

# **Programmatic Biological Evaluation for 10 Activities in the State of Washington for Species Listed or Proposed by National Marine Fisheries Service and U.S. Fish and Wildlife Service under the Endangered Species Act**

## **1.0 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 programmatically consulting with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on its permit program since November 2000, particularly with regard to the 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 under may adversely affect the listed or proposed species.

The original Programmatic Biological Evaluation (PBE) covered 11 categories of activities and was issued in November 2000. The original PBE expired in 2005, but has been extended until September 2008 for USFWS. NMFS concurred with this version on January 14, 2008 (NMFS#2005/07506). This PBE covers 10 of the original 11 activities. Of these 10, nine activities had either no changes or only minor changes. The piling replacement activity had extensive changes.

## **2.0 Intent of Use**

On a statewide programmatic level this PBE covers actions that may affect but are Not Likely to Adversely Affect (NLAA) the listed species, Distinct Population Segments (DPSs)/Evolutionarily Significant Units (ESUs) or designated critical habitat, jeopardize the continued existence of proposed species, or destroy or adversely modify proposed critical habitat listed in Table 1.

Specifically, this informal programmatic consultation for activities covered under certain Nationwide Permits (NWP) or Regional General Permits (RGPs) will evaluate the impacts of such activities on listed

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or proposed 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 10 of them (refer to Appendix F). The District also has 19 RGPs for 5 different types of activities. In this PBE, we have included activities associated with 2 of them (refer to Appendix F). Refer to Table 2 through Table 4 for lists of the activities covered by this programmatic, by major area.

This document gives a description of each activity covered under this PBE. The Corps believes that these activities are NLAA provided they are scheduled to avoid the presence of the listed or proposed 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 1. Listed, Proposed, and Candidate Species potentially affected by proposed activities

Species Name (Scientific Name) Evolutionary Significant Unit (ESU)/Distinct Population Segment (DPS)	Status	Federal Register Date	Critical Habitat Designated	Determination of Effect
Brown Pelican ( <i>Pelecanus occidentalis</i> )	E	June 02, 1970	N	NLAA
Marbled Murrelet ( <i>Brachyramphus marmoratus</i> )	T	October 01, 1992	Y	NLAA
Northern Spotted Owl ( <i>Strix occidentalis</i> )	T	June 26, 1990	Y	NLAA
Short-Tailed Albatross ( <i>Phoebastria albatrus</i> )	E	June 02, 1970	N	NLAA
Western Snowy Plover ( <i>Charadrius alexandrinus</i> )	T	March 05, 1993	Y	NLAA
Canada Lynx ( <i>Lynx Canadensis</i> )	T	March 24, 2000	N	NE
Columbia White-Tailed Deer ( <i>Odocoileus virginianus leucurus</i> )	E	March 11, 1967	N	NLAA
Gray Wolf ( <i>Canis lupis</i> )	E	March 11, 1967	Y	NE
Grizzly Bear ( <i>Ursus arctos horribilis</i> )	T	March 11, 1967	N	NE
Pygmy Rabbit ( <i>Barchylagus idahoensis</i> )	E	November 30, 2001		NLAA
Woodland Caribou ( <i>Rangifer tarandus caribou</i> )	E	January 14, 1983	N	NE
Oregon Silverspot Butterfly ( <i>Speyeria zereze hippolyta</i> )	T	July 02, 1980	Y	NLAA
Blue Whale ( <i>Balaenoptera musculus</i> )	E	June 02, 1970	N	NLAA
Fin Whale ( <i>Balaenoptera physalus</i> )	E	June 02, 1970	N	NLAA
Humpback Whale ( <i>Megaptera novaeangliae</i> )	E	June 02, 1970	N	NLAA
Sei Whale ( <i>Balaenoptera borealis</i> )	E	June 02, 1970	N	NLAA
Sperm Whale ( <i>Physeter macrocephalus</i> )	E	June 02, 1970	N	NLAA
Killer Whale ( <i>Orcinus orca</i> )	E	November 18, 2005	Y	NLAA
Steller Sea Lion ( <i>Eumetopias jubatus</i> )	E	April 05, 1990	Y	NLAA
Green Sea Turtle ( <i>Chelonia mydas</i> )	T	July 28, 1978	N	NLAA
Leatherback Sea Turtle ( <i>Dermochelys coriacea</i> )	E	June 02, 1970	N	NLAA
Loggerhead Sea Turtle ( <i>Caretta caretta</i> )	T	July 28, 1978	N	NLAA
Bradshaw's Desert Parsley ( <i>Lomatium bradshawii</i> )	E	September 30, 1988	N	NLAA
Golden Paintbrush ( <i>Castilleja levisecta</i> )	T	June 11, 1997	N	NE
Kincaid's Sulphur Lupine ( <i>Lupinus sulphureus ssp. Kincaidii</i> )	T	January 25, 2000	N	NE
Marsh Sandwort ( <i>Arenaria paludicola</i> )	E	August 03, 1993	N	NE
Nelson's Checker-Mallow ( <i>Sidalcea nelsoniana</i> )	T	February 12, 1993	N	NLAA
Showy Stickseed ( <i>Hackelia venusta</i> )	PE	February 06, 2002	N	NE
Spalding's Silene ( <i>Silene spaldingii</i> )	PT	October 10, 2001	N	NE
Water Howellia ( <i>Howellia aquatilis</i> )	T	July 14, 1994	N	NLAA
Wenatchee Mountain Checker-Mallow ( <i>Sidalcea oregana var. calva</i> )	E	December 22, 1999	N	NE
Ute Ladies'-Tresses ( <i>Spiranthes diluvialis</i> )	T	January 17, 1992	N	NLAA
Bull Trout ( <i>Salvelinus confluentus</i> )				NLAA
Coastal/Puget Sound DPS	T	November 1, 1999	N	
Columbia River DPS	T	June 20, 1998	N	
Chinook Salmon ( <i>Oncorhynchus tshawytscha</i> )				NLAA
Puget Sound ESU	T	March 24, 1999	N	
Snake River Fall Run ESU	T	April 22, 1992	Y	
Snake River Spring/Summer-run ESU	T	April 22, 1992	Y	
Lower Columbia River ESU	T	March 24, 1999	Y	
Upper Columbia River Spring-run ESU	E	March 24, 1999	Y	
Upper Willamette River ESU	T	March 25, 1999	Y	
Sockeye Salmon ( <i>Oncorhynchus nerka</i> )				NLAA
Ozette Lake ESU	T	March 25, 1999	Y	
Snake River ESU	E	November 20, 1991	Y	
Coho Salmon ( <i>Oncorhynchus kisutch</i> )				NLAA
Lower Columbia River/SW WA ESU	C	July 25, 1995	N	
Chum Salmon ( <i>Oncorhynchus keta</i> )				NLAA
Hood Canal Summer-run ESU	T	March 25, 1999	Y	
Columbia River ESU	T	March 25, 1999	Y	

<b>Species Name</b> ( <i>Scientific Name</i> ) Evolutionary Significant Unit (ESU)/Distinct Population Segment (DPS)	<b>Status</b>	<b>Federal Register Date</b>	<b>Critical Habitat Designated</b>	<b>Determination of Effect</b>
Steelhead Trout ( <i>Oncorhynchus mykiss</i> )				NLAA
Upper Columbia River ESU	E	August 18, 1997	Y	
Middle Columbia River ESU	T	March 25, 1999	Y	
Lower Columbia River ESU	T	March 19, 1998	Y	
Snake River Basin ESU	T	August 18, 1997	Y	
Upper Willamette River ESU	T	March 25, 1999	Y	

Table 2. Summary Of Project Conditions Or Actions in All Fresh Waters *excluding* Columbia River mainstem that Qualify as “Not Likely To Adversely Affect” Listed T&E Species or Their Critical Habitat

Actions	Conditions
Placement of navigation aids and regulatory markers, including placement of buoys for such purposes [from NWP 1]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ 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,</li> <li>▪ No trenching occurs through any water of the U.S. (i.e., for electrical cables),</li> <li>▪ No new piling is placed,</li> <li>▪ If a barge is used, the barge does not ground out,</li> <li>▪ Flotation shall be completely contained to prevent breakup, and</li> <li>▪ Buoys are anchored securely and anchors are installed so that anchor lines do not drag.</li> </ul>
Placement of mooring buoys for single boat, non-commercial [from NWP 10]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ 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,</li> <li>▪ Buoys do not exceed 4 per acre,</li> <li>▪ Buoys are anchored securely and anchors are installed so that anchor lines do not drag,</li> <li>▪ Flotation shall be completely contained to prevent breakup, and the vessel does not ground out at low water.</li> </ul>
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. [from NWP 11]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ 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,</li> <li>▪ No large woody debris is removed,</li> <li>▪ Such devices and structures do not exceed 4 per acre,</li> <li>▪ 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,</li> <li>▪ No new piling is driven,</li> <li>▪ All wooden components are pre-painted and dried prior to installation and no treated wood is used,</li> <li>▪ Such devices and structures remain in the water no longer than 60 days,</li> <li>▪ Such devices and structures are removed within 15 days after use has been discontinued,</li> <li>▪ Such devices and structures are anchored securely,</li> <li>▪ Flotation shall be completely contained to prevent breakup, and</li> <li>▪ The anchor and anchor lines do not drag.</li> </ul>
Replacement of up to one hundred (100) existing wood, concrete or plating piling or forty (40) steel piling with <u>non-treated</u> piling [from NWP 3, LOP]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife;</li> <li>▪ Projects that are 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 will follow BMPs established by EPA during CERCLA coordination;</li> <li>▪ No piles are associated with log raft booms;</li> <li>▪ No sheet piling is used in lieu of pole piling;</li> <li>▪ Existing piles are partially cut with a new pile secured directly on top, fully extracted, <u>or</u> cut 2-feet below the mudline;</li> <li>▪ Removed creosote treated piles are cut into manageable lengths (4 feet is preferable) prior to disposal;</li> <li>▪ 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);</li> <li>▪ Hydraulic water jets are not used to remove or place piles; and</li> <li>▪ Piles are replaced in the same general location and do not extend beyond the footprint of the existing structure (i.e. pier).</li> <li>▪ Steel piles are installed using sound suppression techniques.</li> <li>▪ Steel piles greater than 12 inches in diameter and concrete piles greater than 24 inches in diameter are not approved under this programmatic.</li> </ul>

Actions	Conditions
<p>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 [from NWP 5,3 ]</p>	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ 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,</li> <li>▪ No uncured concrete shall come into contact with the waterbody,</li> <li>▪ No more than one new piling or dolphin is placed,</li> <li>▪ No fill is placed in wetlands or waterward of OHW,</li> <li>▪ Work does <u>not</u> include weirs and flumes,</li> <li>▪ Placement does <u>not</u> require the de-watering or hydraulic modification of a stream or waterbody, and</li> <li>▪ Work will be done during low flow and when possible in the dry.</li> </ul>
<p>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 [from NWP 20]</p>	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ No work is done in or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds),</li> <li>▪ No large woody debris is removed,</li> <li>▪ No new piling is driven,</li> <li>▪ 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,</li> <li>▪ The Regional Response Team (if one exists in the area) concurs with the proposed containment,</li> <li>▪ Booms are anchored securely,</li> <li>▪ Anchors are installed so that anchor and anchor lines do not drag,</li> <li>▪ Booms will not ground out, and</li> <li>▪ Boom and anchor systems will be placed so that neither boom, anchor nor anchor line will result in streambed scour.</li> </ul> <p>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.</p>
<p>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 [from NWP]</p>	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ 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,</li> <li>▪ Gravel materials are washed and clean prior to being brought to the site,</li> <li>▪ Work occurs only in the dry, stockpiling shall not occur below OHW,</li> <li>▪ Work is done by hand except that if a barge is used to deliver material it shall not ground out on the bottom,</li> <li>▪ The material is spread out evenly and the beach grade is not altered (to avoid stranding of fish),</li> <li>▪ Upon completion of material placement the beach shall not contain any pits, potholes, or large depressions, and</li> <li>▪ 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.</li> </ul>

Table 3. Summary Of Project Conditions Or Actions in the Columbia River Mainstem including Snake River Mainstem & Baker Bay that Qualify as “Not Likely To Adversely Affect” Listed T&E Species or Their Critical Habitat

Actions	Conditions
Placement of navigation aids and regulatory markers, including placement of buoys for such purposes [from NWP 1]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ 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,</li> <li>▪ No trenching occurs through any water of the U.S. (i.e., for electrical cables),</li> <li>▪ No more than one new piling or dolphin is placed, no land leveling or grading is conducted,,</li> <li>▪ If a barge is used, the barge does not ground out,</li> <li>▪ Flotation shall be completely contained to prevent breakup, and</li> <li>▪ Buoys are anchored securely and anchors are installed so that the anchor lines do not drag.</li> </ul>
Placement of mooring buoys for single boat, non-commercial use [from NWP 10]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ 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,</li> <li>▪ Buoys do not exceed 4 per acre,</li> <li>▪ Buoys are anchored securely and anchors are installed so that anchor lines do not drag,</li> <li>▪ Flotation shall be completely contained to prevent breakup, and the vessel does not ground out at low water.</li> </ul>
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 [from NWP 11]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ 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,</li> <li>▪ No large woody debris is removed,</li> <li>▪ Such devices and structures do not exceed 4 per acre,</li> <li>▪ 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,</li> <li>▪ No new piling is driven,</li> <li>▪ All wooden components are pre-painted and dried prior to installation and no treated wood is used,</li> <li>▪ Such devices and structures remain in the water no longer than 60 day,</li> <li>▪ Such devices and structures are removed within 15 days after use has been discontinued,</li> <li>▪ Such devices and structures are anchored securely,</li> <li>▪ Flotation shall be completely contained to prevent breakup, and</li> <li>▪ Anchors are installed so that anchor lines do not drag.</li> </ul>
Replacement of up to one hundred (100) existing wood, concrete or plating piling or forty (40) steel piling with <u>non-treated</u> piling [from NWP 3, LOP]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife;</li> <li>▪ Projects that are 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 will follow BMPs established by EPA during CERCLA coordination;</li> <li>▪ No piles are associated with log raft booms;</li> <li>▪ No sheet piling is used in lieu of pole piling;</li> <li>▪ Existing piles are partially cut with a new pile secured directly on top, fully extracted, <u>or</u> cut 2-feet below the mudline;</li> <li>▪ Removed creosote treated piles are cut into manageable lengths (4 feet is preferable) prior to disposal;</li> <li>▪ 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);</li> <li>▪ Hydraulic water jets are not used to remove or place piles; and</li> <li>▪ Piles are replaced in the same general location and do not extend beyond the footprint of the existing structure (i.e. pier).</li> <li>▪ Steel piles are installed using sound suppression techniques.</li> <li>▪ Steel piles greater than 12 inches in diameter and concrete piles greater than 24 inches in diameter are not approved under this programmatic.</li> </ul>

Actions	Conditions
<p>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 [from NWP 5, 3]</p>	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ 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,</li> <li>▪ No uncured concrete shall come into contact with the waterbody,</li> <li>▪ No new piling is placed,</li> <li>▪ No land leveling or grading is conducted,</li> <li>▪ No fill is placed in wetlands or waterward of OHW or high tide line,</li> <li>▪ Work does <u>not</u> include weirs and flumes,</li> <li>▪ Placement does <u>not</u> require the de-watering or hydraulic modification of a stream or waterbody, and</li> <li>▪ Work will be done during low flow and when possible in the dry.</li> </ul>
<p>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 [from NWP 20]</p>	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ No work is done in or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds),</li> <li>▪ No large woody debris is removed,</li> <li>▪ No new piling is driven,</li> <li>▪ 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,</li> <li>▪ Booms are anchored securely,</li> <li>▪ Anchors are installed so that anchor and anchor lines do not drag,</li> <li>▪ Booms will not ground out, and</li> <li>▪ Boom and anchor systems will be placed so that neither boom, anchor nor anchor line will result in streambed scour.</li> </ul> <p>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.</p>
<p>Placement of crab or shrimp pots, non-commercial clam digging, and non-commercial oyster and mussel harvesting [from NWP 4]</p>	<ul style="list-style-type: none"> <li>▪ Work only occurs in estuarine portions of the Columbia River (Baker Bay), and</li> <li>▪ No clam digging or oyster and mussel harvesting activities occur over or adjacent to vegetated shallows or habitat for listed or proposed species.</li> </ul>
<p>Placement of tideland markers, either by a single piling or buoys [from RGP on tidal markers]</p>	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ Work only occurs in the estuarine portions of the Columbia River (Baker Bay),</li> <li>▪ No work occurs in or adjacent to vegetated shallows or spawning habitat for listed or, proposed or prey / forage fish species, (i.e. forage fish for pacific salmon,</li> <li>▪ Piles are not treated with creosote or pentachlorophenol,</li> <li>▪ No uncured concrete is used,</li> <li>▪ Barges and boats do not ground,</li> <li>▪ 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 Statedesignated noxious weeds), and</li> <li>▪ Buoys are anchored securely and anchors and anchor lines do not drag.</li> </ul>

Table 4. Summary Of Project Conditions Or Actions in Marine/Estuarine Waters (excluding Baker Bay) that Qualify as “Not Likely To Adversely Affect” Listed T&E Species or Their Critical Habitat

Actions	Conditions
Placement of navigation aids and regulatory markers, including buoys and up to <u>one</u> new pile or one new dolphin (3 piles) for such purposes [NWP 1]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife;</li> <li>▪ Buoys and anchors are not located over or adjacent to vegetated shallows (except where such vegetation is limited to State-designated noxious weeds) or habitat for listed or proposed species or prey/forage species;</li> <li>▪ No trenching occurs through any water of the U.S. (i.e., for electrical cables);</li> <li>▪ The pile is not treated with creosote or pentachlorophenol;</li> <li>▪ 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);</li> <li>▪ Buoys are anchored securely, and</li> <li>▪ Anchors are installed so that the anchor lines do not drag.</li> <li>▪ Piles are installed using sound suppression techniques</li> </ul>
Placement of mooring buoys for single boat, non-commercial use [from NWP 10].	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ Anchor, buoy, and moored vessel are not located over or adjacent to vegetated shallows or spawning habitat for forage species,</li> <li>▪ Buoys do not exceed 4 per acre,</li> <li>▪ Buoy anchors are installed so that the anchor line does not drag,</li> <li>▪ Flotation shall be completely contained to prevent breakup, and</li> <li>▪ The vessel does not ground out at low water.</li> </ul>
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 [from NWP 11]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ No work takes place over or adjacent to vegetated shallows or spawning habitat for forage species,</li> <li>▪ No large woody debris is removed,</li> <li>▪ Such devices and structures do not exceed 4 per acre,</li> <li>▪ 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,</li> <li>▪ No new piling is driven,</li> <li>▪ Such devices and structures remain in the water no longer than 60 days,</li> <li>▪ Such devices and structures are removed within 15 days after use has been discontinued,</li> <li>▪ Flotation shall be completely contained to prevent breakup,</li> <li>▪ Devices and structures are anchored securely, and</li> <li>▪ The anchors installed so that the anchor lines do not drag.</li> </ul>
Replacement of up to one hundred (100) existing wood, concrete or <u>plasting</u> piling or forty (40) steel piling with <u>non-treated</u> piling [from NWP 3, LOP]	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife;</li> <li>▪ Projects that are 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 will follow BMPs established by EPA during CERCLA coordination;</li> <li>▪ No piles are associated with log raft booms;</li> <li>▪ No sheet piling is used in lieu of pole piling;</li> <li>▪ Existing piles are partially cut with a new pile secured directly on top, fully extracted, <u>or</u> cut 2-feet below the mudline;</li> <li>▪ Removed creosote treated piles are cut into manageable lengths (4 feet is preferable) prior to disposal;</li> <li>▪ 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);</li> <li>▪ Hydraulic water jets are not used to remove or place piles; and</li> <li>▪ Piles are replaced in the same general location and do not extend beyond the footprint of the existing structure (i.e. pier).</li> <li>▪ Steel piles are installed using sound suppression techniques.</li> <li>▪ Steel piles greater than 12 inches in diameter and concrete piles greater than 24 inches in diameter are not approved under this programmatic.</li> </ul>

Actions	Conditions
<p>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 [from NWP 5, 3]</p>	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ No work is done over or adjacent to vegetated shallows or spawning habitat for forage species,</li> <li>▪ No uncured concrete comes into contact with tidal waters,</li> <li>▪ Only one new pile or dolphin is placed,</li> <li>▪ Steel piles are installed using sound suppression techniques</li> <li>▪ The pile or dolphin is <u>not</u> treated with creosote or pentachlorophenol,</li> <li>▪ No land leveling or grading is conducted,</li> <li>▪ No fill is placed in wetlands or waterward of high tide line,</li> <li>▪ Work does <u>not</u> include weirs and flumes,</li> <li>▪ Placement does <u>not</u> require the de-watering or hydraulic modification of a waterbody, and</li> <li>▪ Work will be done during low tide and when possible in the dry.</li> </ul>
<p>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 [from NWP 20]</p>	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ No work is done in or adjacent to vegetated shallows,</li> <li>▪ No large woody debris is removed,</li> <li>▪ No new piling is driven,</li> <li>▪ 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,</li> <li>▪ The Regional Response Team (if one exists in the area) concurs with the proposed containment,</li> <li>▪ Booms are anchored securely,</li> <li>▪ Anchors are installed so that anchor and anchor lines do not drag,</li> <li>▪ Booms will not ground out, and</li> <li>▪ Boom and anchor systems will be placed so that neither boom, anchor, nor anchor line will result in streambed scour.</li> </ul> <p>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.</p>
<p>Placement of crab or shrimp pots, non-commercial clam digging, and non-commercial oyster and mussel harvesting [from NWP 4].</p>	<ul style="list-style-type: none"> <li>▪ No clam digging or oyster and mussel harvesting activities occur over or adjacent to vegetated shallows or habitat for listed or proposed species.</li> </ul>
<p>Placement of tideland markers, either by a single piling or buoys [from RGPs on tidal markers]</p>	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window for fish and wildlife,</li> <li>▪ No work occurs in or adjacent to vegetated shallows or spawning habitat for listed or, proposed or prey / forage fish species, (i.e. forage fish for pacific salmon,</li> <li>▪ Piles are not treated with creosote or pentachlorophenol,</li> <li>▪ Piles are installed using sound suppression techniques</li> <li>▪ No uncured concrete is used,</li> <li>▪ Barges and boats do not ground,</li> <li>▪ 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),</li> <li>▪ Buoys are anchored securely, and</li> <li>▪ Anchors and anchor lines do not drag.</li> </ul>
<p>Placement of up to 25 cubic yards of fill material waterward of the High Tide 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 High Tide line) and already has been constructed [from NWP 18].</p>	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window,</li> <li>▪ Material is not placed in or adjacent to vegetated shallows or other special aquatic sites,</li> <li>▪ Gravel materials are washed and clean prior to being brought to the site,</li> <li>▪ Work occurs only in the dry,</li> <li>▪ Stockpiling shall not occur waterward of the high tide line,</li> <li>▪ Work is done by hand except that if a barge is used to deliver material it shall not ground out on the bottom,</li> <li>▪ The material is spread out evenly and the beach grade is not altered (to avoid stranding of fish),</li> <li>▪ Upon completion of material placement the beach shall not contain any pits, potholes, or large depressions, and</li> <li>▪ 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.</li> </ul>

Actions	Conditions
Minor repair of existing bulkhead or sloped revetment only marine/estuarine waters	<ul style="list-style-type: none"> <li>▪ Work is done within the approved work window,</li> <li>▪ Material is not placed in or adjacent to vegetated shallows, wetlands, spawning habitat for forage species, or other special aquatic sites,</li> <li>▪ All natural beach features are not disturbed</li> <li>▪ Less than 10% of the total bank protection (but not to exceed 10 linear feet) has been damaged or failed</li> <li>▪ Repair is in-kind and in-place at the existing structure</li> <li>▪ Timber is untreated or treated with a biodegradable , non-toxic material</li> <li>▪ No uncured concrete will come in contact with the waterbody</li> <li>▪ All work will be done in the dry</li> <li>▪ All work on the beach will be done by hand</li> <li>▪ No heavy equipment shall operate on the beach</li> <li>▪ Bioengineering shall be employed whenever possible</li> <li>▪ Access to the beach is via existing upland access</li> </ul>

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### 3.0 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.

Appendix E is the list of specific conditions and general conservation measures, which greatly minimize the affects from construction on listed and proposed species. This list includes timing and location restrictions.

The NWP's and RGP's, and their general and regional conditions, that are affiliated with the PBE's make up Appendix F. 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 BMP's 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 PBE's and the implementation conditions contained in Appendix F of this document.

Finally, Appendix G provides 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.

Appendix H is a place holder for a future submittal of a critical habitat analysis for salmonids and bull trout. This document is expected to be submitted to NMFS and USFWS by February 2006.

Tables 5, 6, and 7 list project conditions in fresh water, the Columbia River system, or salt water that will qualify as "Not Likely to Adversely Affect" listed or proposed species.



## 4.0 How This Process Will Work

The NLAA lists and PBEs define, and only pertain to, those portions of NWP, RGP, or IP that we believe are “Not Likely to Adversely Affect” (NLAA). 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. Since 2000 permit actions have gone 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. Programmatic coverage or streamlined processing has aided the Corps’ ability to make timely decisions while still meeting Section 7 requirements of the ESA. The Seattle District currently estimates that about 70 percent of its annual workload falls into the NLAA or “may affect, likely to adversely affect” (LAA) category. The PBE is currently used for approximately 15% of the permits issued by Regulatory.

Once the Services have re-authorized these 10 activities, the Corps will issue a Special Public Notice. The process to confirm applicability of the PBE will remain the same: an individual writes to the Corps (under the notification requirement of NWP General Condition #11, for example), or fills out a permit application. The Corps reviews 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.”

## 5.0 Programmatic BE Notification and Tracking

Upon re-authorization of the 10 NLAA activities in this PBE, 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 JARPs 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 re-authorization of the 10 NLAA activities in this PBE, the Corps will also provide copies of the NLAA lists, implementation conditions, and conservation measures (Appendix D, E, and G) to applicants who notify us prior to initiation of any activity, to ensure full compliance.

To track programmatic NLAA cases following concurrence, the Corps will submit annual reports of all reported cases to the Services each year, 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.

## **6.0 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. 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 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 that 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.

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 that 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.



## 7.0 Conservation Measures

The activities authorized by this PBE would incorporate work windows (see Corps website and Appendix D) and conservation measures (Appendix E). Required design criteria will greatly reduce impacts to listed species. The conservation measures will minimize the degradation of the existing environmental baseline through

- Establishing in-water work windows for the protection of salmonids,
- Establishing construction timing restrictions near known species nesting, feeding, or spawning habitat, and
- Ensuring the restoration of functions is achieved through project planning and post construction monitoring.

A Hydraulic Project Approval (HPA) will be a required element of all projects approved under this programmatic consultation. The Washington Department of Fish and Wildlife (WDFW) issues HPAs for the projects covered under this assessment. HPAs are issued after the local WDFW Area Habitat Biologist (AHB) assesses the project. The AHB is responsible for ensuring that the project meets the mandate to protect fish and shellfish resources (including listed salmonids and forage fish species) in the State of Washington. The HPA regularly includes conservation and mitigation measures designed to reduce the impact of the project. These measures are defined in the State Hydraulic Code (RCW 77.55) and the Hydraulic Code Rules (WAC 220-110).

## **8.0 Programmatic Biological Evaluation (PBE) Information by Category**