

Unrealistic Regulations Coming to a Port Near You

Ryan Pessah
Western Wood Preservers Institute

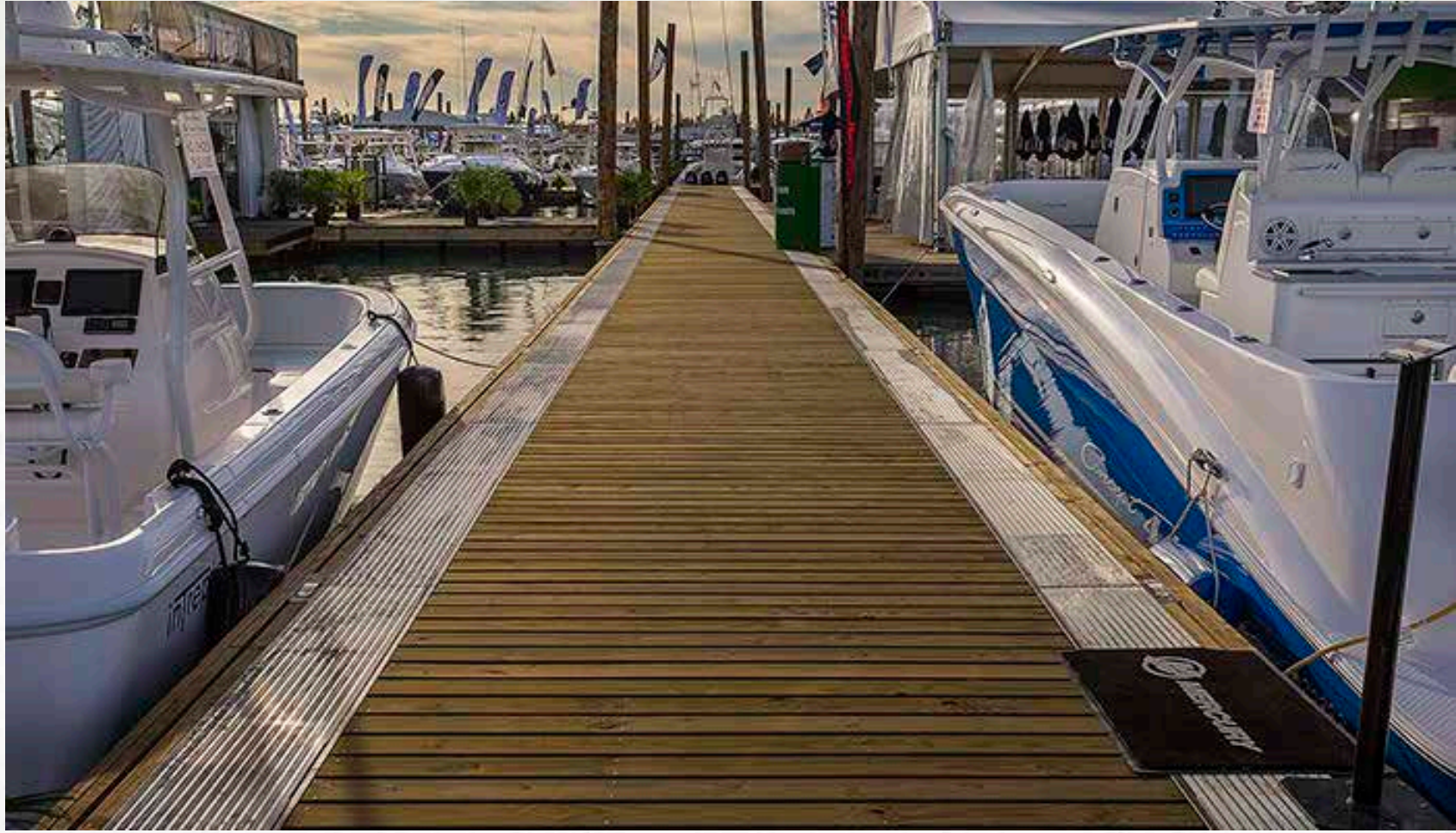


WESTERN
WOOD PRESERVERS
INSTITUTE



EST. 1947





Raise your hand if:

- Your port has dealt with permitting issues from a regulatory agency
- The regulatory agency you dealt with was the Army Corps of Engineers

What other regulatory agencies are you encountering?

Restricting Preserved Wood Products in the Puget Sound

By Ryan Pessah, Western Wood Preservers Institute

Over the past few months, Western Wood Preservers Institute (WWPI) has received inquiries about the restrictions on using preserved wood in the Puget Sound from various ports and marinas in the area. After some digging, WWPI found the Salish Sea Nearshore Programmatic Biological Opinion (Biological Opinion) that was published in June of 2022 (*use Google to find the report online*). Biological Opinions are a programmatic consultation that create the framework for projects in a geographic area to protect and recover imperil species and the ecosystem. In other words, if a project is able to comply with the requirements outlined in the Biological Opinion, it will get expedited approval. Unfortunately, the Biological Opinion places unreasonable restrictions on the use of preserved wood in the Puget Sound. These restrictions will increase

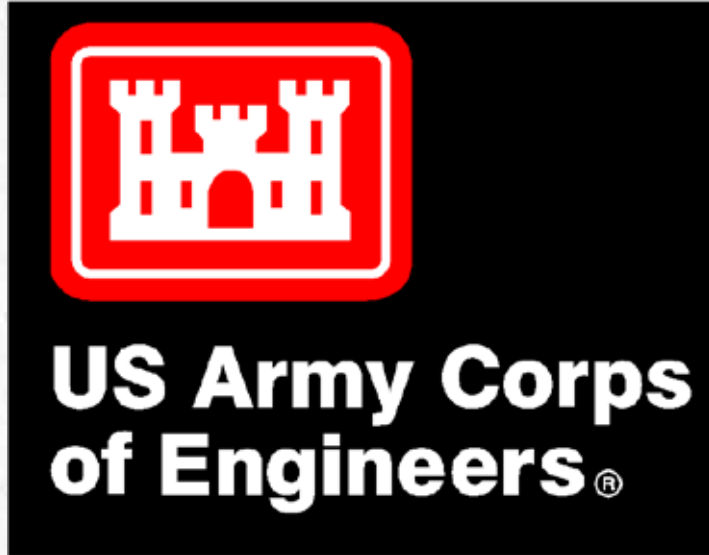
Unfortunately, the Biological Opinion places unreasonable restrictions on the use of preserved wood in the Puget Sound. These restrictions will increase the cost of projects in the Puget Sound.

products for decking and the repair or replacement of bulkheads.

Since hearing about these unrealistic restrictions on the use of preserved wood products in the Puget Sound, WWPI has initiated contact with National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS) to schedule a meeting. The purpose of the meeting will be to get clarification on the ambiguity of the Biological Opinion and provide peer reviewed studies that note the use of preserved wood products will not adversely impact species and the ecosystem.

The Puget Sound is a highly regulated area and has many restrictions on construction activities as well as construction materials. It does not seem likely that other regions in the United States will adopt the unreasonable restrictions noted in the Biological Opinion. However, to ensure that these restrictions do not spread to other parts of the United States, WWPI and other industry partners are ready to advocate for the use of preserved wood products by providing a balanced narrative. If you are looking to start a project in Washington's Puget Sound, please take some time to review the Biological Opinion.

Today's Presentation



Steelhead

Today's Presentation



NOAA
FISHERIES



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd Boulevard, Suite 1100
PORTLAND, OR 97232-1274

Refer to NMFS No:
WCRO-2019-04086

June 29, 2022

Todd Tillinger
Chief Regulatory Branch
U.S. Army Corps of Engineers, Seattle District
4735 East Marginal Way South, Bldg. 1202
Seattle, Washington 98134-2388

Re: Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Salish Sea Nearshore Programmatic Consultation (SSNP)

Dear Mr. Tillinger:

Please find below the Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Salish Sea Nearshore Programmatic Consultation (SSNP).

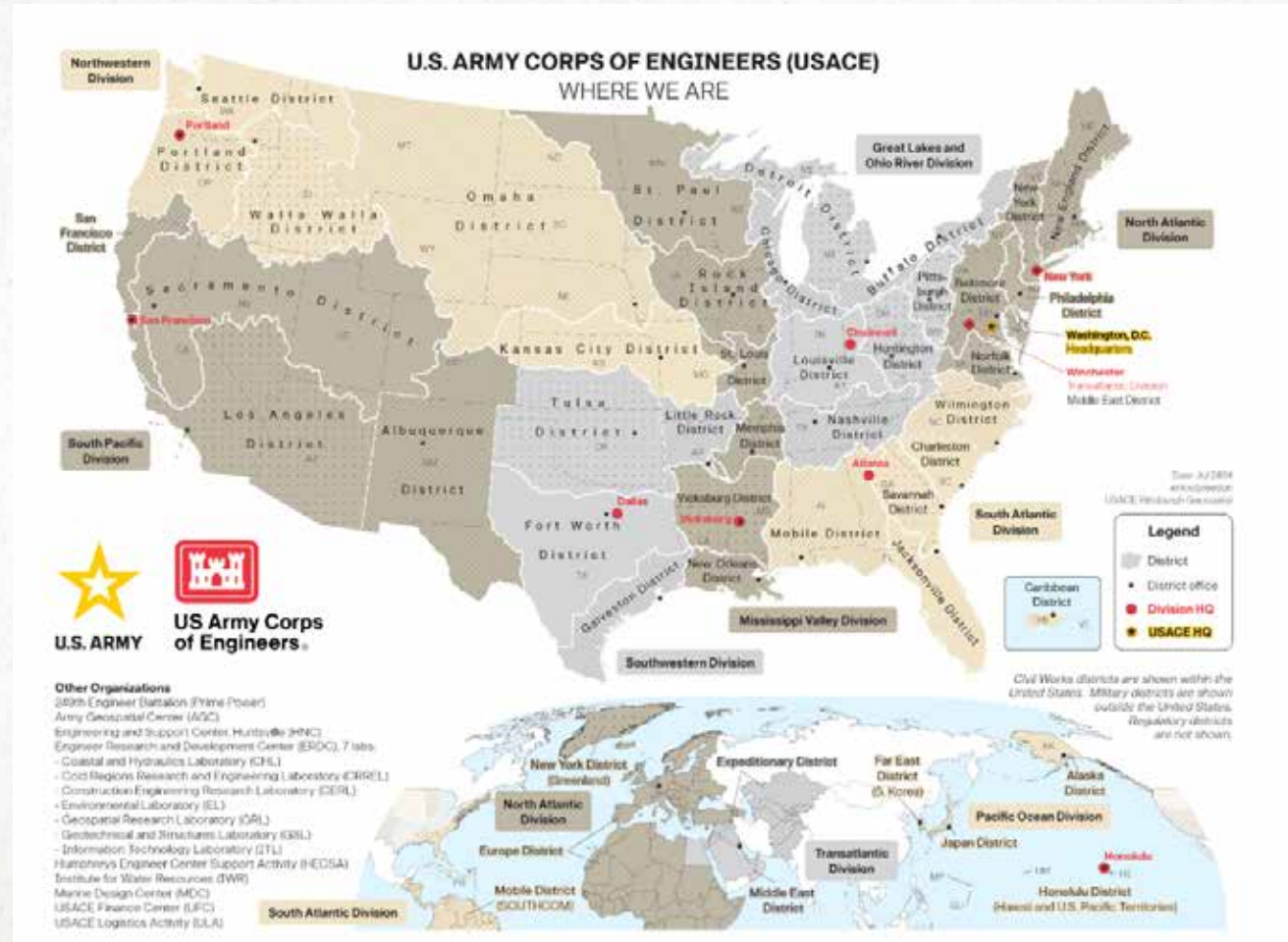
Rivers & Harbor Act

In 1899 Congress passed the Rivers and Harbor Act which tasked the Army Corps of Engineers with approving any work in, under, and over navigable waters

Some of the construction projects:

- Piers, docks, wharves, bulkheads, dolphins, marinas, ramps, floats intake structures, and cable or pipeline crossings.
- Dredging and excavation
- Bank stabilization

Army Corps of Engineers



Corps Permit Process

General Permits

- Regional or nationwide basis for activities that are substantially similar in nature and cause only minimal individual and cumulative environmental impacts.
- Streamlines the permitting process for the permit applicant and the Corps

Individual Permits

- For approving activities that cannot be authorized under a national or general permit.
- Impact to environment is unknown.

Endangered Species Act

Passed by Congress in 1973

Section 7 requires all federal agencies to consult with National Marine Fisheries Service to ensure any federally authorized action will not jeopardize listed species.



Bald Eagle



Kauai Akialoa

Seattle District Office

Long History of limiting the use of preserved wood products through regional general permits

Regional General Permit 6 authorizes the construction of residential in or overwater structures with limits:

- Pier surface and stairways must have 40% to 60% grating, to allow for light passage
- Limits preserved wood products to ammoniacal, copper, zinc, & arsenate (ACZA). Preserved wood can not be used on state-owned lands & fish spawning habitat.



Seattle District Office RGP 6

Issued in April 2017

Expired in April 2022

Corps confirmed that they will not reissue

Since June 2022, the Corps has been utilizing the Salish Sea Nearshore Programmatic Consultation

Biological Opinion Vs. General Permit

No public comment process for Biological Opinion

It sets the floor for all projects

It does not expire like a General Permit

Salish Sea Nearshore Programmatic Consultation



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Puget Sound Nearshore Habitat Conservation Calculator

Version 1.6

3/22/2024

This tool determines long-term habitat impacts and benefits for projects in the Salish Sea nearshore. Details about the use of this Conservation Calculator can be found in the User Guide, FAQs, and training materials, which are all available on the

[Puget Sound Nearshore Habitat Conservation Calculator Webpage](#)

		Conservation Credits/Debits	DSAYs (Discounted Service Acre Years)
Overwater Structures	Debit	0	0.00
	Credit (includes creosote removal)	0	0.00
	Balance	0	0.00
Shoreline Armoring	Debit	0	0.00
	Credit from Armor Removal	0	0.00
	Credit from Creosote Removal	0	0.00
	Balance	0	0.00
Maintenance Dredging	Balance	0	0.00
Boatramps, Jetties, Rubble	Debit	0	0.00
	Credit	0	0.00
	Balance	0	0.00
Riparian Enhancement/Degradation	Balance	0	0.00
SAV Planting	Conservation Credit	0	0.00
Habitat Loss / Remaining Conservation Offsets Needed		0	0.00
Is this a standalone restoration project?*	No		



Impact and Benefit Determination for Overwater Structure Elements

Entry Block: Removal

Determine benefits from both structures to be removed as part of replacements or from structures in close proximity to be removed as mitigation for new structures.

	Description	OWS Element	Units	Quantity	Benefit	Notes
Pier and Ramp to be Removed	Enter the dimensions of elevated piers and ramps in each respective shore zone. If a pier has partial grating, enter dimensions of grating and ungrated portions into respective fields. Enter central portions of piers wider than 40 feet as floats, as there is little side lighting in such structures. Enter boatlifts as solid or grating piers depending on design.	Pier & Ramp USZ fully grating	SqFt		0.00	See the Ref. tab for notes on shore zones, complex floats, and large decks. Refer to the most recent User Guide for further information.
		Pier & Ramp USZ solid	SqFt		0.00	
		Pier & Ramp LSZ fully grating	SqFt		0.00	
		Pier & Ramp LSZ solid	SqFt		0.00	
		Pier & Ramp DSZ fully grating	SqFt		0.00	
		Pier & Ramp DSZ solid	SqFt		0.00	
Piles to be removed	Include all piles to be removed including creosote. The amount of creosote is credited separately below. Use the Average Pile Diameter Calculator below to determine average pile diameter when there are different quantities of piles with different diameters.	Number of piles in USZ			0.00	
		Average pile diameter in USZ.	[inches]			
		Number of piles in LSZ			0.00	
		Average pile diameter in LSZ.	[inches]			
Creosote Removal	Creosote removal: Enter the volume (tons) of creosote to be removed, including all in- and over water creosote, in the respective zone. Use the Creosote Tonnage Estimator below.	USZ Tons of Creosote Timber to be removed	Total in tons		0.00	Benefit duration for creosote removal is 100 years. Absent removal of piles, we assume that derelict piles on average break off after 40 years. Thus, adjustment factors apply for 40 years, only.
		LSZ & DSZ Tons of Creosote Timber to be removed	Total in tons		0.00	
Grated Float to be Removed	Enter the outside dimensions of new floats with at least 50% grating and 60% or more open space as grating floats (compliant with WAC 220-660-140). Grating floats are not split between grating and ungrating portions.	USZ Outside dimensions of float area	Length [feet]			For each shore zone, enter the length and width of the float(s). For complex floats, enter the length and the width of the entire complex float system. Marinas may have multiple complex floats. The calculated area may not match the actual area; if this is the case, manually enter the area in E26, E27, and/or E28. See the Ref. tab or refer to the most recent User Guide for further information.
			Width [feet]			
		LSZ Outside dimensions of float area.	Length [feet]			
			Width [feet]			
	DSZ Outside dimensions of float area.	Length [feet]				
		Width [feet]				
	The area of a float in each shore zone is calculated from the length and width entered above. For complex floats, manually enter the area in the appropriate zone. Floats should not be located in the USZ and cannot ground out.	Grated Float USZ	SqFt	0	0.00	0
Grated Float LSZ		SqFt	0	0.00	0	
Grated Float DSZ		SqFt	0	0.00	0	

Impact and Benefit Determination for Shoreline Armoring

Impact and Benefit Determination for Shoreline Armoring			
Elevations and Beach Type	Input Requests for Elevations and Slope	Quantity (feet in NAVD 88)	Notes
	Enter the elevation of MHHW (feet) in NAVD 88.	0	Use the Beach Slope Reference Line GIS layer to find MHHW, HAT, and other information for the site.
	Enter the elevation of HAT (feet) in NAVD 88.	0	The Beach Slope Reference line elevations are in NAVD 88.
	Typical beach slope:	0.134	Link cell C5 to the applicable slope cell in the Typical Stratified Beach Slopes table to the right (type the '=' sign, click on the pink slope cell, and press Enter). Cell C5 must be linked for C6 to populate correctly.
	Horizontal Distance (feet) between MHHW and HAT:	0.00	This distance is calculated based on the site-specific beach slope. The horizontal distance between MHHW and HAT is used to determine the affected area. This distance does not change with SLR.
Riparian Conditions Post Construction	Post Construction Riparian Site Conditions Landward of Armoring		
	Riparian Vegetation Description	Quantity (SqFt) or Ratio	Notes
	Area with bare or impervious surface like concrete, gravel, or sand, within 130 ft behind hard armoring	1	Enter the post-construction riparian conditions here. The inputs reflect the ratio of riparian habitat types behind armoring. Thus, if just one habitat type is present, it is sufficient to enter a 1 into the respective row. If there is a 50/50 split of the area between two habitat types, enter a 1 into each row for respective habitat types. For more complicated scenarios, enter respective areas. Evaluate <i>changes</i> in riparian habitat type in the RZ separately.
	Area with herbaceous vegetation, like lawn, within 130 ft behind hard armoring	1	
Area with shrubs and trees within 130 ft behind hard armoring	1		
Entry Block: Removal			
Existing Armoring	Input Requests for Removal Armoring	Value	Notes
	Length and Type of Shoreline Armoring to be Removed	Linear feet	
	Linear feet of the existing armoring that is sloped and/or rock	0	Soft and hybrid armoring do not incur habitat impacts in this calculator. Thus, their removal does not generate credits.
	Linear feet of the existing armoring that is vertical (including concrete, sheet pile, creosote pile or wall).	0	
	Location: Tidal Elevation of Armoring	Linear feet	The toe is where the beach meets the armoring. Is your toe elevation in the MLLW datum? Consult the User Guide for instructions to convert to NAVD88. If the toe elevation is unknown, consult the User Guide for an alternative method.
Enter the toe elevation of the existing armoring in feet in NAVD 88.	0		

Impact Determination from Maintenance Dredging

Enter each maintenance dredging event to determine debits. Add dredged events and enter the sum of these areas for a combined assessment.

Dredge Area 1				
			Habitat Loss	Notes
USZ Dredged Area	Enter the area (SqFt) proposed to be dredged.		0.00	50% adjustment factor applies in areas with sand lance or surf smelt fish spawning.
LSZ Dredged Area	Enter the area (SqFt) proposed to be dredged.		0.00	50% adjustment factor applies in areas with herring spawning.
DSZ Dredged Area	Enter the area (SqFt) proposed to be dredged.		0	
Subtotal: Habitat Loss from Dredging Area 1			0.00	Subtotal based on dredging area 1 square footage, LSZ SAV scenario, and adjustment factors.

Dredge Area 2				
Only use this block if a dredge area has different adjustment factors or SAV scenarios than those entered on the ProjectD tab. Include an explanation on the ProjectD tab.				
			Habitat Loss	Notes
USZ Dredged Area	Enter the area (SqFt) proposed to be dredged.	0	0.00	50% more debits apply in areas with sand lance or surf smelt fish spawning.
LSZ SAV scenario	Enter SAV scenario 0-3 for LSZ.	0		Ref: LSZ SAV Scenarios
LSZ Dredged Area	Enter the area (SqFt) proposed to be dredged.	0	0.00	50% more debits apply in areas with herring spawning.
DSZ Dredged Area	Enter the area (SqFt) proposed to be dredged.	0	0.00	
Subtotal: Habitat Loss from Dredging Area 2			0.00	Subtotal based on dredging area 2 square footage, LSZ SAV scenario, and adjustment factors.
Total Habitat Loss from Dredging			0.00	Reflected on Summary tab.

Adjustment Factors for Dredging Area 2			Percent more Debit	Notes
Is the project located within 5 miles of a Puget Sound Chinook natal estuary zone or within 1 mile of a Hood Canal summer-chum estuary zone?			No	Ref: Application of Adjustment Factors
Puget Sound Natal & Pocket Estuaries			0%	
Is the project is located within a pocket estuary/embayment?			No	Ref: Explanation of Pocket Estuaries and Embayments If yes, a factor of 30% applies. If also within a natal estuary
Puget Sound Natal & Pocket Estuaries			0%	



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1201 NE Lloyd Boulevard, Suite 1100
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Refer to NMFS No.:
WCRO-2020-02558

September 10, 2024

Ralph J. Rizzo
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Federal Transit Administration
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Seattle, Washington 98174-1002

Re: Endangered Species Act Section 7(a)(2) Biological Opinion, Conference Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Washington State Ferries Maintenance and Preservation Work Programmatic, Washington (Puget Sound, HUC4 17110019; San Juan Islands, HUC4 17110003; Strait of Georgia, HUC4 17110002)

Dear Sirs and Madam:

Thank you for your letter of September 15, 2020, requesting initiation of consultation with NOAA's National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) for the Federal Highway Administration's (FHWA), Federal Transit Administration's (FTA), and U.S. Army Corps of Engineers' (USACE) proposed Washington State Ferries Maintenance and Preservation Work

Differences between Biological Opinions

State Ferries

- Lower threshold for impact to listed species
- Creosote piling removal credit bank to be used for future projects
- 5 pilings without wraps per year
- 30,000 board feet of treated wood per year, no placement restrictions

Everyone Else

- Higher threshold for impact to listed species
- Creosote piling removal credits must be used immediately
- Limits dredging to 34,000 cubic yards annually
- All treated wood pilings must be wrapped.

Pushing Back on Regulations

WWPI and Treated Wood Council has hired a consultant to conduct a literature review to identify:

- if and why these species are endangered
- where and why the species might be going elsewhere, or if they are dying off, and
- if treated wood materials contribute to their endangerment.

Pushing Back on Regulations

- Pacific Northwest Waterways Association – filing an Amicus Brief
- Seaport Alliance (Seattle and Tacoma) is working on a Biological Assessment

Concluding Remarks

- The Biological Opinion (Salish Sea Nearshore Programmatic Consultation) is being piloted in the Puget Sound.
- Once all the kinks are ironed out it will be coming to a port near you
- Utilize Western Wood Preservers Institute to help you navigate using preserved wood products

Thank you

Ryan Pessah

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