discharged from this outfall.*
3. *Structures authorized under this NWP shall be designed to prevent fish entry or entrapment. Designs shall meet the requirements of the WDFW and/or the National Marine Fisheries Service.*
4. *If construction might result in water quality exceedances beyond those permitted in the State Water Quality Modification issued with these Nationwide Permits, an individual modification may be required. The applicant should contact the appropriate Ecology Regional Office at least 30 days before construction begins.*

<i>Northwest Regional Office</i>	<i>(206) 649-7000</i>
<i>Southwest Regional Office</i>	<i>(206) 407-6300</i>
<i>Central Regional Office</i>	<i>(509) 575-2491</i>
<i>Eastern Regional Office</i>	<i>(509) 456-2926</i>

5. *When operating equipment in or near wetlands or other waters of the State, extreme care shall be taken to prevent any petroleum products, chemicals, or other toxic or deleterious materials from entering the water. If an oil sheen or distressed or dying fish are observed in the project vicinity, the operator shall cease work immediately and notify Ecology's appropriate regional office at the above-referenced phone number.*
6. *Proper erosion and sediment control measures shall be carried out during all phases of construction to prevent the uncontrolled discharge of turbid water, dredged or excavated material, or soils into waters of the State. Erosion control structures or devices shall be regularly maintained and inspected to ensure they prevent exceedances of State water quality standards.*
7. *Construction debris and excess excavated or dredged material shall be disposed of at a suitable upland location and in a manner to prevent degradation of State waters.*
8. *Projects authorized under this NWP involving the extension, replacement,*

repair, or increase in capacity of a domestic wastewater outfall in marine waters are subject to the conditions of the Inter-Agency Permit Streamlining Document: Shellfish and Domestic Wastewater Discharge Outfall Projects (October 10, 1995) issued by the Washington Departments of Ecology, Fish and Wildlife, Health, and Natural Resources.

9. *Projects authorized under this NWP involving the extension, replacement, repair, or increase in capacity of stormwater are also subject to Ecology's Stormwater Management Manual for the Puget Sound Basin or the Highway Runoff Manual issued by the Washington Department of Transportation and approved by Ecology.*

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

- 8. OIL AND GAS STRUCTURES.** 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, Minerals Management Service. 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). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l)). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f). 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. (Section 10)

Notification Requirement -- *Yes. See Regional Condition below.*

Regional Conditions -- *Notification is required to the Corps for use of this NWP in the State. See National General Condition 13 - Notification, for specific requirements.*

EPA, State, and Puyallup Tribe 401 Certification -- *Not applicable.*

CZM Consistency Response -- *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone.*

NOTE: *All work proposed under this NWP must have an exploration or development plan that has been determined by Ecology to be consistent with Washington's CZM Program. Other work not subject to this NWP will require an individual statement of consistency from the proponent and the concurrence of Ecology.*

- 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 such areas have been established for that purpose by the U.S. Coast Guard. (Section 10)

Notification Requirement -- None.

Regional Conditions -- None.

EPA, State, and Puyallup Tribe 401 Certification -- Not applicable.

CZM Consistency Response -- Concur.

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

Notification Requirement -- None.

Regional Conditions -- None.

EPA, State, and Puyallup Tribe 401 Certification -- Not applicable.

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)

Notification Requirement -- None.

Regional Conditions -- None.

EPA, State, and Puyallup Tribe 401 Certification -- *Not applicable.*

CZM Consistency Response -- *Concur.*

12. UTILITY LINE DISCHARGES. Discharges of dredged or fill material associated with excavation, backfill or bedding for utility lines, including outfall and intake structures, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, 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 which drain a water of the United States, such as drainage tile; however, it does apply to pipes conveying drainage from another area. This NWP authorizes mechanized landclearing necessary for the installation of utility lines, including overhead utility lines, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained. However, access roads, temporary or permanent, or foundations associated with overhead utility lines are not authorized by this NWP. Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States, provided that 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 not to exceed a total of 180 days, where appropriate. The area of waters of the United States that is disturbed must be limited to the minimum necessary to construct the utility line. In wetlands, the top 6" to 12" of the trench should generally be backfilled with topsoil from the trench. Excess material must be removed to upland areas immediately upon completion of construction. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line. (See 33 CFR Part 322).

Notification: The permittee must notify the District Engineer in accordance with the "Notification" general condition, if any of the following criteria are met:

- a. Mechanized landclearing in a forested wetland;
- b. A Section 10 permit is required for the utility line;
- c. The utility line in waters of the United States exceeds 500 feet; or,
- d. The utility line is placed within a jurisdictional area (i.e., a water of the United States), and it runs parallel to a streambed that is within that jurisdictional area. (Sections 10 and 404)

Notification Requirement -- *Yes. Refer to a, b (navigable waters), c and d above. See National General Condition 13 - Notification, for specific requirements.*

Regional Conditions --

1. *The installation of a utility line is not authorized in a watershed specifically designated and protected as a surface source of public drinking water.*
2. *Pre-construction hydrology that supports wetland vegetation must be maintained (i.e., by means such as trench plugs, reconstructed impervious soil layers, etc.).*
3. *When trenching through wetlands, the approximate upper 12 inches of topsoil shall be removed and stockpiled separately from subsurface soils. Care shall be taken to avoid compaction when stockpiling hydric soils. Once the utility line has been properly installed, and armored as necessary, subsurface soils shall first be placed in the trench as backfill, followed by the topsoil as the final layer to restore the site to preconstruction contours.*

EPA and Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification -- *Partially denied without prejudice. An individual 401 Certification is required for proposed projects that will affect the following:*

1. *Any Category I wetlands;*
2. *More than a total of 1/2 acre or 500 linear-foot crossing of Category II wetlands; or,*
3. *Any one wetland impact area more than 40 feet wide (impacts due to trenching, construction, staging areas, etc.).*

NOTE: *Characterization of wetlands per Condition 1 and Condition 2 above shall be based on field identification. Wetland categories are described in Washington State Wetlands Rating System, Western Washington, Second Edition, dated August 1993 (Publication #93-74) and Washington State Wetlands Rating System, Eastern Washington, dated October 1991 (Publication #91-58). Copies are available through Ecology's Publications Office at (360) 407-6000.*

For projects below the thresholds described in Conditions 1 through 3 above (i.e., projects not requiring individual 401 Certification), the following conditions apply:

1. *If construction might result in water quality exceedances beyond those permitted in the State Water Quality Modification issued with these Nationwide Permits, an individual modification may be required. The applicant should contact the appropriate Ecology Regional Office at least 30 days before construction begins.*

Northwest Regional Office(206) 649-7000

Southwest Regional Office(206) 407-6300

Central Regional Office(509) 575-2491

Eastern Regional Office(509) 456-2926

2. *When operating equipment near wetlands or other waters of the State, extreme care shall be taken to prevent any petroleum products, chemicals, or other toxic or deleterious materials from entering the water. If an oil sheen or distressed or dying fish are observed in the project vicinity, the operator shall cease immediately and notify Ecology of such conditions. Contact the appropriate regional office at the above phone number.*
3. *Proper erosion and sediment control measures shall be carried out during all phases of utility line installation to prevent the uncontrolled discharge of turbid water, dredged or excavated material, or soils into waters of the State. Erosion control structures or devices shall be regularly maintained and inspected to ensure they prevent exceedances of State water quality standards.*
4. *Construction debris shall be disposed at suitable upland locations and in a manner to prevent degradation of State waters.*
5. *There shall be no permanent discharge of excess excavated or dredged material into wetlands or other waterbodies beyond the physical limits of the trench. All excess material shall be disposed in an appropriate upland location.*
6. *The construction and operation of the utility line shall not permanently dewater wetlands or other waters of the State.*
7. *If a utility line is to be pressure tested using water or chlorinated water, and such water is to be discharged to waters of the State upon completion of the test, such discharge shall not cause an exceedance of State water quality standards.*

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

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 bank stabilization activity is less than 500 feet in length;
- 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;
- d. No material is placed in any special aquatic site, including wetlands;
- e. No material is of the type, or is placed in any location, or in any manner, so as to impair surface water flow into or out of any wetland area;
- 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 part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" general condition and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. This NWP may not be used for the channelization of a water of the United States. (Sections 10 and 404)

Notification Requirement -- *Yes. If project is greater than 500 feet in length, if the fill exceeds 0.5 cubic yard per running foot or if the project includes upright structures. See National General Condition 13 - Notification, for specific requirements.*

Regional Conditions --

1. *The following bank stabilization activities may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" general condition and the adverse impacts are determined to be minimal:*
 - a. *Activities exceeding 1/2 cubic yard per running foot of fill material; or,*
 - b. *Proposed projects using any upright structures (e.g., retaining walls,*

concrete or timber bulkheads, etc.).

- 2. Alteration or disturbance of existing bank vegetation shall be held to a minimum, and revegetation shall occur in areas where vegetation was destroyed by riprap placement or project construction. Measures such as hydroseeding with annual, or non-invasive grasses may be used for temporary erosion control.*

EPA 401 Certification -- Partially denied without prejudice. *All projects receiving coverage under this NWP are subject to the following conditions:*

- 1. An individual 401 certification is required for projects over 250 feet long or exceeding and average of 1/2 cubic yard of material per running foot.*
- 2. The linear distance may be increased to a total project length of 500 feet long if bioengineering, approved by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service, is incorporated into the bank stabilization project.*
- 3. The 1/2 cubic yard limitation can be increased to incorporate the placement of fish enhancement structures into the bank stabilization project (i.e. rock barbs). This work shall be approved by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.*
- 4. An individual 401 Certification is required for all upright (vertical or near vertical) bank stabilization structures (i.e. poured concrete, concrete block and rock gabion retaining walls, timber bulkheads).*

Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification -- Partially denied without prejudice. *An individual 401 Certification is required for the following:*

- 1. Projects that do not incorporate structures and/or modifications beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.) as approved by WDFW;*
- 2. Proposed projects using any upright structures (e.g., retaining walls, concrete or timber bulkheads, etc.); or,*
- 3. Projects that are greater than 500 feet in length.*

For proof of consistency with State 401 Certification Condition #1 above, the

applicant may provide a copy of the Hydraulic Project Approval issued for the project, or a letter from WDFW stating that the project design meets WDFW approval for incorporating structures and/or modifications beneficial for fish or wildlife habitat.

For projects below the thresholds in Conditions 1, 2, or 3 above (i.e., projects not requiring 401 Certification), the following conditions apply:

1. *Care shall be taken to prevent any petroleum products, chemicals, or other toxic or deleterious materials from entering the water. If an oil sheen or distressed or dying fish are observed in the project vicinity, the operator shall cease immediately and notify Ecology of such conditions. Contact the appropriate Ecology regional office:*

<i>Northwest Regional Office</i>	<i>(206) 649-7000</i>
<i>Southwest Regional Office</i>	<i>(206) 407-6300</i>
<i>Central Regional Office</i>	<i>(509) 575-2491</i>
<i>Eastern Regional Office</i>	<i>(509) 456-2926</i>

If construction might result in water quality exceedances beyond those permitted in the Short-Term Water Quality Modification issued for use with these Nationwide Permits, an individual modification may be required. The applicant should contact the appropriate Ecology Regional Office at least 30 days before construction begins.

2. *Any riprap used in this project shall be composed of clean, angular material of a sufficient size to prevent its being washed away by high water or wave action. Concrete slabs or rubble shall not be used.*

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

14. ROAD CROSSINGS. *Fills for roads crossing waters of the United States (including wetlands and other special aquatic sites) provided the activity meets all of the following criteria:*

- a. *The width of the fill is limited to the minimum necessary for the actual crossing;*
- b. *The fill placed in waters of the United States is limited to a filled area of no more than 1/3 acre. Furthermore, no more than a total of 200 linear feet of the fill for the roadway can occur in special aquatic sites, including wetlands;*

- c. The crossing is culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows and tidal flows, and to prevent the restriction of low flows and the movement of aquatic organisms;
- d. The crossing, including all attendant features, both temporary and permanent, is part of a single and complete project for crossing of a water of the United States; and,
- e. For fills in special aquatic sites, including wetlands, the permittee notifies the District Engineer in accordance with the "Notification" general condition. The notification must also include a delineation of affected special aquatic sites, including wetlands.

This NWP may not be combined with NWP 18 or NWP 26 for the purpose of increasing the footprint of the road crossing. Some road fills may be eligible for an exemption from the need for a Section 404 permit altogether (see 33 CFR 323.4). Also, where local circumstances indicate the need, District Engineers will define the term "expected high flows" for the purpose of establishing applicability of this NWP. (Sections 10 and 404)

Notification Requirement -- *Yes. In special aquatic sites (e. above) and in tidal waters (regional condition 1. below). See National General Condition 13 - Notification, for specific requirements, especially (4).*

Regional Conditions --

- 1. *Road crossing activities in tidal waters waterward of mean higher high water may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" general condition and the adverse impacts are determined to be minimal.*
- 2. *Fill placed in waters of the United States greater than one tenth (1/10) acre (4,356 square feet) is not authorized. The 200 linear foot limit remains the same. An individual permit application must be submitted for proposed fills greater than 1/10 acre in waters of the United States.*
- 3. *Alteration or disturbance of existing adjacent vegetation shall be held to a minimum, and revegetation shall occur in areas where vegetation was destroyed by project construction. Measures such as hydroseeding with annual, non-invasive grasses may be used for temporary erosion control.*
- 4. *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species.*

EPA and Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404*

activities.

State 401 Certification -- Partially denied without prejudice. *An individual 401 Certification is required for projects:*

1. *In any Category I wetlands (see NOTE below); or,*
2. *With discharges in wetlands within the 100-year floodplain unless the proposed project:*
 - a. *Is consistent with the local floodplain management comprehensive plans and ordinances; and,*
 - b. *Through design and/or mitigation, results in no increase in water levels and no loss in live storage during flood events up to and including the 100-year flood.*

For proof of consistency, the applicant may provide copies of applicable local permits or a letter from the local jurisdiction stating that the above two conditions will be met.

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.

NOTE: *Characterization of wetlands shall be based on field identification. Wetland categories are described in Washington State Wetlands Rating System, Western Washington, Second Edition, dated August 1993 (Publication #93-74) and Washington State Wetlands Rating System, Eastern Washington, dated October 1991 (Publication #91-58). Copies are available through Ecology's Publications Office at (360) 407-6000.)*

CZM Consistency Response -- Partially denied without prejudice *subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

- 15. U.S. COAST GUARD APPROVED BRIDGES.** *Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United*

States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual or regional Section 404 permit. (Section 404)

Notification Requirement -- None.

Regional Conditions -- *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species.*

EPA, State, and Puyallup Tribe 401 Certification -- *Approved.*

CZM Consistency Response -- *Concur.*

16. RETURN WATER FROM UPLAND CONTAINED DISPOSAL AREAS.

Return water from an upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2(d)), but will require a Section 10 permit if located in navigable waters of the United States. 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 on the upland and thus 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. (Section 404)

Notification Requirement -- None.

Regional Conditions -- None.

EPA, State and Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone.*

17. HYDROPOWER PROJECTS. Discharges of dredged or fill material associated with:

- (a) Small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission under the Federal

Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 KW; and the permittee notifies the District Engineer in accordance with the "Notification" general condition; or

- (b) Hydropower projects for which the Federal Energy Regulatory Commission has granted an exemption from licensing 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; provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. (Section 404)

Notification Requirement -- Yes. *See National General Condition 13 - Notification, for specific requirements.*

Regional Conditions -- None.

EPA, State 401 Certification, and Puyallup Tribe -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- Denied without prejudice. *An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone.*

18. MINOR DISCHARGES. Minor discharges of dredged or fill material into all waters of the United States provided that the activity meets all of the following criteria:

- a. The quantity of discharged material and the volume of excavated area does not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- b. The discharge, including any excavated area, will not cause the loss of more than 1/10 acre of a special aquatic site, including wetlands. For the purposes of this NWP, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the United States as a result of the project;
- c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee notifies the District Engineer in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and
- d. The discharge, including all attendant features, both temporary and permanent, is part

of a single and complete project and is not placed for the purpose of a stream diversion.

- e. This NWP cannot be used in conjunction with NWP 26 for any single and complete project. (Sections 10 and 404)

Notification Requirement -- *Yes. See c. above and National General Condition 13 - Notification, for requirements, especially b.(4).*

Regional Conditions -- *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species.*

EPA and State 401 Certification -- *Partially denied without prejudice. An individual 401 Certification is required for the following:*

1. *Discharges into waters used by anadromous fish (applies only to EPA 401 Certification); or,*
2. *Projects that do not incorporate structures and/or modifications approved by WDFW for Ecology, or by NMFS and/or USFWS for EPA, that are beneficial for fish or wildlife habitat (e.g., soil bioengineering, biotechnical design, rock barbs, etc.); or,*
3. *Discharges in wetlands within the 100-year floodplain unless the proposed project:*
 - a. *Is consistent with the local floodplain management comprehensive plans and ordinances; and,*
 - b. *Through design and/or mitigation, results in no increase in water levels and no loss in live storage during flood events up to and including the 100-year flood.*

For proof of consistency, the applicant may provide copies of applicable local permits or a letter from the local jurisdiction stating that the above two conditions will be met. (Applies only to State 401 Certification).

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.

Puyallup Tribe 401 Certification -- *Denied. An individual 401 Certification is required for Section 404 activities.*

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone).*

- 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) as part of a single and complete project. 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 Section 33 CFR 322.5(g)). (Sections 10 and 404)

Notification Requirement -- *None.*

Regional Conditions -- *Dredging is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species.*

EPA and State 401 Certification -- *Partially denied without prejudice. An individual 401 Certification is required for discharges into waters that support anadromous fish.*

Puyallup Tribe -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

- 20. OIL SPILL CLEANUP.** Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR Part 112.3 and any existing State contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (Sections 10 and 404)

Notification Requirement -- None.

Regional Conditions -- None.

EPA and State 401 Certification -- Approved.

Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- Concur.

- 21. SURFACE COAL MINING ACTIVITIES.** Activities associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. The notification must include a Department of the Interior, Office of Surface Mining or State approved mitigation plan. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or State agency has required one. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. (Also see 33 CFR 330.1(e)) (Sections 10 and 404)

Notification Requirement -- Yes. *See National General Condition 13 - Notification, for requirements, especially b.(4) and (5).*

Regional Conditions -- None.

EPA, State and Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- Denied without prejudice. *An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone.*

- 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 the removal of vessels listed or determined eligible for listing on the National Register of

Historic Places unless the District Engineer is notified and indicates that there is compliance with the "Historic Properties" general condition. This NWP does not authorize maintenance dredging, shoal removal, or river bank snagging. Vessel disposal in waters of the United States may need a permit from EPA (see 40 CFR 229.3). (Sections 10 and 404)

Notification Requirement -- *Yes, for Historic Registered vessels.*

Regional Conditions -- *None.*

EPA and State 401 Certification -- *Approved.*

Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

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 that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge 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 the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

Notification Requirement -- *Yes. Required by regional conditioning. Follow procedures at National Regional Condition 13 - Notification.*

Regional Conditions --

1. *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species.*
2. *Notification is required for projects within the state of Washington.*

EPA and Puyallup Tribe 401 Certification -- *Denied without*

prejudice. An individual 401 Certification is required for all Section 404 activities.

State 401 Certification -- *Partially denied without prejudice. An individual 401 Certification is not required for projects meeting the following conditions:*

1. *Proposed project results in less than 1/3 acre of wetland impact; or,*
2. *Project applicant complies with and implements the following:*
 - a. *A "no net loss of wetlands" policy;*
 - b. *An Ecology-approved mitigation agreement (currently the Implementing Agreement between The Washington Department of Transportation and The Washington State Department of Ecology Concerning Wetlands Protection and Management);*

- c. *The WDFW-approved fish passage policy (Policy M1501); and,*
- d. *An Ecology-approved stormwater retrofit policy.*

An individual 401 Certification is required for all other projects.

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

- 24. STATE ADMINISTERED SECTION 404 PROGRAM.** Any activity permitted by a state 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. Those activities which do not involve a Section 404 state permit are not included in this NWP, but certain structures will be exempted by Section 154 of Public Law 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)). (Section 10)

There is no State administered Section 404 program.

- 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, homes, parking areas, storage areas and other such structures. Housepads or other building pads are also not included in this NWP. The structure itself may require a Section 10 permit if located in navigable waters of the United States. (Section 404)

Notification Requirement -- *None.*

Regional Conditions -- *None.*

EPA and State 401 Certification -- *Approved.*

Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- *Concur.*

26. HEADWATERS AND ISOLATED WATERS DISCHARGES. Discharges of dredged or fill material into headwaters and isolated waters provided that the activity meets all of the following criteria:

- a. The discharge does not cause the loss of more than 3 acres of waters of the United States nor cause the loss of waters of the United States for a distance greater than 500 linear feet of the stream bed;
- b. For discharges causing the loss of greater than 1/3 acre of waters of the United States, the permittee notifies the District Engineer in accordance with the "Notification" general condition;
- c. For discharges causing a loss of 1/3 acre or less of waters of the United States, the permittee must submit a report within 30 days of completion of the work, containing the information listed below;
- d. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and
- e. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project.

NOTE: This NWP will expire on December 13, 1998.

For the purposes of this NWP, the acreage of loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation or drainage as a result of the project. The 3 acre and 1/3 acre limits of NWP 26 are absolute, and cannot be increased by any mitigation plan offered by the applicant or required by the District Engineer. Whenever any other NWP is used in conjunction with this NWP, the total acreage of impacts to waters of the United States of all NWPs combined cannot exceed 3 acres.

Subdivisions: For any real estate subdivision created or subdivided after October 5, 1984, a notification pursuant to subsection b. of this NWP is required for any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed 1/3 acre. Any discharge in any real estate subdivision which would cause the aggregate total loss of waters of the United States in the subdivision to exceed 3 acres is not authorized by this NWP; unless the District Engineer exempts a particular subdivision or parcel by making a written determination that:

- (1) The individual and cumulative adverse environmental effects would be minimal and the property owner had, after October 5, 1984, but prior to February 11, 1997,

committed substantial resources in reliance on NWP 26 with regard to a subdivision, in circumstances where it would be inequitable to frustrate the property owner's investment-backed expectations, or

- (2) The individual and cumulative adverse environmental effects would be minimal, high quality wetlands would not be adversely affected, and there would be an overall benefit to the aquatic environment.

Once the exemption is established for a subdivision, subsequent lot development by individual property owners may proceed using NWP 26. For purposes of NWP 26, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial or other real estate subdivision, including all parcels and parts thereof.

Report: For discharges causing the loss of 1/3 acre or less of waters of the United States the permittee must submit a report within 30 days of completion of the work, containing the following information:

- a. Name, address, and telephone number of the permittee;
- b. Location of the work;
- c. Description of the work; and,
- d. Type and acreage (or square feet) of the loss of waters of the United States (e.g., 1/10 acre of marsh and 50 square feet of a stream.) (Section 404)

Notification Requirement -- *Yes. For projects impacting 1/3 acre or less a report must be submitted to the Corps per Report a - d above. For projects impacting greater than 1/3 to 2 acres PCN is required to the Corps. See National General Condition 13 - Notification, for specific requirements, especially b.(3) and (4). The notification period for NWP 26 is 45 days.*

Regional Conditions --

1. *The discharge of dredged or fill material which would cause the loss of greater than 2 acres is not authorized by this NWP. An individual permit application must be submitted for discharges greater than 2 acres.*
2. *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species.*

3. *To avoid adverse impacts to water quality, fishery resources and other aquatic life, this NWP is not applicable in wetlands within 100 feet of any stream with a channel width at the Ordinary High Water Mark greater than two feet at any point along the reach of the stream adjacent and parallel to the proposed area of fill.*

EPA and State 401 Certification -- *Partially denied without prejudice. An individual 401 Certification is required for the following:*

1. *Discharges affecting more than one acre of wetlands;*
2. *Discharges affecting greater than 1/3 (one-third) acre to one acre of wetlands that do not include a wetland mitigation plan approved by the certifying agency; or,*
3. *Discharges in wetlands within the 100-year floodplain unless the proposed project:*
 - a. *Is consistent with the local floodplain management comprehensive plans and ordinances; and,*
 - b. *Through design and/or mitigation, results in no increase in water levels and no loss in live storage during flood events up to and including the 100-year flood.*

For proof of consistency, the applicant may provide copies of applicable local permits or a letter from the local jurisdiction stating that the above two conditions will be met. (Applies only to State 401 Certification)

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.

Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

NOTE: *PCN and individual 401 Certification is not required for fills affecting 1/3 (one-third) acre or less provided all regional conditions are complied with along with the national NWP conditions listed at the beginning of this Public Notice. For fills impacting 1/3 acre or less, reporting the activity to the Seattle District is required. See discussion above at Report. Reporting is to occur within 30 days of the completion of the discharge. Notification prior to construction is required for fills affecting more than 1/3 (one-third) acre.*

27. WETLAND AND RIPARIAN RESTORATION AND CREATION

ACTIVITIES. Activities in waters of the United States associated with the restoration of former non-tidal wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, and creation of wetlands and riparian areas;

- (i) On non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service or the NRCS or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to the NRCS regulations; or
- (ii) On any Federal land; or
- (iii) On reclaimed surface coal mined lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining or the applicable state agency. (The future reversion does not apply to wetlands created, restored or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank.); or
- (iv) On any public or private land, provided the permittee notifies the District Engineer in accordance with the "Notification" general condition.

Such activities include, but are not limited to: installation and maintenance of small water control structures, dikes, and berms; backfilling of existing drainage ditches; removal of existing drainage structures; construction of small nesting islands; plowing or discing for seed bed preparation; and other related activities. This NWP applies to restoration projects that serve the purpose of restoring "natural" wetland hydrology, vegetation, and function to altered and degraded non-tidal wetlands and "natural" functions of riparian areas. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed.

Reversion. For restoration, enhancement and creation projects conducted under paragraphs (ii) and (iv), 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 at that time would be required for any reversion. For restoration, enhancement and creation projects conducted under paragraphs (i) and (iii), 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 creation activities) within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. The five year reversion limit does not apply to agreements without time limits reached under paragraph (i). 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. Prior to 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 back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. (Sections 10 and 404)

Notification Requirement -- *Yes. See National General Condition 13 - Notification, for requirements.*

Regional Conditions --

1. *Wetland restoration is not authorized in areas falling under the designation of a Federal Superfund site (Comprehensive Environmental Response, Compensation and Liability Act), hazardous waste clean-up site (Resource Conservation and Recovery Act), or State clean-up site (Model Toxics Control Act).*
2. *Restoration proposed in documented habitat for State-listed endangered, threatened, or sensitive animal species must be beneficial to those listed species present.*

Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

EPA and State 401 Certification -- *Partially denied without prejudice. An individual 401 Certification is required for the following:*

1. *Discharges of dredged or fill material associated with the reversion of a restored wetland to its prior condition and use; or,*
2. *Impacts to waters of the U.S. adversely affecting more than 1/3 (one-third) acre.*

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency*

Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.

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

Notification Requirement -- *Yes, required by regional condition. See National General Condition 13 - Notification, for requirements.*

Regional Conditions --

1. *The applicant must notify the District Engineer in accordance with the "Notification" general condition.*
2. *This NWP is not authorized for projects that will adversely impact areas with eelgrass (*Zostera* sp.), kelp, or other macroalgae (*Macrocystis* sp., *Nereocystis* sp., *Ulva* sp.).*

EPA, State, and Puyallup Tribe 401 Certification -- *Not applicable.*

CZM Consistency Response -- *Partially denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects involving fuel facilities or sewage pumpout stations and located in counties within the coastal zone.*

- 29. SINGLE-FAMILY HOUSING.** Discharges of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an individual permittee provided that the activity meets all of the following criteria:

- a. The discharge does not cause the loss of more than 1/2 acre of non-tidal waters of the United States, including non-tidal wetlands;
- b. The permittee notifies the District Engineer in accordance with the "Notification" general condition;
- c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

- d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of 1/2 acre for the entire subdivision;
- e. An individual may use this NWP only for a single-family home for a personal residence;
- f. This NWP may be used only once per parcel;
- g. This NWP may not be used in conjunction with NWP 14, NWP 18, or NWP 26, for any parcel; and,
- h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the United States includes the filled area previously permitted, the proposed filled area, and any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Whenever any other NWP is used in conjunction with this NWP, the total acreage of impacts to waters of the United States of all NWPs combined cannot exceed 1/2 acres. This NWP authorizes activities only by individuals; for this purpose, the term "individual" refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as "the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership". (Sections 10 and 404)

Notification Requirement -- *Yes. See National General Condition 13 - Notification, for requirements, especially b.(4) and (6).*

Regional Conditions --

1. *This NWP is prohibited from use in all open water areas such as, but not limited to rivers, lakes, streams, ponds and playas.*
2. *This NWP is not authorized for use in salt marshes. Salt marshes are defined in the Appendix of this Public Notice.*
3. *In addition to the information required for notification (National*

Condition 13), photographic documentation of site conditions is required. Photos should clearly and accurately show the existing site conditions. These photos should be keyed to a site map or drawing. This will help facilitate project review.

4. *Per Condition h. above, the vegetative buffer shall consist of native emergent, scrub-shrub, or tree species and shall be at least 100 feet wide, unless otherwise approved by the Corps and Ecology.*

Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

EPA and State 401 Certification -- Partially denied without prejudice for the following:

1. *Discharges affecting more than 1/4 (one-quarter) acre of wetlands; or,*
2. *Discharges in wetlands within the 100-year floodplain unless the proposed project:*
 - a. *Is consistent with the local floodplain management comprehensive plans and ordinances; and,*
 - b. *Through design and/or mitigation, results in no increase in water levels and no loss in live storage during flood events up to and including the 100-year flood.*

For proof of consistency, the applicant may provide copies of applicable local permits or a letter from the local jurisdiction stating that the above two conditions will be met. (Applies only to State 401 Certification)

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.

An individual 401 Certification with approved mitigation is required for such projects. Proposed projects outside the 100-year floodplain and less than 1/4 (one-quarter) acre do not require individual 401 Certification.

CZM Consistency Response -- Partially denied without prejudice

subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.

30. MOIST SOIL MANAGEMENT FOR WILDLIFE. Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed and State-owned or managed property, 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: the repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or discing to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies. (Section 404)

Notification Requirement -- None.

Regional Conditions -- None.

Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

EPA and State 401 Certification -- Approved.

CZM Consistency Response -- Concur.

31. MAINTENANCE OF EXISTING FLOOD CONTROL FACILITIES.

Discharges of dredged or fill material for the maintenance of existing flood control facilities, including debris basins, retention/detention basins, and channels that were:

- (i) Previously authorized by the Corps by individual permit, general permit, or by CFR 330.3 and constructed; or 33
- (ii) Constructed by the Corps and transferred to a local sponsor for operation and maintenance.

The maintenance is limited to that approved in a maintenance baseline determination made by the District Engineer. The prospective permittee will provide the District Engineer with sufficient evidence for the District Engineer to determine the approved and constructed

baseline. Subsequent to the determination of the maintenance baseline and prior to any maintenance work, the permittee must notify the District Engineer in accordance with the Notification general condition.

All dredged material must be placed in an upland site or a currently authorized disposal site in waters of the United States, and proper siltation controls must be used. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses. (Activities that involve only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, does not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)(ii)). Only constructed channels within stretches of natural rivers that have been previously authorized as part of a flood control facility could be authorized for maintenance under this NWP.

Maintenance Baseline. Upon receipt of sufficient evidence, the District Engineer will determine the maintenance baseline. The maintenance baseline is the existing flood control project that the District Engineer has determined can be maintained under this NWP, subject to any case-specific conditions required by the District Engineer. In determining the maintenance baseline, the District Engineer will consider the following factors: the approved facility, the actual constructed facility, the Corps constructed project that was transferred, the maintenance history, if the facility has been functioning at a reduced capacity and for how long, present vs. original flood control needs, and if sensitive/unique functions and values may be adversely affected. Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR Part 330.5. This NWP cannot be used until the District Engineer determines the maintenance baseline and the need for mitigation and any regional or activity-specific conditions. The maintenance baseline will only be determined once and will remain valid for any subsequent reissuance of this NWP. However, if the project is effectively abandoned or reduced due to lack of proper maintenance, a new determination of a maintenance baseline would be required before this NWP could be used for subsequent maintenance.

Mitigation. In determining the need for mitigation, the District Engineer will consider the following factors: any original mitigation required, the current environmental setting, and any adverse effects of the maintenance project that were not mitigated in the original construction. The District Engineer will not delay needed maintenance for completion of any required mitigation, provided that the District Engineer and the applicant establish a schedule for the identification, approval, development, construction and completion of such required mitigation. (Sections 10 and 404)

Notification Requirement -- Yes. See *National General Condition 13 - Notification, for requirements, especially b.(7).*

Regional Conditions -- *This NWP does not include projects originally authorized under emergency procedures and does not authorize sand and gravel mining projects.*

EPA, State and Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- *Denied without prejudice. An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone.*

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 nontidal wetlands or 1 acre of tidal wetlands;
 - 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 nationwide permit; and
 - c. The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this nationwide permit 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.

For both (i) or (ii) above, 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 or fails to complete the work by the specified completion date. 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. Prior to 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)

Notification Requirement -- None.

Regional Conditions -- None.

EPA and State 401 Certification -- Approved.

Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- Concur.

NOTE: *The Corps will coordinate with Ecology and the EPA during negotiations with the violator to determine appropriate mitigation.*

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, or for other construction activities not subject to the Corps or U.S. Coast Guard regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas so as to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the United States. (See 33 CFR Part 322). The permittee must notify the District Engineer in accordance with the "Notification" general condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add special conditions, where necessary, to ensure that adverse environmental effects are minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g., construction mats in wetlands where practicable.). (Sections 10 and 404)

Notification Requirement -- Yes. *See National General Condition 13 - Notification, for requirements, especially b.(8).*

Regional Conditions --

1. *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species.*
2. *Temporary fills may be in place for up to six months only, unless the applicant requests and receives approval for an extension from the District Engineer. Additional timing adjustments may be included to lessen impacts during critical times for migratory species.*

Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

EPA and State 401 Certification -- *Partially denied without prejudice. An individual 401 Certification is required for projects that:*

1. *Impair surface water flow into or out of a wetland; or,*
2. *Affect more than 1/3 (one-third) acre of waters of the U.S.*

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

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 provided that the activity meets all of the following criteria:

- a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the United States, including wetlands;
- b. The permittee notifies the District Engineer in accordance with the "Notification" general condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and,
- c. The activity does 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. (Section 404)

Notification Requirement -- *Yes. See National General Condition 13 -*

Notification, for requirements, especially b.(4).

Regional Conditions -- None.

EPA and Puyallup Tribe 401 Certification -- NWP denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

State 401 Certification -- NWP partially denied without prejudice. *An individual 401 Certification is required unless the proposed project meets 1 or 2 below:*

1. *The proposed expansion area:*
 - a. *Does not include forested wetland whose trees of 8" Diameter at Breast Height or greater provide 30% or greater of the areal canopy coverage of that wetland;*
 - 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 map on following page, 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 1680.0 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.

or

2. *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 an individual 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.*

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

This is Map Page -- use revised map!

35. MAINTENANCE DREDGING OF EXISTING BASINS. Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marina basins or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is disposed of at an upland site and proper siltation controls are used. (Section 10)

Notification Requirement -- Yes. See *National General Condition 13 - Notification, for requirements and the Regional Conditions below.*

Regional Conditions --

1. *Prior to performing any maintenance dredging, the applicant must complete dredged material sampling and analyses that are required by Federal, State, or local agencies. The applicant should contact the Seattle District Corps of Engineers Dredged Material Management Office (telephone (206) 764-3768) to determine testing requirements.*
2. *The applicant must notify the District Engineer in accordance with the "Notification" general condition and provide:*
 - a. *The results of any required testing; and,*
 - b. *The location of the upland disposal area.*

EPA, State and Puyallup Tribe 401 Certification -- Not applicable.

CZM Consistency Response -- Denied without prejudice. *An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone.*

36. BOAT RAMPS. Activities required for the construction of boat ramps provided:

- 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 placement of pre-cast concrete planks or slabs. (Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);
- b. The boat ramp does not exceed 20 feet in width;
- 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 the upland; and,

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

Dredging to provide access to the boat ramp may be authorized by another NWP, regional general permit, or individual permit pursuant to Section 10 if located in navigable waters of the United States. (Sections 10 and 404)

Notification Requirement -- None.

Regional Conditions --

1. *The ramp shall be constructed only of pre-cast concrete planks or slabs.*
2. *The width of the fill shall not exceed 12 feet.*
3. *Material required to stabilize the ramp shall be clean, washed, and free of fines, and shall not exceed 20 cubic yards.*
4. *Boat ramps are not authorized under this NWP on smelt, herring, or salmon spawning beaches. Locations are based on locations in the most recent Puget Sound Environmental Atlas, prepared for the Puget Sound Estuary Program.*
5. *Only one boat ramp per contiguous property ownership is authorized by this NWP.*

Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

EPA and State 401 Certification -- Partially denied without prejudice. *An individual 401 Certification is required for projects located in limited or scarce riparian habitat, as identified by the WDFW Habitat Biologist for the State, and by the Tribal, USFWS, or NMFS Habitat Biologist for EPA, for the project area.*

CZM Consistency Response -- Partially denied without prejudice *subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

37. EMERGENCY WATERSHED PROTECTION AND REHABILITATION.

Work done by or funded by the NRCS qualifying as an "exigency" situation (requiring immediate action) under its Emergency Watershed Protection Program (7 CFR Part 624) and work done or funded by the Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13) provided the District Engineer is notified in accordance with the "Notification" general condition. (Also see 33 CFR 330.1(e)). (Sections 10 and 404)

Notification Requirement -- Yes. *See National General Condition 13 - Notification, for requirements.*

Regional Conditions -- None.

EPA, State, and Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

CZM Consistency Response -- Denied without prejudice. *An individual CZM Consistency Response must be obtained from the State for projects located in counties within the coastal zone.*

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 provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. 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. Activities undertaken entirely on a 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. (Sections 10 and 404)

Notification Requirement -- Yes. *See National General Condition 13 - Notification, for requirements.*

Regional Conditions -- None.

Puyallup Tribe 401 Certification -- Denied without prejudice. *An individual 401 Certification is required for all Section 404 activities.*

EPA and State 401 Certification -- *Partially denied without prejudice for cleanup activities unless authorized through a cleanup order from Ecology or EPA. An individual 401 Certification is required for all other activities.*

CZM Consistency Response -- *Partially denied without prejudice subject to the 401 Certification conditions. An individual CZM Consistency Response must be obtained for projects requiring individual 401 Certification and located within counties in the coastal zone.*

39. RESERVED.

40. FARM BUILDINGS. Discharges of dredged or fill material into jurisdictional wetlands (but not including prairie potholes, playa lakes, or vernal pools) that were in agricultural crop production prior to December 23, 1985, i.e., farmed wetlands, for foundations and building pads for farm buildings. The discharge will be limited to the minimum necessary but will in no case exceed 1 acre (see the "Mitigation" Section 404 only condition). The permittee must notify the District Engineer in accordance with the "Notification" general condition for any farm building within 500 linear feet of any flowing water. (Section 404)

Notification Requirement -- *Yes, for any farm buildings within 500 linear feet of any flowing water. See National General Condition 13 - Notification, for requirements.*

Regional Conditions --

1. *The total discharge is limited to one acre per contiguous property ownership.*
2. *To avoid adverse impacts to water quality, fishery resources and other aquatic life, this NWP is not applicable in wetlands within 100 feet of any stream with a channel width at the Ordinary High Water Mark greater than two feet at any point along the reach of the stream adjacent and parallel to the proposed area of fill.*
3. *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species.*

Puyallup Tribe 401 Certification -- *Denied without prejudice. An individual 401 Certification is required for all Section 404 activities.*

EPA and State 401 Certification -- *Approved.*

CZM Consistency Response -- *Concur.*

APPENDIX -- DEFINITION OF BOGS AND SALT MARSHES

Bogs: Bog means wetlands which have the following characteristics: hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, cedar, whitepine, crabapple, or aspen, and may be associated with open water.

{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)}

The presence of bogs is to be determined by using the following identification key.

<u>Question</u>	<u>Response</u>	<u>Action</u>
1. Area is dominated by mosses, low grass-like or shrubby vegetation, in 1/4 acre or more.	Yes No	Go to #4 Go to #2
2. Area has a mixture of stunted trees (sitka spruce, western hemlock, western red cedar, lodgepole pine, Englemann's spruce, western white pine, aspen or crab apple) and low vegetation in 1/4 acre or more.	Yes No	Go to #4 Go to #3
3. Area is forested with sitka spruce, western red cedar, western hemlock, lodgepole pine, quaking aspen, or western white pine, WITH Sphagnum moss as a dominant ground cover (less than 30% coverage of the ground) within at least 1/4 acre of the wetland.	Yes No	Go to #4 Is not a bog.

NOTE: A 30% cover of Sphagnum in 1/4 acre means that 30% of the ground within an area of 1/4 acre is shaded by Sphagnum if a light were placed directly over the vegetation. The Sphagnum may be found under a cover of other emergent or shrub vegetation, and at the bottom of temporary pools during the wet season.

4. Area has organic soils, either peats or mucks, deeper than 16 inches. Organic soils are defined as follows based on the information in <i>Soil Taxonomy</i> (1992):	Yes No	Go to #6 Go to #5
--	-----------	----------------------

(1) Soils with an organic carbon content of 18% or more (excluding live roots) if the mineral fraction contains more than 60% clay;

(2) Soils with an organic carbon content to 12% if the mineral fraction contains no clay;

Question

Response Action

(3) Soils with an organic carbon content between 12-18% based on the percentage of clay present (multiply the actual percentage of clay by 0.1 and add to 12%).

It is not usually necessary, however, to do a chemical analysis of the soil to determine if a soil is organic. Organic soils are easy to recognize as black-colored mucks or as black or dark brown peats. Mucks feel greasy and stain fingers when rubbed between the fingers. Peats have plant fragments visible throughout the soil and feel fibrous. Many organic soils, both peats and mucks, may smell of hydrogen sulfide (rotten eggs).

- | | | |
|--|-----------|--------------------------|
| 5. Area has organic soils, either peats or mucks, that are less than 16 inches deep over bedrock or hardpan. | Yes
No | Go to #6
Is not a bog |
| 6. More than 30% of the total plant cover is provided by one or more of the characteristic bog species in Washington State listed below. Total cover is estimated by assessing the area of land covered by the shadow of plants if the sun were directly overhead. | Yes
No | IS A BOG
Is not a bog |

NOTE: Forests may contain several layers of plant that cover the ground. In arriving at the 30% minimum cover look at plants in the "canopy", the "understory", and the "groundcover". You are trying to determine whether the total "footprint" of the characteristic bog species in Washington State listed below, be they canopy, understory or groundcover, is more than 30%.

Characteristic Bog Species In Washington State:

Scientific Name:

Common Name:

- | | |
|----------------------------|---------------------|
| <i>Andromeda polifolia</i> | Bog rosemary |
| <i>Betula glandulosa</i> | Bog birch |
| <i>Carex brunescens</i> | Brownish sedge |
| <i>Carex buxbaumii</i> | Brown bog sedge |
| <i>Carex canescens</i> | Hoary sedge |
| <i>Carex chordorhiza</i> | Creeping sedge |
| <i>Carex comosa</i> | Breaded sedge |
| <i>Carex lasiocarpa</i> | Wolly-fruit sedge |
| <i>Carex leptalea</i> | Bristly-stalk sedge |
| <i>Carex limosa</i> | Mud sedge |
| <i>Carex livida</i> | Livid sedge |

Characteristic Bog Species In Washington State (Continued):

Scientific Name:

Common Name:

<i>Carex paupercula</i>	Poor sedge
<i>Carex rostrata</i>	Beaked sedge
<i>Carex sexatilis</i>	Russet sedge
<i>Carex sitchensis</i>	Sitka sedge
<i>Carex interior</i>	Inland sedge
<i>Carex pauciflora</i>	Few-flower sedge
<i>Cladina rangifera</i>	Reindeer lichen
<i>Drosera rotundifolia</i>	Sundew
<i>Eleocharis pauciflora</i>	Few-flower spike rush
<i>Empetrum nigrum</i>	Black crowberry
<i>Eriophorum chamissonis</i>	Cottongrass
<i>Eriophorum polystachion</i>	Coldswamp cottongrass
<i>Fauria crista-galli</i>	Deer-cabbage
<i>Gentiana douglasiana</i>	Swamp gentian
<i>Juncus supiniformis</i>	Hairy leaf rush
<i>Kalmia occidentalis</i>	Bog laurel
<i>Ledum groenlandicum</i>	Labrador tea
<i>Lysichitum americanum</i>	American skunk cabbage
<i>Malus fusca</i>	Pacific crabapple
<i>Menyanthes trifoliata</i>	Bog bean
<i>Myrica gale</i>	Sweet gale
<i>Pedicularis groenlandica</i>	Elephant's-head lousewort
<i>Picea engelmannii</i>	Engelmann's spruce
<i>Picea sitchensis</i>	Sitka spruce
<i>Pinus contoria</i>	Lodgepole pine
<i>Pinus monticola</i>	Western white pine
<i>Platanthera dilatata</i>	Leafy white orchid
<i>Populus tremula</i>	Quaking aspen
<i>Potentilla palustris</i>	Marsh cinquefoil
<i>Pteridium aquilinum</i>	Bracken fern
<i>Rhynchospora alba</i>	White beakrush
<i>Salix commutata</i>	Under-green willow
<i>Salix eastwoodiae</i>	Mountain willow
<i>Salix farriae</i>	Farr willow
<i>Salix myrtilifolia</i>	Blue-berry willow
<i>Salix planifolia</i>	Diamond leaf willow
<i>Sanquisorba officinalis</i>	Great burnet
<i>Sphagnum spp.</i>	Sphagnum mosses
<i>Spiranthes romanzofianna</i>	Hooded ladies'-tresses
<i>Thuja plicata</i>	Western red cedar
<i>Tofieldia glutinosa</i>	Sticky false-asphodel

Characteristic Bog Species In Washington State (Continued):

Scientific Name:

Common Name:

Tsuga heterophylla
Vaccinium occidentale
Vaccinium oxycoccus

Western hemlock
Western huckleberry
Bog cranberry

NOTE: Latin names and spelling are based on the U.S. Fish and Wildlife Service, "National List of Plant Species that Occur in Wetlands: Washington". Biological Report May 1988 NERC-88/18.47.

Salt Marsh: The following definition of a salt marsh shall be used in implementing the Nationwide Permit program:

Any area adjacent to salt water where the interstitial soil salinity is greater than or equal to 0.5 parts per thousand at any time of year or where the plant community is comprised of at least 5% total cover of any of the following species occurring singly or in combination:

Scientific Name:

Common Name:

Abronia latifolia
Aster subspicatus
Atriplex patula
Cakile edentula
Cotula coronopifolia
Distichlis spicata
Eleocharis parvula
Glaux maritima
Grindelia integrifolia
Honkenya peploides
Jaumea carnosa
Juncus gerardii
Orthocarpus castillejoides
Plantago maritima
Puccinellia pumila
Salicornia virginica
Scirpus maritimus
Spartina anglica
Spartina alternifolia
Spergularia canadensis
S. marina

Yellow sand verbena
Douglas' aster
Orache
American searocket
Brass buttons, Mud-disk
Seashore saltgrass
Small spike-rush
Sea milk-wort
Entire-leaved gumweed
Seabeach sandwort
Fleshy jaumea
Mud rush
Paintbrush owl-clover
Sea plantain
Dwarf alkali-grass
American glasswort
Seacoast bulrush
Spartina
Spartina
Canadian sand-spurry
Salt marsh sand-spurry

Scientific Name:

Stellaria humifusa
Triglochin concinnum
T. maritimum

Common Name:

Salt marsh starwort
Slender arrow-grass
Sea arrow-grass

In addition, when found in coastal areas adjacent to salt water the following species usually indicate the presence of a salt marsh. All of the species in the second list are found in fresh situations (sometimes well inland) as well as salt/brackish marshes. If there is any doubt that the area is a salt marsh, soil salinity should be established.

Scientific Name:

Agrostis alba (*Agrostis gigantea*)
Carex lyngbyei
Deschampsia caespitosa
Festuca rubra
Hordeum brachyantherum
H. jubatum
Juncus balticus
Lilaeopsis occidentalis
Potentilla pacifica
(*Argentina egedii* ssp. *egedii*)
Scirpus acutis (*S. validus*)
Scirpus americanus

Common Name:

Creeping bentgrass
Lyngby's sedge
Tufted hairgrass
Red fescue
Meadow barley
Foxtail barley
Baltic rush
Western lilaeopsis

Silverweed
Hard-stemmed bulrush
American bulrush