

MEMORANDUM FOR District Commander

SUBJECT: Department of the Army Environmental Assessment and Statement of Findings

1. Name:

Application No: NWS-2016-826

- Permit issuance, no objections.
- Issuance, agency or tribal objections.
- Issuance, other objections
- Issuance, special conditions.
- Categorically excluded from NEPA.
- Permit denial.

2. District Engineer sign attached document.

Team Ld.	_____
Sec Chief	<u>NS 11/26/18</u>
Ch, Reg. Br	_____
Counsel	_____
Ch, Ops Div	_____
DDE	_____
DE	_____

Encl  
 CENWS-DE 1st End  
 Commander  
 For Ch, Reg. Br  
 Signed forms returned herewith.

**MEMORANDUM FOR RECORD**

**SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for the Above-Referenced Standard Individual Permit Application**

This document constitutes the Environmental Assessment, 404(b)(1) Guidelines Evaluation, as applicable, Public Interest Review, and Statement of Findings for the subject application.

**1.0 Introduction and Overview:** Information about the proposal subject to one or more of the U.S. Army Corps of Engineers' (Corps) regulatory authorities is provided in Section 1, detailed evaluation of the activity is found in Sections 2 through 11 and findings are documented in Section 12 of this memorandum. Further, summary information about the activity including administrative history of actions taken during project evaluation is attached (ORM2 Summary) and incorporated in this memorandum.

1.1 Applicant: Makah Indian Tribe

1.2 Activity location: at the Makah Indian Reservation in Neah Bay, on the southern shore of Strait of Juan de Fuca, Clallam County, Washington

1.3 Description of activity requiring permit: The project consists of an extension to an existing fishing pier to accommodate an emergency response towing vessel and other associated spill response vessels. The pier extension will be 563 feet in length extending to the northwest. Two finger piers, respectively 325 feet and 340 feet long, will extend to the north from the angled pier extension. Two floating piers, each 180 feet long, will be located on the north side of the pier extension. The new pier extension will be supported by up to 220 steel piles, which includes eighty-five, 24-inch diameter steel piles, and one hundred thirty-five 18-inch diameter steel piles. The floating piers will be secured to 18-inch diameter steel piles.

The pier extension will have concrete decking paved with an asphalt overlay. The pier extension is sloped to drain stormwater to a central utility corridor with a grated cover. The bottom of the corridor will be sealed so stormwater will drain into the trench and be collected. The collected water will be routed to a vault with cartridges to treat the stormwater prior to discharge into Neah Bay.

The area around the existing pier and proposed extension is proposed to have up to 186,000 cubic yards of material [reduced from the public notice amount of 208,000 cubic yards] dredged to increase the depths to elevations ranging from -15 to -25 feet Mean Lower Low Water (MLLW) plus one foot allowable overdepth (-16 to -25 feet MLLW). Material would be dredged using either mechanical (clamshell) or hydraulic dredging equipment. Material would be placed using hydraulic pipeline equipment onto a nearby shoreline in Neah Bay.

1.3.1 Proposed avoidance and minimization measures: The proposed project site was selected to minimize the amount of new construction required. By adding on to an existing fishing dock trestle, it would eliminate the need for a new trestle or dock that

connects to shore. The site would also place the new pier extension in deeper water, reducing the amount of dredging required to accommodate vessel berthing and transit.

- 1.3.2 Proposed compensatory mitigation: The applicant has proposed to remove a creosote-treated, derelict dock and associated ice house barge in the near vicinity as mitigation for the pier extension. Debris will also be removed in the vicinity of the new pier extension as part of the project.
- 1.4 Existing conditions and any applicable project history: The project site is within Neah Bay, which is at the entrance of the Strait of Juan de Fuca from the Pacific Ocean. The Makah Indian Tribe reservation and a U.S. Coast Guard Station are sited in Neah Bay.

The shoreline of Neah Bay has been altered from its natural conditions over the past 150 years, after the signing of an 1855 treaty with the U.S. resulted in construction of the town to include roads and buildings along the shore of the bay. The predominant land uses at the project site and within the action area are generally fishing and boating related. The existing dock is used as a commercial fishing dock for both tribal and non-tribal fishing operations, including loading ice, materials, and equipment to the outgoing boats, and unloading and ice-packing fish from incoming boats for transport to Seattle and elsewhere. The Makah Marina and a small pier are located about 200 feet east of the dock. The upland property is bounded by a road and various commercial and residential buildings.

The vicinity of the project site is protected with rock riprap extending east and west. There is very little aquatic vegetation or upland vegetation at the project site. The upland vegetation along the shoreline is limited to a narrow band of vegetation at the top of the riprapped slope, and consists primarily of Himalayan blackberry, red alder, and low-growing red-osier dogwood. Some beach grasses are present in small amounts at the material placement site.

The project is within WRIA 19, Lyre-Hoko Basin, and is located within Hydrologic Unit Code 17110021. To help protect shorelines and waterways, the maritime industry has permanently stationed an emergency response towing vessel (ERTV) at Neah Bay. The towing vessel is an important safety net to prevent disabled ships and barges from grounding off the Pacific coast or in the western Strait of Juan de Fuca. This safety net helps to prevent oil spills in this area.

An underwater video survey of the habitat and conditions within the perimeter of the commercial fishing dock facility and dredging area did not observe eelgrass in project area of the survey. The substrate consists of very fine and fine sand with silt and clay.

- 1.5 Permit Authority: Section 10 of the Rivers and Harbors Act (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

- 2.0 Scope of review for National Environmental Policy Act (i.e. scope of analysis), Section 7 of the Endangered Species Act (i.e. action area), and Section 106 of the National Historic Preservation Act (i.e. permit area)**

2.1 Determination of scope of analysis for National Environmental Policy Act (NEPA):

The scope of analysis includes the specific activity requiring a Department of the Army permit. Other portions of the entire project are not included because the Corps does not have sufficient control and responsibility to warrant federal review.

Final description of scope of analysis: The NEPA scope of analysis includes the in-water work within Neah Bay and the area where the placement of dredged material may extend above the mean higher high water (MHHW) to create a riparian area.

2.2 Determination of the "Corps action area" for Section 7 of the Endangered Species Act (ESA): The action area is the area directly or indirectly affected by the proposed action (taking into account ground disturbance, water quality, noise, and lighting effects), including upland work that is interdependent and interrelated with the permitted activities. The action area (394 acres) is defined by the area of increased in-water sound pressure from impact pile driving 24-inch steel piles.

2.3 Determination of permit area for Section 106 of the National Historic Preservation Act (NHPA):

The permit area includes those areas comprising waters of the United States that will be directly affected by the proposed work or structures, as well as activities outside of waters of the U.S. because all three tests identified in 33 CFR 325, Appendix C(g)(1) have been met.

Final description of the permit area: The Corps' permit area is defined by all areas of proposed in-water activity, including upland areas where work is directly associated, integrally related, and would not occur but for the in-water authorized activity. The placement of dredged material may extend landward of the MHHW so as to create a riparian area for the restored beach. This area, waterward of the rip rap bulkhead, proposed to create a riparian area is also included in the permit area.

**3.0 Purpose and Need**

3.1 Purpose and need for the project as provided by the applicant and reviewed by the Corps: The project is to provide adequate, dedicated infrastructure to support enhanced oil spill response capacity in Neah Bay and the Strait of Juan de Fuca.

3.2 Basic project purpose, as determined by the Corps: N/A, the project is not located in a special aquatic site and does not require proximity or siting within a special aquatic site to achieve its basic project purpose.

3.3 Water dependency determination: N/A, activity is not located in a special aquatic site.

- 3.4 Overall project purpose, as determined by the Corps: The overall project purpose is to provide secure, reliable support for enhanced oil spill response capability in the Strait of Juan de Fuca and the Pacific Ocean in the vicinity of Neah Bay.

#### 4.0 Coordination

- 4.1 The results of coordinating the proposal on Public Notice (PN) are identified below, including a summary of issues raised, any applicant response and the Corps' evaluation of concerns.

Were comments received in response to the PN? Yes

Were comments forwarded to the applicant for response? Yes, comments were provided to applicant; however, the applicant was not required to provide a response.

Was a public meeting and/or hearing requested and, if so, was one conducted? No, a public hearing or meeting was not requested.

Comments received in response to public notice:

Comment 1: Karl Spees: "It is shocking that the Makah Tribe is observing this formality. I am sure they have thought thru this project and the benefits far outweigh any risks. I am sharing with other interested parties."

Applicant's Response: N/A

Corps Evaluation: The project is being evaluated under the standard permit process, which requires a public notice.

Comment 2: Suquamish Tribe: The Tribe will not be providing any comments.

Applicant's Response: N/A

Corps Evaluation: N/A

Comment 3: Pearl Hewett: Will post information to personal website to facilitate others to review and comment. She was not aware there is an in-water disposal site near Port Angeles.

Applicant's Response: N/A

Corps Evaluation: The project is not proposing an in-water disposal of the dredged material in the Port Angeles disposal site. No other comments were received as a result of Ms. Hewett re-posting the Public Notice to a personal web site.

Comment 4: Environmental Protection Agency (EPA): The EPA provided a number of comments and requests. Overall, the EPA stated support for the beneficial use

placement of the dredged material in Neah Bay. However, the EPA had specific comments and requests for the project. The comments and Corps' Evaluation are summarized as follows:

1. The EPA requested to be included in future regulatory meetings and the pre-dredging conference for this project.

Corps: The EPA was provided additional information about the project and participated in a 5 June 2018, site visit meeting that included Ecology, NOAA, the Corps, and Makah Tribe. The EPA will be included in the project's pre-dredge conference.

2. The EPA requested to review the dredging plan associated with the project and requested and stated a portion of the dredging area shown in the public notice is inappropriate for beneficial use in the Bay. Also, if the project is not dredged completely at one time, or sequenced, two plans are required with details specific to that project and contractor. Dredging plan must show that clean and contaminated dredged material prisms are set back/buffered from each other, provide accuracy and methods, explain debris management, identify any staging/stockpile area, explain dewatering and re-handling to placement sites.

Corps: Only the material authorized for in-water placement will be dredged, with a buffer maintained from DMMU-7 (area with contaminated material). No material from the dredge prism DMMU-7 will be dredged. Material would be placed using hydraulic pipeline equipment. The EPA will be included in a pre-dredge meeting and receive a copy of the quality control dredging and placement plan with the requested information for their review.

3. EPA supported the beneficial use of clean dredged material and retaining the material in Neah Bay; however, is concerned with impacts to Coast Guard pier and requested final placement location be clarified.

Corps: The Corps coordinated with the Coast Guard (USCG) and was told the USCG does not have concerns with both the project and the beneficial placement site. Because there may be changes in the beach disposal location area due to storms and erosion that may occur in the time until work occurs, the final location specifications for the beach placement will be provided for the pre-dredge meeting.

4. EPA requested the material placement design account for dredged material also being placed from a Corps' anticipated federal navigation dredging project.

Corps: The Corps' federal navigation dredging is proposing beach placement in a separate location to the east. The two projects will not share a placement site.

5. EPA requested details of a beneficial use plan be provided in a design document which would include restoration goals and objectives, bathymetric processes, monitoring and assessment; and recognizes the beach was a previous site identified

to create/restore intertidal clamming to off-set impacts for placement of dredged material when the marina breakwater was constructed in the 1990's. The EPA also requested the placement of more nourishment material not conflict with the previous placement from the 1990's.

Corps: The Corps agrees with the applicant that placement of additional clean dredged material will be complementary to the previous plan to create suitable clam habitat. In the approximately 20 years since material was previously placed, the beach has eroded, including in a more recent winter storm. A dredging and placement workplan shall be required for review and approval prior to starting dredging activities. This plan shall identify the dredged quantities and the disposal location and elevations of placement material.

6. The EPA supports nourishment of the beach for disposal of the material, but does not support the dredged material being placed landward of the current MHHW, converting current intertidal habitat to upland. "Creating upland with dredged material should be evaluated as a fill impact."

Corps: The beach currently lacks a riparian zone and drops steeply from the rip-rapped road. The proposed placement would re-create the historical beach with a riparian zone planted in native vegetation and a more gradual sloping, which would result in better quality intertidal area for clams. The Corps considers restoration of the historical riparian area will benefit waters of the U.S., resulting in improved water quality from interception of road run-off and improved fish and wildlife habitat. The final dimensions and acreage will be provided in the plan for dredging and disposal. The applicant is required to submit the plan for review at least 30 days prior to dredging.

7. The EPA further requested a 'Design Document' address goals and objectives of the beach nourishment, including the effects of creating upland habitat, effects to the mouth of Halfway Creek, effects to the breakwater fish gap, and effects to the existing clam beach.

Corps: The beneficial placement of the dredged material is not mitigation for the project and does not require goals and objectives be identified and addressed. Halfway Creek's mouth is being avoided. No concerns were identified in the ESA consultation or internal coordination with effects to the breakwater fish gap. Clam habitat is expected to be improved with the addition of material to create a more gradually sloping intertidal zone with an upper riparian zone. The dredging and disposal workplan will provide the elevations of placement material to ensure the tidal elevations are suitable for clam habitat.

8. The EPA requested long-term management of the placement site to protect material from being removed for upland projects and requested planting of native dune grass to stabilize the beach. Also, if considered compensatory mitigation, protective site mechanism (e.g., restrictive covenant) should be included.

Corps: The material placement site is not considered compensatory mitigation so will not have the elements of a mitigation plan. Planting of the riparian zone with native species, such as dune grass, to stabilize the beach is planned to occur.

9. The EPA requested a compensatory mitigation plan be prepared that complies with the 2008 joint Corps and EPA federal rule on compensatory mitigation.

Corps: A compensatory mitigation plan is not required for this project proposal. The removal of the creosote-treated derelict dock and ice house barge is part of the project, included in the project drawings and will be required as a special condition of the permit. The structures will be required to be removed prior to or concurrent with the work activities as a special condition of the permit. Best management procedures (BMPs) for removing the structure will also be required as a special condition of the permit and are required as part of Ecology's water quality certification. The beneficial placement of the dredged material is a part of the proposed project and not compensatory mitigation for dredging.

10. The EPA requested their BMPs for piling removal and placement be followed.

Corps: The Corps agrees and will make the EPA BMPs for piling removal a special condition of the permit.

Additional discussion of submitted comments, applicant response and/or Corps' evaluation: N/A

- 4.2 Were additional issues raised by the Corps including any as a result of coordination with other Corps offices? No  
If yes, provide discussion including coordination of concerns with the applicant, applicant's response and Corps' evaluation of the response: N/A
- 4.3 Were comments raised that do not require further discussion because they address activities and/or effects outside of the Corps' purview? No  
If yes, provide discussion: N/A
- 5.0 **Alternatives Analysis** (33 CFR Part 325 Appendix B(7), 40 CFR 230.5(c) and 40 CFR 1502.14). An evaluation of alternatives is required under NEPA for all jurisdictional activities. An evaluation of alternatives is required under the Section 404(b) (1) Guidelines for projects that include the discharge of dredged or fill material. NEPA requires discussion of a reasonable range of alternatives, including the no action alternative, and the effects of those alternatives; under the Guidelines, practicability of alternatives is taken into consideration and no alternative may be permitted if there is a less environmentally damaging practicable alternative.
- 5.1 Site selection/screening criteria: In order to be practicable, an alternative must be available, achieve the overall project purpose (as defined by the Corps), and be feasible when considering cost, logistics and existing technology.



Criteria for evaluating alternatives as evaluated and determined by the Corps: The project criteria for evaluating alternatives are as follows: 1) efficient response to oil spill and emergency events in waters in the vicinity of Neah Bay and mouth of Strait of Juan de Fuca, 2) compliant with Ecology and U.S. Coast Guard standards for oil spill response, 3) site has or can be dredged to suitable depth to support moorage of oil storage barges and response vessels, 4) cost, and 5) dredged material placement within Neah Bay.

## 5.2 Description of alternatives

5.2.1 No action alternative: Without additional area for moorage of response vessels and storage barges to store oil/fuel from a spill pending delivery to an oil refinery, the limitations to the response capability in Neah Bay and the Strait of Juan de Fuca would remain the same. The current response time, which falls below the standards of Ecology and U.S. Coast Guard, would continue. The current risk to vessel safety and the environment from oil spill events would continue and possibly increase with increased shipping vessel traffic in the Strait of Juan de Fuca.

### 5.2.2 Off-site alternatives

Off-site alternative 1: No off-site alternatives outside Neah Bay would meet the overall project purpose to provide secure, reliable support for enhanced oil spill response capability in the Strait of Juan de Fuca and the Pacific Ocean in the vicinity of Neah Bay and meet the above project criteria. Construction of a new pier within Neah Bay would increase costs by requiring a new connection to shore and, if constructed closer to shore, increase the amount of dredging required to accommodate vessel draft. Therefore, off-site alternatives within or outside Neah Bay will not be evaluated further.

### 5.2.3 On-site alternatives

On-site alternative 1 (applicant's preferred alternative): Construct a pier extension to the existing fishing dock trestle and dredge the area around the pier to increase depths to elevations ranging from -15 to -25 feet (MLLW) plus one foot allowable overdepth. Material would be dredged using a hydraulic pipeline and placed on the nearby shoreline east of the marina to restore the historic nearshore tidal elevations.

On-site alternative 2: The same as alternative 1 except material would be dredged using either a mechanical clamshell or hydraulic dredging equipment. The beneficial disposal site would be in the northwest/central part of the bay, near the breakwater.

5.3 Evaluate alternatives and whether or not each is practicable under the Guidelines or reasonable under NEPA: Alternative 1 would meet the project purpose. The current vessels in Neah Bay provide critical oil spill response capability in the Strait of Juan de Fuca as incorporated in Ecology's Geographical Response Plan (GRP). However, they are moored in the Makah Marina, which does not allow for flexible and rapid loading and deployment as needed. The expansion would allow the moorage of storage barges and response vessels and more functionality at the dock expansion. Recovered oil/fuel from

a spill is collected and stored in barges pending delivery to an oil refinery in Port Angeles that is equipped with a large capacity oil-water separator and suitable storage facilities. The additional barge moorage capacity planned at the pier extension will increase the storage capacity and decrease response time when vessels are responding to a spill.

The project site was chosen to minimize the amount of new construction required. Building the spill dock extension from the existing fishing dock trestle eliminates the need for a new trestle or dock that connects to shore. The existing fishing dock was designed to accommodate vehicles, so modifications are not required to the existing structure to accommodate vehicles. The project design also allows the spill dock extension to be constructed in deeper water, and thereby minimizes the amount of dredging necessary to accommodate vessel berthing and transit.

Because of the infrastructure limits on staging capacity for response resources, Ecology and U.S. Coast Guard 6-hour planning standards are not met for Neah Bay, primarily because of the lack of storage capacity for recovered oil. The additional berthing of oil/fuel storage barges would facilitate meeting the 6-hour planning standards in Neah Bay.

Neah Bay is considered to be sediment deficient. Removing the dredged material determined to be suitable for in-water disposal to an approved disposal site near Port Angeles, would permanently remove sediment material from Neah Bay. The proposed material placement site is along the shoreline to the east of the Makah marina. This beach has experienced erosion due to construction of the road and riprapped bank protection for the road. This site received material dredged from the marina in the 1990's, but the material has eroded, more recently from a winter storm event. The beneficial placement of dredged material will restore the historical shoreline and result in improved intertidal habitat conditions for marine intertidal species such as clams, re-establish the riparian zone to control storm runoff from the road and improve water quality conditions and provide detritus to improve the shoreline ecology, and facilitate the Tribe's cultural use of the shore.

Alternative 2 would meet the project purpose but, after further consideration, selecting this material placement site could result in a discharge into a special aquatic site. The placement of dredged material could result in redistribution or movement of material into nearby eelgrass beds, limiting light availability required for plant growth or smothering plants. In addition, bull kelp which provides habitat to a wide variety of important marine species was identified in the placement area.

- 5.4 Least environmentally damaging practicable alternative under the 404(b)(1) Guidelines (if applicable) and the environmentally preferable alternative under NEPA:

The applicant's proposed project is the least environmentally damaging practicable and the environmentally preferable alternative.

- 6.0 **Evaluation for Compliance with the Section 404(b)(1) Guidelines.** The following sequence of evaluation is consistent with 40 CFR 230.5

- 6.1 Practicable alternatives to the proposed discharge consistent with 40 CFR 230.5(c) are evaluated in Section 5. The statements below summarize the analysis of alternatives.

In summary, based on the analysis in Section 5.0 above, the no-action alternative, which would not involve discharge into waters, is not practicable.

For those projects that would discharge into a special aquatic site and are not water dependent, the applicant has demonstrated there are no practicable alternatives that do not involve special aquatic sites.

It has been determined that there are no alternatives to the proposed discharge that would be less environmentally damaging. (Subpart B, 40 CFR 230.10(a)). The proposed discharge in this evaluation is the practicable alternative with the least adverse impact on the aquatic ecosystem, and it does not have other significant environmental consequences.

- 6.2 Candidate disposal site delineation (Subpart B, 40 CFR 230.11(f)). Each disposal site shall be specified through the application of these Guidelines:

The dredged material is proposed for beneficial placement on a nearby shoreline to restore the historic beach and tidal elevations.

- 6.3 Potential impacts on physical and chemical characteristics of the aquatic ecosystem (Subpart C 40 CFR 230.20). See Table 1:

Physical and Chemical Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Substrate					x	
Suspended particulates/ turbidity				x		
Water					x	
Current patterns and water circulation					x	
Normal water fluctuations			x			
Salinity gradients			x			

Discussion: An individual Water Quality Certification was issued for this project by Ecology (below 1.6-ft. tidal elevation) and by the Makah Tribe (above 1.6-ft. tidal elevation), which addressed requirements to ensure impacts to the physical and chemical characteristics of the water are avoided and minimized.

- 6.4 Potential impacts on the living communities or human uses (Subparts D, E and F):

6.4.1 Potential impacts on the biological characteristics of the aquatic ecosystem (Subpart D 40 CFR 230.30). See Table 2:

Table 2 – Potential Impacts on Biological Characteristics						
Biological characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Threatened and endangered species					x	
Fish, crustaceans, mollusk, and other aquatic organisms					x	
Other wildlife					x	

Discussion: NMFS concluded that the proposed action is not likely to jeopardize the continued existence of Puget Sound (PS) Chinook salmon Puget Sound (PS) steelhead, PS yelloweye rockfish, PS bocaccio rockfish, and green sturgeon southern DPS.

6.4.2 Potential impacts on special aquatic sites (Subpart E 40 CFR 230.40). See Table 3:

Table 3 – Potential Impacts on Special Aquatic Sites						
Special Aquatic Sites	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Sanctuaries and refuges	x					
Wetlands	x					
Mud flats	x					
Vegetated shallows		x				
Coral reefs	x					

Discussion: Eelgrass beds are present in Neah Bay, but not within the dredging or disposal placement area. Using a hydraulic pipeline dredge would minimize any turbidity at the dredge site. Any increase in turbidity from subsequent tidal action at the disposal placement site is expected to be negligible.

6.4.3 Potential impacts on human use characteristics (Subpart F 40 CFR 230.50). See Table 4:

Human Use Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Municipal and private water supplies	x					
Recreational and commercial fisheries				x		
Water-related recreation		x				
Aesthetics		x				
Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves	x					

Discussion: Commercial fishing interests using the existing section of the pier will only be effected during construction. The pier was designed to be expanded for the oil spill response vessels.

6.5 Pre-testing evaluation (Subpart G, 40 CFR 230.60):

The following has been considered in evaluating the biological availability of possible contaminants in dredged or fill material. See Table 5:

Physical characteristics	x
Hydrography in relation to known or anticipated sources of contaminants	x
Results from previous testing of the material or similar material in the vicinity of the project	x
Known, significant sources of persistent pesticides from land runoff or percolation	x
Spill records for petroleum products or designated (Section 331 of CWA) hazardous substances	x
Other public records or significant introduction of contaminants from industries, municipalities, or other sources	x
Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharge activities	x

Discussion:

It has been determined that testing is required because of known contamination.

6.6 Evaluation and testing (Subpart G, 40 CFR 230-61):

Discussion: See discussion in Section 6.5. The proposed dredged material has been tested according to the procedures specified by Dredged Material Management Program (DMMP). The DMMP determined the area proposed to be dredged for this project was suitable for in-water disposal either at an open-water disposal site in Port Angeles, or placement in Neah Bay for beneficial use. Another area proposed to be dredged, but excluded in the final project proposal, was found not suitable for in-water disposal.

6.7 Actions to minimize adverse impacts (Subpart H). The following actions, as appropriate, have been taken through application of 40 CFR 230.70-230.77 to ensure minimal adverse effects of the proposed discharge. See Table 6:

Action	Implemented
Actions concerning the location of the discharge	X
Actions concerning the material to be discharged	X
Actions controlling the material after discharge	X
Actions affecting the method of dispersion	X
Actions affecting plant and animal populations	X
Actions affecting human use	X

Discussion: The pier extension site was selected to minimize the amount of material required to be dredged to meet the water depth requirements of the response vessels and a hydraulic pipeline proposed to minimize turbidity and fall back of material. Only the material suitable for beneficial placement is proposed to be dredged and used for beneficial placement. The beneficial placement site will have native vegetation planted to stabilize the restored shoreline and intertidal zone.

6.8 Factual Determinations (Subpart B, 40 CFR 230.11). The following determinations are made based on the applicable information above, including actions to minimize effects and consideration for contaminants. See Table 7:

Site	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Physical substrate				X		
Water circulation, fluctuation and salinity				X		
Suspended particulates/turbidity				X		
Contaminants			X			

**Table 7 – Factual Determinations of Potential Impacts**

Site	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Aquatic ecosystem and organisms					x	
Proposed disposal site					x	
Cumulative effects on the aquatic ecosystem					x	
Secondary effects on the aquatic ecosystem					x	

Discussion: The proposed dredged material has been tested according to the procedures specified by Dredged Material Management Program (DMMP) and approved for beneficial use placement. There will be minor effects to the aquatic ecosystem and organisms during construction and, in the long-term, from creating structure and deepening the water level. Effects at the disposal placement site are expected to be beneficial. The NMFS and USFWS have also reviewed the dredge and material placement sites and provided a biological opinion and concurrence letter, respectively.

- 6.9 Findings of compliance or non-compliance with the restrictions on discharges (40 CFR 230.10(a-d) and 230.12). Based on the information above, including the factual determinations, the proposed discharge has been evaluated to determine whether any of the restrictions on discharge would occur. See Table 8:

**Table 8 – Compliance with Restrictions on Discharge**

Subject	Yes	No
1. Is there a practicable alternative to the proposed discharge that would be less damaging to the environment (any alternative with less aquatic resource effects, or an alternative with more aquatic resource effects that avoids other significant adverse environmental consequences?)		x
2. Will the discharge cause or contribute to violations of any applicable water quality standards?		x
3. Will the discharge violate any toxic effluent standards (under Section 307 of the Act)?		x
4. Will the discharge jeopardize the continued existence of endangered or threatened species or their critical habitat?		x
5. Will the discharge violate standards set by the Department of Commerce to protect marine sanctuaries?		x
6. Will the discharge cause or contribute to significant degradation of waters of the U.S.?		x
7. Have all appropriate and practicable steps (Subpart H, 40 CFR 230.70) been taken to minimize the potential adverse impacts of the discharge on	x	

Table 8 – Compliance with Restrictions on Discharge		
Subject	Yes	No
the aquatic ecosystem?		

**7.0 General Public Interest Review (33 CFR 320.4 and RGL 84-09)**

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest as stated at 33 CFR 320.4(a). To the extent appropriate, the public interest review below also includes consideration of additional policies as described in 33 CFR 320.4(b) through (r). The benefits which reasonably may be expected to accrue from the proposal are balanced against its reasonably foreseeable detriments.

7.1 All public interest factors have been reviewed and those that are relevant to the proposal are considered and discussed in additional detail. See Table 9 and any discussion that follows.

Table 9: Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
1. Conservation: The increased vessel support to prevent or respond to oil/fuel spills will facilitate the conservation of the marine ecology of the Strait of Juan de Fuca and Pacific Ocean in this area.					x	
2. Economics: Construction will provide economic benefits to those industries and some jobs will be created to maintain and crew the response vessels.					x	
3. Aesthetics:				x		
4. General Environmental Concerns: The project will increase protection to the marine environment by reducing risk of catastrophic oil/fuel spills.					x	
5. Wetlands:						x
6. Historic Properties:						x
7. Fish and Wildlife Values: A derelict, creosote-treated pier is proposed for removal to off-set the effects to fish and wildlife species.			x			
8. Flood Hazards:						x
9. Floodplain Values:						x
10. Land Use:						x



Table 9: Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
11. Navigation: The increased depth will improve navigation for vessels docking at the pier. Coordination with USCG (in file) occurred. USCG did not have concerns with the proposed project including the placement location.					x	
12. Shoreline Erosion and Accretion: The beneficial placement of material and planting of native riparian vegetation will help stabilize the shoreline and off-set the shoreline erosion occurring in the area.					x	
13. Recreation:						x
14. Water Supply and Conservation:						x
15. Water Quality: There will be a short term decrease in water quality from turbidity during dredging that will be off-set by a long term improvement from the removal of the derelict, creosote-treated pier.			x			
16. Energy Needs:				x		
17. Safety: The project will provide secure and safe support for enhances oil spill response capability. In addition, the new pier will provide a safer, secure working location.					x	
18. Food and Fiber Production:						x
19. Mineral Needs:						x
20. Consideration of Property Ownership:						x
21. Needs and Welfare of the People: The project has a strong public benefit in providing reliable and effective response to prevent and/or respond to oil/fuel spills and provide emergency assistance to vessels.					x	

Additional discussion of effects on factors above: N/A

- 7.1.1 Climate Change. The proposed activities within the Corps federal control and responsibility likely will result in a negligible release of greenhouse gases into the atmosphere when compared to global greenhouse gas emissions. Greenhouse gas emissions have been shown to contribute to climate change. Aquatic resources can be sources and/or sinks of greenhouse gases. For instance, some aquatic resources sequester carbon dioxide whereas others release methane; therefore, authorized impacts to aquatic resources can result in either an increase or decrease in atmospheric greenhouse gas. These impacts are considered de minimis and are negated through

compensatory mitigation. Greenhouse gas emissions associated with the Corps federal action may also occur from the combustion of fossil fuels associated with the operation of construction equipment, increases in traffic, etc. The Corps has no authority to regulate emissions that result from the combustion of fossil fuels. These are subject to federal regulations under the Clean Air Act and/or the Corporate Average Fuel Economy (CAFE) Program. Greenhouse gas emissions from the Corps action have been weighed against national goals of energy independence, national security, and economic development and determined not contrary to the public interest.

7.2 The relative extent of the public and private need for the proposed structure or work:

The public and Makah Indian Tribe would benefit from the enhanced oil spill and emergency response in Neah Bay. Neah Bay is a critical staging area for oil spill response resources under the Strait of Juan de Fuca Geographic Response Plan. Changes to federal and state rules require vessel response plan holders to meet higher standards for daily recovery of oil, which cannot be met without expansion of infrastructure.

7.3 If there are unresolved conflicts as to resource use, explain how the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work was considered.

Discussion: There were no unresolved conflicts identified as to resource use.

7.4 The extent and permanence of the beneficial and/or detrimental effects that the proposed work is likely to have on the public and private use to which the area is suited:

Detrimental effects are expected to be minimal and permanent.

Beneficial effects are expected to be more than minimal and permanent.

The impact of additional overwater coverage is long term but minimized by site selection extension of an existing structure and placement in deeper waters. The long term beneficial effects of enhanced emergency and spill response are expected to be high and result in a permanent increase in safety for the environment.

**8.0 Mitigation**(33 CFR 320.4(r), 33 CFR Part 332, 40 CFR 230.70-77, 40 CFR 1508.20 and 40 CFR 1502.14)

8.1 Avoidance and Minimization: When evaluating a proposal including regulated activities in waters of the United States, consideration must be given to avoiding and minimizing effects to those waters. Avoidance and minimization measures are described above in Sections 1 and 3.

Were any other mitigative actions including project modifications discussed with the applicant implemented to minimize adverse project impacts? (see 33 CFR 320.4(r)(1)(i))  
Yes

The applicant provided a conceptual mitigation plan dated 2 February 2017. This plan proposed removal of benthic debris in the dredging area, removal of contaminated sediment from the base of the fishing pier, and beneficial placement of the dredged material. However, during the project pre-coordination an adjacent derelict fishing pier, leased by Washington State Department of Natural Resources to an independent party, partially burned. This created an opportunity to instead remove the burned dock, which includes the trestle and icehouse, and result in 20,889 square feet of removal of overwater coverage and removal of 520 creosote-treated piles.

8.2 Is compensatory mitigation required to offset environmental losses resulting from proposed unavoidable impacts to waters of the United States? Yes

Provide rationale: The new structure will add 34,730 square feet of overwater shading, in water depths between -16 and -25 feet (MLLW) and the 220 new piles result in 688 square feet of benthic habitat loss.

8.3 Type and location of compensatory mitigation

8.3.1 Is the impact in the service area of an approved mitigation bank? No

If yes, does the mitigation bank have appropriate number and resource type of credits available? N/A

8.3.2 Is the impact in the service area of an approved in-lieu fee program? No

If yes, does the in-lieu fee program have the appropriate number and resource type of credits available? N/A

8.3.3 Selected compensatory mitigation type/location(s). See Table 10:

Mitigation bank credits	
In-lieu fee program credits	
Permittee-responsible mitigation under a watershed approach	x
Permittee-responsible mitigation, on-site and in-kind	x
Permittee-responsible mitigation, off-site and/or out of kind	

8.3.4 Does the selected compensatory mitigation option deviate from the order of the options presented in §332.3(b)(2)-(6)? No

8.4 Amount of compensatory mitigation: Removal of 20,889 square feet of derelict dock and trestle comprised of burned, creosote-treated wood; removal of 520 creosote-treated piles (920 square feet); and removal of debris from the perimeter and under dock area over an area of 6,000 square feet.

- 8.5 For permittee responsible mitigation identified in 9.3.3 above, the final mitigation plan must include the items described in 33 CFR 332.4(c)(2) through (c)(14) at a level of detail commensurate with the scale and scope of the impacts. As an alternative, the district engineer may determine that it would be more appropriate to address the components of a compensatory mitigation plan as permit conditions.

It is more appropriate to address the compensatory mitigation for this project as permit conditions than in a mitigation plan. The removal of the derelict dock structure, in its entirety, to occur prior to or concurrent with the work will be required as a special condition of the permit and is included in the permit drawings. The applicant has already removed 2,813 square feet of the dock and 1,027 square feet of the trestle to prevent the material from entering the bay after a recent fire. BMPs for the structure removal are included in the permit conditions, 401 water quality certification, and the ESA biological opinion. Long-term management and site protection are not necessary as future structures proposed for the site, if any, would require a Corps permit, and mitigation for the new structure.

To ensure compensatory mitigation is completed, Special Conditions "e" through "g" listed in Section 11 will become conditions of the permit.

#### 9.0 **Consideration of Cumulative Impacts**

(40 CFR 230.11(g) and 40 CFR 1508.7, RGL 84-9) Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor direct and indirect but collectively significant actions taking place over a period of time. A cumulative effects assessment should consider how the direct and indirect environmental effects caused by the proposed activity requiring DA authorization (i.e., the incremental impact of the action) contribute to cumulative effects, and whether that incremental contribution is significant or not.

- 9.1 Identify/describe the direct and indirect effects caused by the proposed activity:  
The direct effects caused by this action include changes in water quality, increased noise levels, changes in the benthic habitat, and changes in nearshore habitat.

Water Quality: Increased levels of sedimentation and turbidity, such as during dredging, is expected during any sediment-disturbance activities. Pile installation and debris removal activities could disrupt sediments and temporarily increase turbidity in the area of work. Increased levels of sedimentation and turbidity may have temporary negative impacts on habitat for fish and other aquatic species. Non mobile species could potentially be more impacted. With over-water work, there is the potential for construction debris to enter the waterway. Alternatively, the removal of debris and contaminated material for mitigation will result in a reduction in water contaminants. Contaminants such as creosote can impair fish sensory perception, contaminate prey items, and cause other soft tissue damage. Removal of the debris and creosote-treated pier structure would be expected to widely improve the water quality in the long-term in Neah Bay.

Noise: Installation of the steel piles using a vibratory hammer to refusal and using an impact hammer to drive to the final tip elevations and for proofing, as needed, to verify their load-bearing capacity has the potential to generate a temporary increase in underwater noise levels. The increased noise levels may cause fish, marine birds, and marine mammals to be disturbed or harassed resulting in a change in their behaviors.

Benthic Habitat: The dock extension will result in an increase in about 34,730 square feet of overwater shading and the new piles will impact about 688 square feet of benthic habitat. This would result in an impact to benthic biotic communities and could provide habitat for predatory fish species. The removal of the debris and creosote-treated pier structure would result in a reduction in sediment contaminants which would be expected to improve benthic habitat in the mitigation area.

Nearshore Habitat: The nearshore habitat spans a continuum from upland to subtidal areas. The beneficial placement of dredged material will help restore the historical shoreline habitat in this area of Neah Bay that has been impacted by previous development and will help stabilize the beach from eroding action of the waves or current. Restoring the shoreline to a more natural condition and creating a more natural riparian area will benefit juvenile salmon and other species. Planting the restored shoreline with native species, such as native dune grass, will help filter out unwanted nutrients and contaminants, which can degrade water quality, and will provide food and nutrients to the marine ecosystem.

Indirect Effects: The proposed project will only minimally increase overall vessel use in the bay. Another project to deepen the channel into the bay to allow vessel traffic to access the area during all tides is currently in planning with the Corps and work is anticipated to occur in the next few years.

Beneficial placement of material to restore the historical beach will facilitate the Makah Tribe's historical, cultural use of the area, such as for Tribal cultural events like the canoe journeys.

- 9.2 The geographic scope for the cumulative effects assessment is:  
The geographic scope for the cumulative effects assessment is within Neah Bay at the Makah Reservation in Clallam County, Washington. Neah Bay is within WRIA 19, Lyre-Hoko Basin, and is located within Hydrologic Unit Code 17110021.
- 9.3 The temporal scope of this assessment covers: The analysis will cover the time period from establishment of the reservation through the next twenty years.
- 9.4 Describe the affected environment: The shoreline of Neah Bay has been altered from its natural conditions since 1855. The establishment of the Makah Reservation, after the signing of an 1855 treaty with the U.S., resulted in the construction of the town to include roads and buildings along the shore of the bay. The town of Neah Bay has a total area of 2.4 square miles of land. The 2010 census reported the population was 865 with 322 housing units. The local economy is sustained mostly by fishing and tourism. Neah Bay is a popular fishing area for sports fisherman. The U.S. Coast Guard maintains a base

in Neah Bay for search and rescue, environmental protection, and maritime law enforcement operations. In order to prevent disabled ships and barges from grounding and causing possible oil spills in the western Strait of Juan de Fuca or off the outer coast, an emergency response tug is stationed at Neah Bay. Commercial forestry continues to employ people throughout WRIA 19, in addition to retail, recreation, and tourism.

Pre-European contact, the Makah Tribe held a larger area of inland and coastal territory with five permanent villages. In the early 1800's the villages were populated by 2,000-4,000 Makah people. Each village contained several longhouses composed of cedar planks which were shared by Makah and their extended families. The Makah were mariners engaged in whaling and sealing and halibut and salmon fishing.

Neah Bay experiences a typical maritime climate, characterized by cool dry summers and mild wet winters. This area has some of the wettest climate in the contiguous U.S. with rainfall ranging more than 100 inches annually. Village, Halfway, and Agency Creeks, which flow into Neah Bay to the west and east of the project site, are not identified on the Ecology 2012 303(d) list for any parameter. Water temperatures are not typically elevated in large tidal systems, such as Neah Bay. There is no natural terrestrial habitat at the site of the proposed activities. The shoreline is protected with rock rip rap extending to the top of the shoreline on both sides of the dock. Upland vegetation is limited to a narrow band of vegetation.

In general, the affected environment is somewhat degraded. Sediment transport within the bay has been altered by the construction of breakwaters, which has affected the natural hydraulic processes in the bay. Sedimentation is predominantly fine-grained silt and sands. Aquatic vegetation is largely lacking at the project site. There is minimal riparian habitat and much has been replaced with hardened riprap shoreline embankment. There are a few remnant patches of forested riparian habitat, which are isolated and fragmented.

- 9.5 Determine the environmental consequences:
- 9.6 Discuss any mitigation to avoid, minimize or compensate for cumulative effects: The project site was selected to minimize new construction and work required in Neah Bay. By adding onto an existing fishing dock trestle a reconnection to the upland and additional bank stabilization was avoided. Also, adding onto the distal end of an existing trestle reduced the area required to be dredged to accommodate vessel draft. Beneficial placement of the dredged material facilitated retention of the material in Neah Bay and re-creation of the historic shoreline with a native riparian zone.
- 9.7 Conclusions regarding cumulative impacts:

When considering the overall impacts that will result from the proposed activity, in relation to the overall impacts from past, present, and reasonably foreseeable future activities, the incremental contribution of the proposed activity to cumulative impacts in the area described in section 9.2, are not considered to be significant. Compensatory

mitigation will be required to help offset the impacts to eliminate or minimize the proposed activity's incremental contribution to cumulative effects within the geographic area described in Section 9.2. Mitigation required for the proposed activity is discussed in Section 8.0.

## **10.0 Compliance with Other Laws, Policies, and Requirements**

### **10.1 Section 7(a)(2) of the Endangered Species Act (ESA):** Refer to Section 2.2 for description of the Corps action area for Section 7.

10.1.1 Has another federal agency been identified as the lead agency for complying with Section 7 of the ESA with the Corps designated as a cooperating agency and has that consultation been completed? No

10.1.2 Are there listed species or designated critical habitat present or in the vicinity of the Corps' action area? Yes

10.1.3 Consultation with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) was completed as required, for any determinations other than "no effect" (see the attached "Summary" sheet for begin date, end date and closure method of the consultation). The USFWS concurred on 26 June 2018. On 16 April 2018, the NMFS stated they did not concur with the Corps effect determination of not likely to adversely affect. A per their request, the Corps initiated a formal consultation. The NMFS issued a Biological Opinion on 5 October 2018. Special Conditions "h" and "i" listed in Section 11 will become conditions of the permit.

Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under Section 7(a)(2) of the ESA.

### **10.2 Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Essential Fish Habitat (EFH).**

10.2.1 Has another federal agency been identified as the lead agency for complying with the EFH provisions of the Magnuson-Stevens Act with the Corps designated as a cooperating agency and has that consultation been completed? No

10.2.2 Did the proposed project require review under the Magnuson-Stevens Act? Yes

10.2.3 If yes, EFH species or complexes considered: Pacific salmon, groundfish, and coastal pelagic species.

Effect determination and basis for that determination: The Corps has determined that the proposal is not likely to adversely affect EFH utilized by Pacific salmon, groundfish, and coastal pelagic species in Washington waters. The NMFS disagreed with the Corps effect determination.

10.2.4 Consultation with the National Marine Fisheries Service was initiated and completed as required (see the attached "Summary" sheet for consultation type, begin date, end date and closure method of the consultation). The NMFS determined the proposal may affect, and is likely to adversely affect EFH, and provided conservation

recommendations. The Corps responded on 31 October 2018 to accept the conservation recommendations.

Section 305(b) consultation under the MSA with NMFS has been completed through the programmatic consultation referenced in Section 3.1.

Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under EFH provisions of the Magnuson-Stevens Act.

**10.3 Section 106 of the National Historic Preservation Act (Section 106):** Refer to Section 2.3 for permit area determination.

10.3.1 Has another federal agency been identified as the lead federal agency for complying with Section 106 of the National Historic Preservation Act with the Corps designated as a cooperating agency and has that consultation been completed? No

10.3.2 Known historic properties present? No

Effect determination and basis for that determination: The Corps has determined the proposed action has a potential to cause effects to historic properties listed or eligible for listing in the National Register of Historic Places. See 106 MFR.

The project is on Tribal lands with a Tribal Historic Preservation Officer (THPO). The Makah Tribal THPO office provided a letter dated 3 October 2017, stating, "We will support a determination of no effect to historic properties for this project. A search of our records indicates that there are no properties listed or eligible for listing located within or adjacent to either area."

10.3.3 Consultation was initiated and completed with the appropriate agencies, tribes and/or other parties for any determinations other than "no potential to cause effects" (see the attached ORM2 Summary sheet for consultation type, begin date, end date and closure method of the consultation). See Section 106 Consultation Record for details. Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under Section 106 of the NHPA. Compliance documentation incorporated by reference.

**10.4 Tribal Trust Responsibilities**

Treaty Rights. In the mid-1850s, the United States entered into treaties with a number of Indian tribes in Washington. These treaties guaranteed the signatory tribes the right to "take fish at usual and accustomed grounds and stations . . . in common with all citizens of the territory" [U.S. v. Washington, 384 F.Supp. 312 at 332 (WDWA 1974)]. In U.S. v. Washington, 384 F.Supp. 312 at 343 - 344, the court also found that the Treaty tribes had the right to take up to 50 percent of the harvestable anadromous fish runs passing through those grounds, as needed to provide them with a moderate standard of living (Fair Share). Over the years, the courts have held that this right comprehends certain subsidiary rights, such as access to their "usual and accustomed" fishing grounds. More than de minimis impacts to access to usual and accustomed fishing areas may violate this treaty right [Northwest Sea Farms v. Wynn, F.Supp. 931 F.Supp. 1515 at 1522



(WDWA 1996)]. In U.S. v. Washington, 759 F.2d 1353 (9<sup>th</sup> Cir 1985) the court indicated that the obligation to prevent degradation of the fish habitat would be determined on a case-by-case basis. The Ninth Circuit has held that this right also encompasses the right to take shellfish [U.S. v. Washington 135 F.3d 618 (9<sup>th</sup> Cir 1998)].

- 10.4.1 Were federally recognized tribes notified of the permit application? Yes. See Summary Sheet for notification details.

No comments were received from other Tribes.

- 10.4.2 Was government-to-government consultation conducted with Federally-recognized Tribe(s)? No

The work proposed in this application has been analyzed with respect to its effects on the treaty rights described above, and my conclusions are that: (1) the work will not interfere with access to usual and accustomed fishing grounds or with fishing activities or shellfish harvesting; (2) the work will not cause the degradation of fish runs and habitat; and (3) the work will not impair the tribes' ability to meet moderate living needs. The Corps has determined that it has fulfilled its tribal trust responsibilities.

- 10.4.2 Other Tribal including any discussion of Tribal Treaty rights? N/A

**10.5 Section 401 of the Clean Water Act – Water Quality Certification (WQC)**

- 10.5.1 Is a Section 401 WQC required, and if so, has the certification been issued, waived or presumed? An individual water quality certification is required and has been issued by the certifying agency.

**10.6 Coastal Zone Management Act (CZMA)**

- 10.6.1 Is a CZMA consistency concurrence required, and if so, has the concurrence been issued, waived or presumed? An individual CZMA consistency concurrence is required and was waived by the appropriate agency.

**10.7 Wild and Scenic Rivers Act**

- 10.7.1 Is the project located in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system? No

The Corps has determined that it has fulfilled its responsibilities under the Wild and Scenic Rivers Act.

**10.8 Effects on Corps Civil Works Projects (33 USC 408)**

- 10.8.1 Does the applicant also require permission under Section 14 of the Rivers and Harbors Act (33 USC 408) because the activity, in whole or in part, would alter, occupy or use a Corps Civil Works project? No, the appropriate non-Regulatory office has determined that there will be no effects to federal projects that require permission from the Corps.

**10.9 Corps Wetland Policy (33 CFR 320.4(b))**

10.9.1 Does the project propose to impact wetlands? No

10.9.2 Based on the public interest review herein, the beneficial effects of the project outweigh the detrimental impacts of the project.

**10.10 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC 103)**

10.10.1 Does the activity require notification under Section 103 of CERCLA because the project is at/near a Superfund site? No, the project is not located at/near a Superfund site.

**11.0 Special Conditions**

11.1 Are special conditions required to protect the public interest, ensure effects are not significant and/or ensure compliance of the activity with any of the laws above? Yes

11.2 Required special condition(s)

a. You shall provide a copy of the permit transmittal letter, permit form, and permit drawings to all contractors involved in the authorized work.

b. If future operations by the United States require the removal, relocation, or other alteration of the work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the U. S Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

c. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard, through regulations or otherwise, on your authorized facilities.

d. All construction debris shall be properly disposed of on uplands in such a manner that it cannot enter into the waterway or cause water quality degradation.

e. The proposed mitigation for removal of the burned derelict dock, in its entirety, including the trestle and icehouse, shall occur before or concurrent with the work authorized by this permit. A report, as-built drawing and photographs demonstrating the dock has been completely removed must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, within 60 days of the mitigation completion. The report must prominently display the reference number NWS-2016-826.

f. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition "e" will not be considered fulfilled until you have received written verification from the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch.

g. The Environmental Protection Agency, Region 10, Best Management Practices for Piling Removal and Placement in Washington State, dated February 18, 2016, must be adhered to during construction.

h. This U.S. Army Corps of Engineers (Corps) permit does not authorize you to take a threatened or endangered species, in particular the Chinook salmon and green sturgeon. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA; e.g., an ESA Section 10 permit, or ESA Section 7 consultation Biological Opinion (BO) with non-discretionary "incidental take" provisions with which you must comply). The enclosed BO prepared by the National Marine Fisheries Service (NMFS) dated October 5, 2018, contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified "incidental take" in the BO (NMFS Reference Number WCR-2018-9450). Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the enclosed BO. These terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

i. You must implement and abide by the Endangered Species Act (ESA) requirements and/or agreements set forth in the *Revised Biological Evaluation, Makah Indian Tribe Emergency Spill Response Dock Extension Construction Project* dated September 2017. The U.S. Fish and Wildlife Service (USFWS) provided the enclosed LOC with a finding of "may affect, not likely to adversely affect" based on this document on June 21, 2018 (USFWS Reference Number 01EWF00-2018-I-0028)). Both agencies will be informed of this permit issuance. Failure to comply with the commitments made in this consultation constitutes non-compliance with the ESA and your U.S. Army Corps of Engineers permit. The USFWS is the appropriate authority to determine compliance with ESA.

j. For debris management procedures, dredged material placed in the dump scow or barge shall be filtered through a debris grid with a maximum opening size of 12 inches by 12 inches. Debris shall be disposed at an upland location.

k. At least 30 days prior to the scheduled pre-dredge meeting, you must submit to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch Project Manager, a quality control plan (Dredging and Disposal Workplan) for dredging and placement for review and approval prior to commencement of in-water placement. This plan must include: the equipment and vessels to be used, operational controls to ensure dredging accuracy, placement positioning procedures, spill control and response measures, water quality monitoring and contingency plans for exceeding water quality standards, debris management, personnel and responsibilities, dredging and placement schedule, report submittals, agency contact information and coordination procedures. The plan must also include dredged quantities, placement location with elevations of the placement material, and location of shoreline vegetation to stabilize the placement.

- l. At least 14 days prior to beginning the dredging and placement work, you must notify the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch Project Manager, by telephone at (206) 764-6904, to schedule a pre-dredge meeting.
- m. At least 7 days prior to dredging and placement, you, the dredging contractor's representative, and the dredging contractor's disposal positioning supervisor must attend a pre-dredge meeting to review the Department of the Army permit conditions, dredging and disposal quality control plan, and water quality certification.
- n. The U.S. Coast Guard (USCG) must be notified by email at [D13-PF-LNM@uscg.mil](mailto:D13-PF-LNM@uscg.mil) at least 14 days prior to commencing dredging operations, so the project information can be issued in the Local Notice to Mariners. The notification to the USCG must include the radio frequencies/channels that the dredger will be monitoring so any traffic in the area can contact the dredger if needed.
- o. Any deviations from the authorized dredging footprint or depths must be reported to the Regulatory Branch Project Manager within 24 hours of discovery.
- p. Plotted results of the post-dredge bathymetric survey shall be submitted to the U.S. Army Corps of Engineers, Seattle District, Dredged Material Management Office and Regulatory Branch Project Manager in PDF format within 30 days of completion of dredging. Results must clearly display the post-dredge sediment surface in relation to the permitted dredge boundary and depth, as well as the location of project features such as docks, wharfs and other landmarks. The vertical datum must be clearly indicated. Full bathymetric survey data must be submitted upon request.
- q. A post-dredge report shall be submitted to the U.S. Army Corps of Engineers, Seattle District, Dredged Material Management Office and Regulatory Branch Project Manager within 30 days of completion of dredging and include the volume and location of in-water disposal and the volume and location of material placed in uplands.
- r. If dredging cannot be completed prior to the "Recency Determination" date specified in the Dredged Material Management Program (DMMP) suitability determination dated May 16, 2017, the U.S. Army Corps of Engineers, Seattle District, Dredged Material Management Office (DMMO) Project Manager must be contacted. The DMMO Project Manager will coordinate with the other DMMP agencies to determine whether an extension to the recency period can be granted.

## **12.0 Findings and Determinations**

- 12.1 Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing

program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

12.2 Presidential Executive Orders (EO):

12.2.1 EO 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians: This action has no substantial effect on one or more Indian tribes, Alaska or Hawaiian natives. See Section 10.4 for a detailed discussion.

12.2.2 EO 11988, Floodplain Management: This action is not located in a floodplain.

12.2.3 EO 12898, Environmental Justice: The Corps has determined that the proposed project would not use methods or practices that discriminate on the basis of race, color or national origin nor would it have a disproportionate effect on minority or low-income communities.

12.2.4 EO 13112, Invasive Species: There are no invasive species issues involved in this proposed project.

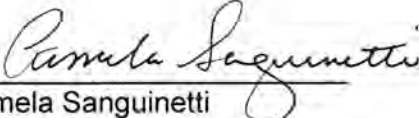
12.2.5 EO 13212 and EO 13302, Energy Supply and Availability: The proposal is not one that will increase the production, transmission, or conservation of energy, or strengthen pipeline safety.

12.3 Findings of No Significant Impact: Having reviewed the information provided by the applicant and all interested parties and an assessment of the environmental impacts, I find that this permit action will not have a significant impact on the quality of the human environment. Therefore, an environmental impact statement will not be required.

12.4 Compliance with the Section 404(b)(1) Guidelines: Having completed the evaluation above, I have determined that the proposed discharge complies with the Guidelines, with the inclusion of the appropriate and practicable special conditions to minimize pollution or adverse effects to the affected ecosystem.

12.5 Public interest determination: Having reviewed and considered the information above, I find that the proposed project is not contrary to the public interest.

**PREPARED BY:**

  
Pamela Sanguinetti  
Project Manager

Date: 26 Nov 2018

**REVIEWED BY:**

  
\_\_\_\_\_  
Matthew Bennett  
Section Chief

Date: 26 Nov 18

**APPROVED BY:**

  
\_\_\_\_\_  
Matthew Bennett  
Section Chief

Date: 26 Nov 18