

**Programmatic Biological Evaluation for the
State of Washington for Salmonid Species Listed or Proposed
By the National Marine Fisheries Service
and U.S. Fish and Wildlife Service
Under the Endangered Species Act**

October 13, 2000
Revised: May 30, 2001

Prepared by: Regulatory Branch
Seattle District
U.S. Army Corps of Engineers
P.O. Box 3755
Seattle, Washington 98124-3755

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Introduction

The Regulatory Branch of the U.S. Army Corps of Engineers (Corps), under its authorities pursuant to the Rivers and Harbors Act of 1899, the Federal Water Pollution Control Act, as amended (Clean Water Act), and the Marine Protection, Research, and Sanctuaries Act of 1972 (Ocean Dumping Act), evaluates applications for permits for work in waters of the U.S. [33 CFR Parts 320 through 330; 40 CFR Part 230]. At the conclusion of the evaluation process, the Corps issues decisions in the form of permits (Nationwide Permit, Regional General Permit, Standard Individual Permit, and/or Letter of Permission - a form of Individual Permit), or in the form of denials (Denial Without Prejudice, Denial With Prejudice). Approvals or other decisions in the permit process constitute federal actions, and the Corps must ensure that its actions are in compliance with other major federal statutes and regulations. Among those is the federal Endangered Species Act of 1973, as amended.

Under Section 7 of the ESA, the Seattle District Corps has been informally consulting with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on its permit program, particularly with regard to the recent listings of salmonid species as threatened or endangered in the state of Washington (see Table 1). Seattle District regulatory program covers all areas of the state with the exception of ten ports along the Columbia River, which are covered by the Portland District regulatory program. Seattle District has determined that some, but not all, of its permit actions may adversely affect the listed or proposed fish species.

Intent of Use

This Programmatic Biological Evaluation (PBE) covers just those actions, on a statewide programmatic level, that we believe may affect but are Not Likely to Adversely Affect (NLAA) the fish species, Distinct Population Segments (DPSs)/Evolutionarily Significant Units (ESUs) or designated critical habitat, jeopardize the continued existence of proposed fish species, or destroy or adversely modify proposed critical habitat listed in Table 1. Applicants may design projects to meet the NLAA lists or not. The Corps will continue to fulfill its statutory ESA obligations for other types of actions and species via case-by-case Section 7 consultations.

Table 1: Threatened & Endangered Salmonid ESUs & DPSs Occurring in Washington State (by species)			<i>Critical Habitat</i>
<i>Evolutionary Sig. Unit (ESU)</i>	<i>Status</i>	<i>Fed. Register Date</i>	
Snake R. Spring/Summer Chinook	Final, Threatened	Apr. 22, 1992	Y
Snake R. Fall Chinook	Final, Threatened	Apr. 22, 1992	Y
NOTE: On Mar. 9, 1998, proposal made to add areas to Snake R. fall chinook ESU			
Lower Columbia R. Chinook	Final, Threatened	Mar. 24, 1999	Y
Upper Columbia R. Spring Chinook	Final, Endangered	Mar. 24, 1999	Y
Upper Willamette R. Chinook	Final, Threatened	Mar. 24, 1999	Y
Puget Sound Chinook	Final, Threatened	Mar. 24, 1999	Y
Snake R. Sockeye	Final, Endangered	Nov. 20, 1991	Y
Ozette Lake Sockeye	Final, Threatened	Mar. 25, 1999	Y
Snake R. Steelhead	Final, Threatened	Aug. 18, 1997	Y
Lower Columbia R. Steelhead	Final, Threatened	Mar. 19, 1998	Y
Middle Columbia R. Steelhead	Final, Threatened	Mar. 25, 1999	Y
Upper Columbia R. Steelhead	Final, Endangered	Aug. 18, 1997	Y
Upper Willamette Steelhead	Final, Threatened	Mar. 25, 1999	Y
Columbia River Chum	Final, Threatened	Mar. 25, 1999	Y
Hood Canal Summer Chum	Final, Threatened	Mar. 25, 1999	Y
Lower Columbia R./SW WA Coho	Candidate	Jul. 25, 1995	N/A
Puget Sound/St. of Georgia Coho	Candidate	Jul. 25, 1995	N/A
Coastal/Puget Sound Bull Trout	Final, Threatened	Nov. 1, 1999	N
Columbia River Bull Trout	Final, Threatened	Jun. 20, 1998	N
SW Washington/Columbia River Coastal Cutthroat Trout	Proposed, Threatened	Apr. 5, 1999	N

Common Name : Scientific Name

Chinook salmon : *Oncorhynchus tshawytscha*

Sockeye salmon : *Oncorhynchus nerka*

Chum salmon : *Oncorhynchus keta*

Steelhead : *Oncorhynchus mykiss*

Coho salmon : *Oncorhynchus kisutch*

Bull Trout : *Salvelinus confluentus*

Cutthroat Trout : *Oncorhynchus clarki clarki*

Specifically, this informal programmatic consultation for activities covered under certain Nationwide Permits (NWP) or Regional General Permits (RGP) will evaluate the impacts of such activities on listed or proposed fish species or their critical habitat, and will identify measures to avoid or minimize adverse affects. The Corps currently has 40 types of NWPs and in this PBE we have included activities associated with 9 of them (refer to Appendix E). The District also has 20 RGPs for 6 different types of activities. In this PBE, we have included activities associated with 2 of them (refer to Appendix E). Refer to Tables 2 through 4 for lists of all the activities we believe are NLAA on a programmatic basis, by major area.

During programmatic consultation discussions between ourselves and the NMFS, the USFWS, and the Washington Department of Fish and Wildlife (WDFW), we also discussed a number of permit activities that would have No Effect upon listed and proposed fish species, primarily based on location (Tables 5 and 6). The Corps is providing this guidance to applicants and staff, to assist in proper effect determinations. The Seattle District currently estimates that about 5 to 10 percent of its annual workload is apt to qualify for a No Effect determination.

This document gives a description of each activity we believe is NLAA provided those activities are scheduled to avoid the presence of the listed or proposed fish species or provided the work is proposed within certain timing windows and include certain protective measures or Best Management Practices (BMPs). The windows and protective measures are specific to each of the following major areas: All Fresh Waters *excluding* the Columbia River mainstem, Columbia River Mainstem *including* Snake River Mainstem & Baker Bay, and Marine/Estuarine Waters *excluding* Baker Bay. Each PBE includes a programmatic description, project construction description (details on construction practices and logistics), action area description, species and habitat information, activity history and status (to estimate how many instances of use may occur annually), environmental baseline, effects of the action (any short-term or long-term impacts from either construction or the placement of the work), and a determination of effect under the ESA. Monitoring of actions is also discussed.

**TABLE 2: SUMMARY OF
PROJECT CONDITIONS OR ACTIONS THAT QUALIFY AS
“NOT LIKELY TO ADVERSELY AFFECT”
LISTED T&E FISH
OR THEIR CRITICAL HABITAT
(All Fresh Waters *excluding* Columbia River mainstem)**

Location: This informal programmatic consultation applies only to proposed actions in the counties of Washington State where the National Marine Fisheries Service and U.S. Fish and Wildlife Service have concurred that the project not likely to adversely affect listed fish species and designated critical habitat and will not jeopardize proposed fish species or destroy or adversely modify proposed critical habitat.

Implementation Conditions: To be covered by this informal programmatic consultation, all actions addressed herein shall comply with the Implementation Conditions outlined in Appendix F of this document. In addition, each action shall comply with specific conditions outlined below.

Timing: For all actions described, the action shall only occur once within one “work season” (the approved work windows described in Appendix D) for a single and complete project. For example, only a maximum of 18 piles shall be replaced on a single pier within the approved work window. The following year, up to 18 piles may be replaced on the same pier within the approved work window for that year.

1. Placement of navigation aids and regulatory markers, including placement of buoys for such purposes, provided that: buoys and anchors are not located over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or spawning habitat for listed or proposed fish species, no trenching occurs through any water of the U.S. (i.e., for electrical cables), no new piling is placed, if a barge is used, the barge does not ground out, flotation shall be completely contained to prevent breakup, and buoys are anchored securely and anchors are installed so that anchor lines do not drag. [from NWP 1]
2. Placement of mooring buoys for single boat, non-commercial use, provided that: the anchor, buoy, and moored vessel are not located over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or spawning habitat for listed or proposed fish species, buoys do not exceed 4 per acre, buoys are anchored securely and anchors are installed so that anchor lines do not drag, flotation shall be completely contained to prevent breakup, and the vessel does not ground out at low water. [from NWP 10]
3. Placement of temporary buoys, markers, small floating docks, and similar devices or structures that are for recreational use during specific events such as water skiing

competitions and boat races, provided that: work is done within the approved work window, no work is done over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or spawning habitat for listed or proposed fish species, no large woody debris is removed, such devices and structures do not exceed 4 per acre, any small floating docks are no larger than 400 square feet in size and multiples (no more than 4) are spaced at least the distance of the longest dock length, no new piling is driven, all wooden components are pre-painted and dried prior to installation and no treated wood is used, such devices and structures remain in the water no longer than 60 days, such devices and structures are removed within 15 days after use has been discontinued, such devices and structures are anchored securely, flotation shall be completely contained to prevent breakup, and the anchor and anchor lines do not drag. [from NWP 11] **NOTE:** The activities described in this section require individual informal or formal consultation with the National Marine Fisheries Service (NMFS) if such work may affect listed or proposed fish species under NMFS jurisdiction.

4. Replacement of up to eighteen (18) existing piling with non-treated piling, provided that: work is done within the approved work window; no work is done in or adjacent to an existing or previously designated Superfund site or a site currently or previously designated for cleanup under the Washington State Model Toxic Cleanup Act; no piles are associated with log raft booms; no sheet piling is used in lieu of pole piling; existing piles are partially cut with a new pile secured directly on top, fully extracted, or cut 2-feet below the mudline; if treated piles are fully extracted or cut 2-feet below the mudline, the holes or piles are capped with appropriate material (such as clean sand, or plastic or steel pile cap for cut piles) to ensure that the chemicals from the existing pile do not leach into the adjacent sediments or water column. If fill (i.e. clean sand) is used to cap the area, the fill material should match sediment substrate of the site; removed creosote treated piles are cut into maximum lengths of 4 feet prior to disposal; if a barge is used, the barge does not ground out and the barge is not over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds); hydraulic water jets are not used to remove or place piles; and piles are replaced in the same general location and do not extend beyond the footprint of the existing structure (i.e. pier). [from NWP 3 or LOP]
5. Installation or replacement of one (1) uncovered boatlift at an existing pier or dock, provided that: work is done in approved work window; no work is done over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or in or adjacent to spawning habitat for listed or proposed fish species; no large woody debris is removed; all structural steel members are pre-painted and dried prior to installation; only non-treated wood shall be used; only two (2) new piles (steel or non-treated wood) may be driven and only if necessary for boatlift installation; if a barge is used, the barge does not ground out and the barge is not over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds); and existing boat lifts to be removed are removed in their entirety. [RGP, LOP, or NWP 3]
6. Placement of new devices or replacement of old devices (with no greater dimensions than those already in place) 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, provided that: work is done within the approved work window, no work is done in or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or spawning habitat for listed or proposed fish species, no uncured concrete shall come into contact with the waterbody, no new piling is placed, no land leveling or grading is conducted, no fill is placed in wetlands or waterward of OHW, work does not include weirs and flumes, placement does not require the de-watering or hydraulic modification of a stream or waterbody, and work will be done during low flow and when possible in the dry. [from NWP 5 or 3]

7. Activities required for the containment (but not cleanup) of oil and hazardous substances [which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300)], including placement of booms and anchors, provided that: work is done within the approved work window, no work is done in or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds), no large woody debris is removed, no new piling is driven, 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, the Regional Response Team (if one exists in the area) concurs with the proposed containment, booms are anchored securely, anchors are installed so that anchor and anchor lines do not drag, booms will not ground out, and boom and anchor systems will be placed so that neither boom, anchor nor anchor line will result in streambed scour. For emergency response actions, the lead federal agency (EPA, US Coast Guard, or the Corps for State response actions) will coordinate with NMFS and USFWS under “emergency procedures.” All other actions that do not fit the terms of this informal programmatic consultation will be reviewed through individual informal or formal ESA consultation. [from NWP 20]
8. Placement of up to 25 cubic yards of fill material waterward of the ordinary high water line (OHW) line to meet mitigation requirements imposed by Washington State Department of Fish and Wildlife (WDFW) where all other work (the bank stabilization activity and associated stockpiling) is outside Corps jurisdiction (landward of the OHW line) and has already been constructed, provided that: work is done within the approved work window, material is not placed in or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or other special aquatic sites, gravel materials are washed and clean prior to being brought to the site, work occurs only in the dry, stockpiling shall not occur below OHW, work is done by hand except that if a barge is used to deliver material it shall not ground out on the bottom, the material is spread out evenly and the beach grade is not altered (to avoid stranding of fish), upon completion of material placement the beach shall not contain any pits, potholes, or large depressions, and all natural beach complexity features that were necessary to remove are repositioned or replaced in their original locations on the beach immediately following completion of the work. [from NWP 18]

**TABLE 3: SUMMARY OF
PROJECT CONDITIONS OR ACTIONS THAT QUALIFY AS
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LISTED T&E FISH
OR THEIR CRITICAL HABITAT
(Columbia River Mainstem *including* Snake River Mainstem & Baker Bay)**

Location: This informal programmatic consultation applies only to proposed actions in the counties of Washington State where the National Marine Fisheries Service and U.S. Fish and Wildlife Service have concurred that the project not likely to adversely affect listed fish species and designated critical habitat and will not jeopardize proposed fish species or destroy or adversely modify proposed critical habitat.

Implementation Conditions: To be covered by this informal programmatic consultation, all actions addressed herein shall comply with the Implementation Conditions outlined in Appendix F of this document. In addition, each action shall comply with specific conditions outlined below.

Timing: For all actions described, the action shall only occur once within one “work season” (the approved work windows described in Appendix D) for a single and complete project. For example, only a maximum of 18 piles shall be replaced on a single pier within the approved work window. The following year, up to 18 piles may be replaced on the same pier within the approved work window for that year.

1. Placement of navigation aids and regulatory markers, including placement of buoys for such purposes, provided that: buoys and anchors are not located over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or spawning habitat for listed, proposed or forage fish species, no trenching occurs through any water of the U.S. (i.e., for electrical cables), no new piling is placed, if a barge is used, the barge does not ground out, flotation shall be completely contained to prevent breakup, and buoys are anchored securely and anchors are installed so that the anchor lines do not drag. [from NWP1]
2. Placement of mooring buoys for single boat, non-commercial use, provided that: the anchor, buoy, and moored vessel are not located over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or spawning habitat for listed, proposed or forage fish species, buoys do not exceed 4 per acre, buoys are anchored securely and anchors are installed so that anchor lines do not drag, flotation shall be completely contained to prevent breakup, and the vessel does not ground out at low water. [from NWP 10]
3. Placement of temporary buoys, markers, small floating docks, and similar devices or structures that are for recreational use during specific events such as water skiing

competitions and boat races, provided that: work is done within the approved work window, no work is done over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or spawning habitat for listed, proposed or forage fish species, no large woody debris is removed, such devices and structures do not exceed 4 per acre, any small floating docks are no larger than 400 square feet in size and multiples (no more than 4) are spaced at least the distance of the longest dock length, no new piling is driven, all wooden components are pre-painted and dried prior to installation and no treated wood is used, such devices and structures remain in the water no longer than 60 day, such devices and structures are removed within 15 days after use has been discontinued, such devices and structures are anchored securely, flotation shall be completely contained to prevent breakup, and anchors are installed so that anchor lines do not drag. [from NWP 11] **NOTE:** The activities described in this section require individual informal or formal consultation with the National Marine Fisheries Service (NMFS) if such work may affect listed or proposed fish species under NMFS jurisdiction.

4. Replacement of up to eighteen (18) existing piling with non-treated piling, provided that: work is done within the approved work window; no work is done in or adjacent to an existing or previously designated Superfund site or a site currently or previously designated for cleanup under the Washington State Model Toxic Cleanup Act; no piles are associated with log raft booms; no sheet piling is used in lieu of pole piling; existing piles are partially cut with a new pile secured directly on top, fully extracted, or cut 2-feet below the mudline; if treated piles are fully extracted or cut 2-feet below the mudline, the holes or piles are capped with appropriate material (such as clean sand, or plastic or steel pile cap for cut piles) to ensure that the chemicals from the existing pile do not leach into the adjacent sediments or water column. If fill (i.e. clean sand) is used to cap the area, the fill material should match sediment substrate of the site; removed creosote treated piles are cut into maximum lengths of 4 feet prior to disposal; if a barge is used, the barge does not ground out and the barge is not over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds); hydraulic water jets are not used to remove or place piles; and piles are replaced in the same general location and do not extend beyond the footprint of the existing structure (i.e. pier). [from NWP 3 or LOP]
5. Installation or replacement of one (1) uncovered boatlift at an existing pier or dock, provided that: work is done in approved work window; no work is done over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or in or adjacent to spawning habitat for listed, proposed or forage fish species; no large woody debris is removed; all structural steel members are pre-painted and dried prior to installation; only non-treated wood shall be used; only two (2) new piles (steel or non-treated wood) may be driven and only if necessary for boatlift installation; if a barge is used, the barge does not ground out and the barge is not over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds); and existing boat lifts to be removed are removed in their entirety. [RGP, LOP, or NWP 3]
6. Placement of new devices or replacement of old devices (with no greater dimensions than those already in place) 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, provided that: work is done within the approved work window, no work is done in or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or spawning habitat for listed, proposed or forage fish species, no uncured concrete shall come into contact with the waterbody, no new piling is placed, no land leveling or grading is conducted, no fill is placed in wetlands or waterward of OHW or MHHW, work does not include weirs and flumes, placement does not require the de-watering or hydraulic modification of a stream or waterbody, and work will be done during low flow and when possible in the dry. [from NWP 5 or 3]

7. Activities required for the containment (but not cleanup) of oil and hazardous substances [which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300)], including placement of booms and anchors, provided that: work is done within the approved work window, no work is done in or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds), no large woody debris is removed, no new piling is driven, 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, the Regional Response Team (if one exists in the area) concurs with the proposed containment, booms are anchored securely, anchors are installed so that anchor and anchor lines do not drag, booms will not ground out, and boom and anchor systems will be placed so that neither boom, anchor nor anchor line will result in streambed scour. For emergency response actions, the lead federal agency (EPA, US Coast Guard, or the Corps for State response actions) will coordinate with NMFS and USFWS under “emergency procedures.” All other actions that do not fit the terms of this informal programmatic consultation will be reviewed through individual informal or formal ESA consultation. [from NWP 20]
8. Placement of crab or shrimp pots, non-commercial clam digging, and non-commercial oyster and mussel harvesting provided that: work only occurs in estuarine portions of the Columbia River (Baker Bay), and no clam digging or oyster and mussel harvesting activities occur over or adjacent to vegetated shallows. [from NWP 4]
9. Placement of tideland markers, either by a single piling or buoys, provided that: work is done within the approved work window, work only occurs in the estuarine portions of the Columbia River (Baker Bay), no work occurs in or adjacent to vegetated shallows, piles are not treated with creosote or pentachlorophenol, no uncured concrete is used, barges and boats do not ground, if a barge is used, the barge does not ground out and the barge is not over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds), and buoys are anchored securely and anchors and anchor lines do not drag. [RGPs on tidal markers]

**TABLE 4: SUMMARY OF
PROJECT CONDITIONS OR ACTIONS THAT QUALIFY AS
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LISTED T&E FISH
OR THEIR CRITICAL HABITAT
(Marine/Estuarine Waters *excluding* Baker Bay)**

Location: This informal programmatic consultation applies only to proposed actions in the counties of Washington State where the National Marine Fisheries Service and U.S. Fish and Wildlife Service have concurred that the project is not likely to adversely affect listed fish species and designated critical habitat and will not jeopardize proposed fish species or destroy or adversely modify proposed critical habitat.

Implementation Conditions: To be covered by this informal programmatic consultation, all actions addressed herein shall comply with the Implementation Conditions outlined in Appendix F of this document. In addition, each action shall comply with specific conditions outlined below.

Timing: For all actions described, the action shall only occur once within one “work season” (the approved work windows described in Appendix D) for a single and complete project. For example, only a maximum of 18 piles shall be replaced on a single pier within the approved work window. The following year, up to 18 piles may be replaced on the same pier within the approved work window for that year.

1. Placement of navigation aids and regulatory markers, including buoys and up to one new pile or one new dolphin (3 piles) for such purposes, provided that: work is done within the approved work window; structures are not located over or adjacent to vegetated shallows; no trenching occurs through any water of the U.S. (i.e., for electrical cables); the pile is not treated with creosote or pentachlorophenol; all piling or dolphins are capped with a device to preclude perching by piscivorous birds; if a barge is used, the barge does not ground out and the barge is not over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds); and buoys are anchored securely and anchors are installed so that the anchor lines do not drag. [from NWP 1]
2. Placement of mooring buoys for single boat, non-commercial use, provided that: the anchor, buoy, and moored vessel are not located over or adjacent to vegetated shallows or spawning habitat for forage species, buoys do not exceed 4 per acre, buoy anchors are installed so that the anchor line does not drag, flotation shall be completely contained to prevent breakup, and the vessel does not ground out at low water. [from NWP 10]

3. Placement of temporary buoys, anchors, markers, small floating docks, and similar devices or structures that are for recreational use during specific events such as water skiing competitions and boat races, provided that: work is done within the approved work window, no work takes place over or adjacent to vegetated shallows or spawning habitat for forage species, no large woody debris is removed, such devices and structures do not exceed 4 per acre, any small floating docks are no larger than 400 square feet in size and multiples (no more than 4) are spaced at least the distance of the longest dock length, no new piling is driven, such devices and structures remain in the water no longer than 60 days, such devices and structures are removed within 15 days after use has been discontinued, flotation shall be completely contained to prevent breakup, and such devices and structures are anchored securely, and the anchors installed so that the anchor lines do not drag. [from NWP 11] **NOTE:** The activities described in this section require individual informal or formal consultation with the National Marine Fisheries Service (NMFS) if such work may affect listed or proposed fish species under NMFS jurisdiction.
4. Replacement of up to eighteen (18) existing piling, provided that: work is done within the approved work window; no work is done in or adjacent to an existing or previously designated Superfund site or a site currently or previously designated for cleanup under the Washington State Model Toxic Cleanup Act; no piles are associated with log raft booms; no sheet piling is used in lieu of pole piling; no piles treated with creosote or pentachlorophenol are used; existing piles are partially cut with a new pile secured directly on top, fully extracted, or cut 2-feet below the mudline; if treated piles are fully extracted or cut 2-feet below the mudline, the holes or piles are capped with appropriate material (such as clean sand, or plastic or steel pile cap for cut piles) to ensure that the chemicals from the existing pile do not leach into the adjacent sediments or water column. If fill (i.e. clean sand) is used to cap the area, the fill material should match sediment substrate of the site; removed creosote treated piles are cut into maximum lengths of 4 feet prior to disposal; if a barge is used, the barge does not ground out and the barge is not over or adjacent to vegetated shallows; hydraulic water jets are not used to remove or place piles; and piles are replaced in the same general location and do not extend beyond the footprint of the existing structure (i.e. pier). [from NWP3 or LOP]
5. Installation or replacement of one (1) uncovered boatlift at an existing pier or dock, provided that: work is done in approved work window; no work is done over or adjacent to vegetated shallows or spawning habitat for forage species; no large woody debris is removed; all structural steel members are pre-painted and dried prior to installation; no wood or piles treated with creosote or pentachlorophenol shall be used, only two (2) new piles may be driven and only if necessary for boatlift installation; if a barge is used, the barge does not ground out and the barge is not over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds); and existing boat lifts to be removed are removed in their entirety. [RGP, LOP, or NWP 3]
6. Placement of new devices or replacement of old devices (with no greater dimensions than those already in place) 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, provided that: work is done within approved work window, no work is done over or adjacent to vegetated shallows or spawning habitat for forage species, no uncured concrete comes into contact with tidal waters, only one new pile or dolphin is placed, the pile or dolphin is not treated with creosote or pentachlorophenol, no land leveling or grading is conducted, no fill is placed in wetlands or waterward of MHHW, work does not include weirs and flumes, placement does not require the de-watering or hydraulic modification of a waterbody, and work will be done during low tide and when possible in the dry. [from NWP 5 or 3]

7. Activities required for the containment (but not cleanup) of oil and hazardous substances [which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300)], including placement of booms and anchors, provided that: work is done within the approved work window, no work is done in or adjacent to vegetated shallows, no large woody debris is removed, no new piling is driven, 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, the Regional Response Team (if one exists in the area) concurs with the proposed containment, booms are anchored securely, anchors are installed so that anchor and anchor lines do not drag, booms will not ground out, and boom and anchor systems will be placed so that neither boom, anchor, nor anchor line will result in streambed scour. For emergency response actions, the lead federal agency (EPA, US Coast Guard, or the Corps for State response actions) will coordinate with NMFS and USFWS under “emergency procedures.” All other actions that do not fit the terms of this informal programmatic consultation will be reviewed through individual informal or formal ESA consultation. [from NWP20]
8. Placement of crab or shrimp pots, non-commercial clam digging, and non-commercial oyster and mussel harvesting, provided that: no clam digging or oyster and mussel harvesting activities occur over or adjacent to vegetated shallows. [from NWP4]
9. Placement of tideland markers, either by a single piling or buoys, provided that: work is done within the approved work window, no work occurs in or adjacent to vegetated shallows, piles are not treated with creosote or pentachlorophenol, no uncured concrete is used, barges and boats do not ground, if a barge is used, the barge does not ground out and the barge is not over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds), and buoys are anchored securely and anchors and anchor lines do not drag. [RGPs on tidal markers]
10. Placement of up to 25 cubic yards of fill material waterward of the mean higher high water (MHHW) line to meet mitigation requirements imposed by Washington State Department of Fish and Wildlife (WDFW) where all other work (the bank stabilization activity and associated stockpiling) is outside Corps jurisdiction (landward of the MHHW line) and already has been constructed, provided that: work is done within the approved work window, material is not placed in or adjacent to vegetated shallows or other special aquatic sites, gravel materials are washed and clean prior to being brought to the site, work occurs only in the dry, stockpiling shall not occur below MHHW, work is done by hand except that if a barge is used to deliver material it shall not ground out on the bottom, the material

is spread out evenly and the beach grade is not altered (to avoid stranding of fish), upon completion of material placement the beach shall not contain any pits, potholes, or large depressions, and all natural beach complexity features that were necessary to remove are repositioned or replaced in their original locations on the beach immediately following completion of the work. [from NWP 18]

11. Minor repair of existing bulkhead or sloped revetment only in marine/estuarine waters, provided that: work is done within the approved work window, no work is done over or adjacent to vegetated shallows, wetlands, or spawning habitat for forage species, all natural beach complexity features are not disturbed, less than 10% of the total bank protection (but not to exceed a total length of 10 linear feet) has been damaged or has failed, repair is in-kind and in-place at the existing structure, timber is untreated or treated with biodegradable¹, non-toxic material, no uncured concrete shall come into contact with the waterbody, all work will be done in the dry, all work on the beach is done by hand, no heavy equipment shall operate on the beach, bioengineering shall be employed wherever possible, and access to the beach is via existing upland access. [from NWP 3]

¹ According to established ASTM (American Society of Testing Material) procedures the following is the definition of biodegradability: A minimum of 40% of the original sample has been decomposed to inert ingredients within twenty eight (28) days.

-WORKING DRAFT -

**TABLE 5: 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 ACT²
(All Fresh Waters, *including* Columbia River & Baker Bay)**

1. No listed fish or fish proposed for listing, or their forage base, or designated or proposed critical habitat occur in the waterbody where work is to occur, and work will not result in short- or long-term water quality or quantity impacts which may affect listed or proposed species or their forage base downstream of the project site. This condition applies to all fresh waters of the U.S., including wetlands, and includes all isolated waters or wetlands.
2. For salmon and steelhead: Work that occurs as part of a single and complete project that is 300 feet or more away from a water of the U.S. which may contain listed fish or fish proposed for listing, including intermittent streams and adjacent wetlands, 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 ordinary high water (OHW) mark (or top of the bank if an OHW mark is not observable), and does not take topography into account.
3. For bull trout: For streams and rivers: Work that occurs as part of a single and complete project that is beyond the edge of the channel migration zone (CMZ) of streams and rivers which may contain listed fish or fish proposed for listing (including intermittent streams) plus one site-potential tree height, or that is 300 feet or more away from a water of the U.S., whichever is the greater distance, 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 down-gradient of the project site. For the purposes of this determination, site-potential tree height shall be defined as 130 feet for areas east of the Cascade crest and 200 feet for areas west of the Cascade crest. The 300-foot measurement is a horizontal measurement from the ordinary high water (OHW) mark (or the top of the bank if an OHW mark is not observable), and does not take topography into account. For lakes and other waters: Work that occurs as part of a single and complete project that is 300 feet or more away from a lake or other water of the U.S. which may contain listed fish or fish proposed

² 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.

for listing, including wetlands, 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 down-gradient of the project site. The 300-foot measurement is a horizontal measurement from the ordinary high water (OHW) mark (or the top of the bank if an OHW mark is not observable), and does not take topography into account.

4. Replacement of decking, rails, stringers, or other above-water parts on serviceable structures in navigable waters, provided that: any stain, paint, or preservatives to be applied on such components is completely dry/cured prior to installation, creosote and pentachlorophenol preserved wood will not be used, and no material shall enter the waterbody during the removal of decking, etc. [work typically allowed under Nationwide Permit 3]
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]

(NOTE: The EPA/Corps jurisdiction under the Clean Water Act generally does not extend to: artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing; nor artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons; nor to waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the U.S. Additionally, construction or maintenance of farm or stock ponds is exempt from needing a Corps permit, as is construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the U.S.)

- WORKING DRAFT -

**TABLE 6: 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]
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

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.

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]

Detailed Information

A glossary of regulatory and ESA terms is presented in Appendix A. When a specific term is used in a NLAA list or in a PBE, its meaning is as defined in the appendix. A detailed status of the various species within the State of Washington, including critical habitat if known, is given in Appendix B. The status discussions were pulled from notices in the Federal Register and from various other reports and texts. A discussion of environmental baseline in the various major areas is presented in Appendix C. This was largely pulled from existing reports available for the various major areas. Appendix D is the proposed list of approved work windows for the various water bodies of the state, to avoid or greatly minimize affects from construction on listed or proposed fish. It was developed from the State's similar list in "Gold and Fish," as modified by new information and comments from staff from the Services and WDFW. Timing windows are subject to change based on new information, and Appendix D may be amended periodically.

The NWP and RGP, and their general and regional conditions, that are affiliated with the PBEs make up Appendix E. Note, however, that the activities listed would also be considered NLAA if part of the work was proposed under an Individual Permit (IP) or a Letter of Permission (LOP). We recognize that if other activities under an IP or LOP were Likely to Adversely Affect (LAA) a species or its critical habitat, the entire project would have an ESA determination of LAA. Appendix F consists of several BMPs that the Corps has chosen to make implementation conditions. To be covered by this programmatic informal consultation, all actions addressed herein will need to comply with the terms of the PBEs and the implementation conditions contained in Appendix F of this document. Finally, Appendix G is a list of navigable waters of the U.S. found within the regulatory boundaries of the Corps' Seattle District. Construction activities occurring in these waters require Corps authorization, in the form of a permit pursuant to the Rivers and Harbors Act. Several of the activities covered by the PBE occur in navigable waters.

How This Process Will Work

The NLAA lists and PBEs define, and only pertain to, those portions of NWPs, RGPs, or IPs that we believe are truly Not Likely to Adversely Affect. For example, NWP 5 authorizes devices whose purpose is to measure and record scientific data, including small weirs and flumes. The NLAA lists do not apply to weirs and flumes of any kind. Applicants may elect to design projects to meet the NLAA lists or not. If they choose not to, then their work will need to be evaluated via our batch process for informal consultations or via a full Biological Assessment (BA) for formal consultations. To the extent they choose to design to meet the NLAA lists and PBEs, then the Corps will be able to process those applications much more quickly. The Corps will also track the consultations and report to the Services (as described below).

Prior to these new listings, the Corps had small numbers of permit actions that required consultation under the ESA, and typically finalized processing on about 1,200 actions per year. In 2000 and future years, it is anticipated that requested permit actions will go up, due to the

necessity of many applicants to notify the Corps that their action may affect threatened or endangered fish, pursuant to NWP General Condition #11 or pursuant to conditions on IPs or LOPs. Any method of programmatic coverage or streamlined processing will greatly aid the Corps' ability to make timely decisions while still meeting Section 7 requirements of the ESA. The Seattle District currently estimates that about 25 percent of its annual workload falls into the NLAA category. This percentage is anticipated to go up upon implementation of this informal programmatic consultation.

Upon agency concurrence with these effect determinations, the Corps will advise the public in a widely disseminated and publicized Special Public Notice. For any given activity described in this programmatic informal consultation, it is envisioned that the process to confirm applicability of the PBE will occur like so: an individual will write to the Corps (under the notification requirement of NWP General Condition #11, for example), or fill out a permit application. The Corps will review the construction techniques and the proposed activity against the terms of the various PBEs and their implementation conditions. Where the applicant has designed the work and construction methods such that they meet one or more of the PBEs, the Corps will record this finding and ESA consultation will be complete. No case-by-case consultation will occur with the Services. This will considerably reduce processing time over that required when case-by-case consultation is required.

Periodically, the Corps will meet with the Services and provide information to the NMFS and the USFWS on numbers and types of activities processed in this manner, relative to the species they manage. This is described below under "Programmatic BE Notification and Tracking."

Future Programmatic Consultation Plans

As additional types of activities are identified that may qualify for a programmatic determination of NLAA relative to fish species, they may be proposed and evaluated. Thus, this document may be amended in the future.

In addition to this PBE for activities that are determined to be NLAA for fish species, the Seattle District Corps plans to conduct programmatic formal consultation on certain activities it believes are Likely to Adversely Affect (LAA) threatened or endangered species. Each document, or Programmatic Biological Assessment (PBA), prepared for formal consultation will evaluate the activity's effects on terrestrial as well as aquatic species (refer to Table 7 for the current list of such species). The Seattle District currently estimates that about 65 to 70 percent of its annual workload falls into this category of effect determination, with respect to fish species. This percentage is anticipated to go down upon completion of the present informal programmatic consultation.

TABLE 7: ESA NON-FISH LISTED OR PROPOSED SPECIES IN WASHINGTON STATE			
COMMON NAME	SCIENTIFIC NAME	STATUS	CRITICAL HABITAT
BIRDS			
Aleutian Canada goose	<i>Branta canadensis leucopareia</i>	Threatened	N
Bald eagle	<i>Haliaeetus leucocephalus</i>	Threatened	N
Brown pelican	<i>Pelecanus occidentalis</i>	Endangered	N
Marbled murrelet	<i>Brachyramphus marmoratus</i>	Threatened	Y
Northern Spotted owl	<i>Strix occidentalis</i>	Threatened	Y
Short-tailed albatross	<i>Phoebastria albatrus</i>	Endangered	N
Western snowy plover	<i>Charadrius alexandrinus</i>	Threatened	Y
MAMMALS			
Canada lynx	<i>Lynx canadensis</i>	Threatened	N
Columbia white-tailed deer	<i>Odocoileus virginianus leucurus</i>	Endangered	N
Gray wolf	<i>Canis lupus</i>	Endangered	Y
Grizzly bear	<i>Ursus arctos horribilis</i>	Threatened	N
Woodland caribou	<i>Rangifer tarandus caribou</i>	Endangered	N
MARINE MAMMALS			
Blue Whale	<i>Balaenoptera musculus</i>	Endangered	N
Fin Whale	<i>Balaenoptera physalus</i>	Endangered	N
Humpback Whale	<i>Megaptera novaeangliae</i>	Endangered	N
Sei Whale	<i>Balaenoptera borealis</i>	Endangered	N
Sperm Whale	<i>Physeter macrocephalus</i>	Endangered	N
Steller sea lion	<i>Eumetopias jubatus</i>	Threatened	Y
INSECTS			
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>	Threatened	Y
PLANTS			
Bradshaw's desert parsley	<i>Lomatium bradshawii</i>	Endangered	N
Golden paintbrush	<i>Castilleja levisecta</i>	Threatened	N
Kincaid's sulphur lupine	<i>Lupinus sulphureus</i> ssp. <i>Kincaidii</i>	Threatened (proposed)	N
Marsh sandwort	<i>Arenaria paludicola</i>	Endangered	N
Nelson's checker-mallow	<i>Sidalcea nelsoniana</i>	Threatened	N
Showy stickseed	<i>Hackelia venusta</i>	Threatened (proposed)	N
Spalding's silene	<i>Silene spaldingii</i>	Threatened	N
Water howellia	<i>Howellia aquatilis</i>	Threatened	N
Wenatchee Mountain Checker – Mallow	<i>Sidalcea oregana</i> var. <i>calva</i>	Endangered	N
Ute ladies' -tresses	<i>Spiranthes diluvialis</i>	Threatened	N
REPTILES/AMPHIBIANS			
Green Sea Turtle	<i>Chelonia mydas</i>	Threatened	N
Leatherback Sea Turtle	<i>Dermochelys coriacea</i>	Endangered	N
Loggerhead Sea Turtle	<i>Caretta caretta</i>	Threatened	N
Olive Ridley Sea Turtle	<i>Lepidochelys olivacea</i>	Threatened	N

Programmatic BE Notification and Tracking

An estimate of anticipated number of uses for each NWP and RGP is provided in the PBEs. Some of these permits currently require “preconstruction notification” (PCN) to the Corps and some do not. For those that do not, Seattle District may have a difficult time confirming appropriate use of the permits and impacts to threatened or endangered fish species from their use in the future. Therefore, in addition to proposing only those NWP- and RGP-level activities we truly believe are Not Likely to Adversely Affect listed fish species or designated critical habitat and will not jeopardize proposed fish species or destroy or adversely modify proposed critical habitat, both individually or cumulatively (based on existing use), we plan other measures of notification and tracking.

Upon concurrence with the NLAA determinations for the PBEs, we will advise the public of the NLAA lists and implementation conditions for use of certain NWPs and RGPs in a widely disseminated and publicized Special Public Notice. As letters, PCNs, or JARPAs come in to the Corps, we will track all projects that use the PBE to comply with the ESA by requiring the applicant to fill out the attached form and providing it to the Corps prior to initiating work (see Table 8). Copies of these forms will be provided to the USFWS/NMFS, as discussed below.

Upon concurrence with NLAA determinations in this PBE, the Corps will also provide copies of the NLAA lists and implementation conditions (Appendix F) to applicants who notify us prior to initiation of any activity, to ensure full compliance.

For all applications we receive, once an application is entered into our RAMS database, we currently track certain ESA parameters (see Table 9). For each species, this tracking includes: species (common and scientific name), determination (Threatened or Endangered), critical habitat designated or proposed (yes or no), permit conditioned (yes or no), short description of conditions (or a reference to specific conditions by number), informal consultation dates (date concurrence requested and date concurrence received from Service), formal consultation dates (date consultation requested and date Biological Opinion received from Service).

To track programmatic NLAA cases in the first year following concurrence, the Corps will do the following: In the first 3 months, meet monthly with the Services to discuss programmatic cases; in the second 9 months, meet quarterly to discuss programmatic process and cases; during the first 6 months, send the Services the tracking forms on a monthly basis; and during the second 6 months, send the Services the tracking forms every two months.

To track programmatic NLAA cases thereafter, the Corps will submit an annual report of all reported cases to the Services each year by November 1, which will include the following information:

- 1) Location of the activity (section, township, range & latitude, longitude);
- 2) Description of the activity and permit conditions;
- 3) Species and critical habitat consulted on; and

4) Type of activity covered by NWP, RGP, LOP, or IP.

Upon reviewing the reports, the Services may elect to request additional information on a case by case basis.



TABLE 8: ESA NOTIFICATION AND TRACKING FORM

**U.S. Army Corps of Engineers
Seattle District, Regulatory Branch
ESA Notification and Tracking Form
For Nationwide Permit**

FWS Programmatic Reference Number: 1-3-00-I-1524 & 1-3-00-IC-I525

1. **Date:** _____

2. **Applicant:** _____ **Corps Reference No.** _____

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

3. **Agent:**

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

4. **Location(s) of Activity:**

Section: _____ Township: _____ Range: _____

Latitude: _____ Longitude: _____

Waterbody: _____ County: _____

5. **Listed or Proposed Fish Species present:** _____

6. **Description of Work:**

Proposed project - Describe what is being placed, installed, or constructed (i.e. pier, bulkhead, culvert, house, etc.) and the type of material used (i.e. untreated wood, concrete or steel piling).:

Construction techniques – Describe how the work will be done:

Machinery (types): _____

By Hand: _____

See attached list(s): _____

6. **Timing:** Time of year for construction: _____ to _____

7. **Nationwide Permit(s) [NWP] proposed to be used:** _____

8. **Drawings** - Drawings must be submitted, incorporating the following information, as it applies to your project. For definitions of the terms, see attached glossary.

- **Habitat Areas:** If present, the following habitat areas must be shown on the plan view:
 - Wetland delineation
 - Riffle/pool complex delineation
 - Side- and off-channel habitat
 - Vegetated shallows
 - Snake River and Ozette Lake sockeye salmon spawning areas
 - Forage fish spawning areas (herring, surf smelt, sand lance, etc.)
 - ESA Listed or proposed fish spawning areas (chinook salmon, chum salmon, steelhead, bull trout, and cutthroat trout)

- **Suggested guidance for completion of drawings.** Three types of illustrations are very helpful to properly depict the proposed activity: Vicinity Map, Plan View, and Cross-Sectional View. Drawings are best prepared using clear printing, black ink, and the fewest number of sheets possible. Include the scale. The importance of clear accurate drawings cannot be overstated. If you have questions regarding completing the drawings, you may call the U.S. Army Corps of Engineers, Regulatory Branch at (206) 764-3495.
 - **Vicinity Map.** A copy of a county or city road map, or a U.S. Geological Survey topographic map may be used. Include:
 - a. North arrow.
 - b. Name of waterbody (and river mile if appropriate).
 - c. Location of the proposed activity (indicate with a circle, arrow, X, or similar symbol).

 - **Plan View.** This drawing illustrates the proposed project area as if you were looking down at the site from overhead.
 - a. North arrow.
 - b. Name of waterbody and direction of water flow.
 - c. Location of existing shoreline relative to proposed work and relative to habitat areas (listed in item 7).
 - d. Dimensions of the activity or structure and impervious surfaces and the distance it extends into the waterbody and/or related resource/habitat areas (listed in item 7), as appropriate.

 - **Cross-Sectional View.** This drawing illustrates the proposed activity as if it were cut from the side and/or front. Include:
 - a. Location of water elevation relative to the bank or shore.
 - b. Water depth at waterward face of project.
 - c. Dimensions of the activity or structure, and the distance it extends into the waterbody and/or related resource/habitat areas (listed in item 7), as appropriate.
 - d. Indicate dredge and/or fill areas as appropriate.
 - e. Indicate types and location of resource/habitat areas (listed in item 7).

Glossary of Terms

EELGRASS – Eelgrass (*Zostera marina* or *Zostera japonica*) is a rooted plant that grows in intertidal and shallow subtidal estuarine and marine areas. It is distinguished by flat, grass-like leaves up to 1.4 cm (about $\frac{3}{4}$ of an inch) wide and can be over 3 meters (6 feet) in length (height and width varying by species). The upright stems originate from an underground rhizome. The seeds are enclosed in elongated membranous, translucent packets. Eelgrass occurs up to about 1.8 meters (6 feet) above MLLW and as deep as 6.6 meter (22 feet) below MLLW, elevations varying by species. Both species grow well in sandy or muddy substrate and may be found along both low and moderate energy shorelines throughout Puget Sound. [US Army Corps of Engineers, 1984]

FORAGE FISH / FORAGE SPECIES – As used in this document, these are generic terms for all of those fish species that as adults are small enough that salmonids may prey upon, particularly in the estuarine or marine environment. The primary forage fish in estuarine or marine areas include herring, surf smelt, and sand lance. (Also known by the term “bait fish.”)

INTERTIDAL VASCULAR PLANTS – Fleishy plants that grow between the extreme high tide and extreme low tide areas of brackish or saltwater systems. Examples include brass buttons, Lyngby’s sedge, pickleweed, Pacific silverweed, salt grass, saltweed (fat hen), and Seaside plantain. [Corps, 1984]

KELP – Large brown alga or seaweed that grows in the intertidal region and are also plentiful below the low-tide line (Phylum *Phaeophyta*). A feature of many kelps is a holdfast consisting of a mass of stuffy rootlike structures. This type of holdfast, looking like something fished out of a jar of mixed pickles, is limited to the brown algae. Float bladders are another distinctive characteristic of many representatives of this group. [Kozloff, 1993]

LISTED SPECIES – Any species of fish, wildlife or plant, which has been determined to be endangered or threatened under section 4 of the Act. [50 CFR 402.02]

MACROALGAE – Algae (red, brown or green) where each plant is large enough to distinguish with the naked eye, usually referring to algae that grows in estuarine or marine systems. Algae may occur as individual plants in the intertidal or low tide areas such as Kelp or as thin membranes, or thick rubbery sometimes warty sheets that can be found on rocks in the intertidal area. [Kozloff, 1993]

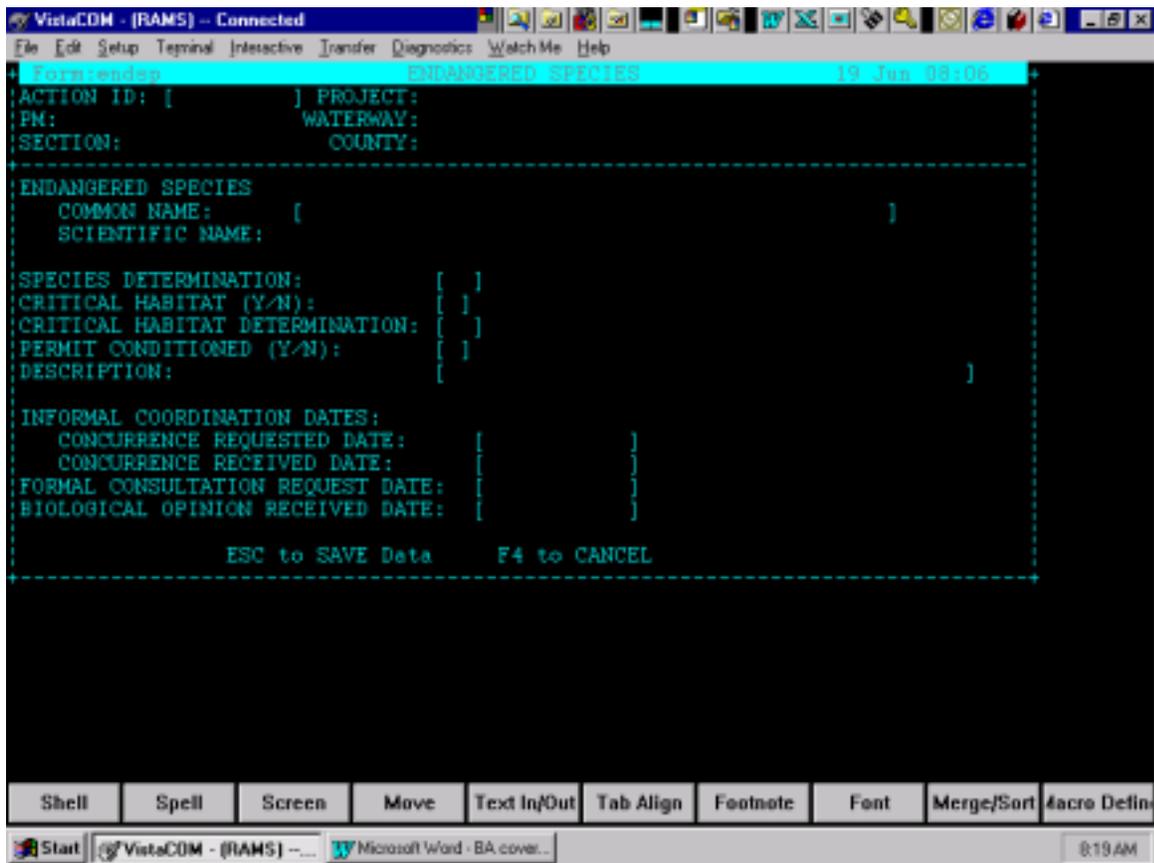
RIFFLE AND POOL COMPLEXES – Riffle and pool complexes are one of 6 “special aquatic sites”. Steep gradient sections of streams are sometimes characterized by riffle and pool complexes. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate. Riffle and pool complexes are particularly valuable habitat for fish and wildlife. [40 CFR 230.45(a) Subpart E]

SPAWNING AREA – These are substrates into and upon which aquatic species will lay their eggs. Salmonid spawning areas vary by species, ESU, or DPS. Typically, salmon species eggs require 30 to 90 days of incubation. Salmon species alevin typically remain in the gravel for 30 to 150 days, emerging as fry in the spring or summer months. Total time in the gravel is typically 60 to 240 days. Bull trout eggs require a minimum of 200 days of incubation. Bull trout fry have been found to stay in gravel for 3 weeks after emergence, for a total time in gravel of 221 days. Known areas are identified by species in the WDFW StreamNet data base. Forage fish spawning areas are identified in the Washington State Department of Fish and Wildlife’s 1995 “Puget Sound Intertidal Baitfish Spawning Beach Survey Project” document.

VEGETATED SHALLOW - Vegetated shallows are one of 6 “special aquatic sites”. Vegetated shallows are permanently inundated areas that under normal circumstances support communities of rooted aquatic vegetation, such as turtle grass, eelgrass, kelp, other macroalgae, and intertidal vascular plants in estuarine and marine systems as well as a number of freshwater species in streams and lakes. [40 CFR 230.43(a) Subpart E]

WETLANDS – Wetlands are one of 6 “special aquatic sites”. “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. [33 CFR 328.3(b) and 40 CFR 230.41(a)(1)]

Table 9: RAMS Endangered Species Screen



Cumulative effects

As defined for the purposes of the Endangered Species Act, cumulative effects are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation (ESA Handbook, March 1998).

Other Federal actions are not included in the discussion of cumulative effects because such actions will undergo their own review under Section 7 of the ESA at a later time, and the effects discussions are based on the environmental baseline at that point in time. The Corps notes that most activities within waters of the U.S. do require either a Corps permit, a Federal Energy Regulatory Commission authorization, a Bureau of Reclamation authorization, or other similar Federal permit or authorization. So, activities that may affect listed or proposed fish species that have no Federal nexus to ESA appear to be largely in the critical habitat areas adjacent to waterbodies.

An analysis of cumulative effects is necessary for the initiation of formal consultation under the ESA. While this PBE for several types of activities has been prepared to document the Corps' findings of "not likely to adversely affect" and "no jeopardy" under informal consultation, we present this summary for the Services' information. By looking at both Federal actions for which Section 7 consultations have been completed and the action is ongoing and non-Federal actions in a given action area, the Services can get a feeling for the sum total of cumulative impacts that might be anticipated in the reasonably foreseeable future.

A list of activities follows, for actions the Corps does not regulate (that are either not specifically regulated by the Clean Water Act or Rivers and Harbors Act, or are specifically exempted from regulation by the Clean Water Act). Some of these activities are currently part of the existing environmental baseline. The Corps has not attempted to determine what types of specific activities would occur across the state.

Non-regulated actions may include:

1. Upland development activities within the areas designated as critical habitat within an ESU or DPS. Upland development may include residential developments; road improvement projects; commercial development; etc. where Federal funding or a Federal permit, such as a Corps permit, is not required;
2. Activities that were commenced or completed shoreward of established Federal harbor lines before May 27, 1970 do not require section 10 permits unless those activities involve the discharge of dredged or fill material into waters of the U.S. after October 18, 1972 [33 CFR 322.4(a)];
3. Construction of wharves or piers in any waterbody, located entirely within one state, that is a navigable water of the U.S. solely on the basis of its historical use to transport interstate commerce [33 CFR Part 322.4(b)];
4. Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. These activities must be part of an established (i.e., on-going) farming, silviculture, or ranching operation. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. If an activity takes place outside the waters of the U.S., or if it does not involve a discharge, it does not need a section 404 permit, whether or not it is part of an established farming, silviculture or ranching operation [CFR 323.4(a)(1)(i-ii)];
5. Minor drainage means: The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the U.S., adequate to effect the removal of soil moisture from upland croplands [33 CFR 323.4(a)(1)(iii)(c)(1)(i)]; the discharge of dredged

or fill material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the U.S. which are in established use for such agricultural and silvicultural wetland crop production [33 CFR 323.4(a)(1)(iii)(c)(1)(ii)];

6. The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within existing impoundments which have been constructed in accordance with applicable requirements of the Clean Water Act, and which are in established use for the production of rice, cranberries, or other wetland crop species [CFR 323.4 (a)(1)(iii)(C)(1)(iii)];
7. The discharges of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in establish use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of discovery of such blockages in order to be eligible for exemption [33 CFR 323.4 (a)(1)(iii)(C)(1)(iv)];
8. See 323.4 (a)(1)(iii)(C)(2) for descriptions of minor drainage, and (a)(1)(iii)(D) and (E) for plowing and seeding if needed to clarify.
9. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time (appx. 2 years) after damage occurs in order to qualify for this exemption [33 CFR 323.4 (a)(2)];
10. Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not the construction) of drainage ditches. Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches [33 CFR 323.4 (a)(3)];
11. Construction of temporary sediment basins on a construction site which does not include placement of fill material into waters of the U.S. [33 CFR 323.4 (a)(4)];
12. Any activity with respect to which a state has an approved program under section 208(b)(4) of the Clean Water Act which meets the requirement of sections 208(b)(4)(B) and (C) [33 CFR 323.4 (a)(5)];
13. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with

BMP to assure that flow and circulation patterns and chemical and biological characteristics of waters of the U.S. are not impaired, that the reach of the waters of the U.S. is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized [33 CFR 323.4(a)(6)].

14. Activities that involve only the cutting or removing of vegetation above the ground (i.e., mowing, rotary cutting, and chainsawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soils material [33 CFR 232.2 (2) (ii)].

While the Corps has not attempted to make an actual list of activities anticipated in the reasonable foreseeable future, it does note that lists of these kinds of non-Federal activities can often be obtained from city, county, or State notification records for authorizations like grading permits, stormwater disposal permits, water withdrawal permits, State Environmental Policy Act (SEPA) documents, etc. An example of a SEPA notification list for Washington State is attached.

Cumulative effects from these types of non-regulated actions may include impacts to ecosystem functions, such as sediment transport; impacts to water quality and quantity; fish passage; instream conditions; and species interactions. Many of these types of impacts are well described in the Environmental Baseline discussion in this document. Additional information is available in the Federal Register listing notices for the various ESU and DPS description of each threatened and endangered species.

The Corps has found that the effects which may be generated from the Corps regulated activities described in this PBE, when conducted as described herein, are extremely minor in nature (insignificant) or are very unlikely to occur (discountable). As a result, they will not alter the current environmental baseline, nor exacerbate potential cumulative effects.

Table 10: Washington State SEPA Notification List Example (Mason County, August 1, 2000)

<http://www.ecy.wa.gov/apps/sepa/query2.asp>

[SEPA Register Home](#)

[Environmental Review Home](#)

[Ecology Home Page](#)

The SEPA Register is updated each state business day. New records are indicated by **green text**. [Additional information](#) describing the contents of the SEPA Register is available if needed. Documents for listing in this Register should be sent to the Department of Ecology, Environmental Coordination Section, PO Box 47703, Olympia WA 98504-7703. Telephone (360) 407-6924. The SEPA Register is displayed in "County" sequence.

3 records returned

County: Mason
Lead Agency: Mason County
Lead Agency Contact: Shandra Ohaleck
Lead Agency Phone: (360) 427-9670 **Ext:** 295
Lead Agency File #: SEP2000-00096
Ecology File #: 200005347
Document Type: DNS-M
Description: Variance Permit; siting of 5 x 11 ft hydraulic boat lift within 5 ft sideyard setback, lift will be totally submerged when not in use, site is on Mason Lake
Location: E2151 Mason Lake Dr E, Grapeview
Applicant: Kim Karppinen
Issue Date:
Mail Date: 07/31/2000
Comment Due: 08/11/2000
Enter Date: 08/01/2000

County: Mason
Lead Agency: Mason County
Lead Agency Contact: Shandra Ohaleck
Lead Agency Phone: (360) 427-9670 **Ext:** 295
Lead Agency File #: SEP2000-00097
Ecology File #: 200005343
Document Type: DNS-M
Description: Construct 50 ft x by 8 ft dock with a 6 ft x 10 ft L attached at the end, using 12 inch pilings of untreated fir, pressure treated lumber above MHWM, remove old dock, private lake front site, located on Mason Lake
Location: 1143 E mason Lake Dr E, Grapeview
Applicant: Colby Swanson
Issue Date:
Mail Date: 07/31/2000
Comment Due: 08/11/2000
Enter Date: 08/01/2000

County: Mason
Lead Agency: Mason County
Lead Agency Contact: Allan Borden
Lead Agency Phone: (360) 427-9670 **Ext:** 365
Lead Agency File #: SEP2000-00098
Ecology File #: 200005346
Document Type: DNS-M
Description: Creation of 25,000 sq ft wetland as 2:1 replacement mitigation for filling small wetland areas and vegetation buffers as part of site prep and road building to develop a recreational park near a category 2 wetland, more
Location: Vicinity of 5600 E Grapeview Loop Rd, 1 mile north of Grapeview and on the west side of rd
Applicant: Glen Jurges
Issue Date: 07/28/2000
Mail Date:
Comment Due: 08/14/2000
Enter Date: 08/01/2000
