

- WORKING DRAFT -

**PROJECT CONDITIONS OR ACTIONS THAT QUALIFY AS
“NO EFFECT” ON LISTED OR PROPOSED T&E FISH
OR THEIR CRITICAL HABITAT IN WASHINGTON STATE
UNDER THE ENDANGERED SPECIES ACT¹
(All Marine/Estuarine Waters *excluding* Baker Bay)**

1. No listed fish or fish proposed for listing, or their forage base, or designated or proposed critical habitat occur in the marine or estuarine waterbody where work is to occur.
2. Work that occurs as part of a single and complete project and that is 300 feet or more upland from the shoreline (generally the line of Mean Higher High Water (MHHW) or ordinary high water (OHW) line), of any marine or estuarine waterbody (including any estuarine wetlands with or without tidal channels), except the mouth of the Columbia River (Baker Bay), and work will not result in short- or long-term water quality or quantity impacts which may affect listed or proposed fish species or their forage base downgradient of the project site. The 300-foot measurement is a horizontal measurement from the MHHW or OHW line, or from the upland edge of the estuarine wetland, and does not take topography into account.
3. Placement of navigation aids and regulatory markers on existing structures, and buoys for such purposes, in navigable waters, provided that: the buoys are not located over or adjacent to vegetated shallows or spawning areas for forage species and are anchored securely. [from Nationwide Permit (NWP) 1]
4. Replacement of decking, rails, stringers, or other above-water parts of serviceable structures in navigable waters, provided that: any stain, paint, or preservatives to be applied on such components is completely dried/cured prior to installation, creosote and pentachlorophenol preserved wood will not be used, and no material shall enter the waterbody during removal of decking, etc. [work typically allowed under NWP 3]

¹ Based on available literature [50 CFR Part 226, FR Vol. 65, No. 32], the Corps' Seattle District, Regulatory Branch, notes that a 300-foot-riparian area should provide a high level of protection for these species and their critical habitat under the Endangered Species Act (ESA). This “No Effect” list is meant to cover those single and complete projects that meet the stated criteria. For projects that do not meet these criteria the applicant should contact the Corps for a case-by-case determination of effect under the ESA. Such projects may still qualify for a “No Effect” determination on an individual basis. This list does not represent any finding regarding the Clean Water Act, the Rivers and Harbors Act, nor any Federal law other than the ESA.

5. Replacement of floats, provided that: replacement float is no larger and within the same footprint as the original float; only the over-water float is replaced and the original anchor system remains in place; the float is unchained from the anchor, moved onshore and new replacement float is placed in the water fully intact and chained to the existing anchor; any stain, paint, or preservatives to be applied onto the float is done while the float is on the land and all treatments are completely dry/cured prior to returning the float to the water; and the flotation is fully contained in a rigid protective casing. [work typically allowed under Nationwide Permit 3]