



# Skokomish Indian Tribe

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Skokomish Nation, WA 98584

August 19<sup>th</sup>, 2016

Karen Urelius  
U.S. Army Corps of Engineers  
Seattle District  
Regulatory Branch

Electronic Correspondence

Reference: COE-2015-0017 NWP Reauthorization Seattle District Regional Conditions

Dear Ms. Urelius:

## **Regional General Conditions**

### **RGC 1 Pre-Construction Notification**

Pre-construction notification is required to meet GC 18 Endangered Species but not all anadromous waters in the Hood Canal contain ESA listed salmon and steelhead stocks. All anadromous waters (and waters affecting anadromous waters) contain fish that are critical to the Skokomish Tribe. In order to meet GC 17 Tribal Rights all projects in anadromous waters and in waters affecting downstream anadromous waters must require PCN with the opportunity for affected tribes to review and comment on the project. The Seattle District needs to make it clear in the RGCs to applicants that in order to meet GC 17 a PCN is required in all projects in anadromous waters or in waters that may affect downstream anadromous waters.

### **RGC 3 New Bank Stabilization in Tidal Waters of the Salish Sea**

A significant amount of shoreline throughout the Hood Canal has already been stabilized encroaching on nearshore habitat, disrupting shoreline processes which create and maintain critical habitat, and diminishing habitat quality for juvenile salmonids, forage fish on which salmon prey, and invertebrates which are critical in the food web. RGC 3 should be retained in the final Seattle District Regional General Conditions.

### **RGC 5 Bank Stabilization**

RGC 5 should be retained in the final Seattle District Regional General Conditions for maintenance of existing bank stabilization. All new bank stabilization in the Hood Canal should only be authorized by Individual Permit.

### **RGC 7 Stream Loss**

RGC 7 should be retained in the final Seattle District Regional General Conditions and extended to intermittent and ephemeral streams in anadromous waters. Intermittent and ephemeral streams can provide valuable habitat for salmonids on a seasonal basis. As we have already stated the Hood Canal and its river basins have already been heavily impacted by habitat loss.

### **RGC 8 Mitigation**

Mitigation for impacts to habitat often involves habitat improvements that might otherwise be achieved through restoration. Projects should be designed to avoid impacts, enhancing the opportunity for restoration efforts to contribute to recovery of salmon instead of being a stop loss mechanism. The USACE's preference for mitigation banks and in-lieu-fee programs is opposite of how mitigation sequencing should be prioritized. Mitigation banks and in-lieu-fee programs are off-site and often out-of-kind mitigation that may not address habitat for a critical life stage that the project impacts. Mitigation banks often have large service areas and using them does not account for different life stage or unique stock considerations. Appropriate mitigation sequencing is first and foremost avoidance of impact, minimize the impact, followed by on-site in-kind mitigation, off-site in-kind mitigation, on-site out-of-kind mitigation, and lastly off-site out-of-kind mitigation. Seattle District mitigation guidance should reflect on-site in-kind mitigation as the priority for unavoidable impacts and avoidance should be stressed to applicants for NWP.

### **Specific Regional Conditions**

#### **NWP 10 Mooring Buoys**

Applicants should be required to provide an inventory of all mooring buoys in an embayment or water body. If the boundaries of a water body are large and/or undefined the inventory should include the nearest nautical mile. More detail needs to be worked out on NWP 10 between the USACE, Tribes, and Washington Department of Health to ensure that NWP 10 issuance does not lead to more waterbodies being listed as closed or threatened. When areas are closed due to mooring buoys it has a direct impact on the livelihood of the Skokomish Tribe.

#### **NWP 13 Bank Stabilization**

The Skokomish Tribe agrees that NWP 13 should be revoked for tidal waters in the Salish Sea in accordance with RGC 3 and it should be retained in the final Regional Specific Conditions for the Seattle District. Bank stabilization also has a profound effect in non-tidal waters flowing to the Hood Canal. USACE authorization of bank stabilization would add to the already high cumulative impact and be more than a minimal cumulative effect. The Skokomish Tribe request NWP 13 be revoked for theanadromous waters in River Basins flowing into Hood Canal.

### **NWP 31 Maintenance of Existing Flood Control Facilities**

NWP 31 authorizes removal of vegetation from flood control facilities. In many cases that vegetation will be riparian vegetation that has important ecosystem functions including shading to keep water temperature down, instream cover for aquatic life, delivery of terrestrial insects for food for aquatic life, and delivery of terrestrial vegetation for detritus as a basic building block in the food chain. Periodic removal of vegetation from flood control facilities precludes recovery of riparian vegetation and represents an ongoing degradation of aquatic ecosystem functions. Removal of riparian vegetation from flood control facilities should not be authorized by NWP. NWP 31 requires mitigation at the direction of the District Engineer on a onetime only basis at the establishment of the maintenance baseline. This NWP, especially in flood control facilities that include a natural water course, authorizes maintenance of the water course in a degraded state. The mitigation implemented at the maintenance baseline may have temporal benefits. In order for NWP 31 to have no more than minimal adverse environmental impacts the mitigation must continue to provide benefit as long as the watercourse is maintained in a degraded state. The Seattle District should have a RSC requiring PCN for each maintenance activity and evaluate the mitigation implemented at the maintenance baseline to ensure that it continues to provide environmental benefit commensurate with the ongoing environmental impact of maintaining the watercourse as a flood control facility. The Seattle District should require a monitoring plan for mitigation and require additional mitigation if mitigation does not provide benefit commensurate with the impact of maintaining the water course as a flood control facility.

### **NWP 40 Agricultural Activities**

The Seattle District should have a SRC for NWP 40 requiring documentation of anadromous waters in the project area and how they may be altered. The SRC should prohibit constructed farm ponds from diverting anadromous waters or diminishing flow in anadromous waters.

### **NWP 45 Repair of Uplands Damaged by Discrete Events**

If NWP 45 is used to armor and fix a stream course in place within its normal channel migration zone it will have far more than a minimal environmental impact. Streams and rivers create habitat through natural channel migration across their floodplain. NWP 45 could be construed in such a way as that it would allow filling a river or stream, thus forcing the stream back to a previous course in the river or streams natural migration. Such actions, if they are authorized at all, should only be authorized through individual permit. The Seattle district should have a SRC for NWP 45 to clarify that it does not authorize forcing a stream or river back to a previous course.

### **NWP 48 Commercial Shellfish Aquaculture Activities**

NWP 48 authorizes new and existing aquaculture activities and restricts new activities so that they affect no more than ½ acre of submerged aquatic vegetation. New activities are defined as operations where commercial operations have not taken place in the last 100 years. Conversely areas where aquaculture has not occurred for many decades would be classified as ongoing. These areas may have critical habitat and the USACE definition would allow for unlimited destruction of submerged aquatic vegetation. This could result in the loss of thousands of acres of eelgrass which is critical habitat for ESA listed salmonids. The USACE's definition of ongoing aquaculture is unreasonable, we know of no other regulated activity which would be defined as ongoing if it occurred within the last 100 years. The Seattle District should have a SRC that prohibits new aquaculture activities encroaching on eelgrass. The Seattle District's SRC should define ongoing aquaculture as the area under cultivation when NWP 48 was authorized in 2007 or where a grower can document an area has been part of a regular and continuous rotation of cultivation prior to that time.

### **NWP 52 Water-based Renewable Energy Generation Pilot Projects**

Renewable Energy Generation Pilot Projects involve new emerging technologies with unknown environmental effects. These technologies have not been widely studied and each pilot site location is different. The siting of many of these pilot projects makes environmental evaluation difficult. The addition of floating solar generation projects to NWP 52 is a bit premature. We seek to limit new opaque over water coverage due to its environmental effect on submerged aquatic vegetation, disruption of juvenile salmon migration, and potential changes predator/prey pathways. New over water structures may also affect Tribes ability to conduct treaty fisheries. An additional note is proposed for NWP 52 that states a NWP is not required if a project is permitted by the Federal Energy Regulatory Commission (FERC). The USACE has a regulatory responsibility and tribal trust responsibility to protect waters of the U.S. that cannot be abdicated to FERC who may not have the same expertise as the USACE in evaluating environmental impacts of a project on waters of the U.S. Water-based Renewable Energy Generation Pilot Projects should be evaluated by Individual Permit. The Seattle District should revoke NWP 52 in the Salish Sea and the anadromous waters of Hood Canal.

Because of the impacts to the Tribe's treaty right and treaty resources, A.C.O.E. needs to consider the above comments. We also request that the Skokomish Tribe be made aware of any decision

that you make regarding these comments. Thank you for including the Skokomish Tribe in the planning process; if you have any questions about the comments provided herein please contact Randy N. Lumper (Environmental Planner) at 1-360-877-5213 ext.# 508 or email them to [rlumper@skokomish.org](mailto:rlumper@skokomish.org).

Sincerely,

A handwritten signature in blue ink that reads "Joseph Pavel". The signature is written in a cursive style with a large initial "J" and "P".

Joseph Pavel  
Director  
Skokomish Natural Resources Department