Version: October 13, 2000

Appendix E

Nationwide Permit
&
Regional General Permit
Conditions

Appendix E includes the following:

- General conditions for all Nationwide Permits (NWPs).
- Corps Regional conditions for all Nationwide Permits (NWPs).
- Regional General 401 conditions for all Nationwide Permits.
- Description of individual Nationwide Permit (NWPs) that may be used to authorize activities addressed in this informal programmatic consultation, with their regional special conditions and regional conditions for Section 401 Water Quality Certification (WQC) and Coastal Zone Management (CZM) Consistency Determinations.
- Description of the Regional General Permits (RGPs) that may be used to authorize activities addressed in this informal programmatic consultation with their general and special conditions (one example of each is provided). An example of each of the RGPs addressed in this informal consultation (boat lifts and tideland markers) is provided. All RGPs have the same conditions for activities and differ only by location. Table E.1 lists all RGPs with their expiration dates, with the relevant RGPs highlighted.

NOTE: The Corps will use the most current version of the NWPs. Any such authorized action that is not determined to be "no effect" under ESA must either conform with the terms of this informal consultation or undergo individual informal or formal consultation.

NATIONAL GENERAL CONDITIONS FOR ALL NATIONWIDE PERMITS

National Conditions. The following general conditions must be followed in order for any authorization by an 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. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment 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. Culverts placed in streams must be installed to maintain low flow conditions.

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 or by the State or tribe in its Section 401 water quality certification and Coastal Zone Management Act consistency determination.

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 affect 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. The following general conditions must be followed in order for any authorization by a NWP to be valid. These apply to <u>all</u> NWPs.

9. Water Quality.

> **(a)** In certain States and tribal lands an individual 401 water quality certification must be obtained or waived (See 33 CFR 330.4(c)).
>
> **(b)** For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the State or tribal 401 certification (either generically or individually) does not require or approve a water quality management plan, the permittee must include design criteria and techniques that will ensure that the authorized work does not result in more than minimal degradation of water quality. An important component of a water quality management plan includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality. Refer to General Condition 21 for stormwater management requirements. Another important component of a water quality management plan is the establishment and maintenance of vegetated buffers next to open waters, including streams. Refer to General Condition 19 for vegetated buffer requirements for the NWPs.

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 will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat 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. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(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., an ESA 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://www.nfms.gov/prot__res/esahome.html, respectively.

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 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)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification.

(a) Timing: Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing 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 in writing by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written 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 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN

must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7, Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 14, Linear Transportation Crossings, the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the United States and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable.

(7) For NWP 21, Surface Coal Mining Activities, the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan.

(8) For NWP 27, Stream and Wetland Restoration, the PCN must include documentation of the prior condition of the site that will be reverted by the permittee.

(9) 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 ¼ 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 ¼ 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;

(10) For NWP 31, Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a 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 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.

(11) 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.

(12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site.

(13) For NWP 39, Residential, Commercial, and Institutional Developments, and NWP 42, Recreational Facilities, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the United States or justification explaining why compensatory mitigation should not be required.

(14) For NWP 40, Agricultural Activities, the PCN must include a compensatory mitigation proposal to offset losses of waters of the United States.

(15) For NWP 43, Stormwater Management Facilities, the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with State and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the United States.

(16) For NWP 44, Mining Activities, the PCN must include a description of all waters of the United States adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the United States, a description of measures taken to comply with the

criteria of the NWP, and a reclamation plan (for aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities).

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(19) For NWPs 12, 14, 29, 39, 40, 42, 43, and 44, where the proposed work involves discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

(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)-(19) of General Condition 13. A letter containing the requisite information may also be used.

(d) District Engineer's Decision: In reviewing the PCN 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 PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment 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 on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either

conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory 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'ssubmission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or
>
> (3) that the project is authorized under the NWP with specific modifications or conditions.

Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within the 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the United States will occur until the District Engineer has approved a specific mitigation plan.

(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 effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than ½ acre of waters of the United States, the District Engineer will, upon receipt of a notification, provide immediately (e.g., via 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 10 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 15 calendar days 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, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to National Marine Fisheries Service within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetlands Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(9)(iii) for parcels less than ¼ acre 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 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

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. The certification 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; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by

NWP 13, the maximum acreage loss of waters of the United States for the total project

cannot exceed 1/3 acre.

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. Mitigation. The project must be designed and constructed to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation will be required when necessary to ensure that the adverse effects to the aquatic environment are minimal. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

> **(a)** Compensatory mitigation at a minimum 1:1 ratio will be required for all wetland impacts requiring a PCN. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands to meet the minimum compensatory mitigation ratio, with preservation used only in exceptional circumstances.
>
> **(b)** 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. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed;
>
> **(c)** The District Engineer will require restoration, creation, enhancement, or preservation of other aquatic resources in order to offset the authorized impacts to the extent necessary to ensure that the adverse effects on the aquatic environment are minimal. An important element of any compensatory mitigation plan for projects in or near streams or other open waters is the establishment

and maintenance, to the maximum extent practicable, of vegetated buffers next to open waters on the project site. The vegetated buffer should consist of native species. The District Engineer will determine the appropriate width of the vegetated buffer and in which cases it will be required. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require wider vegetated buffers to address documented water quality concerns. If there are open waters on the project site and the District Engineer requires compensatory mitigation for wetland impacts to ensure that the net adverse effects on the aquatic environment are minimal, any vegetated buffer will comprise no more than 1/3 of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced on a one-to-one acreage basis. In addition, compensatory mitigation must address adverse effects on wetland functions and values and cannot be 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 39, ¼ acre of wetlands cannot be created to change a ½ acre loss of wetlands to a ¼ acre loss; however, ½ acre of created wetlands can be used to reduce the impacts of a 1/3 acre loss of wetlands). If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed.

(d) To the extent appropriate, permittees should consider mitigation banking and other appropriate forms of compensatory mitigation. If the District Engineer determines that compensatory mitigation is necessary to offset losses of waters of the United States and ensure that the net adverse effects of the authorized work on the aquatic environment are minimal, consolidated mitigation approaches, such as mitigation banks, will be the preferred method of providing compensatory mitigation, unless the District Engineer determines that activity-specific compensatory mitigation is more appropriate, based on which is best for the aquatic environment. These types of mitigation are preferred because they involve larger blocks of protected aquatic environment, are more likely to meet the mitigation goals, and are more easily checked for compliance. If a mitigation bank or other consolidated mitigation approach is not available in the watershed, the District Engineer will consider other appropriate forms of compensatory mitigation to offset the losses of waters of the United States to ensure that the net adverse effects of the authorized work on the aquatic environment are minimal.

20. Spawning Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently

restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and must not increase water flows from the project site, relocate water, or redirect water flow beyond preconstruction conditions. In addition, the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows.

22. Adverse Effects From Impoundments. If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, 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.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

> **(a)** Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.
>
> **(b)** For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and

38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after he determines that the impacts to the critical resource waters will be no more than minimal.

26. Fills Within 100-Year Floodplains. For purposes of this general condition, 100-year floodplains will be identified through the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) Discharges Below Headwaters. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the 100-year floodplain at or below the point on a stream where the average annual flow is five cubic feet per second (i.e., below headwaters) are not authorized by NWPs 29, 39, 40, 42, 43, and 44. For NWPs 12 and 14, the prospective permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above-grade fills in waters of the United States within the 100-year floodplain below headwaters comply with FEMA or FEMA-approved local floodplain construction requirements.

(b) Discharges in Headwaters (i.e., above the point on a stream where the average annual flow is five cubic feet per second).

(1) *Flood Fring*e. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the flood fringe of the 100-year floodplain of headwaters are not authorized by NWPs 12, 14, 29, 39, 40, 42, 43, and 44, unless the prospective permittee notifies the District Engineer in accordance with General Condition 13. The notification must include documentation that such discharges comply with FEMA or FEMA-approved local floodplain construction requirements.

(2) *Floodwa*y. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the floodway of the 100-year floodplain of headwaters are not authorized by NWPs 29, 39, 40, 42, 43, and 44. For NWPs 12 and 14, the permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above grade fills proposed in the floodway comply with FEMA or FEMA-approved local floodplain construction requirements.

Section 10 Only Condition

1. Removal, Relocation or Other Alteration to Structures. The permitee understands and agrees that, if future operations by the United States requires the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Special Condition

1. Access. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

CORPS REGIONAL GENERAL CONDITIONS FOR ALL NATIONWIDE PERMITS

1. Bog and Bog-like Wetlands. The use of NWPs is specifically prohibited in bog and bog-like wetlands or just the bog or bog-like component of a wetland system (as defined in the Definition section of this Public Notice), except for projects provided coverage under the following NWPs:

NWP 3(i,ii) – Maintenance
NWP 20 – Oil Spill Cleanup
NWP 32 – Completed Enforcement Actions
NWP 38 – Cleanup of Hazardous and Toxic Waste
NWP 40(a) – USDA program participant

NOTE: NWP regulations do not allow the regional conditioning of NWP 40(a).

2. Mature Forested Wetlands. The use of NWPs is specifically prohibited in mature forested systems or just the mature forested component of a wetland system (as defined in the Definition section of this Public Notice), except for projects provided coverage under the following NWPs:

NWP 3(i,ii) – Maintenance
NWP 20 – Oil Spill Cleanup
NWP 32 – Completed Enforcement Actions
NWP 38 – Cleanup of Hazardous and Toxic Waste
NWP 40(a) – USDA program participant

NOTE: NWP regulations do not allow the regional conditioning of NWP 40(a).

3. Revegetation. Though applying to all NWPs where wetland vegetation is temporarily removed, this condition most often applies to NWPs 12, 13, 14, and 33 which require restoration and/or revegetation of the temporarily impacted areas or work areas. This condition does not apply to any NWP authorizations which require a separate mitigation plan.

Upon completion of the work authorized by the NWP, the site shall be replanted with the appropriate native upland or wetland vegetation during the first available planting season. Vegetation removal or destruction shall be held to the absolute minimum necessary. The applicant shall take appropriate measures to ensure revegetation success, as defined below. Success is defined as 80% of the planted area being covered with native species five years after construction is completed. If this standard is not equaled or exceeded, 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. Commencement Bay. An individual permit is required in the Commencement Bay Study Area (CBSA) for activities which would have qualified for the following NWPs:

NWP 12 -- Utility Line Activities (substations and access roads)
NWP 13 -- Bank Stabilization
NWP 14 -- Linear Transportation Crossings
NWP 23 -- Approved Categorical Exclusions
NWP 29 -- Single-Family Housing
NWP 39 -- Residential, Commercial, and Institutional Developments
NWP 40 -- Agricultural Activities
NWP 41 -- Reshaping Existing Drainage Ditches
NWP 42 -- Recreational Facilities
NWP 43 -- Stormwater Management Facilities

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.

5. Mill Creek Special Area Management Plan (SAMP). Within the boundaries of the (SAMP), only the following NWPs can be used in those areas designated as "Developable Wetlands":

NWP 14 -- Linear Transportation Crossings
NWP 23 -- Approved Categorical Exclusions
NWP 29 -- Single-Family Housing
NWP 33 -- Temporary Construction, Access and Dewatering
NWP 39 -- Residential, Commercial, and Institutional Developments
NWP 40 – Agricultural Activities
NWP 41 -- Reshaping Existing Drainage Ditches
NWP 42 -- Recreational Facilities
NWP 43 -- Stormwater Management Facilities

Until the SAMP is approved, the users of these NWPs listed above (except NWP 40a.) must notify the District Engineer in accordance with General Condition 13 for any acreage or volume proposed. Once the SAMP is approved, the "Notification" limits will be as specified in the individual NWPs.

Mitigation requirements for these projects must either be onsite or within the areas designated as "Preferred Mitigation Sites". Mitigation plans must comply with the requirements found within the *Mill Creek Special Area Management Plan, King County, Washingto*n, dated April 2000.

An individual permit is required for all proposals in “Developable Wetlands” that would have qualified for NWPs other than those listed above.

NWP 27, Stream Restoration and Enhancement Activities, can be used within the SAMP, but, must comply with the requirements found within the *Mill Creek Special Area Management Plan, King County, Washingto*n.

The Mill Creek SAMP applies to all areas and tributaries drained by Mill Creek, (Auburn), Mullen Slough, Midway Creek, Auburn Creek, and the area bounded by 4 th Street Northeast in Auburn on the south, and the Ordinary High Water mark of the Green River on the east and north.

6. 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:

(1) Nesting between January 1 and August 15 each year.
(2) 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 (USFWS).

Contact the USFWS 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: Ephrata - (509) 754-8580
or Spokane - (509) 893-8002
Mainstem of the Columbia River downstream from McNary Dam:
Portland - (503) 231-6179

NOTE: If the bald eagle is delisted (6 July 2000 at the earliest), this regional condition will no longer be valid.

REGIONAL GENERAL 401 CONDITIONS FOR ALL NATIONWIDE PERMITS

Washington State Department of Ecology

1. Soil Erosion and Sediment Controls.

(a) For in-water construction activities: An individual 401 Certification is not required under this condition for projects or activities authorized under NWPs that will meet the following requirements of the water quality standards (WAC 173-201A-110):

(1) All necessary local and State permits have been obtained;

(2) Best Management Practices have been implemented; and,

(3) Turbidity does not extend beyond the following limits:

(a) Up to 100 feet downstream from the activity in waters flowing up to 10 cfs (cubic feet per second) at the time of construction;

(b) Up to 200 feet downstream from the activity in waters flowing between 10 cfs to 100 cfs at the time of construction;

(c) Up to 300 feet downstream from the activity in waters flowing above 100 cfs at the time of construction; or,

(d) A radius of up to 150 feet for projects or activities within or along lakes,

ponds, wetlands, estuaries, marine waters or other non-flowing waters.

For WDOT in-water construction projects or activities, an individual 401 certification is not required for those projects or activities in compliance with the Ecology approved Implementing Agreement regarding compliance with the State of Washington Surface Water Quality Standards.

Applicants whose projects or activities will not or do not meet the above requirements must contact Ecology to request issuance of an individual 401 Certification or a modification to the water quality standards pursuant to WAC 173-201A-110.

(b) For upland and wetland construction activities: An individual 401 Certification is not required under this condition for projects or activities authorized under NWPs that meet the applicable turbidity standards in adjacent waterbodies (per WAC 173-201A-030).

For WDOT projects or activities authorized under NWPs, an individual 401 certification is not required under this condition for projects or activities that are in compliance with the most current applicable WDOT Highway Runoff Manual and the Ecology-approved Temporary Erosion and Sediment Control (TESC) document for project site plans.

Applicants whose projects or activities will not or do not meet the above requirements must contact Ecology to request issuance of an individual 401 Certification or a modification to the water quality standards pursuant to WAC 173-201A-110.

2. Stormwater Provisions. An individual 401 Certification is not required under this condition for any project or activity authorized under NWPs complying with applicable provisions of:

(a) the stormwater-related conditions of an HPA issued for the project or activity; or,

(b) the most current Ecology-approved version of the Puget Sound Stormwater Manual, the WDOT Highway Runoff Manual, or any other Ecology-approved local stormwater manual. Compliance may be determined by submitting a letter signed by a professional engineer certifying that the stormwater design meets the applicable manual.

3. Compliance with requirements of the National Pollutant Discharge Elimination System (NPDES). An individual 401 Certification is required for and project or activity authorized under NWPs that are not in compliance with all applicable requirements of a general or individual NPDES permit.

4. Projects or Activities Discharging to Impaired Waters. An individual 401 Certification is required for projects or activities that will discharge to a waterbody on the state's list of impaired waterbodies (the 303(d) list) if the discharge will result in further exceedances of the 303(d)-listed contaminant or will result in further impairment of the listed reason for impairment of that waterbody, except as described below:

> **(a) For projects or activities that will discharge to a 303(d)-listed waterbody that has an approved Total Maximum Daily Load (TMDL),** an individual 401 Certification is not required under this condition if the applicant provides documentation for Ecology approval showing that the discharge is within the limits established in the TMDL.
>
> **(b) For projects and activities that will discharge to a 303(d)-listed waterbody that does not have an approved Total Maximum Daily Load (TMDL),** an individual 401 Certification is not required under this condition if the applicant provides documentation for Ecology approval showing that the project or activity will not result in further discharges of the listed contaminant or further impairment of the listed reason for impairment.

Note: For example, if a waterbody is on the 303(d) list for exceeding the water quality criteria for fecal coliform, applicants must provide documentation showing that the proposed project will not result in further fecal coliform exceedances in that waterbody or individual 401 Certification will be required.

When an individual 401 Certification is required for projects or activities that would result in further exceedances or impairment in 303(d)-listed waterbodies, Ecology may issue a 401 Certification if mitigation is provided that would result in a net decrease in listed contaminants or less impairment in the waterbody. This determination would be made during individual 401 Certification review.

5. Notification. For projects or activities that will require individual 401 Certification, applicants must provide Ecology with the documentation provided to the Corps (as described in Corps National General Condition 13), including, when applicable:

> **(a)** Delineation of special aquatic sites, including wetlands.
>
> **Note:** delineation should also be provided for areas described in local Critical Areas Ordinances, such as riparian zones, locally-significant wetlands, shorelines of statewide significance, etc.]
>
> **(b)** Proposed compensatory mitigation or restoration plans.
>
> **(c)** Proposed water quality and water quantity management measures (e.g., proposed stormwater management plan and designs, proposed BMPs, etc.).
>
> **(d)** Endangered or threatened listed species that may be affected by the

proposed work.

(e) Historic properties listed or eligible for listing in the National Register of Historic Places.

(f) Site plans showing the 100-year floodplain.

(g) Other applicable requirements of Corps National General Condition 13, Corps Regional Conditions, or notification conditions of the applicable NWP.

A request for 401 Certification is not complete until the applicable documents noted above have been provided to Ecology and Ecology has received a copy of the final authorization letter from the Corps providing coverage for a proposed project or activity under the NWP Program.

6. Compliance Certification. Applicants must provide a copy of the compliance certification to Ecology whenever it is required to be submitted to the Corps (as described in Corps National General Condition 14).

7. Mitigation. 401 Certification is based on adequate compensatory mitigation being provided for wetland and other water quality-related impacts of projects or activities authorized under the NWP Program. An individual 401 Certification is required for projects or activities authorized under NWPs that do not receive written approval from Ecology of proposed mitigation plans for the following:

(a) Any fill-related impacts to Category I wetlands or other high-quality wetlands including bogs, mature forested wetlands, vernal pools, camas prairie wetlands, playas, and prairie potholes.

(b) Any fill-related impacts to tidal waters or to non-tidal wetlands adjacent to tidal waters.

(c) Any Corps-required proposed compensatory mitigation plan (as described in Corps National General Condition 13) under NWPs 14, 39, 40, 42, and 43 for any fill-related impacts greater than ¼ acre.

Mitigation plans submitted for Ecology review and approval shall be based on the guidance provided in *Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals* (Ecology Publication 94-29) and shall, at a minimum, include the following:

(a) Evidence of wetland hydrology at the mitigation site.

(b) Completion and submittal of an “as-built report” upon construction of the mitigation.

(c) Completion and submittal of monitoring reports at Years 3 and 5 showing the results of monitoring for wetland hydrology, vegetation types, and areal coverage of vegetation.

(d) For projects proposing mitigation at an Ecology-approved mitigation bank, applicants shall provide a copy of the proposed impact and mitigation bank credit determination.

In addition to the above, WDOT projects and activities authorized under NWPs must comply with applicable provisions of the "Implementing Agreement between the Washington Department of Transportation and the Washington Department of Ecology Concerning Wetlands Protection and Management".

8. Temporary Fills. An individual 401 Certification is required for any project or activity authorized under NWPs that does not receive written approval from Ecology allowing temporary fill to remain in wetlands or other waterbodies for more than 90 days. The 90-day period begins when fill is first placed in the wetland or other waterbody.

9. Designated Critical Resource Waters. An individual 401 Certification is required for any project or activity authorized under NWPs in waterbodies on the most current list of the following Designated Critical Resource Waters (as described in Corps National General Condition 25 on page 101):

(a) NOAA-designated marine sanctuaries.

(b) National Wild and Scenic Rivers.

(c) State natural heritage sites.

In addition, an individual 401 Certification is required for any project or activity authorized under NWPs in any aquatic reserve established by WDNR or in any outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment.

10. Fills Within 100-Year Floodplains. An individual 401 Certification is required for any proposed project or activity authorized under NWPs that includes permanent, above-grade fill within the 100-year floodplain.

11. Standard 401 Certification Requirements. All permittees whose projects or activities receive 401 Certification are subject to the applicable requirements below:

(a) Spill prevention and response: 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 wetlands or other waterbodies. If a spill occurs, the operator shall

immediately cease work, take steps to contain the material, and notify Ecology's appropriate regional office.

(b) Equipment fueling: Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored to prevent spills into state waters. Fueling is to be done only in areas designed to contain spills and not within 50 feet of wetlands.

(c) No wash water discharges: Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains, unless authorized through a separate NPDES permit or state waste discharge permit.

(d) Disposal of material: Construction debris and excess excavated or dredged material shall be disposed of at an upland location in a manner to prevent degradation of State waters.

(e) Clean fill: Fill material used in projects or activities authorized under NWPs shall not result in exceedances of state water quality standards (WAC 173-201A), including exceedances of the surface water quality numeric criteria, beyond the approved area of fill.

Note: For example, fill material should not contain contaminants or toxic substances that would leach through the material and into wetlands or other surface waters of the state at rates or concentrations that exceed the surface water quality numeric criteria.

(f) Identifying construction boundaries: Prior to clearing and grading in wetlands, the adjacent wetlands and waterbodies shall be protected from construction impacts. Construction fencing or flagging (using brightly colored tape at no less than twenty-five foot (25') intervals) of the existing wetlands and other waterbodies to be protected shall be completed prior to clearing. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or other waterbodies that are not authorized to be impacted.

(g) Access: 401 Certification is based on NWP permittees providing access to project and mitigation sites upon request of Ecology personnel for site inspections, monitoring, or data collection to determine compliance with 401 certification conditions.

(h) Liability: Any 401 Certification issued for projects or activities authorized under NWPs does not absolve the applicant from liability for contamination

occurring as a result of construction or operations and for subsequent cleanup of

surface waters or sediments.

Environmental Protection Agency (EPA)

1. Soil Erosion and Sediment Controls. 401 Certification determination is based on the project or activity meeting established turbidity levels. EPA will be using as guidance, the State water quality standards [WAC 173-201A-110(3)]. Projects or activities that are expected to exceed these levels or that do exceed these levels will require individual 401 Certification.

The water quality standards allow for short-term turbidity exceedances after all necessary Best Management Practices have been implemented (e.g., properly placed and maintained filter fences, hay bales and/or other erosion control devices, adequate detention of runoff to prevent turbid water from flowing off-site, providing a vegetated buffer between the activity and open water, etc.), and only up to the following limits:

(a) Up to 100 feet downstream from the activity in waters flowing up to 10 cfs (cubic feet per second) at the time of construction;

(b) Up to 200 feet downstream from the activity in waters flowing between 10 cfs to 100 cfs at the time of construction; or

(c) Up to 300 feet downstream from the activity in waters flowing above 100 cfs at the time of construction.

2. Compliance with Stormwater Provisions. 401 Certification of projects and activities authorized under NWP permits will use the applicable provisions of the most current Ecology-approved version of the Puget Sound Stormwater Manual, or the Washington State Department of Transportation Highway Runoff Manual on highway projects as guidance to meet water quality standards.

3. Compliance with requirements of the National Pollutant Discharge Elimination System (NPDES). For projects and activities requiring coverage under an NPDES permit, certification is based on compliance with the requirements of that permit. Projects and activities that are not in compliance with NPDES requirements will require individual 401 Certification.

4. Projects or Activities Discharging to Impaired Waters. Projects or activities that will discharge to a waterbody on the state's list of impaired waterbodies (the 303(d) list) require individual 401 Certification if the discharge may result in further exceedances of the 303(d)-listed contaminant or will result in further impairment. The current list of 303(d)-listed waterbodies is available on Ecology's web site at http://www.wa.gov/ecology or by contacting Ecology's Federal Permits staff.

For projects or activities that will discharge to a 303(d)-listed waterbody that does not

have an approved Total Maximum Daily Load (TMDL), the applicant must provide documentation for EPA approval showing that the discharge will not result in further exceedances of the listed contaminant or impairment.

For projects or activities that will discharge to a 303(d)-listed waterbody that does have an approved TMDL, the applicant must provide documentation for EPA approval showing that the discharge is within the limits established in the TMDL.

EPA may issue 401 Certification determination for projects or activities that would result in further exceedances or impairment if mitigation is provided that would result in a net decrease in listed contaminants or less impairment in the waterbody. This determination would be made during individual 401 review.

5. Notification. For projects that will require individual 401 certification determination, applicants must provide EPA with the same documentation provided to the Corps (per Corps National General Condition 13), including when applicable:

(a) Delineation of special aquatic sites, including wetlands.

(b) Proposed compensatory mitigation or restoration plans.

(c) Proposed water quality and water quantity management measures.

(d) Endangered or threatened listed species that may be affected by the proposed work.

(e) Historic properties listed or eligible for listing in the National Register of Historic Places.

(f) Site plans showing the 100-year floodplain.

(g) Other applicable requirements of Corps National General Condition 13, Corps Regional Conditions, or notification conditions of the applicable Nationwide Permit.

A request for 401 Certification is not complete until the applicable documents noted above have been provided to the certifying agency.

6. Compliance Certification. Applicants must provide a copy of the compliance certification to EPA whenever it is required to be submitted to the Corps (per Corps National General Condition 14).

7. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of

the Clean Water Act).

8. Mitigation. 401 Certification is based on adequate compensatory mitigation being provided for wetland and other water quality-related impacts of projects and activities authorized under the NWP Program. Compensatory mitigation is required under Corps General Condition 13 for projects and activities authorized under NWPs 14, 39, 40, 42, and 43. 401 Certification is subject to the applicant receiving written approval from EPA of the mitigation plan for projects and activities resulting in any of the following:

(a) Any impacts to Category I wetlands;

(b) Any impacts to tidal waters or non-tidal waters adjacent to tidal waters (applies to NWP 14); or,

(c) Any impacts to wetlands greater than ¼ acre.

Compensatory mitigation plans submitted for EPA review and approval shall be based on the guidance provided in *Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals* (Ecology Publication 94-29) and shall, at a minimum, include the following:

(a) Evidence of wetland hydrology at the mitigation site;

(b) Completion and submittal of an “as-built report” upon construction of the mitigation;

(c) Completion and submittal of reports at Years 3 and 5 showing the results of monitoring for wetland hydrology, vegetation types, and areal coverage of vegetation.

Projects and activities that do not receive written approval of their mitigation plan, or do not meet the conditions stated above, will require an individual 401 Certification.

Note: Characterization of wetlands shall be based on field identification and using the “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) as guidance. Copies are available through Ecology's Publications Office at (360) 407-6000.)

9. Management of Water Flows. 401 Certification of projects and activities authorized under NWP permits is based on guidance and/or compliance with the applicable provisions of the most current Ecology-approved version of the Puget Sound Stormwater Manual. Projects and activities not meeting the applicable provisions will require individual 401 Certification.

10. Temporary Fills. An individual 401 Certification is required for any activity where

temporary fill will remain in wetlands or other waterbodies for more than 90 days. The 90 day period begins when filling activity starts in the wetland or other waterbody.

11. Designated Critical Resource Waters. An individual 401 Certification is required for any proposed project or activity in waterbodies on the most current list of the Designated Critical Resource Waters per Corps National General Condition 25.

Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, and outstanding national resource waters or other waters officially designated by a Tribe as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

12. Fills Within 100-Year Floodplains. An individual 401 Certification is required for any proposed project that would increase permanent, above-grade fill within the 100-year floodplain (including the floodway and the flood fringe).

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.

INDIVIDUAL 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 Conditions 13, 25, and 26).*

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

EPA, State, Puyallup Tribe and Chehalis 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).*

Individual NWP Description and Conditions.

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. be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

Regional Conditions – *None.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

3. Maintenance. Activities related to:

(i) 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 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 adverse 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 nationwide permit authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is 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.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the United States to remove accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional rip rap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) **REVOKED**

Maintenance dredging for the primary purpose of navigation and beach restoration are not authorized by this permit. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (Sections 10 and 404)

NOTE: This NWP authorizes the minimal impact repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance.

Notification Requirement – *Yes. Notification required for any work proposed under NWP 3 in designated critical resource waters or any work under NWP 3(ii) requires notification. See National General Condition 13 – Notification and 25(b) – Designated Critical Resource Waters, for specific requirements*

Regional Conditions for NWP 3(ii) –

1. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved.

2. In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:

a) Wetlands adjacent to lower perennial riverine systems (see Note below); or
b) Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or
c) Playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or

d) In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.

***NOTE:** Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definition section of this SPN.*

3. The construction of new or additional bank protection of the repair or replacement of existing permitted bank protection will incorporate the least environmentally damaging practicable methods. These methods would include the use of bioengineering, biotechnical design, root wads, large woody debris, plantings, etc.

EPA 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for any activities requiring excavation or dredging in open water. See also EPA Regional General 401 Conditions for other requirements.*

Puyallup Tribe and Chehalis 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 or activities authorized under this NWP if required by any State Regional General 401 Condition.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary*

consultation or concurrence required under ESA is completed. The State's CZM

review will start upon completion of ESA requirements.

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.*

EPA and State 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA or State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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. Notification required 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 – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA or State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

10. Mooring Buoys. Non-commercial, single-boat, mooring buoys. (Section 10)

Notification Requirement – *Yes. Notification required for any work proposed in designated critical resource waters. See National General Condition 25(b) – Designated Critical Resource Waters, for specific requirements*

Regional Conditions – *None.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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, Puyallup Tribe, and Chehalis Tribe 401 Certification – *Not applicable.*

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

12. Utility Line Activities. Activities required for the construction, maintenance, and repair of utility lines and associated facilities in waters of the United States as follows:

(i) *Utility line*s: The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, 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 (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States, provided 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. In wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the United States through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) *Utility line substation*s: The construction, maintenance, or expansion of a substation

facility associated with a power line or utility line in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than ½ acre of non-tidal waters of the United States.

(iii) *Foundations for overhead utility line towers, poles, and anchor*s: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) *Access road*s: The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than ½ acre of non-tidal waters of the United States. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the United States and as near as possible to preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

The term "utility line" does not include activities which drain a water of the United States, such as drainage tile or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the 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. Activities authorized by paragraphs (i) through (iv) may not exceed a total of ½ acre loss of waters of the United States. Waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of waters of the United States. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the United States are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized landclearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance, and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the United States that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to

upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the United States, even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(a) Mechanized land clearing in a forested wetland for the utility line right-of-way;

(b) A Section 10 permit is required;

(c) The utility line in waters of the United States, excluding overhead lines, exceeds 500 feet;

(d) The utility line is placed within a jurisdictional area (i.e., a water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area;

(e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10 acre of waters of the United States;

(f) Permanent access roads constructed above grade in waters of the United States for a distance of more than 500 feet; or

(g) Permanent access roads constructed in waters of the United States with impervious materials. (Sections 10 and 404)

NOTE 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

NOTE 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

NOTE 3: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the utility line to protect navigation.

Notification Requirement – *Yes. Refer to notification requirements above, regional conditions below, and for work involving permanent above-grade fills within the 100-year floodplain. See National General Conditions 13 – Notification and 26 – Fills Within 100-Year Floodplains, for specific requirements.*

NOTE: *Also review information in Migratory Bird section above (page 21).*

Regional Conditions for all of NWP 12 *–The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the "Notification" must include a written justification to the District Engineer detailing compliance with this condition, i.e., why the discharge must occur in waters of the United States and why avoidance or additional minimization cannot be achieved.*

Regional Conditions for NWP 12(i) –

1. In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:

a) Playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system.

These systems are defined in the Definition section of this SPN.

2. When trenching through wetlands, the approximate upper 12 inches of topsoil shall be removed and stockpiled separately from subsurface soils. Alternatively, topsoil can be imported to comply with this condition. Care shall be taken to avoid compaction when stockpiling hydric soils. Once the utility line has been 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. No more than 10 percent of the subsurface soils may be mixed in with the topsoil.

Regional Conditions for NWP 12(ii) –

1. In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:

a) Wetlands adjacent to lower perennial riverine systems (See Note below); or

b) Coastal dunal wetland systems along the coast of Washington except for

within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or

c) Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or

d) In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.

***Note:** Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definition section of this SPN.*

2. The permittee must notify the District Engineer in accordance with General Condition 13 for mechanized landclearing in a forested wetland for the construction of a substation(s).

Regional Conditions for NWP 12(iii) –

1. In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:

a) Wetlands adjacent to lower perennial riverine systems (see Note below); or

b) Coastal dunal wetland systems along the coast of Washington except for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or

c) Playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or

d) In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.

***NOTE:** Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definition section of this SPN.*

Regional Conditions for NWP 12(iv) –

1. In addition to being restricted from use in tidal waters of the United States (defined in 33 CFR Part 328.4(b)), this NWP is not authorized for use in the non-tidal waters of the United States listed below. An individual permit application must be submitted for any proposed work in these designated areas:

a) Wetlands adjacent to lower perennial riverine systems (see Notebelow); or

b) Coastal dunal wetland systems along the coast of Washingtonexcept for within the city of Long Beach provided the project is consistent with the approved "City of Long Beach Dune Management Report"; or

c) Lakes, playa lakes, prairie potholes, vernal pools, kettles, and camas prairie wetlands or within 100 feet of any such system; or

d) In "Protected High-Functioning Wetlands" as identified in the Skagit WIN Phase III: Wetland Management Plan for the Port of Skagit County dated 1 August 1997.

***NOTE:** Adjacent is as defined in 33 CFR Part 328.3(c). In the riverine systems, a line is drawn perpendicular to the river at the break between lower and upper perennial river systems. This NWP can be used in those wetlands upstream of this line only. These systems are defined in the Definition section of this SPN.*

2. For the construction of access roads, the permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(a) the loss of greater than 1/10 th of an acre;

(b) footprints wider than 12 feet;

(c) mechanized land clearing in a forested wetland

EPA 401 Certification – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA Regional General 401 Conditions and for projects or activities that will affect the following:*

1. Any linear wetland impact area more than 40 feet wide (impacts due to trenching, construction, staging areas, etc.).

2. Any excavation or dredging activities affecting open water areas (e.g., trenching across streams).

3. Any project or activity that will replace wetland areas with more than 1/10 of

an acre of new or additional permanent impervious surfaces (e.g., concrete, gravel, asphalt, etc).

Puyallup Tribe and Chehalis 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 or activities authorized under this NWP if required by any State Regional General 401 Condition and for projects or activities that will affect the following:*

1. Any one wetland impact area more than 40 feet wide (impacts due to trenching, construction, staging areas, etc.)

.

2. Any excavation or dredging activities affecting open water areas (e.g., trenching across streams).

3. Any project or activity that will replace wetland areas with more than 1/10 th of an acre of new or additional permanent impervious surfaces (e.g., concrete, gravel, asphalt, etc).

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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. Notification is required for fills greater than 10 cubic yards, in special aquatic sites, or in designated critical resource waters. See National General Conditions 13(b) – Notification and 25(b) – Designated Critical Resource Waters, for specific requirements.*

> **Regional Conditions –** *The discharge is not authorized in documented habitat for State-listed endangered, threatened, or sensitive animal species. Contact the Ecology Regional office for information.*
>
> **EPA 401 Certification –** *Partially denied without prejudice. An individual 401 Certification is required for projects authorized under this NWP if required by any EPA Regional General 401 Condition and 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 and Chehalis 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 authorized under this NWP if required by any State Regional General 401 Condition and 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).

For proof of consistency with this condition, 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.

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects that the Seattle District has not yet determined are in compliance with ESA, or that require individual 401 Certification, and that are located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation or concurrence required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

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 – *Partially denied without prejudice. An individual 401 Certification is required for projects or activities authorized under this NWP if required by any EPA or State Regional General 401 Condition.*

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

CZM Consistency Response – *Partially denied without prejudice. An individual CZM Consistency Response must be obtained for projects without ESA concurrence and located within counties in the coastal zone. Consistency with CZM cannot be determined until any necessary consultation required under ESA is completed. The State's CZM review will start upon completion of ESA requirements.*

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX C-3755
SEATTLE. WASHINGTON 98124

NPSOP-RF **5 AUG 1981**

DEPARTMENT OF THE ARMY PERMIT

GENERAL PERMIT
TIDELAND MARKERS
WITHIN PACIFIC COUNTY
071-OYB-1-007066

Referring to Public Notice No. 071-OYB-1-007066 proposing a General Permit to:

Perform work in or affecting navigable waters upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403);

Washington State Department of Natural Resources is hereby authorized by the Secretary of the Army:

to install stationary and/or floating tideland ownership identification markers in coastal waters that are navigable waters of the United States subject to the ebb and flow of the tide, shoreward to the line of mean high water, within the geographical boundaries of Pacific County subject to the following conditions:

I. Special Conditions:

1. This permit only satisfies Federal law and does not satisfy state and local requirements including leasing of the submerged lands, zoning, building, hydraulic, shoreline management or other required permits. The work is authorized only after final approval has been obtained from the state and applicable local government.

2. This permit is applicable only to activities which are performed in accordance with the state laws and local government's Shoreline Management Master Program, building codes and zoning ordinances.

3. This permit is applicable only to activities which are in accordance with Section 307(c)(3) of the Coastal Zone Management Act and the approved State of Washington Coastal Zone Management Program.

4. All activities in navigable waters within Pacific County not covered by this General Permit require authorization by separate Department of the Army permit.

5. Any state or local governmental agency marking public tideland boundaries under this General Permit must enter into written agreement with the Department of Natural Resources.

6. This permit shall become effective on the date of the District Engineer's signature.

7. This permit may be revoked by issuance of a public notice at any time the District Engineer determines that the singular or cumulative effects of the activities authorized herein have an adverse effect on the public interest. Following such revocation, any future activities in areas covered by this General Permit will be processed as individual permits.

8. The permittee, upon notice of revocation of this permit, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

9. If the District Engineer determines that a specific identification marker, installed under this General Permit, is interfering with navigation, the permittee shall, without expense to the United States and in such time and manner as the District Engineer may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the District Engineer, the District Engineer may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

10. The permittee hereby recognizes the possibility that the identification marker installation permitted herein may be subject to damage by wave wash from passing vessels or flooding. The permittee shall not hold the United States liable for any such damage.

11. The agency installing a marker must have the legal right to use and occupy the affected land. This agency shall obtain concurrence on the location of the applicable property line from each affected adjacent upland property owner prior to installation of identification markers. If a dispute arises between this agency and the affected adjacent upland property owner on the location of a property line, the agency shall obtain the applicable State Attorney General or County Prosecuting Attorney's opinion that the agency has the legal right to use and occupy the affected land.

12. This permit shall not grant to the permittee authority to enter upon the uplands, tidelands or aquatic lands lying within the exterior boundaries of any Indian reservation

located in Pacific County, Washington, for the purpose of installing stationary or floating tideland ownership identification markers or any other activity authorized under this permit.

13. No structure permitted herein shall be installed on a property registered in the National Register of Historic Places or in such a way to affect known archaeological or other cultural resources.

14. Work in navigable water will be done in such a manner to minimize turbidity which tends to degrade water quality and damage aquatic life.

15. All construction debris will be disposed in such a manner that it cannot enter navigable waters.

16. The Washington State Department of Natural Resources will provide the District Engineer a quarterly listing of identification markers installed. This listing will contain the location, name of the navigable waterway a-Lid the type of each identification marker installed. This listing will include the latitude and longitude of the right-end marker, as seen from the waterside, and the distance along the beach of each subsequent marker from the last right-hand marker. This listing will be available to any interested local, state or Federal agency upon request to the Department of Natural Resources.

NOTE: Sketches of typical installations are furnished for general information in Appendix A.

II. General Conditions:

1. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit and may result in the modification, suspension, or revocation of this permit, in whole or in part.

2. That the permittee agrees to make every reasonable effort to prosecute the work authorized herein in a manner so as to minimize any adverse impact of the work on fish, wildlife, and natural environmental values.

3. That the permittee agrees to prosecute the work authorized herein in a manner so as to minimize any degradation of water quality.

4. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

5. That the permittee shall maintain the structure or work authorized herein in good condition.

6. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property, invasion of rights, or any infringement of Federal, state, or local laws or regulations, nor does it obviate the requirement to obtain state or local assent required by law for the activity authorized herein.

7. That this permit does not authorize the interference with any existing or proposed Federal project, and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

8. That this permit may be either modified, suspended, or revoked, in whole or in part, if the Secretary of the Army or his authorized representative determines that activities identified and authorized within the terms or conditions of this permit are not in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after issuance of public notice of such action. Within this 30-day period, permittees may request a public hearing to be held to present oral and written evidence concerning the proposed modification, suspension, or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend, or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

9. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

10. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

11. That if and when the permittee desires to abandon the activity authorized herein, lie must restore the area to a condition satisfactory to the District Engineer.

12. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Date 5 August 1981

/s/

LEON K MORASKI
Colonel, Corps of Engineers
District Engineer

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX C-3755
SEATTLE, WASHINGTON 98124

NPSOP-RF **8 October 1980**

DEPARTMENT OF THE ARMY PERMIT

GENERAL PERMIT
BOAT LIFT STATIONS
LAKE WASHINGTON
071-OYB-1-005974

Referring to Public Notice 071-OYB-1-005974 proposing a General Permit to:

Perform work in or affecting navigable waters upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403); general authority is hereby given to the general public to:

install or retain boat lift stations for private use

in Lake Washington, including Union Bay, King County, Washington

Subject to the following conditions:

I. Special Conditions:

1. For all work described in this General Permit, separate state and local approvals and/or permits are required as well. This permit only satisfies Federal law and does not satisfy state and local requirements including leasing of the submerged lands, zoning, building, hydraulic, shoreline management or other required permits. The work is authorized after final approval has been obtained from the state and applicable local government.

2. This permit is applicable only to activities which are performed in accordance with the state laws and the local government's Shoreline Management Master Program, building codes, and zoning ordinances.

3. This permit is applicable only to activities which are in accordance with Section 307(c)(3) of the Coastal Zone Management Act and the approved State of Washington Coastal Zone Management Program.

4. All activities in Lake Washington not covered by this General Permit require authorization by separate Department of the Army permit.

5. This permit shall become effective on the date of the District Engineer's signature.

6. This permit may be revoked by issuance of a public notice at any time the District Engineer determines that the singular or cumulative effects of the activities authorized herein have an adverse effect on the public interest. Following such revocation, any future activities covered by this General Permit will be processed as individual permits.

7. The permittee, upon notice of revocation of this permit, shall, without expense to the United States or in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

8. If the District Engineer determines that a specific boat lift station, installed under this General Permit, is interfering with navigation, the permittee shall, without expense to the United States and in such time and manner as the District Engineer may direct, restore the waterway to its former condition. If the permittee fails to comply with the direction of the District Engineer, the District Engineer may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

9. This permit does not apply to any boat lift station to be installed within boundaries of any Federal project.

10. The permittee hereby recognizes the possibility that the boat installation permitted herein may be subject to damage by wave wash from passing vessels or flooding. The permittee shall not hold the United States liable for any such damage. The issuance of this permit does not relieve the permittee from taking all proper steps to insure:

a. The integrity of the boat lift station permitted herein.

b. The safety of boats stored or moored thereto from damage by wave wash.

11. The permittee shall not hold the city, county, state, or Federal Government responsible for the maintenance of the bottom or beach line location.

12. The permittee must have the legal right to use and occupy the affected submerged land. A lease of the submerged land may be required from the Washington State Department of Natural Resources or the Port of Seattle.

13. No boat lift station permitted herein shall be installed in such a way that it would restrict movement of vessels using existing facilities.

14. No boat lift station permitted herein shall be installed in the mouth of any river, stream, or creek.

15. Dredging or placement of fill is not authorized in conjunction with the installation of any boat lift station authorized by this General Permit.

16. Ordinary high water for Lake Washington hereafter means 21.8 feet above the Corps of Engineers' Datum established in 1919.

17. Pile driving is not authorized by this permit.

18. Boat lift stations for vessels shall be limited by the following conditions:

a. Boat lift stations shall not be installed in a depth greater than 10 feet below the plane of ordinary high water.

b. Boat lift stations shall be located adjacent to existing, authorized floats, piers, or walkways.

c. Boat lift stations shall not be located waterward (toward middle of lake) of existing, authorized piers, floats, or walkways.

d. Canopies, if allowed by local regulations, must be part of the boat lift station and structurally independent of the adjacent pier, float, or walkway.

e. This permit authorizes a maximum of two boat lift stations per waterfront lot.

19. To be authorized under this General Permit, the permittee must submit to the Seattle District Engineer within 10 days after substantial completion of proposed work within the navigable waters of the United States, the following information:

a. General Permit number.

b. Name of property owner or lessee
Mailing address
Telephone

c. Description of the work.

d. Address where structure exists, including section, township, range, latitude, longitude, street address, city, county, and state.

e. Name of bay or cove, if applicable.

f. Local government.

g. A copy of valid written approval from the Departments of Fisheries and Game.

h. Date structure was installed.

i. Name and address of contractor, if applicable.

j. Statement of compliance with all conditions of this General Permit.

k. Signature and date.

The information shall be submitted in the format identified in Appendix B.

NOTE: A sketch of typical installations is furnished for general information in Appendix A.

II. General Conditions:

1. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit and may result in the modification, suspension, or revocation of this permit, in whole or in part.

2. That the permittee agrees to make every reasonable effort to prosecute the work authorized herein in a manner so as to minimize any adverse impact of the work an fish, wildlife, and natural environmental values.

3. That the permittee agrees to prosecute the work authorized herein in a manner so as to minimize any degradation of water quality.

4. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

5. That the permittee shall maintain the structure or work authorized herein in good condition.

6. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations, nor does it obviate the requirement to obtain state or local assent required by law for the activity authorized herein.

7. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage

or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

8. That this permit may be either modified, suspended, or revoked, in whole or in part, if the Secretary of the Army or his authorized representative determines that activities identified and authorized within the terms or conditions of this permit are not in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after issuance of public notice of such action. Within this 30-day period, permittees may request a public hearing to be held to present oral and written evidence concerning the proposed modification, suspension, or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend, or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

9. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

10. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

11. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

12. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

13. That if and when the permittee desires to abandon the activity authorized herein, he must restore the area to a condition satisfactory to the District Engineer.

14. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

15. The word "permittee" shall include such permittee's successors in interest.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Date 8 October 1980

/s/

LEON K. MORASKI
Colonel, Corps of Engineers
District Engineer

APPENDIX B

STATEMENT OF COMPLIANCE

GENERAL PERMIT
071-OYB-1-005974

I. Name of property owner or lessee:

2. Mailing address:

3. Telephone:

4. Description of the work:

5. Location where structure exists:

Section- Township- Range-
Latitude- Longitude-

Street address -

City -

County - State -

6. Name of bay or cove, if applicable:

7. Local government:

8. A copy of valid written approval from the Departments of Fisheries and Game.

9. Date structure was substantially completed:

10. Name and address of contractor, if applicable:

I certify that I have complied with all of the conditions of this General Permit.

_____ _____
Signature of Permittee Date

Table E.1: REGIONAL PERMITS STATUS – U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT

Reference No.	Name	Authorized Activity	Waterway	County	Date Issued	Date Expires	Status
OYB-1-003265	**Regional Permit for Lake Sammamish**	**Install and maintain portable lift stations**	**Lake Sammamish**	**King**	**08-Apr-99**	**08-Apr-04**	**Modified**
OYB-1-003738	Regional Permit for Lake Chelan	Construct piers and install floats	Lake Chelan	Chelan	13-Nov-97	13-Nov-02	Modified
OYB-1-003872	**Tideland Markers in Island County**	**Install tideland markers**		**Island**	**24-May-77**	**None**	
OYB-1-003877	Washington State Parks	Mooring buoys	Statewide	Statewide	22-Jun-79	None	
OYB-1-004141	Regional Permit for Lake Washington	Construct piers and install floats	Lake Washington	King	18-Jan-94	18-Jan-94	Cancelled
OYB-1-004521	**Tideland Markers in Skagit County**	**Install tideland markers**		**Skagit**	**05-May-78**	**None**	
OYB-1-004522	**Tideland Markers in Whatcom County**	**Install tideland markers**		**Whatcom**	**05-May-78**	**None**	
OYB-1-004523	**Tideland Markers in Island County**	**Install tideland markers**		**Island**	**10-May-78**	**None**	
OYB-1-005974	**Regional Permit for Lake Washington**	**Install and maintain portable lift stations**	**Lake Washington**	**King**	**08-Oct-80**	**None**	
OYB-1-007061	**DNR Tideland Markers in Grays Harbor County**	**Install tideland markers**		**Grays Harbor**	**05-Aug-81**	**None**	
OYB-1-007062	**DNR Tideland Markers in Jefferson County**	**Install tideland markers**		**Jefferson**	**05-Aug-81**	**None**	
OYB-1-007063	**DNR Tideland Markers in King County**	**Install tideland markers**		**King**	**05-Aug-81**	**None**	
OYB-1-007064	**DNR Tideland Markers in Kitsap County**	**Install tideland markers**		**Kitsap**	**05-Aug-81**	**None**	
OYB-1-007065	**DNR Tideland Markers in Mason County**	**Install tideland markers**		**Mason**	**05-Aug-81**	**None**	
OYB-1-007066	**DNR Tideland Markers in Pacific County**	**Install tideland markers**		**Pacific**	**05-Aug-81**	**None**	
OYB-1-007067	**DNR Tideland Markers in Pierce County**	**Install tideland markers**		**Pierce**	**05-Aug-81**	**None**	
OYB-1-007068	**DNR Tideland Markers in Snohomish County**	**Install tideland markers**		**Snohomish**	**05-Aug-81**	**None**	
OYB-4-008079	Washington State Dept. of Fish & Wildlife	Fill to restore salmon spawning areas	Western WA	Western WA	13-Nov-97	13-Nov-02	Modified
OYB-4-008100	Washington State Dept. of Fish & Wildlife	Fill for fish passage through culverts	Western WA	Western WA	13-Sep-03	13-Sep-03	Modified
OYB-4-009300	U.S. Forest Service	Fill for fish habitat enhancement			22-Jul-91	22-Jul-96	Cancelled