

Section 2

Permitting and Consultation

2.1 Corps of Engineers Permitting

2.1.1 Statutory Authority

The Corps regulates activities under Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act. A Section 10 permit is required for any work that would occur above or below Navigable Waters of the United States. The Corps regulates all activities below the ordinary high water (OHW)¹ mark in non-tidal waters and below the mean high water (MHW)² line in tidal waters. Navigable waters in and near the City of Seattle (City) are listed below and shown on Figure 1.

- Duwamish River (the entire length within City limits is navigable)
- Lake Washington Ship Canal (entire length is navigable)
- Cedar River from its mouth at Lake Washington to Northern Pacific Railroad Bridge approximately at River Mile 1.25
- Lake Union (entire length is navigable)
- Lake Washington (entire length is navigable)
- Puget Sound (entire length is navigable)

Section 404 of the Clean Water Act regulates the discharge of dredged or fill material into Waters of the United States, which include Navigable Waters and other parts of the surface water tributary system down to the smallest of streams (e.g., a tributary that only

¹ OHW: The visible line on a bank where the presence and action of waters are so common as to leave a mark on soil or vegetation. As used by the Corps, this means the line on the shore of non-tidal (freshwater) streams and lakes. For tidally influenced (marine) water bodies, OHW correlates to the mean higher high water (MHHW). The Corps uses a reference system that sets 0 at Mean Lower Low Water (MLLW) (whereas MLLW in NAVD88 is at approx. -2.35). Make sure you use the Corps datum.

² MHW: A tidal datum that is the average high water height. As used by the Corps, this term means the elevation on the shore of tidal waters (ocean, bays estuaries, and certain rivers) reached by the plane of the average high water. The Corps uses a reference system that sets 0 at Mean Lower Low Water (MLLW) (whereas MLLW in NAVD88 is at approx. -2.35). Make sure you use the Corps datum.

contains water after storm events), lakes, ponds, or other water bodies on those streams, and adjacent wetlands (e.g. sloughs, swamps, and some seasonally flooded areas) if they meet certain criteria. A Section 404 permit is required for all fill or discharge activities waterward of the OHW mark in non-tidal waters and waterward of the mean higher high water (MHHW)³ line in tidal waters. When adjacent wetlands are present, Corps jurisdiction extends beyond the OHW mark to the limit of the adjacent wetlands. When the Water of the United States consists only of wetlands, Corps jurisdiction extends to the boundaries of the wetlands.

2.1.2 Corps Permitting with the City of Seattle

The City and Corps have developed a program to streamline permitting in which the City financially supports a designated Corps liaison to coordinate and prioritize City permit applications. Authorized under Section 214 of the Water Resources Development Act, the program is implemented through a Memorandum of Agreement (MOA) between the City and the Corps. The MOA covers all City departments and is facilitated through Seattle Public Utilities.

2.2 Consultation with the Services

When issuing permits, the Corps must consider the presence of species listed as threatened or endangered under the Endangered Species Act (ESA) (or their critical habitat). As addressed in ESA Section 7(a)(2), the information required for ESA evaluation is usually prepared in the form of a biological evaluation (BE). The Corps uses BEs to conduct ESA Section 7 and Essential Fish Habitat (EFH) consultation with the Services to assess potential effects of a project action on listed species and their designated critical habitat. BEs must include all areas directly and indirectly affected by the project.

Direct effects are the immediate effects of a project. For example, work in or along a stream can affect Chinook salmon in that stream.

Indirect effects are those caused later by an action, or in a broader geographic area, and are reasonably likely to occur. For example, removal of a fish barrier could result in an adverse affect if Chinook salmon move upstream into a polluted area above the former fish barrier.

In the spring of 1999, several species of salmon in Washington waters were listed under the ESA. Because these listed species may be affected by in-water work in many areas of Washington, including the City, the Corps [as mandated by Section 7 of the ESA and Department of the Army permit regulations at 33 CFR 325.2(b)(5)] consults with the Services on most permit applications it receives.

³ MHHW: A tidal (marine) datum that is the mean (average) of the two highest tides. The Corps uses a reference system that sets 0 at Mean Lower Low Water (MLLW) (whereas MLLW in NAVD88 is at approx. -2.35). Make sure you are use the Corps datum.

2.3 What to Submit to the Corps

This Seattle Biological Evaluation (SBE) replaces the numerous individual BEs that would otherwise be required for Section 7 consultation. For the projects or activities covered under this SBE, the City would submit the following application package to the Corps:

- **Permit application.** Use the Joint Aquatic Resources Permit Application (JARPA) form, available at <http://www.epermitting.org/> along with permit drawings.
- **Specific Project Information Form (SPIF).** Fill out the SPIF Cover Page and, based on project or activity construction methods, the other applicable SPIFs. The SPIFs are found in Appendix A. The SPIF requires identification of ESA-listed species and their EFH that occur in the project area. SBE Section 5 can assist in making these identifications. Other scientists may also be consulted in the effort to write the information on which ESA-listed species are found in a project area and which of them may be affected by the proposed project or maintenance activity.

Upon receipt of these documents, the Corps will request, if necessary, additional information to complete the application package. The Corps then initiates individual ESA and EFH consultation with the Services.