

Proposed 2017 Nationwide Permits & Seattle District Regional Conditions Public Notice Comments

**Western Washington Treaty Tribes
Location: Northwest Indian Fisheries Commission
Olympia Washington**

Seattle District, U.S. Army Corps of Engineers
September 29, 2016



Agenda

1. Introductions
2. Overview of 2017 NWP Reissuance
3. Seattle District Comment Evaluation
4. Discussion
5. Next Steps

PowerPoint will be posted on Seattle District website

“News and Updates” (left menu)

2017 Nationwide Permit Reissuance Process: Updates for Tribes in Washington State (middle menu)

Also posted under “News and Information” (middle of page)

* Public Notice Comment Letters

* Special Public Notice with Proposed Regional Conditions

The screenshot shows the Seattle District website with the following elements:

- Header:** "SEATTLE DISTRICT" and "US Army Corps of Engineers" logo.
- Navigation:** HOME, ABOUT, BUSINESS WITH US, MISSIONS, LOCATIONS, CAREERS, MEDIA, LIBRARY, CONTACT.
- Breadcrumbs:** HOME > MISSIONS > CIVIL WORKS > REGULATORY > NEWS AND UPDATES.
- Left Sidebar:**
 - Electronic Permit Guidebook:** Includes a red book icon and a link "Click here for permit information".
 - Regulatory Quick Links:** A list of links including "News and Updates", "Forms", "Public Notices", "Jurisdictional Determinations", "Permit Decisions/Appeals", and "Emergencies".
- Main Content:**
 - News and Updates:** A section with expandable items. The first item is "2017 NWP Reissuance Process - Updates for Tribes in Washington State", which includes a list of bullet points: "2012 NWP Biological Opinion from NMFS Update for Tribes PowerPoint Presentation", "Reissuance Schedule for Tribes and Agencies, 14 December 2015", "Meeting Agenda, 14 December 2015", "NWP Total Usage Handout", "Information Sheet for Tribal Meeting on 14 December 2015", "Informational PowerPoint Presentation, 14 December 2015", and "List of 2012 NWP National and Regional Conditions".
 - Other items include "Updates on High Profile Projects (BP Cherry Point, Gateway Pacific Terminal, Millennium Bulk Terminals-Longview)" and "Latest Pre-Application Meeting Information and Documents".

Summary of June 1, 2016 Proposed Rule

- Propose to reissue 50 existing NWP's
 - ▶ 26 NWP's – no changes proposed
 - ▶ 24 NWP's – some changes proposed

- Propose to issue two new NWP's
 - ▶ Removal of Low-Head Dams
 - ▶ Living Shorelines



FEDERAL REGISTER

Vol. 81 Wednesday,
No. 105 June 1, 2016

Part III

Department of Defense

Department of the Army, Corps of Engineers
33 CFR Chapter II
Proposal To Reissue and Modify Nationwide Permits; Proposed Rule

Nationwide Permits

- Reissued every 5 years (expire March 18, 2017).
- Authorize Section 404 and Section 10 activities
- Issued on a national basis for activities that are similar in nature
- Approx. 2/3 of the Seattle District projects are authorized with a NWP
- Streamlined authorization process for categories of activities with no more than minimal individual and cumulative adverse environmental effects
- Encourages applicants to design projects that are minimally impacting
- Allows Seattle District to add regional conditions to ensure projects are minimally impacting

Regional Tailoring of Nationwide Permit Program

- Division Engineer has the authority to modify, suspend, or revoke Nationwide Permits within a region
 - ▶ Corps district, state, county, or other geographic area
 - ▶ Regional conditions to further restrict use of Nationwide Permits
 - ▶ Prohibit use of one or more Nationwide Permits in a region

- District Engineer has the authority to modify, suspend or revoke Nationwide Permits on a activity-specific basis
 - ▶ General conditions restricting use of Nationwide Permit
 - ▶ Prohibit the use of a Nationwide Permit to authorize a specific activity

District Engineer's Decision

(Section D of the Proposed NWP's)

- Criteria for determining whether a proposed NWP activity will result in no more than minimal individual or cumulative adverse environmental effects or any public interest review factor
 - ▶ Consider the direct and indirect effects caused by the NWP activity
 - ▶ Consider cumulative effects of NWP use on a regional basis
- Add activity-specific conditions requiring avoidance, minimization measures, and/or compensatory mitigation

Actions to Date

Meetings with Tribes

- December 14, 2015 – Overview of NWP Program and Reissuance Process
- February 4, 2016 – Cumulative Effects
- July 12, 2016 – Public Notice (PN) Comment Period, Proposed Regional Conditions

PN Comment Period: June 20 – August 19, 2016

- Total Comment Letters: 30
- Number of Tribes that Commented: 14

Next Steps

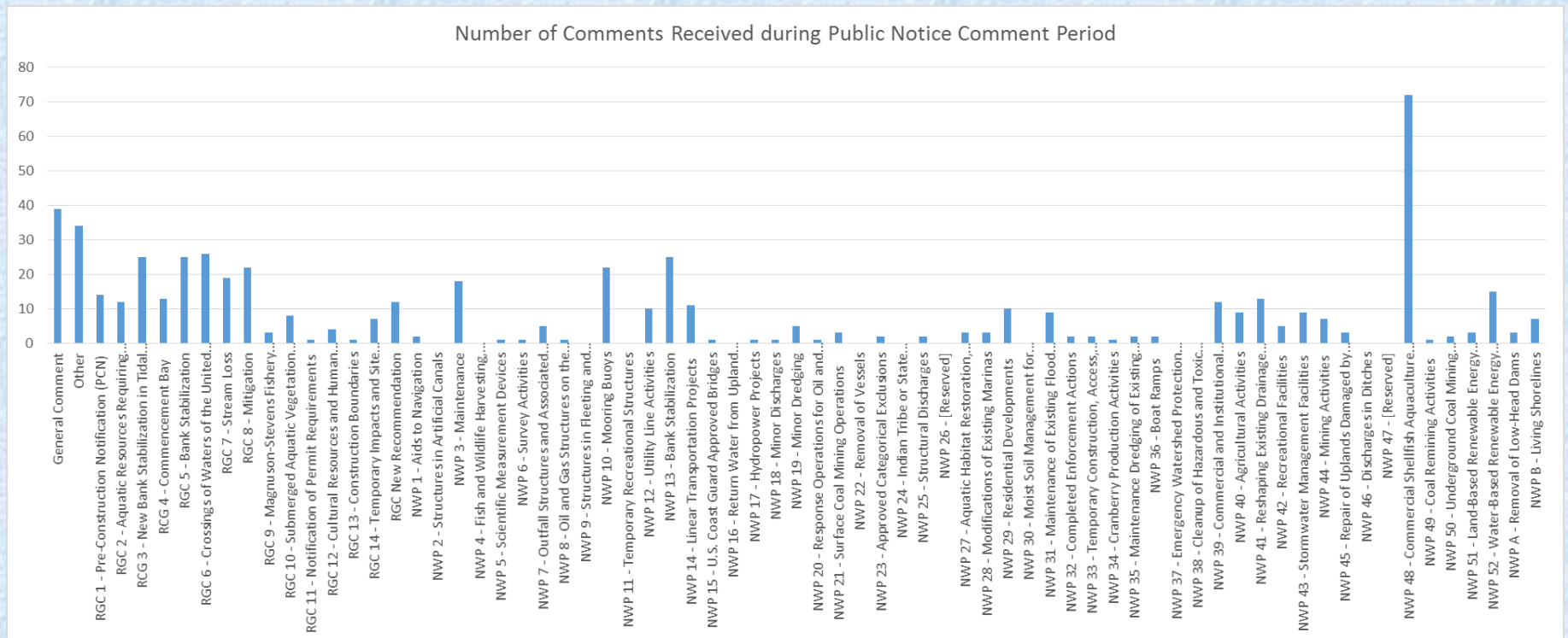
- Finalize Proposed Regional Conditions by October 31, 2016 (coordinate modifications with Division)
- If warranted, go out to Public Notice with revisions – early November 2016
- Finalize regional conditions with Division – December 2016
- HQ publishes final NWPs in Federal Register – December 19, 2016
- Seattle District publishes final Special Public Notice of NWPs and regional conditions; new NWPs go into effect – March 19, 2017

Comment Evaluation

- 30 Comment letters received during 60-day comment period
- Letters reviewed by NWP team, and divided into individual comments.
- Comments organized by content into review categories.
- Comments that recommend changes to the regional conditions have been identified and are being evaluated.

Comment Evaluation

- Comments organized by topic.
- Graph depicts first level review



Major Categories of Comments Received from Tribes

- Tribal Rights (General Condition 17)
- Bank Stabilization Cumulative Effects – Additional Areas of Concern
- Mooring Buoys
- Bank Stabilization – Maintenance
- Stream Loss – Intermittent and Ephemeral
- NWP 52 – Water Based Renewable Energy Generation Pilot Projects
- NWP 48
- Water Quality, Treated Wood, Stormwater, Impermeable Surfaces

NOTE: The slides below represent broad brush summaries of the major categories of comments received. There are dozens of separate and distinct comments that we are addressing that are not included in this PowerPoint.

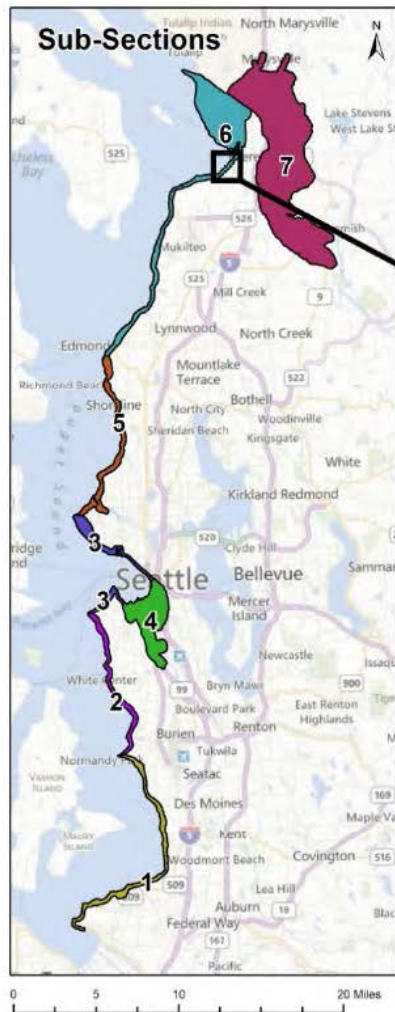
General Condition 17

Tribal Rights

- **Comments:**
- GC 17 does not provide an opportunity for Tribes to consult on specific actions that may impact Tribal treaty resources or access to usual and accustomed hunting and fishing grounds.
- PCN should be required for all proposed actions in the Boldt Decision case areas.

Puget Sound Eastern Shore

- **Comments:**
- Similar to RGC 4 Commencement Bay, for geographic areas which have experienced cumulative losses of aquatic resources within their shorelines and watersheds.
- Due to historic loss and degradation of waters of the U.S., including wetlands.
- Focuses on a narrow shoreline strip defined as 650 feet landward of the High Tide Line and 30 feet waterward of the mean lower low-water datum.
- Seven subsections in Eastern Puget Sound (Federal Way, Burien/West , Elliott , Duwamish Estuary, Edmonds, Everett, Snohomish).



Spatial Framework



Figure 1-1 Study area, including subsections and process units. The map on the left shows the study area including associated subsections. The width of the study area is shown on the photo in the middle (i.e., the zone 30ft waterward of the MLLW and 650 feet landward from the MHHW). The map on the right portrays the extent of the “process” units that drain to the study area and associated subsections.

Tidally influenced areas of tributaries to the Salish Sea

- **Comments:**
- The proposed Regional General Condition 3 – New Bank Stabilization in Tidal Waters of the Salish Sea potentially omits the tidally influenced areas of tributaries to the Salish Sea.
- A prohibition on the use of NWP's when authorizing new bank stabilization in tidal waters of the Puget Sound and Salish Sea is warranted along lower portions of major Puget Sound tributaries (e.g., the lower Puyallup, Green/Duwamish, Snohomish, Stillaguamish, and lower Skagit Rivers).
- NWP activities and projects will result in significant net losses, and a more than minimal cumulative adverse effect and loss.

Tidally Influenced Areas of the Lower Columbia River

- **Comments:**
- There is concern about impacts to the Columbia River Basin from new bank stabilization, specifically Water Resource Inventory Areas (WRIAs) 24, 25, 27, 28, and 29 from the mouth of Columbia River to Lyle, Washington (~river mile 181).
- The Columbia River mouth/estuary/outer coast begins/ends the migration corridor for all the Columbia River basin anadromous salmonids, as well as Pacific Lamprey, green and white sturgeon, Pacific eulachon (smelt) and for many other migratory fish.
- Recommend that the Seattle District assess important species and habitat, and take a precautionary approach.

Lakes Washington and Sammamish

- **Comments:**
- Approximately 82% of Lake Washington's shoreline is altered by bulkheads and riprap, and there are roughly 4,157 docks, including 60 new ones since 2011, on both lakes.
- The cumulative effect to these lakes has already occurred, and additional armoring or shoreline losses must be reviewed via a Standard Individual Permit.
- At a minimum, all NWP's for new bank stabilization must be revoked, and a PCN must be required for any NWP's authorizing repair, maintenance or replacement of bank stabilization.

Non-Tidal Tributaries to the Salish Sea

- **Comments:**
 - Freshwater bank armoring results in significant (i.e., more than minimal) cumulative effects.
 - Continued incremental degradation of floodplain connectivity and channel function through streamlined permitting of both new bank stabilization projects and repair of existing projects is not consistent with either recovering salmon or meeting federal obligations to Indian tribes.
 - Permits for Installation and/or perpetuation of hard armor, in both marine and freshwaters draining into the Salish Sea, should be the most difficult permits to get.
 - The Corps should incentivize the use of less harmful or "softer" approaches.
 - The current best available science for marine shoreline stabilization in the Salish Sea is reflected in the Marine Shoreline Design Guidelines.

Nationwide Permit 10

Mooring Buoys

- Comments:
- Interfere with access to fisheries (e.g., set nets, drift nets, obstruct access to shellfish harvest areas, interfere with fishing vessels).
- Contamination leading to waterbodies designated by DOH as threatened or closed. To be protective of shellfish harvest do not exceed 10 boats or a density greater than 1 boat per acre to ensure NWP 10 does not contribute to more waterbodies being listed as threatened or closed.
- No inventory to establish if cumulative impacts are being reached.
- No comprehensive database to track buoys.
- Unauthorized buoys.
- Insufficient coordination with Department of Health and Department of Natural Resources.
- Require permittees to have an individual permit to install mooring buoys in the Boldt case area.

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Bank Stabilization - Maintenance

■ Comments

- PCNs should be required for all maintenance projects occurring within the Boldt case area.
- All NWP activities should require compensatory mitigation for new and ongoing environmental impacts.
- Many maintenance projects perpetuate ongoing impacts to salmon habitat by disrupting the processes that create and maintain habitat and have added to the cumulative impacts.

Stream Loss

■ Comments

- Intermittent streams and ditches can provide habitat for salmon.
- The proposed threshold condition of losses up to 300 linear feet of intermittent and/or ephemeral stream beds and ditches is too high for existing and potential salmon bearing streams and streams that contribute habitat functions downstream.
- The Corps proposed condition for intermittent/ephemeral stream beds should scaled based on the stream length of potential fish habitat.

NWP 52 – Water Based Renewable Energy Generation Pilot Projects

■ Comments

- Due to the interference of hydrokinetic renewable energy generation projects on the exercise of tribal treaty rights to fish, these projects should not be allowed in western Washington without the consent of all affected tribal governments (i.e., tribal governments who have adjudicated Usual and Accustomed [U&A] within or adjacent to the proposed project footprint).
- Floating solar panels, up to ½ acre in size, would interfere with treaty protected fishing activities.