

ADDENDUM TO SUPPLEMENTAL DOCUMENTS FOR NATIONWIDE PERMITS

This document is an addendum to the supplements to the national decision documents for the 2021 Nationwide Permits (NWP). This addendum applies to all 56 current NWPs and contains additional regional general conditions (RGCs) for the NWPs in Washington State.¹ In Washington State, the Seattle District is the lead district. This addendum is prepared for the purposes of 33 CFR 330.5(c)(1)(iii). The Northwestern Division (NWD) Division Engineer has considered the potential individual and cumulative adverse environmental effects that could result from the addition of these RGCs to the NWPs in Washington State to ensure that those individual and cumulative adverse environmental effects are no more than minimal. These RGCs are necessary to address important regional issues relating to jurisdictional waters and wetlands. These regional issues are identified in this document. These RGCs are being required to ensure that the NWPs continue to only authorize activities that result in no more than minimal individual and cumulative adverse environmental effects.

The analyses contained in many portions of the supplemental documents (e.g., Alternatives; Section 7 of the Endangered Species Act; Section 106 of the National Historic Preservation Act; Essential Fish Habitat; Public Interest Review Factors; Section 404(b)(1) Guidelines Impact Analysis, where applicable; Regional Cumulative Effects Analysis; Water Quality Certification and Coastal Zone Management Act Consistency Determinations; and Measures to Ensure No More Than Minimal Adverse Environmental Effects) are not materially affected by the addition of these RGCs and those portions are not being amended at this time.

The supplemental documents for the 2021 NWPs in Washington State are amended by:

Inserting after section 2.3.7, the following:

“2.3.8 Proposed New Regional Conditions (RGCs) for the NWPs

On 27 June 2023, we published a public notice proposing the following supplemental regional general conditions:

RGC A. The length of new bank stabilization within waters of the U.S., including new bank stabilization associated with maintenance activities that would expand previously authorized armoring length, cannot exceed 50 linear feet within the tidal waters of Puget Sound under any NWP. This condition does not apply to NWP 54, *Living Shorelines*.

RGC B. No NWP activity can cause more than minimal adverse effects to drift cells within tidal waters of Puget Sound, including more than minimal adverse effects to sediment recruitment, transport, or deposition. This regional condition applies to all NWP activities within tidal waters. Information regarding the location and movement of

¹ On 15 March 2024, the Northwestern Division revoked the use of the 2021 NWP 48, *Commercial Shellfish Mariculture Activities*, in Washington State.

drift cells is available at the Washington State Department of Ecology's Coastal Atlas Map website: <https://apps.ecology.wa.gov/coastalatlasmap>.

RGC C. No NWP activity can prevent the functioning of feeder bluffs or other necessary sediment supply sources in tidal waters. This regional condition applies to all NWP activities within the tidal waters of Puget Sound. Information regarding shoreline stability and coastal landforms, to include feeder bluffs, is available at the Washington State Department of Ecology's Coastal Atlas Map website: <https://apps.ecology.wa.gov/coastalatlasmap>.

On 25 April 2024, we published an additional public notice proposing additional supplemental regional general conditions:

RGC D. No NWP activity can cause more than minimal adverse effects to forage fish spawning beaches. This regional condition applies to all NWP activities within tidal waters. Information regarding the location of forage fish spawning beaches is available on the Washington Department of Fish and Wildlife's (WDFW) Forage Fish Spawning Map at: <https://wdfw.maps.arcgis.com/home/webmap/viewer.html?webmap=19b8f74e2d41470cbd80b1af8dedd6b3>

This map is a resource that can be used to help identify the location of forage fish spawning beaches; this is not a substitute for site-specific data. Information about forage fish, their spawning habitats, and spawning behavior are available through the WDFW. Additional information about the importance of these species as prey species for Endangered Species Act listed salmonids can be found on the National Marine Fisheries Service website.

RGC E: Bank stabilization activities, including maintenance activities, shall utilize living shorelines, vegetative stabilization, bioengineering, including but not limited to large woody material with intact root wads, and other soft bank stabilization approaches to the maximum practicable extent before considering hard bank stabilization methods such as bulkheads and rock revetments.

RGC F: To ensure compliance with General Condition 17, *Tribal Rights*, a pre-construction notification is required for all NWPs associated with structures or fills in areas where Tribes have retained via treaty the right to fish in their usual and accustomed grounds and stations.

RGC G. (applicable to NWP 3, Maintenance Activities) Maintenance of existing bank stabilization structures that expand the existing structure's footprint or dimensions either waterward, vertically, or linearly along the shoreline within the geographic jurisdiction of the U.S. Army Corps of Engineers are not eligible for NWP 3

Comments in Response to Public Notices:

RGC A:

Comment 1: Many commenters expressed support for RGC A on an interim basis pending future changes to RGC 3.

Response 1: We appreciate the support and acknowledge the desire for changes to RGC 3. NWD has sought public input on whether to propose a change to RGC 3 in future NWP reauthorizations.

Comment 2: Some commenters expressed concern that RGC A does not go far enough and support immediate changes to RGC 3 to restrict new shoreline stabilization all waters of the Puget Sound.

Response 2: We acknowledge the concern. While expansion of RGC 3 is not in the current proposal, we have been seeking input on whether to expand RGC 3 during future NWP reauthorizations.

Comment 3: A few commenters indicated that new Puget Sound shoreline stabilization permits should be “the hardest to get” or that they should all require individual permits. One commenter suggested that this should be the case due to the fact that all of Puget Sound is designated critical habitat for ESA-listed species and consists of the Tribes’ reserved treaty resources.

Response 3: We acknowledge the concern. However, the Corps is neither a proponent nor an opponent of a project. We must evaluate effects based on individual proposals and cannot make the process onerous for applicants based on the stated purpose of the project. Regardless of the permit type under consideration, the Corps must ensure compliance with ESA prior to reaching a permit decision. Upon review of an application, if a proposed activity may have an effect on ESA-listed species or critical habitat, the Corps initiates consultation with the appropriate resource agency. The Corps cannot make a permit decision until that process is complete. Most of these actions receive either a letter of concurrence or a biological opinion. If a jeopardy opinion is provided by the resource agency, the Corps would take appropriate action. Additionally, the Corps coordinates requests for permits with Tribes to inform us if a proposed activity may have an effect on reserved treaty rights.

Comment 4: A few commenters suggested that a cumulative adverse impact analysis should be incorporated into RGC A for individual authorizations under NWPs.

Response 4: Cumulative impact assessments are conducted during the 5-year NWP review cycle. The Corps analyzes cumulative impacts consistent with its implementing regulations and as explained in the Memorandum Between the Department of the Army (Civil Works) and the National Oceanic and Atmospheric Administration, dated January 5, 2022. NWS’s review of PCNs involving bank stabilization will be conducted in accordance with applicable statutes and regulations, and the most up to date data available at the time a decision is made.

Comment 5: Some commenters recommended modifying RGC A to remove the 50-foot threshold, (*i.e.*, expand RGC 3) as they do not believe that all these projects would have minimal effects.

Response 5: This recommendation was not adopted. The Corps conducted an in-depth review all authorizations (both NWP verifications and individual permits) that involved an element of bank stabilization in the past five years. There were a number of verifications under NWPs that involved at least some new bank stabilization. The Corps reviewed those verifications and concluded that the initial determinations that the activities would have no more than minimal adverse environmental effects, individually or cumulatively, were correct—indeed, a number of the reviewed verifications had a net beneficial effect. Based on this, the Corps determined that at least some future proposed projects of 50 linear feet or less might have no more than minimal adverse environmental effects, individually or cumulatively, and, after being reviewed pursuant to the PCN process, could be verified under an NWP

Comment 6: Washington’s Department of Ecology expressed support for RGC A’s filling a gap left by the existing RGC 3.

Response 6: We acknowledge the support from our Ecology partners.

Comment 7: Several commenters expressed concerns that RGC A could result in a significant expansion of new armoring under NWPs.

Response 7: RGC A is expected to reduce the amount of new bank stabilization that can be authorized with an NWP in tidal waters of the Salish Sea. Without RGC A, applicants could seek verification for up to projects involving up to 500 linear feet of new bank stabilization. Regulatory permitting data demonstrates that in the past five years, more bank stabilization has been authorized for removal than has been approved for placement. The State of the Sound reports also demonstrate that in the past several years bank stabilization has leveled off and in recent years has been decreasing.² Given this trend and the statutory requirement that activities authorized under NWPs result in no more than minimal adverse impact, we do not expect a measurable increase in new bank stabilization verified under an NWP.

Comment 8: Some commenters suggested striking the language in RGC A that addresses “new bank stabilization associated with maintenance activities that would expand previously authorized armoring length” to avoid confusion with RGC G.

Response 8: We do not believe this introduces confusion. RGC G precludes the use of NWP 3 to be used to authorize expansion of existing structures. Applicants can seek to use a different NWP to cover proposed expansions, but the other RGCs would be in effect.

² This data includes activities outside of the Corps’ jurisdiction.

Comment 9: Some commenters suggested that proposed RGC A would allow work up to 50' in length in the Water Resource Inventory Areas (WRIAs) that are currently restricted by RGC 3.

Response 9: RGC A does not replace or modify RGC 3. RGC 3 will remain in place and unchanged, thereby precluding new bank stabilization in the applicable WRIAs. RGC A will limit new bank stabilization activities to no more than 50 linear feet throughout the remainder of the Salish Sea.

Comment 10: NMFS expressed concern that RGC A would mean that shoreline armoring projects up to 50' in length would be allowed under NWP's at the discretion of the District Engineer (DE), including the opportunity to determine that some of these projects would qualify as "No Effect" on species and critical habitat listed under ESA, which would avoid a thorough environmental review, including ESA consultation from NMFS.

Response 10: This misstates the law. The obligation to engage in Section 7 consultation turns on the effects of the Corps' *action*, not the permit review pathway chosen by the Corps. See 16 U.S.C. 1536(a)(2); 50 C.F.R. 402.02 ("Action means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal Agencies in the United States or upon the high seas."). Regardless of the permitting pathway chosen, the ESA, including Section 7, applies with equal force. As discussed above, the Corps conducts a project-specific review of proposed projects when PCNs are submitted to ensure that the proposed project complies with all applicable environmental laws and regulations. Due to ESA-related conditions, applicants seeking to use an NWP for almost every activity within the Salish Sea must submit a PCN.

Comment 11: NMFS suggested that RGC A as proposed would likely diminish restoration efforts, prolong legacy effects of shoreline armoring and lead to incremental degradation by carrying those effects into the future.

Response 11: Neither RGC A nor RGC 3 address any "legacy" effects that might arise from ensuring that already constructed bank stabilization projects are maintained in serviceable condition. NWS retains discretion to elevate requests for verification under an NWP to the individual permit review process. Proposed projects that have more than minimal adverse environmental effects, individually or cumulatively, are not eligible for verification under an NWP. In general, applicants will not be able to circumvent this cumulative effect threshold requirement by proceeding incrementally. Going into the next and subsequent rounds of NWP's, NWD intends to keep a close eye on permitting trends involving new bank stabilization.

Comment 12: NMFS stated that RGC A is too broad of an exception.

Response 12: RGC A is not an exception. It would further constrain the use of NWP's to no more than 50 linear feet, whereas currently NWP's may be used to

authorize up to 500 linear feet of new bank stabilization. Based on historic permitting data, this would reduce the number of NWPs used to verify new bank stabilization activities in half. RGC A is not a carte blanche for projects that are 50 linear feet or less to proceed under an NWP. Proposed projects must still undergo a review to ensure that they have no more than individual adverse environmental effects, individually and cumulatively, and comply with all applicable laws and regulations.

Comment 13: NMFS stated that if the intent of RGC A is to allow restoration-type activities to proceed because of an expected overall net positive impact on the environment, then we suggest you make that requirement plain and only allow the exemption for restoration projects impacting less than 50 linear feet of bank.

Response 13: The intent is not to allow restoration-type activities to proceed because of their purpose or expected net impact on the environment. The Corps is neither a proponent nor an opponent of projects. We review activities based on the effects of the proposal on the aquatic environment and not on the project purpose. For this reason, the Corps is removing the language referencing NWP 54 from RGC A.

Comment 14: NMFS also suggested that the Corps should not verify bank stabilization projects under NWPs, regardless of length, indicating that "...we cannot envision a Puget Sound nearshore bank stabilization project where a no effect decision would be justified."

Response 14: By regulation, "[n]o activity is authorized by any NWP if that activity is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA) or destroy or adversely modify the critical habitat of such species." 33 CFR 330.4(f). However, that does not mean that under the Clean Water Act or Rivers and Harbors Act of 1899 only those projects that have no effect on listed or proposed species or designated critical habitat are eligible to be authorized under an NWP.

As discussed above, the ESA, including Section 7, applies with equal force regardless of the permitting pathway used. An ESA effect call is not, by itself, a barrier to verifying an activity under an NWP, provided the call remains below the threshold identified in 33 CFR 330.4(f).

Comment 15: Some commenters were concerned that draft RGC A would make allowances for maintenance activities.

Response 15: In light of these comments and a reevaluation of the available data, NWD developed RGC G to more clearly define maintenance activities.

Comment 16: One comment recommended that repair and replacement projects be carefully evaluated to determine if the need for repairs creates an opportunity to reduce or eliminate structures that are harmful to salmon.

Response 16: Department of the Army permits include a requirement that applicants maintain their authorized structures in good condition, and the regulations further have a presumption that landowners have a general right to protect property from erosion (33 CFR §320.4(g)(2)). RGC E, which applies to maintenance activities, would require applicants to utilize living shorelines, vegetative stabilization, bioengineering, including but not limited to large woody material with intact root wads, and other soft bank stabilization approaches to the maximum practicable extent before considering hard bank stabilization methods such as bulkheads and rock revetments.

Comment 17: Some commenters suggested that the Corps should incentivize and/or require softer bank stabilization approaches.

Response 17: In response to feedback on the initial set of three proposed RGCs, NWD developed an additional RGC to encourage the use of bioengineering to the maximum extent practicable. Specifically, RGC E requires consideration of the practicability of living shorelines and other bioengineering options prior to considering harder stabilization approaches.

Comment 18: Many commenters expressed concern about the effects of climate change and associated sea level rise potentially increasing the number and extent of shoreline armoring projects.

Response 18: The Corps acknowledges that current climate science predicts these events are likely to happen; however, the Regulatory Program is responsible for responding to requests for permits at the time that we receive them and cannot base decisions today on hypothetical permit applications in response to changing conditions in the future. The Corps will continue to evaluate applications for NWP verifications to determine if the proposed activities would have a more than minimal adverse environmental affect individually or cumulatively and will undertake Section 7 ESA consultation where proposed projects may affect listed species and/or critical habitat. During development of future NWP packages, NWD will continue to develop RGCs that will address regional specific concerns and ensure that the use of NWPs continue to result in no more than minimal adverse effects.

Comment 19: Several commenters expressed concerns about the nearshore habitat that is necessary for salmon recovery to include forage fish spawning beach protection.

Response 19: In response to feedback comments, NWD developed RGC D to address forage fish spawning habitat.

Comment 20: One commenter expressed support for the adoption of RGC A as an interim step until RGC 3 can be expanded to all tidal waters of Puget Sound. In addition, this commenter recommended removal of the language “including new bank stabilization associated with maintenance activities that would expand previously authorized armoring length,” to avoid undermining proposed RGC G.

Response 20: RGC A is adopted without the suggested changes in language. RGC G *Maintenance of Existing Bank Stabilization Structures and Fills* applies only to NWP's seeking authorization under NWP 3 for maintenance activities; if an applicant is proposing to expand the footprint of an existing structure under a different NWP, RGC A would apply.

Comment 21: Some commenters requested that RGC A incorporate language to the effect that: a cumulative adverse impacts analysis must be performed by the applicant to scientifically demonstrate that a shoreline stabilization structure permitted under RGC A will have less than minimal adverse impacts on the nearshore environment.

Response 21: NWD recognizes that many parties would like to see expansion of RGC 3. NWD did not adopt the proposed language to add a cumulative adverse impacts analysis to be performed by the applicant. The analysis of effects is required to be performed by the Corps and is not the burden of the public. The PCN allows the Corps to complete a site-specific and project-specific analysis of effects, both individually and cumulatively, in light of the environmental setting of each proposed activity.

Comment 22: One commenter requested confirmation that RGC A and RGC G would work in conjunction to prohibit the use of NWP 3 for maintenance activities that would expand an existing structure's footprint or dimensions in any way.

Response 22: RGC G explicitly prohibits the use of NWP 3 where an applicant is seeking to expand the footprint of a structure or fill within the Corps' geographic jurisdiction. However, applicants can seek expansion under other NWP's, in which case all other applicable RGCs, including RGC A would apply.

Comment 23: Several commenters objected to potential waiver provisions for RGC A. One commenter specified that no waiver should be authorized unless there is a detailed site-specific study that demonstrates the activity results in no net loss.

Response 23: No waiver provisions are included with any of the RGCs. It should be noted, however that the standard under section 404(e) of the Clean Water Act is not "no net loss," rather, it is that the activities authorized "will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment."

Comment 24: One commenter objected to the adoption of RGC A due to the belief that it would cause individual and cumulative adverse effects on important nearshore habitat for ESA-listed species, increase the risk of significant expansion in new armoring under NWP's and cause deleterious effects on ecosystems at the landscape scale.

Response 24: Based on the feedback received in response to the first special public notice, the Corps developed additional draft RGCs that address these concerns. Regarding the impacts to ESA-protected resources, regardless of the permit type under consideration, the Corps must ensure compliance with ESA prior to reaching a permit decision. Upon review of an application, if a proposed activity would have an effect on ESA-listed species or critical habitat, the Corps initiates consultation with the appropriate resource agency. The Corps cannot make a permit decision until that process is complete.

Comment 25: Some commenters stated that improving existing shoreline habitat condition is essential to ESA-listed salmon recovery and tribal reserved treaty rights.

Response 25: The Regulatory Program mission is not habitat restoration or recovery; the Regulatory Program is intended to balance protection of the aquatic environment while allowing reasonable use of this environment, including development. The Regulatory Program does not have the authority to issue authorizations that would abrogate treaty-reserved rights. The Corps must develop conditions that are aligned with our program authorities. Comments regarding protection of habitat or recovery of species should be provided the appropriate resources agencies.

Comment 26: A few commenters indicated concern over “expedited permitting” allowing for the construction of dikes and fill along the shoreline, reducing habitat. The commenter states this is contrary to the Corps’ federal trust responsibility.

Response 26: The Corps evaluates a proposed activity’s effects on the aquatic environment. The PCN allows the Corps to review proposed bank stabilization activities, including maintenance activities, in light of the project’s effects on the aquatic environment and to complete any necessary environmental reviews which may include ESA Section 7 consultation. The Corps also coordinates these proposed actions with Tribes to ensure that if there are concerns for impacts to a Tribe’s treaty reserved rights, we have opportunity to engage with the Tribe on those impacts and make an informed decision.

Comment 27: A few commenters expressed concerns about how sea level rise is particularly concerning to parcels that are older and low-lying. Residents are raising the height of existing armoring in response to sea level rise. Other commenters had concerns about modifications to buildings, roads, and other structures, which also affects the ecosystem of the Puget Sound.

Response 27: The limit of the Corps geographic jurisdiction is the high tide line; where applicants perform work above the high tide line, the Corps does not have regulatory authority.

Comment 28: A few commenters expressed concern about how RGC A would apply for activities seeking an NWP 3 verification, including where applicants taper the

ends of the maintenance activity with new bank stabilization that expands the footprint of the structure by less than 50 linear feet, and often include ‘soft armor’ approaches.

Response 28: In response to these and other similar concerns, the NWD developed RGC G, and RGC E, to make clear what activities constitute maintenance activities, and to ensure applicants consider bioengineering designs for all bank stabilization activities, including maintenance.

Comment 29: One commenter suggested that, as a federal trustee, the Corps must consider preservation of all remaining nearshore habitat within our jurisdiction to be part of our trust responsibilities.

Response 29: The Corps takes our trust responsibilities seriously, and engagement with the Tribes on this effort is evidence of our commitment to these responsibilities. We continue to coordinate on proposed actions, not just bank stabilization proposals, with the Tribes to ensure that proposed projects will not abrogate reserved treaty rights and with the resource agencies to ensure that proposed projects would comply with the ESA.

Comment 30 The tribe expresses concerns that although shoreline modification may occur on the site scale, the cumulative impacts can affect entire ecosystems on the landscape scale. Shoreline modification can cause fragmentation of the landscape that disrupts connectivity and reduces the productivity and biological diversity of Puget Sound nearshore.

Response 30: The Corps acknowledges this concern. When reviewing PCNs, the Corps reviews the proposed project to make sure that the cumulative adverse environmental effects are no more than minimal. The Corps also obtains Clean Water Act section 401 water quality certifications from the applicable certifying authority, complies with the Coastal Zone Management Act, consults, where applicable, with the resource agencies under the ESA, and complies with other applicable statutory and regulatory requirements.

Comment 31: One commenter expressed confusion over proposed RGCs A, B, and C. The commenter was unclear whether the Corps was eliminating RGC 3 and replacing it with the proposed RGCs or retaining RGC 3 as-is for WRIAs 8-12 and adding the proposed RGCs for WRIAs 1-3, 5-7, and 13-19.

Response 31: The draft RGCs are in no way intended to replace, alter, or supplant existing RGC 3. Through multiple engagements the Corps has made it clear that RGC 3 remains intact and unchanged and the draft RGCs (except for RGC G) were intended to apply to all NWP within the Salish Sea (and some of the RGCs apply to all of Washington State).

Comment 32: One commenter requested information as to how the Corps arrived at the 50 linear foot limitation for the draft RGC A

Response 32: The Corps conducted an in-depth review all authorizations (both NWP verifications and individual permits) that involved an element of bank stabilization in the past five years. There were a number of verifications under NWPs that involved at least some new bank stabilization. The Corps reviewed those verifications and concluded that the initial determinations that the activities would have no more than minimal adverse environmental effects, individually or cumulatively, were correct—indeed, a number of the reviewed verifications had a net beneficial effect. When reviewing the data, it was apparent that there was a significant cluster of verified projects that were 50 linear feet or less. The remaining projects that were authorized were of varying lengths longer than 50 linear feet. Based on this, the Corps determined that at least some future proposed projects of 50 linear feet or less might have no more than minimal adverse environmental effects, individually or cumulatively, and, after being reviewed pursuant to the PCN process, could be verified under an NWP.

Comment 33: One commenter requested that PCNs be required for all new bank stabilization activities and that they would require more information to ensure that RGCs B and C are adhered to.

Response 33: In response to comments and feedback from stakeholders, the Corps developed additional RGCs, including RGC F. RGC F requires applicants to submit PCNs if a project is located in an area in which Tribes may have treaty-reserved rights to fish. While the Corps did not change the information requirements for a complete PCN, the Corps can request additional information from the applicant, if necessary, to ensure that projects evaluated under an NWP continue to have no more than minimal individual and cumulative adverse environmental effects.

Comment 34: One commenter requested clear information on the definition of “tidal waters of Puget Sound”. Specifically, the commenter asked if this refers to only sites immediately adjacent to the permanent saltwater shoreline or whether the definition includes sites upstream that are tidally influenced? Clarification would be necessary to understand how to apply these RGCs.

Response 34: The intent was for this RGC to apply to those waters immediately adjacent to the permanent saltwater shoreline. The Corps received several comments indicating that when the term Puget Sound was used, it wasn’t clear to some whether that included Hood Canal, the Strait of Juan de Fuca and/or the Strait of Georgia. To ensure clarity, the Corps will use the term Salish Sea in RGCs A–D.

Comment 35: One commenter suggested a revision to the draft RGC A language to state that RGC A would not apply if the proposed bank stabilization will result in less than 500 feet of non-stabilized shoreline (unless a soft shoreline whose slope is within 10% of the expected natural shoreline) between areas of non-soft bank stabilization.

Response 35: This language was not adopted. However, the Corps reviewed and considered this language in development of RGC E.

RGC B:

Comment 1: A few commenters were unclear on what criteria the Corps uses to determine when an activity causes “no more than minimal adverse effect” or will “prevent the functioning of” a sediment supply source. NMFS suggests that the Corps state that only restoration activities could reach a minimal adverse effect determination.

Response 1: The no more than minimal adverse environmental effect standard comes from the language of subsection 404(e)(1) of the Clean Water Act. The Corps relies on the best available information to help inform decisions regarding effects on the aquatic resources, including information made available by state and federal agencies. The Corps performs case-specific analysis informed by site-specific information, including the environmental setting, and direct and indirect effects of the proposed action.

Comment 2: Some commenters commented that RGC B is vague, and that the language puts the burden to analyze effects on the Northwest Indian Fisheries Commission (NWIFC) member tribes.

Response 2: The Corps is responsible for the analysis of a proposed project’s effects on the aquatic environment. For activities seeking an NWP verification, if the Corps reaches a favorable decision, that decision includes a Memorandum for Record documenting alignment with the HQUSACE decision documents and NWD supplemental documents, as well as project-specific direct and indirect effects.

Comment 3: A few commenters suggested that the Corps develop a clear, scientifically based definition of what constitutes “minimal adverse effects” to assist applicants and interested parties in evaluating whether proposed projects adhere to this threshold.

Response 3: The no more than minimal adverse environmental effect standard comes from the language of subsection 404(e)(1) of the Clean Water Act. Establishing a regulatory definition of this term is beyond the scope of this effort and would be more appropriately addressed at the national level. The Corps will continue to train staff on information to consider in this analysis to support decisions. Where proposed projects do not meet the RGCs, they must be evaluated as individual permits.

Comment 4: A few commenters proposed a change to the language in the draft RGC B to read “NWP3 cannot be used in the area of a drift cell, and only in locations where the WA Department of Ecology Coastal Atlas or best available science indicate No Appreciable Drift.”

Response 4: This language is not adopted. RGC B applies to all NWPs,

including NWP 3. Constraining RGC B to just NWP 3 would not achieve the intended outcomes. If Tribes, state agencies, or other entities provide evidence of the occurrence of a drift cell within a proposed project location, the Corps would consider that information. Currently, RGC B applies to all potential NWP activities and is not intended to specifically prohibit the use of maintenance activities (NWP 3) within drift cells. As mentioned in previous responses to comments, applicants are generally considered to have a right to maintain previously authorized structures and maintenance activities typically do not introduce new impacts to these resources. The incorporation of RGC G would prohibit the expansion of existing structures and fills under an NWP 3.

Comment 5: Several commenters expressed support for RGC B and RGC C, with the inclusion of language requiring applicant to provide ecological site information.

Response 5: NWD did not adopt the proposed language to add a requirement for additional ecological analysis to be performed by the applicant. The analysis of effects is required to be performed by the Corps and is not the burden of the public. The PCN allows the Corps to complete a site-specific and project-specific analysis of effects, both individually and cumulatively, in light of the environmental setting of each proposed activity.

Comment 6: One commenter recommended making RGC B more explicit as to the geography of where the maintenance provisions of NWPs can be applied, specifically related to shoreline types.

Response 6: RGC B is not specific to maintenance activities, but to all projects that would be located within drift cells seeking verification under any NWP.

Comment 7: One commenter requested that RGCs B and C be applied to all NWPs.

Response 7: These RGCs apply to all NWPs within the designated geographic areas.

Comment 8: Regarding RGCs B and C, the Washington State Department of Transportation (WSDOT) requests very clear guidance on the documentation the Corps would require showing that the effects to drift cells are no more than minimal or that the functioning of feeder bluffs and other sediment supply sources is not prevented. WSDOT requests that specific information about the best available science and the process for determining effects be provided to assist permit applicants.

Response 8: As outlined in the RGC, the Department of Ecology has publicly available data sets that can be used to assist in determining whether drift cells or feeder bluffs would be impacted by a proposed project. The requirement that projects have no more than minimal adverse environmental impacts stems from the language of Clean Water Act section 404(e). Even without RGCs B–D, projects would be ineligible for verification under an NWPs if they had more than a minimal adverse environmental

effect—including on drift cells, feeder bluffs, and forage fish spawning beaches. These RGCs serve to identify specific potential impacts that applicants should be particularly mindful that the Corps has already been considering when reviewing PCNs.

Comment 9: One commenter suggested that the proposed RGC B be reworded to “No NWP activity can cause a Net Loss of drift cell functions, including sediment recruitment, transport, or deposition.” The applicant needs to demonstrate no changes in shoreline substrate composition, slope, and transport rates. The commenter also suggested a requirement that the notification to the Corps include a map of particle size distribution and bed elevation throughout the activity areas; and one year after completion of the work another map showing particle size distribution and bed elevation. The Corps should review the issue of shoreline stabilization upon shoreline form and function and include other parameters that applicants should provide in the application. If the applicant is unable to demonstrate No Net Loss, then it should be an Individual Permit, not an NWP.

Response 9: The Corps has not added the recommended language. “No net loss” is not the relevant standard. The relevant standard under the Corps’ regulatory authorities is no more than minimal adverse environmental impact, individually or cumulatively. The level of detail needed to verify whether a project meets the terms and conditions of an NWP is based on the project-specific impacts in the area where the impact is proposed to occur. If required to verify that a project submitted through PCN would result in no more than minimal adverse environmental effects, the district engineer can require evaluations or reports such as those described.

Comment 10: One commenter stated that unless the standard is No Net Loss, there is the potential for more than minimal, individually, and cumulatively adverse environmental effects to occur as minimal adverse effects or even de minimis effects are impacts that result in net loss.

Response 10: The Corps acknowledges that projects authorized under NWP will result in impacts, however the standard of review is not “no net loss”. The terms and conditions of the NWPs help ensure the impacts are no more than minimal individually and cumulatively. Section 404(e) of the Clean Water Act allows the issuance of general permits for any category of activity similar in nature resulting in no more than minimal individual and cumulative adverse environmental effects.

RGC C:

Comment 1: A few commenters proposed a change to draft RGC C to include the language “RGC C can only be used where the Ecology’s Coastal Atlas or best available science indicate the coastal landforms proposed for the permit action, or adjacent to the property proposed for the permit action, are not feeder bluffs.”

Response 1: The language for draft RGC C is not adopted. The Corps will retain the ability to evaluate a proposed project’s effects on the aquatic environment in a case

specific analysis rather than effecting a blanket prohibition on activities located in drift cells. This blanket prohibition would result in eliminating projects that may have no adverse effects or positive effects on these functions.

Comment 2: Several commenters expressed general support for the adoption of RGC D.

Response 2: We are adopting the substance of RGC C as proposed. RGCs B–D were combined into a single RGC called “Effects to Forage Fish Spawning Beaches, Drift Cells, and Feeder Bluffs.” The purpose for merging these three draft RGCs into a single RGC was to ensure that the public understands the importance of these resources not just individually but collectively to the overall functioning of the intertidal area of the Salish Sea.

Comment 3: One commenter stated that the draft RGC C should be reworded to: “No NWP activity can result in a Net Loss of sediment supply sources in tidal waters. This regional condition applies to all NWP activities within the tidal waters of Puget Sound.”

Response 3: This recommended language is not adopted. “No net loss” is not the relevant standard. The relevant standard under the Corps’ regulatory authorities is no more than minimal adverse environmental impact, individually or cumulatively. Impacts from NWPs can only be approved if it is determined they would result in no more than minimal adverse environmental effects, individually or cumulatively. Through PCNs this requirement is evaluated on a case-by-case basis.

Comment 4: One commenter noted that observations by tribal staff indicate stabilization, even soft shore stabilization, tends to cut off feeder bluffs. This is an impact. “Prevent the functioning” could be interpreted meaning that a reduction in sediment supply is acceptable as long as there is still some supply.” The introduction to the proposed Regional General Conditions notes “adding up to three additional Regional General Conditions (RGCs) that would apply to the use of NWPs within all tidal waters of Puget Sound.” There is a difference between “sediment supply sources in tidal waters” and “sediment supply sources to tidal waters”. If the intent is for the RGC to only apply to feeding bluffs or sediment supply sources that are directly tidally influenced through submergence or wave or tidal action, then the RGC is too narrow. Upland activities also influence sediment supply to tidal waters. This RGC should apply to an NWP issued from the top of the bluff to tidal waters and to areas landward of the top of bluff that could alter the sediment supply to tidal waters.

Response 4: The Corps has determined that softer approaches tend to allow more environmental function than hard armoring such as rock slopes and vertical bulkheads and are therefore generally considered to be less environmentally impactful. This RGC is focused on the effects of the proposed action, not the type of stabilization used. The Corps has determined that an activity that prevents the functioning of a feeder bluff in the Salish Sea would have more than a minimal adverse impact and

would thus not be eligible for verification under an NWP. Depending on the specifics of a proposed project it may be possible that there may be some level of impairment to the functioning of a feeder bluff that does not have more than a minimal adverse environmental impact. If that is the case, the proposed project may, after going through a case-specific review, be eligible to be verified under an NWP if the project would comply with all the terms and conditions of the applicable NWP.

The Corps' Regulatory authority is limited under the Rivers and Harbors Act of 1899 and the Clean Water Act, to waters of the U.S., and does not extend to the upland areas described.

RGC D:

Comment 1: Several commenters expressed general support for the adoption of RGC D.

Response 1: We are adopting the substance of RGC D as proposed. RGCs B–D were combined into a single RGC called “Effects to Forage Fish Spawning Beaches, Drift Cells, and Feeder Bluffs.” The purpose for merging these three draft RGCs into a single RGC was to ensure that the public understands the importance of these resources not just individually but collectively to the overall functioning of the intertidal area of the Salish Sea.

Comment 2: A few commenters stated that “Protecting forage fish spawning as well as more of the beach will result in better protection for salmon and shellfish, and the entire Puget Sound ecosystem.”

Response 2: It is not clear what definition is used in this context for “beach”; however, the Regulatory Program’s threshold for the evaluation of proposed projects is not ‘protection of’ resources. The Corps must develop conditions that are aligned with our program authorities. Comments regarding the protection of habitat or recovery of species should be provided to the appropriate resource agencies.

Comment 3: A few commenters requested definitions and/or examples of what constitutes “adverse effects” for forage fish habitat. This commenter further requested that the following language to be added to the draft RGC D: “Sites lacking up-to-date assessment of ecological condition and impacts to forage fish spawning beaches cannot be completed with the use of an NWP. All PCNs shall demonstrate the proposed project’s compliance with this condition. Such demonstration shall be completed by a qualified professional.”

Response 3: RGC D would be applicable to all NWP activities located within forage fish spawning beaches. Due to the intended broad activity and geographic scope of this RGC, a specific definition would be difficult to develop. The Corps will continue to train Regulatory Project Managers to ensure understanding of these resources. The receipt of PCNs would allow project managers to perform case-specific analysis of proposed projects in light of environmental setting. The Corps did not adopt the

proposed language as there is no standard for what constitutes a “qualified professional” and the analysis for compliance with the condition as well as analysis of the effects is the responsibility of the Corps.

Comment 4: One commenter expressed support for this condition but was unclear on how it would be implemented. Specifically, the commenter wanted to know what information is expected from an applicant to demonstrate minimal adverse effects to fish spawning beaches. Another commenter requested clarification that this RGC only applies to mapped spawning beaches.

Response 4: As outlined in the RGC, the Washington Department of Fish and Wildlife and Department of Ecology have publicly available data sets that can be used to assist in determining whether forage fish spawning beaches may be impacted by a proposed project. Depending on the nature of the proposed project, performing work during certain times of the year may help ensure that any adverse effects remain below the required threshold.

Comment 5: One commenter stated that unless there is a site-specific study that looks at habitat use at the proposed activity site, particularly that by forage fish and juvenile salmonids, and compares it to use at the adjacent stabilized sites, then it would be very difficult for the Corps to determine if the proposed activity had no more than minimal adverse effects, individually, and cumulatively, let alone No Net Loss. The site-specific study (not a literature review of habitat use) should, at a minimum, compare predator types, density, and sizes as well as juvenile salmonid size, densities and apparent use (such as the speed which they move through the area and the action undertaking such as feeding or moving through the area) vs moving through) between the proposed activity area and the adjacent stabilized shoreline. Unless that study shows no statistical differences between the parameters, the NWP should not be issued. This concept is simply extending the typical forage fish and eelgrass surveys to include juvenile salmonids.

Response 5: The Corps did not modify the proposed language to include a requirement for a specific level of analysis to this condition as recommended. In most cases, whether the level of detail needed to verify a project meets the terms and conditions of an NWP is based on the project-specific impacts in the area where the impact is proposed to occur. Where required for compliance with the terms and conditions of the NWP, including these new RGCs, site specific information may be necessary to evaluate impacts of the proposed activity at the project location. The district engineer can require additional information needed to make their determination on a case-by-case basis, and frequently must ask for additional information from applicants before verifying the NWP.

Comment 6: One commenter stated that the proposed wording “No NWP activity can cause more than minimal adverse effects to forage fish spawning beaches. This regional condition applies to all NWP activities within tidal waters” is too vague.

Response 6: For projects subject to PCN the Corps will perform case-specific analyses and can add special conditions, where appropriate, to NWP verifications to ensure compliance with this condition. Further, all NWPs are subject to compliance with the ESA, and for projects that may affect listed species or critical habitat, the Corps will consult with NMFS and USFWS.

Comment 7: One commenter stated that even if the activity occurs outside of the spawning season, various consultant reports underestimate impacts to the habitat due to an optimistic view of proposed mitigation measures.

Response 7: The Corps does not rely exclusively on the information provided by consultants, and relies on experience, best available science, and site-specific investigation when needed. The Corps also consults with multiple agencies during our review process to evaluate impacts, including the NMFS and USFWS for impacts to endangered species and Essential Fish Habitat.

Comment 8: One commenter stated that given the uncertainty of mitigation, the protection of the resource mandates that, during consideration of whether a proposal complies with the requirements of an NWP and associated RGCs, weighing dueling reports or literature citations about impacts or the efficacy of the proposed mitigation measures, USACE should simply state that no NWP will authorize in-water or overwater work in marine waters that is in, or within 500 feet of, mapped forage fish spawning beaches, or areas that have suitable habitat but are not currently mapped as forage fish spawning beaches.

Response 8: This recommendation is not incorporated into the RGC. Before consideration of compensatory mitigation, the Corps reviews avoidance and minimization to impacts, which includes implementing Best Management Practices for construction, or limiting construction to only occur during times where no spawning is actively occurring. Compensatory mitigation of NWP authorized activities can be required by the district engineer after he or she reviews the PCN and determines compensatory mitigation is necessary to comply with the “no more than minimal adverse environmental effects” requirement for NWPs (see 33 CFR 330.1(e)(3)).

RGC E:

Comment 1: Several commenters expressed general support for the adoption of RGC E.

Response 1: We are adopting RGC E as proposed.

Comment 2: One commenter suggested applicants should be required to provide “demonstration of need” with an explanation as to why deviation from bioengineering or living shoreline design is not feasible for a site.

Response 2: Corps regulations have the presumption of need if an applicant applies for a Department of the Army permit. The applicant will be responsible, per the existing language, to demonstrate how they considered bioengineering in the project design and why it may not be feasible at a given site.

Comment 3: One commenter requested information on what an applicant would need to provide to demonstrate that softer alternatives are inadequate (or impracticable) before hard armoring approaches are considered.

Response 3: The RGC does not set forth any specific information requirements. The information necessary to demonstrate that softer alternatives are impracticable will vary based on the specific proposed activity. At the end of the process, the Corps needs to make a determination that softer alternatives are impracticable. To reach that determination, the Corps may need to request additional information from the applicant.

Comment 4: A few commenters stated support for the Corps in “utilizing its authority to require hard armor to be replaced with more natural, "softer" approaches to bank stabilization that maximize habitat function, while addressing stabilization at the site.”

Response 4: RGC E does not require replacement of existing hard shoreline armoring. It requires that the practicability of utilizing softer options be considered before proposing hard armoring.

Comment 5: One commenter noted that these material restrictions may require work outside the original footprint of the project, which could trigger RGC G if it is adopted. Additionally, if the additional footprint is considered new bank stabilization, it could trigger RGC 3 and require an individual permit in WRIAs 8 through 12.

Response 5: What is practicable is highly context dependent. What may be practicable for a new project may not be practicable for maintenance of an existing structure, especially in a highly developed area.

Comment 6: To protect public infrastructure, WSDOT requests a waiver for imminent threat projects to implement a phased approach, where a temporary hard repair to stabilize active slope movement is allowed, followed by a soft repair permanently installed as soon as funding, engineering, permitting, and contracting can all be completed, and construction scheduled during the in-water work window.

Response 6: No waivers have been incorporated into the RGCs. We recognize the concern and encourage WSDOT to engage with Seattle District at the earliest possible time to address urgent projects. For situations where an unacceptable hazard to life, property, or significant economic hardship would occur, abbreviated emergency permit procedures are available.

Comment 7: One commenter stated that the proposed wording will continue to

allow hard bank stabilization to occur under the NWP.

Response 7: This language is not intended to exclude any hard armoring but will direct applicants to consider the practicability of softer shoreline stabilization options before proposing hard armoring.

RGC F:

Comment 1: Several commenters expressed general support for the adoption of RGC F.

Response 1: We are adopting RGC F as proposed.

Comment 2: One commenter stated that RGC F should rely on the case area for *United States v. Washington*, 384 F. Supp. 312, 328 (W.D. Wash. 1974).

Response 2: NWD appreciates the feedback that was provided in response to its specific request on this topic. NWD has decided to not define the geographic applicability of this RGC. The Corps' obligation to uphold treaty rights in Washington State, the area covered by this decision, extends to areas not included in the case area for *U.S. v. Washington*. If an applicant is not sure whether they need to submit a PCN in response to this RGC, they should first check to see if they trigger any other PCN requirements, e.g., GC 18, *Endangered Species*. In many cases, areas designated as critical habitat under the ESA will overlap with areas in which Tribes may have off-reservation, treaty-reserved rights. If they do not trigger any other PCN requirements and are still unsure about this RGC, they may contact the NWS Regulatory Program for assistance.

Comment 3: One commenter expressed support for the proposed RGC F and recommended that a PCN be required for all NWPs proposing structures or fill in water.

Response 3: Due to the extensive presence of ESA-listed species, as well as tribal treaty rights, cultural resources, and other PCN-triggering general conditions, nearly all NWPs affecting tidal waters in Washington State already require a PCN.

Comment 4: One commenter expressed concern that the wording of RGC F is written too generally and could result in a PCN requirement even for projects with no impacts to treaty resources. The commenter recommended that the language be refined so that it only applies to projects that could potentially impact treaty resources.

Response 4: The Corps expects, given already existing PCN requirements, that this condition will result in no more than a handful of additional PCNs submitted per year. If an applicant is uncertain about whether their proposed project may trigger this RGC's PCN requirement, they may contact the NWS Regulatory Program for assistance.

Comment 5: One commenter suggested inclusion of a map showing all the basins covered by the treaties, such as the entirety of the Puget Sound, its marine waters and associated fresh waters.

Response 5: While we do not have a graphic representation of the treaty areas as suggested, we have modified the PCN requirements for this RGC.

RGC G:

Comment 1: Some commenters supported the adoption of RGC G, with a request that it be strengthened to exclude any NWP from being verified to allow for expansion.

Response 1: The Corps is not adopting the suggested modification. RGC G is adopted as proposed. It precludes the use of NWP 3 to be used to expand existing structures. Applicants can seek to use a different NWP to cover proposed expansions, but all other applicable RGCs would remain in effect and apply to that proposed project.

Comment 2: One commenter stated support for RGC G and believes that it is an essential counterpart to the expansion of RGC 3 to all tidal waters of Puget Sound.

Response 2: We appreciate the support and acknowledge the desire for changes to RGC 3. NWD has sought public input on whether to propose a change to RGC 3 in future NWP reauthorizations.

Comment 3: One commenter noted that there are other activities with similar impacts to those caused by the maintenance of bank stabilization projects during the expansion of an “existing structure’s footprint or dimensions either waterward, vertically, or linearly along the shoreline within the geographic jurisdiction of the U.S. Army Corps of Engineers”. For example, NWP 7 Outfall Structures and Associated Intake Structures; NWP 13 Bank Stabilization; and NWP 43 Stormwater Management Facilities.

Response 3: For the proposed RGCs, we requested comments specifically on the impacts of new armoring in tidal waters of Puget Sound. The finalized RGCs (except G) are applicable to all NWPs within the Salish Sea. Several of the RGCs apply to all of Washington State.

GENERAL COMMENTS:

Comment 1: One commenter requested that NWD undertake a reinterpretation of our geographic jurisdiction in part to mitigate for the impacts of sea level rise and our tribal trust responsibilities. Specifically, they requested that NWD revisit using Highest Astronomical Tide as the limit of our geographic jurisdiction.

Response 1: The definition of waters of the U.S. and the geographic and activity

jurisdictions are established by the Clean Water Act, the Rivers and Harbors Act, and our implementing regulations. NWD has no authority to change the lateral limits of geographic jurisdiction. These comments and concerns are more appropriately provided to HQUSACE and EPA.

Comment 2: One commenter provided comments in support of expanding RGC 3 to all tidal waters of Puget Sound with an exception for NWP 27, Aquatic Habitat Restoration, Enhancement, and Establishment Activities, which sometimes includes new bank stabilization in larger restoration activities.

Response 2: The Corps is not proposing expansion of RGC 3 at this time but acknowledges the commenter's concern that there is a need to ensure that RGCs are not drafted in a way that results in unintended consequences such as increasing administrative burdens to process applications for projects that clearly meet the requirements to be considered for verification under an NWP. The Corps looks forward to ongoing engagement with the other agencies, the public, and Tribes on future NWP efforts.

Comment 3: A few commenters stated that there is continued expansion of freshwater and marine shoreline armoring that isolates aquatic habitat from natural processes that create and maintain that habitat.

Response 3: This narrow, off-cycle effort was specifically focused on the tidal waters of the Salish Sea. Therefore, NWD focused its review on those areas when developing the additional RGCs. The data showed that within tidal waters of the Salish Sea over the past five years, more bank stabilization has been authorized for removal than has been authorized for placement. The recent State of the Sound report published data that supports these findings. Because all NWPs must be reviewed at least every five years, the Corps will need to begin the review process for the 2021 NWPs in the relatively near future. If this remains a concern, submitting comments of this nature to the Corps during the next round of NWP review is an option.

Comment 4: One commenter requested that the Corps further consider cumulative impacts from bank stabilization maintenance activities. The commenter believes these activities are cumulatively resulting in more than minimal adverse effects. This commenter further states that more shoreline armoring was added to Puget Sound through new construction and maintenance than was removed during the years 2011 and 2022.

Response 4: Cumulative impact assessments are conducted nationally during the 5-year renewal cycle of the NWPs. Regulatory permitting data demonstrates that in the past five years, more bank stabilization has been authorized for removal than has been approved for placement. The State of the Sound reports also demonstrated that in the past several years bank stabilization has leveled off and in recent years has been

decreasing.³

Comment 5: Acknowledging that the NWP pathway is faster, the EPA believes it provides fewer opportunities for input from tribes, NGOs, other federal agencies, and the public.

Response 5: Opportunities for input regarding NWPs occur during the renewal cycle every five years. Further, because nearly all NWP activities in the Salish Sea require a PCN notification, opportunities also exist on a case-by-case basis through project coordination on issues such as ESA and tribal trust responsibilities.

Comment 6: One commenter was concerned that addition of seven new RGCs could create some confusion among the regulated public.

Response 6: We recognized this concern during our review and have combined RGCs B–D in an effort to both alleviate some of the confusion and to ensure that the public understands the importance of these resources not just individually but collectively to the overall functioning of the intertidal area of the Salish Sea.

Comment 7: A few commenters stated that the Corps has not provided a rationale for treating a handful of watersheds (WRIAs) with heightened permitting requirements but allowing fast-tracked NWPs in the majority of Puget Sound watersheds.

Response 7: The rationale for why new bank stabilization is not authorized by NWPs in specific WRIAs is located in the supplemental documents for NWPs in Washington State.

Comment 8: One commenter stated that the Multi-Agency Review Team (MART) is a team of federal and state regulatory staff working together to streamline permitting for habitat recovery projects by facilitating the federal permitting process in coordination with state and local permits. It operates as a work group of the Puget Sound Federal Leadership Task Force (of which U.S. Army Corps of Engineers, Seattle District is a co-chair) for collaborative coordination on permitting processes for ecologically beneficial projects. We note and appreciate the Army Corps' active participation and leadership on the MART and see strong possible alignment between those efforts and these RGCs. However, as with any new proposal that impacts federal permitting, we urge the Seattle District to ensure that the proposed RGCs do not inadvertently undermine the good work being done within the MART to streamline permitting for habitat recovery projects.

Response 8: The Seattle District appreciates the support, and remains committed to its work on the MART.

³ This data includes activities outside of the Corps' jurisdiction.

Comment 9: The WSDOT requested that RGCs A through C be modified to include a waiver for projects with developing imminent erosion threats to public infrastructure where the longer permitting timeline of an individual permit would delay urgently needed repairs and potentially result in more unplanned emergency erosion control projects. For example, delayed coastal highway repair projects can increase risk to the highway infrastructure and public safety and cause negative impacts to water quality. Planned projects are more able to incorporate native plants and wood and can schedule construction during in-water work windows. Or the erosion of sediment from an adjacent feeder bluff may be undermining the stability of an existing ferry terminal structure. An erosion control project to protect a ferry terminal may not have adequate lead time necessary to apply for an individual permit.

Response 9: No waiver provision has been included with the RGCs. We recognize the concern and encourage WSDOT to engage with Seattle District at the earliest possible time when situations such as the examples provided occur. For situations where an unacceptable hazard to life, property, or significant economic hardship would occur, abbreviated emergency permit procedures are available. If this is a frequent issue, a regional general permit issued by Seattle District may be an appropriate approach.”

Inserting after section 6.1, the following:

“6.1.1 Supplemental Consultation Summary

On June 20, 2023, the NWD Commander sent letters to Tribes in Washington State and the Northwest Indian Fisheries Commission (NWIFC) informing them of his decision to not propose expanding RGC 3 and instead propose RGCs A–C. Numerous Tribes provided letters responding to the June 2023 SPN. On October 12, 2023, NWD and NWS held a government-to-government consultation with the Swinomish Indian Tribal Community and staff-level coordination meetings with the Swinomish Indian Tribal Community on September 29, 2023, and March 5, 2024. NWD held staff-level coordination meetings with the member Tribes of NWIFC on November 28, 2023, February 16, 2024, and March 7, 2024. On May 2, 2024, the NWD Commander sent letters to the Tribes notifying them of the second SPN proposing RGCs D–G. NWD received additional comments from a number of Tribes in response to the second SPN.”

Deleting Section 9.1 and inserting in its place:

“9.1 Regional General Conditions

Note: The numerals for the final RGCs may be different than the numerals or letters listed in the above discussion.

RGC 1, Project Drawings

Drawings must be submitted with a pre-construction notification (PCN). Drawings must provide a clear understanding of the proposed project, and how waters of the United States will be affected. Drawings must be originals and not reduced copies of large-scale plans. Engineering drawings are not required. Existing and proposed site conditions (manmade and landscape features) must be drawn to scale.

RGC 2, Aquatic Resources Requiring Special Protection

A PCN is required for activities resulting in a loss of waters of the United States in wetlands in dunal systems along the Washington coast, mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, and wetlands in coastal lagoons.

RGC 3, New Bank Stabilization in Tidal Waters of Puget Sound

Activities involving new bank stabilization in tidal waters in Water Resource Inventory Areas (WRIAs) 8, 9, 10, 11, and 12 (within the areas identified on Figures 1a through 1e) cannot be authorized by NWP.

RGC 4, Commencement Bay

No permanent losses of wetlands or mudflats within the Commencement Bay Study Area may be authorized by any NWP (see Figure 2).

RGC 5, Bank Stabilization

All projects including new or maintenance bank stabilization activities in waters of the United States where salmonid species are present or could be present, requires PCN to the U.S. Army Corps of Engineers (Corps) (see NWP general condition 32).

For new bank stabilization projects only, the following must be submitted to the Corps:

- a. The cause of the erosion and the distance of any existing structures from the area(s) being stabilized.
- b. The type and length of existing bank stabilization within 300 feet of the proposed project.
- c. A description of current conditions and expected post-project conditions in the waterbody.
- d. A statement describing how the project incorporates elements avoiding and minimizing adverse environmental effects to the aquatic environment and nearshore riparian area, including vegetation impacts in the waterbody.

In addition to a. through d., the results from any relevant geotechnical investigations can

be submitted with the PCN if it describes current or expected conditions in the waterbody.

RGC 6, Crossings of Waters of the United States

Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the U.S. Army Corps of Engineers (see NWP general condition 32).

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, the project must apply the stream simulation design method from the Washington Department of Fish and Wildlife located in the *Water Crossing Design Guidelines* (2013), or a design method which provides passage at all life stages at all flows where the salmonid species would naturally seek passage. If the stream simulation design method is not applied for a culvert where salmonid species are present or could be present, the applicant must provide a rationale in the PCN sufficient to establish one of the following:

- a. The existence of extraordinary site conditions.
- b. How the proposed design will provide equivalent or better fish passage and fisheries habitat benefits than the stream simulation design method.

Culverts installed under emergency authorization that do not meet the above design criteria will be required to meet the above design criteria to receive an after-the-fact nationwide permit verification.

RGC 7, Stream Loss

A PCN is required for all activities that result in the loss of any linear feet of streams.

RGC 8, Construction Boundaries

Permittees must clearly mark all construction area boundaries within waters of the United States before beginning work on projects that involve grading or placement of fill. Boundary markers and/or construction fencing must be maintained and clearly visible for the duration of construction. Permittees should avoid and minimize removal of native vegetation (including submerged aquatic vegetation) to the maximum extent possible.

RGC 9, ESA Reporting to NMFS

For any nationwide permit that may affect threatened or endangered species:

Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries, National Marine Fisheries Service (NMFS) under the Endangered Species Act appear to be injured or

killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide Permit verification shall be reported to NMFS, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by the NMFS to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

RGC 10, Limitations on New Bank Stabilization Within the Salish Sea

The length of new bank stabilization within waters of the U.S., including new bank stabilization associated with maintenance activities that would expand previously authorized armoring length, cannot exceed 50 linear feet within the Salish Sea under any NWP.

RGC 11, Effects to Forage Fish Spawning Beaches, Drift Cells, and Feeder Bluffs)

No NWP activity can:

- a) cause more than minimal adverse effects to forage fish spawning beaches or drift cells; or
- b) prevent the functioning of feeder bluffs, including more than minimal adverse effects to sediment recruitment, transport, or deposition.

This regional general condition applies to all NWP activities within the Salish Sea. Information regarding the location of forage fish spawning beaches is available on the Washington Department of Fish and Wildlife's (WDFW) Forage Fish Spawning Map at <https://wdfw.maps.arcgis.com/home/webmap/viewer.html?webmap=19b8f74e2d41470cbd80b1af8dedd6b3>. Information regarding the location and movement of drift cells, shoreline stability, and coastal landforms, to include feeder bluffs, is available at the Washington State Department of Ecology's Coastal Atlas Map website: <https://apps.ecology.wa.gov/coastalatlasmap>. These maps are resources that can be used to help identify the location of forage fish spawning beaches, drift cells, and feeder bluffs; they are not a substitute for site-specific data. Information about forage fish, their spawning habitats, and spawning behavior are available through the WDFW. Additional information about the importance of these species as prey species for Endangered Species Act listed salmonids can be found on the National Marine Fisheries Service website.

RGC 12, Bank Stabilization Design Considerations

Bank stabilization activities, including maintenance activities, shall utilize living shorelines, vegetative stabilization, bioengineering, including but not limited to large woody material with intact root wads, and other soft bank stabilization approaches to the

maximum practicable extent before considering hard bank stabilization methods such as bulkheads and rock revetments.

RGC 13, PCNs for Activities in Areas Where There May Be Treaty-Reserved Tribal Rights

To ensure compliance with General Condition 17, *Tribal Rights*, a pre-construction notification (PCN) is required for all NWP's associated with structures or fills in areas where Tribes have retained via treaty the right to fish in their usual and accustomed grounds and stations.

RGC 14, Maintenance of Existing Bank Stabilization Structures and Fills

(applicable to NWP 3, Maintenance Activities) Maintenance of existing bank stabilization structures that expand the existing structure's footprint or dimensions either waterward, vertically, or linearly along the shoreline within the geographic jurisdiction of the U.S. Army Corps of Engineers are not eligible for NWP 3."

Deleting Section 12.0 and inserting in its place:

"12.0 Final Determination

Based on the considerations discussed above, and in accordance with 33 CFR 330.4(e)(1) and 330.5(c), I have determined that this NWP, including its terms and conditions, as well as these regional conditions, will authorize only those activities that have no more than minimal individual and cumulative adverse environmental effects."