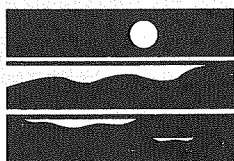
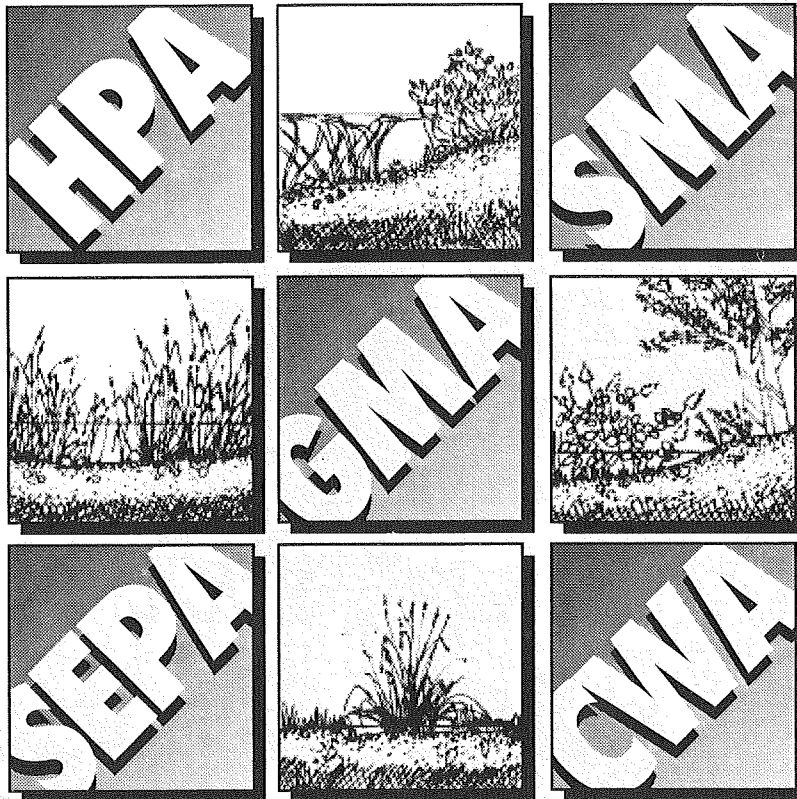


# WETLAND

## Regulations Guidebook



WASHINGTON STATE  
DEPARTMENT OF  
E C O L O G Y



# WETLAND

## Regulations Guidebook



### Note to the Reader

Numerous federal, state, and local laws affect the use and protection of wetlands. Because none of the laws were specifically designed as a comprehensive approach for wetlands management, understanding how and when the laws apply can be confusing.

The purpose of this guidebook is to provide planners, developers, and the general public with a basic guide to the use and application of existing wetland laws and regulations. As such, it is not a legal document and should not be considered as the final word on any of the laws or requirements presented.

A variety of agencies implement the laws and are referenced throughout this document. The reader should always contact the appropriate local, state or federal agencies for complete, up to date information on that agency's responsibility over wetland areas. A list of federal and state implementing agencies is provided at the back of this document.

We welcome any comments on how we can improve the usefulness of this guidebook. Please send your written comments to the *Washington Department of Ecology*, P.O. Box 47600, Olympia, Washington 98504-7600.

*The Department of Ecology is an equal opportunity agency and does not discriminate on the basis of race, creed, color, disability, age, religion, national origin, sex, marital status, disabled veteran's status, Vietnam Era veteran's status or sexual orientation. If you have special accommodation needs or require this document in alternative format, please contact Tim Gates at (360) 407-7256 (Voice) or (360) 407-6006 (TDD).*



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# How to Use This Guide

**T**his guidebook is designed to help you understand how various federal, state, and local laws and regulations apply to wetlands and activities that may affect wetlands. Generally, wetland laws only apply to proposed, not existing, activities that affect wetlands. If you already know which laws may apply in your particular situation, you can skip ahead to the sections of the guidebook that pertain to those laws. Detailed descriptions of each law start on page 11.

If you wish to determine whether any of the wetland laws and regulations apply in your particular situation, you may wish to follow the process illustrated below, which is described in the following sections of the guidebook. This process will help you to:

- 1. determine if you have** a wetland that is within the jurisdiction of any of the laws,
- 2. determine what type** of wetland you have,
- 3. determine what wetland laws** and permits might apply in your situation, and
- 4. determine what such laws** and their implementing regulations might require.

You should not assume, however, that you can make each of these determinations in a complete and accurate manner based on the information in this guidebook. In all cases you should check with each agency that may have jurisdiction over your proposal, and in some cases it may be necessary to have agency staff or a qualified consultant make a particular determination. If you rely solely on this guidebook and your own knowledge, you may find out later that you are in violation of one or more laws.





# Wetlands determination

**Wetlands** are transitional areas between upland and aquatic environments where water is present long enough to form distinct soils and where specialized "water-loving" plants can grow.

## Do You Have a Wetland?

The first thing you need to know to determine whether any wetland laws apply to your particular situation is whether you have a wetland on the property that is within the jurisdiction of any wetland laws. To answer this question, you must first of all determine if there is a "wetland" as defined by the respective laws. However, you may also need to know how big it is and where it is relative to other water bodies. This is because some laws and regulations only apply to wetlands of a particular size, and others only apply to wetlands that are adjacent to or associated with other water bodies.

Wetlands are defined differently in various wetland laws, but generally they are areas where water is present long enough to form distinct soils and where specialized "water-loving" plants can grow. Several regulatory definitions can be found in the sections of this guidebook that describe the major regulatory programs that affect development activities in wetlands. Differences in wetland definitions can result in some agencies asserting jurisdiction over certain wetlands where other agencies may not. Some agencies have maps which show many of the wetlands within their jurisdiction, but such maps may not show all of these wetlands or their precise boundaries. For this reason, it is often advisable to have an agency representative or qualified consultant determine if there are any wetlands on the property. If there are, it may also be necessary to have experts delineate the wetland boundaries and determine if they are adjacent to or associated with other water bodies. It is important to make sure that such delineations and determinations are conducted in accordance with the procedures required by the agencies with jurisdiction.

## What Type of Wetland Do You Have?

Once you've determined that you have a wetland, it is important to identify what type of wetland you have, and what its functions and values are. Some wetland laws and regulations only apply to certain types of wetlands based on their location, classification, or rating. Also, most regulations require that any impacts to wetland functions and values be mitigated.

As shown in Figure 1, the location of a wetland in relationship to surface waters is critical in determining the jurisdiction of various state and federal laws. However, permit requirements vary depending upon the type of activity proposed and the specific wetland situation. Always contact an agency for clarification if you are not sure about permit requirements.

The most commonly used wetland classification system is "Cowardin", named for one of the scientists who developed it. It was officially adopted by the U.S. Fish and Wildlife Service in the 1970's. Cowardin divides wetlands into five major categories based on the type of aquatic environment to which they are connected, and further divides wetlands by soil type, vegetation, persistence of wet conditions, and other characteristics. The five basic types are:

**Marine:** sea water wetlands undiluted by freshwater.

**Estuarine:** wetlands in estuaries where saltwater and freshwater mix.

**Riverine:** freshwater wetlands associated with rivers or streams.

**Lacustrine:** freshwater wetlands associated with lakes.

**Palustrine:** all other freshwater wetlands (swamps, marshes, bogs, etc.)

Some agencies have also adopted wetland regulations that treat wetlands differently depending upon how they score in a wetland rating system. For instance, they might specify wider buffers or higher compensation ratios for wetlands that are considered more valuable. Therefore, it is important to determine whether a rating system is being used, and if so, whether a rating has been assigned to your wetland. If one is being used and no rating has been assigned, it may be necessary to get professional help in determining how your wetland would be rated.

When a permit is applied for, some agencies require an assessment of the ecological functions and socio-economic values that a wetland provides. Many agencies require mitigation for any impacts to wetland functions and values that will be caused by permit approval. Therefore, it is important to understand what functions and values your wetland provides. These may vary from wetland to wetland, and any particular wetland may provide functions such as water quality protection, flood protection, shoreline stabilization, groundwater recharge, stream flow maintenance, and fish and wildlife habitat, and values such as aesthetic, recreational, and educational opportunities. It is best to get professional help in conducting an assessment of a wetland's functions and values, and in designing a project to avoid or otherwise mitigate any impacts to such functions and values.

# What Laws/Permits Apply to Your Proposal?

A variety of federal, state, and local laws and regulations affect construction and other activities in wetlands and adjacent areas. Some of them, however, only apply to certain wetlands or certain activities in wetlands, and the provisions of these laws and regulations are varied. As a result, case-by-case review is needed, and applicants are advised to contact the appropriate agency prior to project development. Contacting the Department of Ecology, U.S. Army Corps of Engineers, or your local planning department will provide the best start.

The information provided in Table 1 will assist you in identifying the primary laws and permits that may apply to any proposed activities in your wetlands. Each of the laws has a detailed description beginning on the page noted in the table. For more information on each law contact the responsible agency. Addresses and phone numbers for all of the federal and state agencies are provided on the last page of the guidebook.

**Table 1: Federal Laws/Permits**

Law	Implementation	Jurisdiction	Application to Wetlands	Implementing Agency	Ref Page
<b>Federal Clean Water Act Section 404</b>	Permit required for placement of dredge or fill materials including any related draining, flooding, and excavation	Waters of the United States	Includes all wetlands (with some exemptions)	<i>United States Army Corps of Engineers/ Environmental Protection Agency</i>	11
<b>Federal Clean Water Act Section 401</b>	Certification that the proposed project will meet state water quality standards is a condition of federal permit approvals	Federal permits affecting waters of the U.S., including wetlands	Includes all wetlands that may be affected by a federally permitted activity	<i>Washington Department of Ecology</i>	17
<b>Federal River and Harbor Act Section 10</b>	Permit required for all construction activity	Navigable waters to the mean high water mark of tidal waters and the ordinary high water mark (OHWM) of fresh water	Wetlands within the limits of "navigable waters"	<i>United States Army Corps of Engineers</i>	18
<b>Federal Coastal Zone Management Act</b>	A notice of consistency with the state coastal zone management plan is a condition of federal activities, federal license and permit approval, and federal support of local activities	Applies to Washington's 15 coastal counties	Wetlands within the 15 coastal counties of Washington	<i>Washington Department of Ecology</i>	19
<b>National Environmental Policy Act (NEPA)</b>	Federal process which requires full disclosure of potential impacts associated with proposed actions	All federal actions	All wetlands	Varies (usually the federal agency issuing the permit)	19

## Federal Laws and Regulations

The principal federal laws that regulate activities in wetlands are Sections 404 and 401 of the Clean Water Act. Other federal laws include Section 10 of the River and Harbor Act, the Coastal Zone Management Act, the Fish and Wildlife Coordination Act, the National Environmental Policy Act, a provision of the 1985 Food Security Act, and the 1990 Food, Agriculture, Conservation, and Trade Act, known as "Swampbuster." All of these laws are implemented through regulations adopted by the agencies with jurisdiction over them.

## State Laws and Regulations

The primary state laws that affect development activities in and near wetlands include the Growth Management Act, the Shoreline Management Act, the Water Pollution Control Act, the Hydraulic Project Approval Code, the Forest Practices Act, and the State Environmental Policy Act. Other state laws include the Flood Plain Management Act and the Puget Sound Water Pollution Control Act. All of these laws are also implemented through regulations.

**Table 2: Primary State Laws/Permits**

Law	Implementation	Jurisdiction	Application to Wetlands	Implementing Agency	Ref Page
<b>State Growth Management Act</b>	Consistency with local comprehensive plans and development regulations. Various permits may be required	All cities and counties in Washington State	Requires protection of all wetlands designated as "critical areas"	Local jurisdiction/ <i>Washington Department of Community, Trade &amp; Economic Development</i>	21
<b>State Shoreline Management Act</b>	Permits required to ensure that proposed activity complies with local shoreline master plan and the Shoreline Management Act	Shorelines of the state including streams with flows greater than 20 cfs or lakes 20 acres or larger and landward area 200 feet from OHWM or floodway; associated wetlands, river deltas and certain floodplains	Includes all land within 200 feet of the OHWM of a state shoreline. Jurisdiction may be extended to include the entirety of an associated wetland and/or floodplains	Local jurisdiction/ <i>Washington Department of Ecology</i>	22
<b>State Water Pollution Control Act</b>	Permits, orders, certifications or compliance with water quality standards	Any pollution of waters of the state	All waters of the state including wetlands	<i>Washington Department of Ecology</i>	24
<b>State Hydraulic Code</b>	Permit (Hydraulic Project Approval) required for all work	Activities affecting waters of the state	Includes wetlands that are important to fish life	<i>Washington Department of Fish &amp; Wildlife</i>	27
<b>Forest Practices Act</b>	Permit required for tree harvest	State-owned and private timberlands	Restricts harvest activities in and around wetlands	<i>Washington Department of Natural Resources</i>	29

## Local Laws and Regulations

Many cities and counties in Washington now have provisions in their comprehensive plans, shoreline master programs, and/or development regulations that affect projects proposed in or adjacent to wetlands. Because there is considerable variation in the provisions of these local plans and regulations, it is necessary to contact local planning departments to determine the local provisions that affect a particular wetland. In many cases, local regulations may cover wetlands not covered by federal and state regulations, and they may be more restrictive than federal and state regulations.

The most common local means for regulating development in wetland areas is through critical area development regulations adopted under the Growth Management Act. In addition, many cities and counties have shoreline master programs (SMPs) adopted under the State Shoreline Manage-

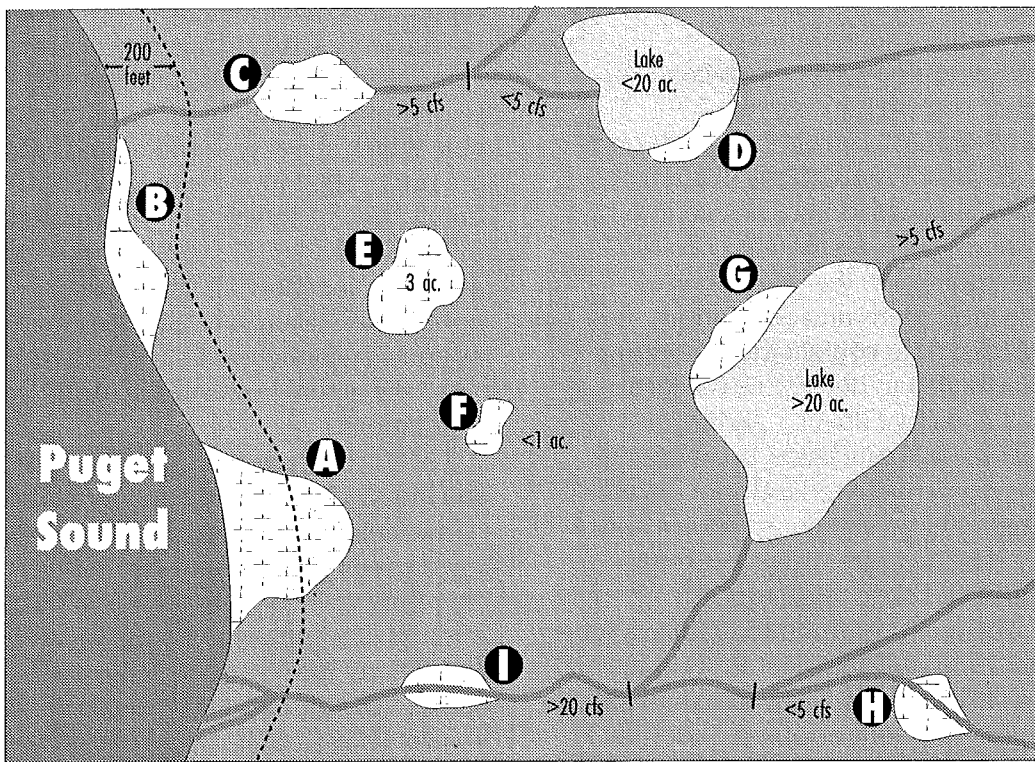
ment Act (SMA) which contain use regulations that affect development in wetlands. City and county offices responsible for administering local regulations usually have maps available which show wetland areas that are under their jurisdiction. Unfortunately, however, wetland inventories in many jurisdictions are incomplete and may not show all wetlands or boundaries accurately. Site specific review is usually necessary to determine the actual limits of the local regulations.

Most local regulations recognize the importance of wetlands. Wetlands considered significant are often managed under policies and regulations that limit certain disruptive activities such as dredging and filling. In addition, many local governments use a variety of non-regulatory methods to protect wetlands. Local planning and public works agencies can assist project proponents in determining local requirements.

**Table 3: Local Laws/Permits**

Law	Implementation	Jurisdiction	Application to Wetlands	Implementing Agency	Ref Page
<b>Local Laws</b>	Consistency with local comprehensive plans zoning, ordinances, shoreline master program. Various permits may be required	As defined by local plans, ordinances, and regulations	May identify specific wetlands and performance standards	Local Jurisdiction	35

**Figure 1: Wetland Jurisdiction**



**Table 4: Primary Federal and State Laws**

WL	404	401	SMA	HPA
<b>A</b>	Individual permit required (Adjacent to marine waters)	Yes	Yes - WL portion outside of 200' is associated with shoreline	Probably (Yes?)
<b>B</b>	Ind. permit required (Adjacent to marine waters)	Yes	Yes	Probably (Yes?)
<b>C</b>	Ind. permit required (Adjacent to stream over 5 cfs)	Yes	Maybe - If WL is judged by Ecology to be associated w/Puget Sound	Yes
<b>D</b>	Ind. permit if impact is 2 acres, otherwise NWP 26 may apply	If ind. permit (or NWP for impact >1 acre) Yes	No	Maybe
<b>E</b>	Ind. permit if impact is 2 acres, otherwise NWP 26 may apply	If ind. permit (or NWP for impact >1 acre) Yes	No	No (unless it supports fish)
<b>F</b>	No	No	No	No (unless it supports fish)
<b>G</b>	Ind. permit required (Adjacent to stream 5 cfs)	Yes	Yes	Probably
<b>H</b>	Ind. permit if impact is 2 acres, otherwise NWP 26 may apply	If ind. permit (or NWP for impact >1 acre) Yes	No	Yes
<b>I</b>	Ind. permit required (Adjacent to stream 5 cfs)	Yes	Yes	Yes

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# What Do the Laws and Regulations Require?

The following sections of the guidebook describe the requirements of specific laws and regulations that may apply to your particular situation. However, it is also advisable to contact the appropriate implementing agencies. The applicable sections and appropriate implementing agencies can be identified by referring to Table 1 on page 5.

Many of the laws and regulations require compliance with standards for wetland buffers and mitigation of wetland impacts. Various agencies require that permit applicants identify any potential wetland impacts, and many require that the agencies mitigate such impacts by applying the following mitigation sequence:

1. *Avoiding* the impact altogether by not taking a certain action or parts of an action;
2. *Minimizing* impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

3. *Rectifying* the impact by repairing, rehabilitating, or restoring the affected environment;

4. *Reducing or eliminating* the impact over time by preservation and maintenance operations during the life of the action; and

5. *Compensating* for the impact by replacing, enhancing, or providing substitute resources or environments.

It is crucial for project proponents to fully understand such requirements and design their projects accordingly. If they do not, they may face costly delays, and run the risk of having their permit denied.

Because of the multiplicity of regulations, it can be very confusing and frustrating to determine which laws apply to you and how you can meet all the requirements. If you have an experienced staffperson in your local planning department, she or he may be able to steer you in the right direction. You should also consider hiring a consultant to assist you, especially if you are proposing a complex project.





# Federal Laws and Regulations

**Wetlands** are defined as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (33 CFR 328.3(b))." To implement this definition, the Corps uses a multi-parameter approach that requires the presence of wetland vegetation, hydrology, and soils.

The 404(b)(1) guidelines were developed by the EPA for use by the Corps of Engineers in determining the suitability of a fill project. The guidelines provide for the identification of adverse impacts to wetlands and discourage avoidable fills in wetlands.

*In this section, federal laws and regulations that affect the use of wetlands are described in more detail. Particular focus is given to provisions of the federal Clean Water Act (Sections 404 and 401).*

## Clean Water Act Section 404

### Purpose

The primary goal of the Clean Water Act (CWA) is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 404 is specifically directed towards regulating discharges of dredged or fill material into waters of the United States, including wetlands (*see Definitions in sidebars*). (Other pollutants are regulated under Section 402 of the CWA by Ecology as delegated by EPA.)

### Implementation

Section 404 provides for government and public review and comment on projects that result in a loss of waters of the United States from a discharge of dredged or fill material and any flooding, excavation, or drainage caused by such projects. (As of September, 1993 excavation, mechanized ground clearing, and in some cases, placing pilings, are considered to involve "filling" and are generally covered by section 404.) A permit program is used to administer the provisions of Section 404. Through the program, the United States Army Corps of Engineers (Corps) issues or denies permits. Enforcement actions may be brought by the Corps or EPA against individuals who violate 404 provisions. Permit approval must comply with guidelines developed by EPA under Section 404(b)(1). If a project does not comply with the 404(b)(1) guidelines, the permit application must be denied. In some cases, an

environmental impact statement may be required prior to permit issuance.

### Provisions of the Law

Under the law, actions in waters of the U.S. may either be subject to an individual permit, covered under the provisions of a general permit, or exempt from regulatory requirements. Usually, individual permits are issued for a single proposed activity. Some activities have been given blanket authorization under the provisions of a general permit issued by the Corps. General permits may pertain to a geographic region or the entire nation. Special conditions may apply to general permits. However, with respect to wetlands, it is important to note that proposed activities may be subject to other laws even if exempted or covered by a general permit. When a project involves a particularly special aquatic site or other especially valuable ecological area, the Corps Division Engineer or Chief of Engineers can exercise discretionary authority to require an applicant to obtain an individual permit regardless of the presence of a general permit.

### Individual Permits

Except as noted under General Permits later in this section, most proposals to modify wetlands in any way will require issuance of an individual Section 404 permit. Whenever work in waters of the United States (including wetlands) is being considered, the Corps should be contacted to determine permit requirements.

The Corps evaluates Section 404 permit applications based upon two standards: (1) Section 404(b)(1) guidelines to assess the impact of a project on environmental quality and (2) factors to determine if the project is in the public interest.

The Section 404(b)(1) evaluation and the public interest review go hand in hand. If a project cannot meet the Section 404(b)(1) guidelines, a permit would be denied.

The primary basis for evaluating the environmental impacts of Section 404 permits are EPA Section 404(b)(1) guidelines (40 CFR Part 230). The Corps must consider the requirements in the guidelines that discourage placement of dredged or fill material into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an "unacceptable adverse impact on restoring and maintaining the chemical, physical, and biological integrity of the waters of the United States."

To assure that the goals of the Clean Water Act are being met, the guidelines state that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to proposed discharge which would have less adverse impacts on the aquatic ecosystem." If the fill can be avoided or placed somewhere else and the same purpose achieved, the permit must be denied. EPA's guidelines also state that no permits should be given if the disposal of dredged or fill materials will:

- ❖ Cause violations of state water quality standards
- ❖ Violate toxic effluent standards
- ❖ Jeopardize federally listed endangered or threatened species
- ❖ Adversely affect municipal water supplies, plankton, fish, shellfish, wildlife and special aquatic sites (e.g. wetlands)
- ❖ Adversely affect the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy
- ❖ Significantly reduce recreational, aesthetic and economic values
- ❖ In addition, no permits are to be granted which involve alteration to wetlands unless "the benefits of the proposed alteration outweigh the damage to the wetlands resource" (33 CFR Part 320.4(b)(4)).

All permit applicants are required to look for alternatives to the proposed action. If the project does not require access or proximity to water (the "water dependency test"), it is presumed that other practicable alternatives exist unless proven otherwise; if the proposed action is water dependent, impacts are to be minimized to the greatest extent possible (40 CFR 230.10(a)(3)). Analysis of alternatives must include cost, logistics, and technology.

If no practicable alternatives exist which do not involve a project sited in wetlands or other waters of the U.S., impacts must be minimized to the greatest extent possible. EPA and United States Fish & Wildlife Service (USFWS) have developed strong mitigation guidelines; the Corps usually incorporates them into permit requirements.

The second standard that the Corps uses to evaluate permits is the "public interest review." Through this process, the Corps balances many factors to determine if the project is in the public's interest. The factors considered include conservation, economics, aesthetics, environmental quality, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and the needs and welfare of the people.

### General Permits

The Corps has authority to issue general permits which provide blanket authorization on a nationwide, state, or regional level for activities which have minimal adverse impacts on the environment. Such activities do not require individual permits as long as they comply with the conditions in the general permit.

Although state and regional general permits offer an opportunity to avoid duplicative wetland protection efforts at the federal, state, and local level, no state or regional general permits have yet been issued in Washington State. However, several

### Waters of the United States means:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters;
  - a. which are or could be used by interstate or foreign travelers for recreational or other purposes; or
  - b. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. which are used or could be used for industrial purpose by industries in interstate commerce;

If the Corps decides to issue a nationwide permit for a fill of 1 - 2 acres, the applicant must then obtain 401 water quality certification from Ecology. (See the next section for more information on 401 water quality certifications.)

❖ All proposed fill actions which require filling more than 2 acres of wetlands or that involve any fill in wetlands that provide habitat for threatened, endangered, or sensitive animal species require an individual permit.

Actions allowed under a nationwide permit are not subject to an appeal process. However, the Corps' Division Engineer can override provisions of a general permit on a case-by-case basis if there is sufficient reason to be concerned about the effect of the project on the aquatic environment.

### **Exemptions (33 CFR 323.4)**

**Exempted activities include:**

*Normal existing farming, forestry, and ranching activities including cultivation, soil conservation practices, farm ponds, irrigation ditches, roads used strictly for farming or forestry operations, regular maintenance, and emergency reconstruction. Such activities may not be exempt if they convert natural wetlands to another use.*

Although agricultural activities are exempt as noted above, if agricultural lands have been abandoned and wetlands have developed which would require hydrologic modification to return the land to agricultural uses, then a permit would be required. In addition, conversion of agricultural lands which are still wetlands to a non-agricultural land use will generally require a permit.

In the fall of 1994 the Soil Conservation Service (SCS) will begin making wetland jurisdictional determinations on agricultural lands. SCS will only be involved in making wetland delineation and will not be involved in any 404 permitting processes. Contact the Corps or SCS for more information.

## **Regulating Agencies**

The Corps and EPA jointly administer Section 404 requirements. The Corps reviews permit applications and issues or denies the permits and may also override EPA guidelines in the interest of navigation (although this rarely occurs). EPA is responsible for setting the guidelines which are used to assess the environmental impacts of proposed disposal permits. It also has veto power over any disposal permit that would have an unacceptable impact on water supply, fish, shellfish, wildlife, and recreational uses (Section 404(c)). If EPA prohibits or requires restriction of a proposed placement of fill, the Corps' permit processing ends and EPA assumes responsibility for approval, modification, or denial of the proposed activity (Section 404(c)). In the event of disagreement between local Corps and EPA (or USFWS or NMFS) permit reviewers, the disagreement may be elevated to the national agency heads for resolution (Section 404(q)). Both the Corps and EPA have authority to bring enforcement action against individuals who violate Section 404 requirements.

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service, as well as the state Department of Wildlife, also have major roles in implementation of the 404 program. The agencies review and comment on permit applications and provide technical assistance to protect fish and wildlife resources and mitigate project impacts. Their authority is derived from the Fish and Wildlife Coordination Act.

Under provisions of Section 401 of the Clean Water Act, the state certifies whether a proposed project complies with state water quality laws. Ecology has the right to place conditions on or request denial of a Section 404 permit if a proposed project does not comply with state water quality laws. The Corps cannot generally issue a Section 404 permit if the state has denied water quality certification. In fact,

4. All impoundments of waters otherwise defined as waters of the United States under the definition;

5. Tributaries of waters identified in paragraphs (a)-(4) of this section;

6. The territorial seas;

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section.

[33 CFR 328.3(a)(1-7)]

nationwide general permits have been issued. Typical activities that have been authorized through nationwide general permits include navigation markers, utility line structures, bank stabilization projects, wetland and riparian restoration and creation projects, cranberry production activities, minor road crossings and bridges, minor dredge and fill projects involving less than 25 cubic yards of fill material, boat docks, and certain federally approved and funded projects. However, many of these nationwide permits have regional conditions which restrict their use in Washington. For more information on nationwide permits and how to obtain one contact the Corps office in Seattle.

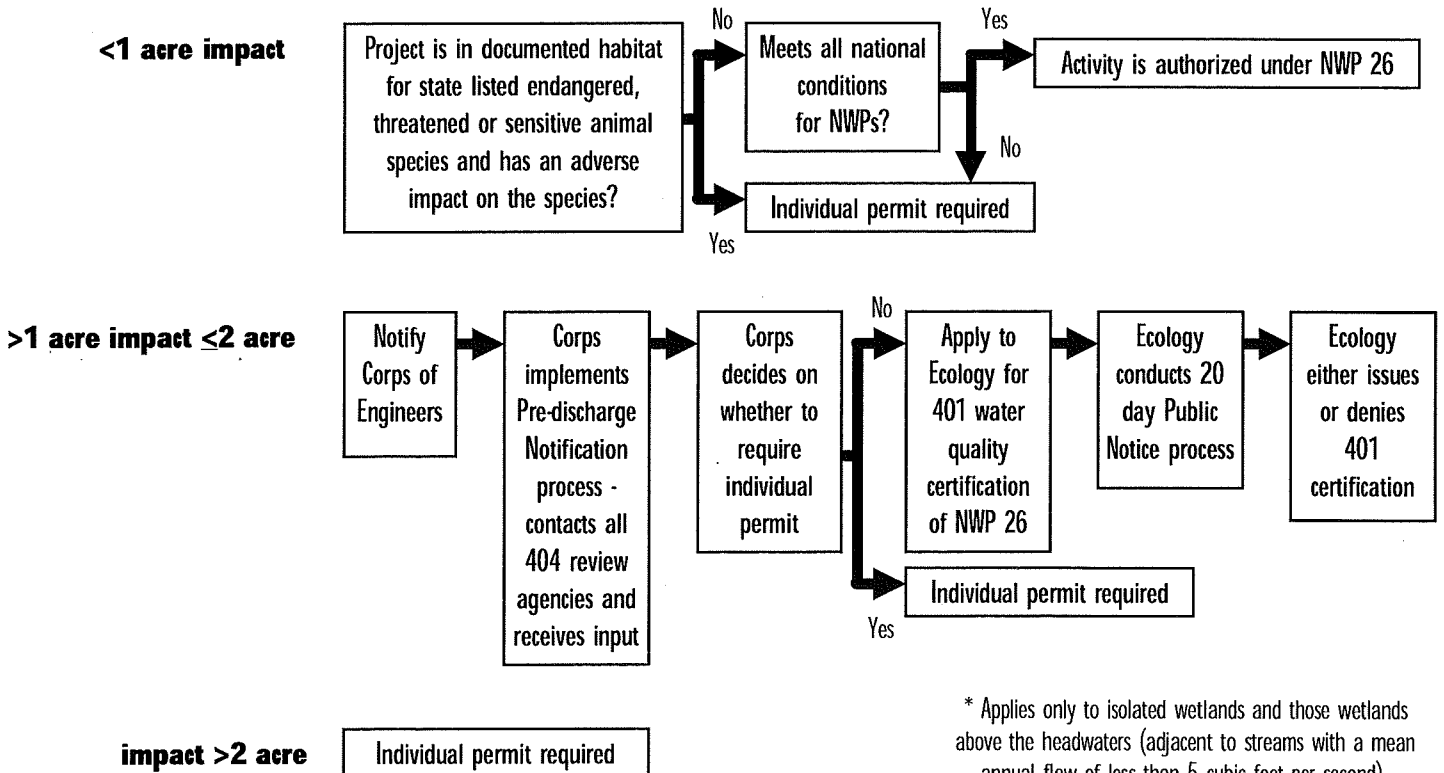
One nationwide general permit (Nationwide Permit #26) applies to discharges of dredged or fill material in headwaters and isolated waters of the U.S., as determined by the Corps. (Headwaters of a river or stream occur above the point where there is less than 5 cfs average annual flow.) In other waters, i.e., below head-

waters, such discharges require an individual permit. Under this permit, as approved in Washington State:

- ❖ Blanket authority is provided for up to 1 acre of fill (including excavation, clearing, etc.) in isolated and headwater wetlands provided certain conditions are met such as: the wetlands do not provide habitat for threatened, endangered, or sensitive animal species, the work would not degrade water quality, or the work does not occur in wild and scenic rivers, or affect international or tribal treaties regarding fish or migratory birds.

- ❖ For fills between 1 and 2 acres, the applicant must notify the Corps. The Corps will consider the proposed fill action and coordinate with EPA, USFWS, NMFS, Ecology, and WDF&W. The process takes about 20 days and results in either authorization to proceed with the proposed action or notification that an individual permit is required. (In most cases, unless adequate mitigation is provided, wetland fills of an acre or more will require an individual permit.)

**Figure 2: Nationwide Permit 26 Process\***



\* Applies only to isolated wetlands and those wetlands above the headwaters (adjacent to streams with a mean annual flow of less than 5 cubic feet per second).

Anyone may request that under the discretionary authority of 404(c) the Regional Administrator of EPA restrict or deny the use of a wetland for disposal of dredged material.

if any local agency permit associated with the project is denied, the Corps will also deny the 404 permit.

### **Permit Information**

Upon determination of the need for an individual permit, the Corps issues a public notice of a 404 permit application. The public notice follows a set format which includes a project description, characteristics of the fill and the extent of wetland proposed to be filled, criteria for permit review, and potential impacts on threatened and endangered species, cultural resources and wild and scenic rivers.

### **Individual Permit Process**

An overview of the permit process is shown in Figure 3 below. Elements of the process are described in the following paragraphs. It should be noted that the 404 provisions are complex and include many exceptions. Because of the flexibility in the implementation of the law, this overview of the process is intended only as a description of a typical sequence of events.

Prior to formal application, the following may occur:

**Informal meetings** with the Corps may be requested at any time to discuss project concepts, potential permit requirements and probable time required to complete this permit process.

An optional **Pre-Application Meeting** may be requested prior to submittal of a permit application. The meeting provides an opportunity for the applicant to present the proposed project to federal, state, local and tribal groups to obtain preliminary technical input.

The remaining paragraphs describe steps in the formal application and review process.

**Submittal of the Application to the Corps.** The application is checked for correctness and completeness and compliance with Corps format requirements.

**Public Notice.** Once a complete submittal is received, the Corps publishes a public notice. The notice is sent to an extensive list of groups and individuals including public agencies, newspapers, adjacent property owners, treaty Indian tribes, and environmental groups. Any individual may request to be on the mailing list for specific regions or projects. The Corps normally solicits public and agency comments for 30 days. Public agencies involved in the review process include:

- ❖ *U.S. Environmental Protection Agency*
- ❖ *U.S. Fish and Wildlife Service*
- ❖ *National Marine Fisheries Service* (for wetlands associated with any anadromous fish habitat)
- ❖ *Treaty Indian Tribes*
- ❖ *Local jurisdictions*
- ❖ *Ecology* (which incorporates comments of other state agencies including Department of Natural Resources, and Department of Fisheries and Wildlife)

Ecology coordinates all state agency review of the application and consolidates comments including:

- ❖ *Section 401 water quality certification* that fill will not cause water quality degradation
- ❖ *Hydraulic Project Approval* provisions
- ❖ *Coastal Zone management consistency requirements* through the Shoreline Management Act in the 15 coastal counties (bordering the Pacific Ocean and Puget Sound).

If the state denies either a 401 certification or a determination of coastal zone consistency, the Corps must deny the permit application. In addition, if any local permits are denied, the Corps must also deny the 404 permit.

**Public Hearing.** The Corps is not required to hold a public hearing, but may do so if requested or if the Corps considers the environmental impacts to be significant or if there is substantial public interest.

**Environmental Review.** Since every permit issued by the Corps is a federal action, the provisions of NEPA apply to every permit. Thus the Corps prepares an environmental assessment and a 404(b)(1) analysis if necessary. If the result of this step is a Finding of No Significant Impact (FONSI), the environmental documentation is concluded. If there is reason to believe that the project will “cause significant damage to the human environment,” preparation of a federal environmental impact statement (EIS) is required. The decision to prepare a federal EIS is made separately from the decision on a state EIS.

**Permit Evaluation and Decision-Making.** The Corps prepares a decision document which weighs the benefits of the project against the environmental impacts. All applicable federal laws are considered during this part of the process. In addition, comments

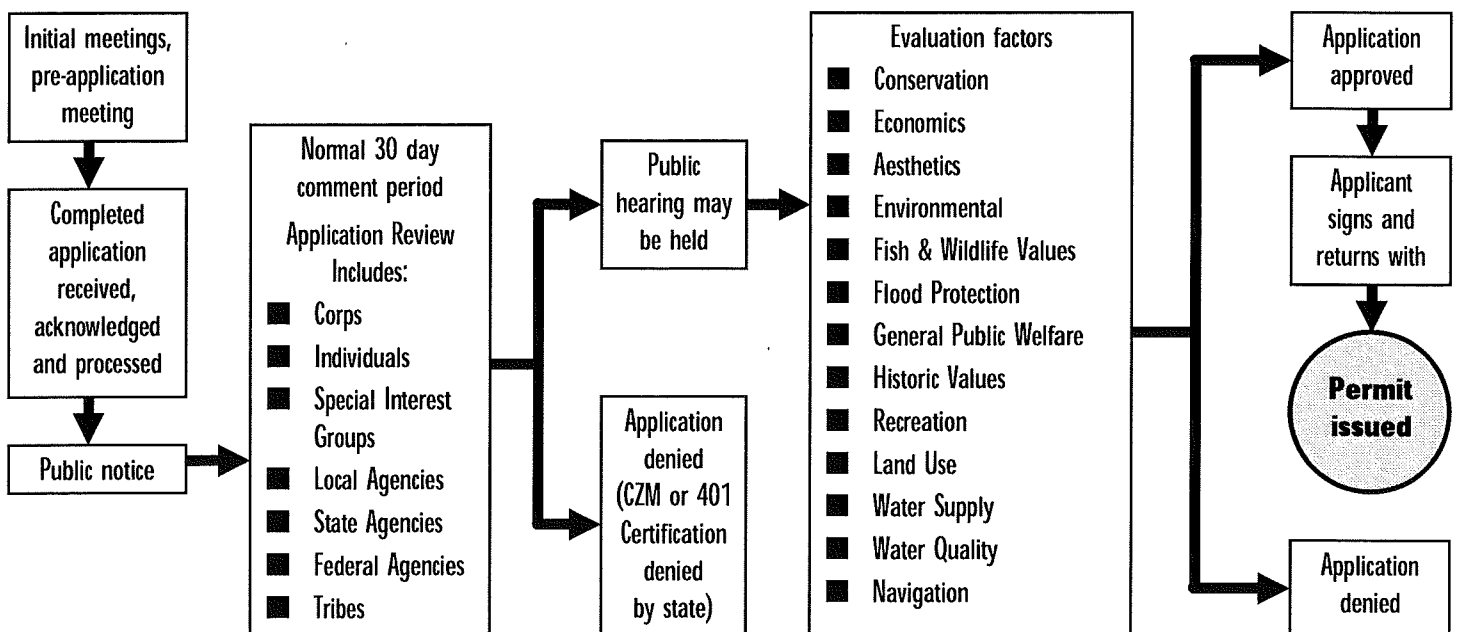
received during the public notice process are reviewed. If necessary, the applicant is required to provide additional information. The final decision for permit approval, modification, or denial rests with the Corps.

### Permit Timing

The review process normally is completed within 60 days of the Corps’ receipt of a completed application. However, the complexity of the wetland issues and laws, and the number of agencies involved may lengthen the process. In particular, if a controversial action is proposed or an EIS is required, the application process may take one to two years before the actual decision to approve, modify or deny the permit application is made.

If EPA, USFWS, or NMFS exercise their option to elevate a permit decision to the national level, under 404(q), the decision may be delayed for 30 to 60 days. If EPA decides to exercise its authority to deny or restrict use of a site for placement of fill material, the Corps cannot issue a permit. The 404(c) process may involve a hearing but will take at most 6 months. This process allows for public participation.

**Figure 3: Section 404 Permitting Process (Individual Permits)**



## Clean Water Act Section 401

### Purpose of the Law

The purpose of Section 401 provisions is to ensure that federally permitted activities comply with the federal Clean Water Act, state water quality laws, and any other appropriate state laws (such as the Water Resources Act and Hydraulic Code).

### Implementation of the Law

Section 401 is implemented through a certification process. With respect to wetlands, the state certification process is most typically triggered through a Section 404 Public Notice and permit application. The 401 process may also be triggered through the Corps' Nationwide Permit process. For several Nationwide Permits a 401 certification is required if wetland impacts are greater than one acre. For impacts less than one acre applicants are required to notify the state Department of Ecology or state Department of Fish and Wildlife to verify that their project is not located in habitat for threatened or endangered animal species. 401 certification is also required for hydropower projects licensed by the Federal Energy Regulatory Commission and for federally approved National Pollution Discharge Elimination System permits.

### Provisions of the Law

Any applicant for a federal permit for any activity that could result in the discharge of a pollutant in violation of state water quality standards is required to obtain a certification from the state in which the activity is to occur. In essence the state is to certify that the materials to be discharged into a wetland will comply with the applicable effluent limitations, water quality standards, and any other applicable conditions of state law. A certification obtained for construction of any facility must also pertain to the subsequent operation of the facility.

If the state denies certification, the federal permitting agency must deny the permit. If the state imposes conditions on a certification, the conditions become part of the federal permit.

### Regulating Agencies

In Washington, the Department of Ecology implements the Section 401 requirements, except for tribal and federal lands. (EPA performs the certification of projects on tribal land and lands under exclusive federal jurisdiction.) Ecology also tracks the responses of other state agencies and has the final word on approval, denial, or special conditions for certification.

### Permit Information

Typically, sufficient information to process a 401 certification is provided through the federal permit application process. If additional information is required, the applicant is notified by Ecology or the state agency requesting additional information.

Failure to provide adequate information can result in delays in processing certifications and/or denial of the certification.

### Permit Process

Typically, the 401 certification process begins with the receipt of a Section 404 Public Notice from the Corps by each reviewing state agency. The public notice includes a notice of request for 401 certification. Ecology's Environmental Review Section serves as the clearinghouse for state agency responses. Reviewing state agencies respond both to the applicant and to Ecology. Ecology prepares a state comment letter based on the various state agency responses along with the 401 Certification or denial. However, unless a violation of a state law would result, Ecology has authority to override any state agency recommendation. *State 401 certifications are exempt from State Environmental Policy Act (SEPA) requirements.*

## Timing

Ecology has 30 days from the issuance of a public notice to respond to the Corps (and up to one year for response to other federal agencies) concerning certification of a proposed activity. Ecology's response may be approval, approval with conditions, denial, or a request for delay due to lack of information. For Nationwide Permits Ecology has up to 60 days to issue or deny certification. If Ecology has not responded within 60 days, the federal agency is authorized to waive certification requirements. The Corps District Engineer can extend the time period for state response when so requested by the state. The public has 20 days from the time of public notice to respond to the request for certification to the state.

For Individual Permits Ecology has up to one year to issue or deny certification. If Ecology has not responded within one year, the federal agency is authorized to waive certification requirements. The Corps District Engineer can extend the time period for state response when so requested by the state. The public has 30 days from the time of public notice to respond to the request for certification to the state. However, for some more controversial projects the time allowed for public responses may be lengthened.

## Other Federal Laws and Regulations

### River and Harbor Act, Section 10

This law was enacted in 1899 to preserve the navigability of the nation's waterways. Section 10 prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The provisions apply to all structures or work below the mean high water mark of navigable tidal waters and the ordinary high water mark of navigable fresh waters. Actions in wetlands within these limits are subject to Section 10 provisions. The provisions also apply to proposed actions "in, over, or affecting" navigable waters.

Navigable waters include all presently, historically, and reasonably potential navigable waters and all waters subject to the ebb and flow of the tide up to mean higher high water in tidal waters and up to ordinary high water in freshwater areas. In Washington, these waters include the Pacific Ocean, Puget Sound, and portions of several major rivers. The Corps has a complete listing of navigable waters in Washington. Provisions of Section 10 are implemented through a permit process that includes consideration of navigational, flood control, fish and wildlife management, and environmental impacts. NEPA compliance is required. Section 10 reviews often occur simultaneously with Section 404 permit processing, but the Corps does not use the 404(b)(1) guidelines in its review of the Section 10 part of a proposal.



**Mitigation under NEPA includes:**

*Avoiding the impact altogether by not taking a certain action or parts of an action*

*Minimizing impacts by limiting the degree or magnitude of the action and its implementation*

*Rectifying the impact by repairing, rehabilitating or restoring the affected environment*

*Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action*

*Compensating for the impact by replacing or providing substitute resources or environments*

**Coastal Zone Management Act of 1972**

The federal Coastal Zone Management Act (CZMA) of 1972 and subsequent amendments established a voluntary program through which a state could receive financial and technical assistance to formulate a plan for the efficient use of coastal zone areas within its boundaries. Through the CZMA, each state is encouraged to develop a state coastal zone management plan for coastal resources. Once a state plan is approved by the federal government, additional federal financial assistance becomes available to implement the plan.

Washington's Coastal Zone Management Plan (CZMP) was approved by the Office of Coastal Resources Management in 1976, making it the first CZMP in the nation. Fifteen counties in Washington are affected by the plan, which incorporates all of the shoreline master programs prepared under the Shoreline Management Act of 1971 by cities and counties within the coastal zone.

Any applicant for a federal license or permit to conduct an activity in the coastal zone must certify that their project is consistent with the enforceable provisions of the state's approved CZMP. (Ecology maintains a list of federal licenses and permits that fall within this category.) Ecology in turn must also determine if the project is consistent with the state's CZMP. For example, prior to public notice on Section 404 permit applications for proposed actions in the 15 coastal counties, Ecology's Shorelands Program confirms or denies that the proposed action complies with the Washington Coastal Zone Management Program. Any denial prevents the federal agency from granting the license or permit. Sponsors of federal projects which affect the coastal zone must also supply a determination that their project is consistent to the maximum extent practicable.

**National Environmental Policy Act of 1969**

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) established a process requiring federal agencies to consider the environmental impacts of agency-sponsored development projects and of agency decisions on permits and approvals required for privately-sponsored development projects. The NEPA process emphasizes the full-disclosure of environmental impacts and their consideration, along with technical and economic considerations, prior to an agency decision.

Guidance for the implementation of NEPA is provided by the Council on Environmental Quality (CEQ). The CEQ Regulations (40 CFR 1500-1508) place a great deal of emphasis upon the consideration of alternatives, including ways to mitigate (avoid or reduce) harmful environmental effects. Generally, the NEPA process occurs concurrently with Section 404 reviews by the Corps of Engineers. Most federal agencies have adopted their own regulations, policies, or guidelines for implementing NEPA requirements.

NEPA requires that an environmental impact statement (EIS) be prepared for any major federal action that would have significant adverse environmental impacts. The EIS must thoroughly evaluate any adverse environmental impacts of the proposed action and its alternatives. Permits issued by a federal agency (such as Section 404 permits) are considered to be federal actions that may require an EIS. Anyone can recommend to the permitting federal agency that an EIS be prepared. However, any such recommendation should be based on evidence indicating that a proposed action would result in significant adverse environmental impacts.

To determine if a proposal would have significant adverse environmental impacts, the agency may prepare an environmental assessment (EA). A permit applicant often provides much of the information and analysis used to prepare the EA. The EA contains sufficient evidence and analysis to determine if an EIS is required. If an EIS is not required, a finding of no significant impact (FONSI) document is prepared by the federal agency that explains why an EIS is not required for a particular proposal. In Washington, environmental documents prepared under the State Environmental Policy Act (SEPA) may provide information and analysis useful in preparing the EA and FONSI. The conditions for attaining compliance with NEPA requirements are fulfilled upon completion of the FONSI or EIS.

The State Environmental Policy Act (SEPA) parallels the requirements of NEPA. In virtually the same manner as federal agencies, state agencies are required to consider environmental impacts associated with proposed actions.

Because more wetlands are required to meet SEPA requirements, and because the processes are nearly identical, a more detailed analysis of the process for environmental impact assessment or analysis is provided under the SEPA section, but may be considered to apply to NEPA with respect to the general requirements of the act.

### **1985 Food Security Act and 1990 Food, Agriculture, Conservation, and Trade Act Swampbuster Provision**

The 1985 Food Security Act and the 1990 Food, Agriculture, Conservation, and Trade Act contain a provision regarding wetland conversions to agricultural land. This provision, known as Swampbuster, denies eligibility for all United States Department of Agriculture (USDA) farm programs to farmers who convert wetlands to cropland, hayland, or pastureland. This provision applies to all annually grown commodity crops, as well as hay and pasture crops.

Swampbuster regulations cover many USDA programs including price and income supports, disaster payments, crop insurance, Agricultural Conservation Program cost share payments, Farmers Home Administration Loans, Commodity Credit Corporation storage payments, farm storage facility loans and Conservation Reserve Program payments.

Farmers who apply for certain USDA programs must certify that they will not produce agricultural commodities on wetland that was converted after December 23, 1985 or agricultural commodities or hay and pasture on wetland converted after November 28, 1990. Each farm is professionally evaluated by the Soil Conservation Service to determine if wetlands are present on the farm and to determine allowable drainage maintenance activities on lands converted to agricultural uses prior to passage of the Acts.

# State Laws and Regulations

**“Wetland” or “wetlands”** according to the GMA, mean areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the county or city.

**I**n this section state laws and regulations that affect the use of wetlands are described in more detail. Particular emphasis is given to the Growth Management Act, Shoreline Management Act, Water Pollution Control Act, Hydraulic Code, and State Environmental Policy Act.

## Growth Management Act

### Purpose

In 1990, the legislature passed the Growth Management Act (GMA) to address the problem of uncoordinated and unplanned growth, which “together with a lack of common goals expressing the public’s interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of the state”. The Act includes thirteen planning goals to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under the Act. In 1991, the GMA (Chapter 36.70A RCW) was amended to require (among other things) that *all* cities and counties adopt development regulations that protect critical areas, including wetlands.

### Implementation

The GMA is implemented through a “bottom-up” planning process and local adoption and implementation of various planning products prepared in accordance with minimum guidelines and “procedural criteria” adopted by the state Department of Community, Trade & Economic Development. The planning products include development regulations for the conservation of agricultural, forest, and mineral resource lands and

the protection of critical areas, county-wide planning policies, comprehensive plans that include various specified and optional elements, and implementing development regulations. State agencies are also required to comply with local comprehensive plans and development regulations when they seek to implement projects in a city or county.

### Provisions of the Law

The GMA requires *all* counties and cities to designate their critical areas where appropriate and consider guidelines developed by the Department of Community, Trade & Economic Development in making such designations. Critical areas include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas, but wetlands may be included in all five categories of critical areas. The Act also requires that all counties and cities adopt development regulations that protect the critical areas they have designated, and it requires that assessors adjust the assessed value of property that has been designated as a critical area if the designation results in a change of property value. For wetlands most counties and cities have amended existing ordinances or adopted new ones that include permit requirements and standards for wetlands protection.

The GMA also requires that certain counties and all of the cities in those counties adopt comprehensive land use plans and development regulations to implement them, and some additional counties, together with all of their cities, have opted to do the same. Such jurisdictions must also review their initial resource land and critical area designations and development regulations

when adopting their comprehensive plans and implementing development regulations to insure consistency, and they may alter such designations and regulations to achieve such consistency. Many of these jurisdictions are also including wetland protection provisions in their comprehensive plans to provide a firm factual and policy basis for implementing development regulations and non-regulatory approaches that protect wetlands.

### **Regulating Agencies**

Cities and counties are responsible for implementing the development regulations they adopt under the GMA to implement their comprehensive plans and conserve resource lands and/or protect critical areas. Most cities and counties have adopted development regulations that require permits for activities in or near critical areas, including wetlands. Many have also developed incentive and acquisition programs to help implement their wetlands protection goals.

### **Permit Information**

For information regarding permits and other requirements pertaining to activities in or near wetlands, interested persons should contact the city or county with jurisdiction over the area where the activities will occur. Most jurisdictions have maps of at least some of the wetlands in their area.

### **Permit Process**

The permit processes that cities and counties have adopted through their development regulations to protect critical areas vary from jurisdiction to jurisdiction. Most of them, however, require that an applicant provide sufficient information regarding his or her proposal, any wetlands and wetland impacts, and any proposed mitigation, so the local government can determine whether the proposed activities comply with specified wetland protection standards.

### **Permit Timing**

Permit timing also varies from jurisdiction to jurisdiction. Interested persons should contact the city or county with jurisdiction over the project area.

## **Shoreline Management Act of 1971**

### **Purpose**

The state's Shoreline Management Act (SMA) of 1971 (Chapter 90.58 RCW) was passed to manage appropriate uses of the shorelines of the state. In its action, the Legislature stated that shoreline areas are among the most valuable and fragile natural resources and established a state policy to provide management by planning for and fostering all reasonable and appropriate uses. Under the SMA, development of the state's shorelines is intended to be done in a manner that promotes and enhances the public interest, and that protects against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life.

### **Implementation**

The SMA is implemented through a permit program for activities in and on the shorelines of the state. Permits for substantial development, conditional uses, and variances are issued by the local government if permit applications are in conformance with the local shoreline master program for the city or county and the policies and provisions of the SMA. The Washington Department of Ecology has primary responsibility to review issued permits for conformance with the SMA. Chapter 173-14 WAC sets out regulations related to the permit system for developments on shorelines of the state.

Other relevant agency rules include Chapter 173-16 WAC, which provides guidance on the develop-

### **Shorelines of the State include:**

- 1.** All marine waters and their associated wetlands (together with the lands underlying them)
- 2.** All lakes and reservoirs equal to or greater than 20 acres in size and their associated wetlands (together with the lands underlying them)
- 3.** All streams and river segments with a mean annual flow greater than 20 cubic feet per second, and their associated wetlands (together with the lands underlying them)

## Associated Wetlands

In addition to the area within 200 feet of the *Ordinary High Water Mark*, the SMA exerts jurisdiction over marshes, bogs and swamps which are associated with shorelines of the state. These wetlands may fall inside, outside or may straddle the 200 foot boundary line.

In order to be considered associated, a marsh, bog or swamp must meet two criteria:

1. It must be in proximity to a shoreline of the state
2. It must influence or be influenced by a shoreline of the state

ment of local government shoreline master programs, and Chapter 173-22 WAC, which provides criteria for designating wetlands associated with shorelines of the state. Through their association with these shorelines, many wetlands are covered by the provisions of the SMA. This is particularly true of estuarine wetlands, and wetlands associated with streams with flows greater than 20 cubic feet per second (cfs) and lakes 20 acres or larger.

## Provisions of the Law

The SMA provides for local governments to prepare shoreline master programs (land use plans) for all shorelines within their jurisdiction. These programs are based on shoreline inventories and generally classify shorelines based on appropriate uses. The SMA also sets up a review process for shoreline development to balance shoreline development with habitat protection and other shoreline interests such as public access.

Most activities in and on shorelines are subject to the SMA. However, some activities are exempted from the permit process. Major exemptions include:

- ❖ developments having a fair market value less than \$2500
- ❖ maintenance and repair of existing structures
- ❖ construction of protective bulkheads on property occupied by single family residence
- ❖ emergency construction to protect property from damage by the elements
- ❖ construction and practices necessary for farming, agricultural, and ranching activities
- ❖ construction of certain single family residences

RCW 90.58.030 and WAC 173-14-040 provide additional detail related to permit exemptions.

*(Caution: although the above activities may be exempt from permits, they must still comply with policies and provisions of the SMA.)*

## Regulating Agencies

The SMA established a cooperative shoreline management program between local governments and the state. Local governments are responsible for development of local shoreline master programs and administration of the shoreline permit program. Ecology acts primarily in a supportive and review capacity with primary emphasis on insuring compliance with the policies and provisions of the SMA.

## Permit Information

Local governments provide application forms for substantial development, conditional use, and variance permits authorized under the SMA. The applicant is required to submit project diagrams including site plans and maps drawn to scale and other relevant information needed to determine compliance with the shoreline master program.

## Permit Process

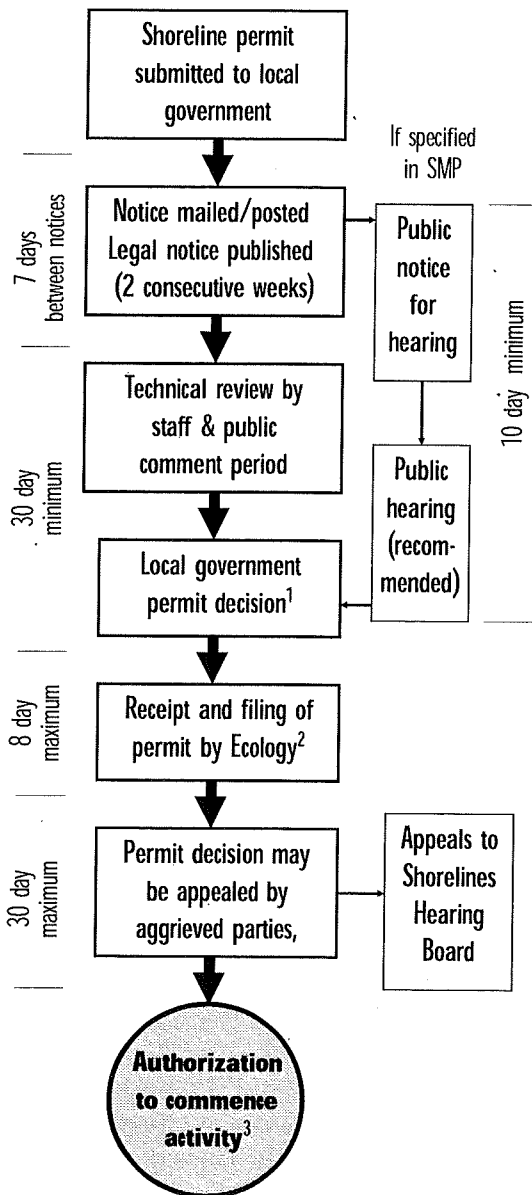
Details of the permit process vary somewhat among local jurisdictions; however, all are consistent with the guidelines contained in Chapter 173-14 WAC. The flow diagram (Figure 5) outlines the typical process for a substantial development, conditional use, or variance permit.

All permit actions are subject to appeal by applicants, citizens, and/or government agencies (including Ecology). Such appeals are heard by the Shoreline Hearings Board, a six-member quasi-judicial body appointed by the governor. Chapter 461-08 WAC contains the rules of practice and procedure for the Shoreline Hearings Board. Appeals must be received by the board within 30 days of the date of filing the permit with Ecology.

## Permit Timing

From the time that a complete application for a substantial development permit is submitted to a local planning agency, the minimum time periods required by state regulations total approximately 70 days until construction may begin. Local shoreline permit processes may vary somewhat from the timing shown in the flow diagram (Figure 4).

**Figure 4: Shoreline Substantial Development Permit Review Process**

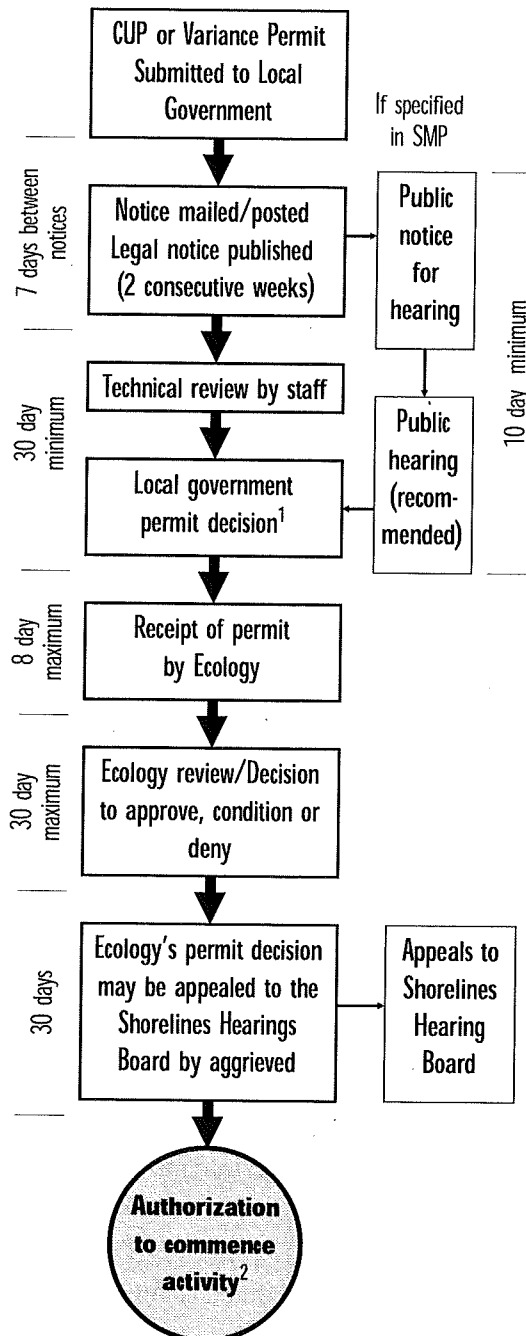


## State Water Pollution Control Act

### Purpose

The state Water Pollution Control Act (Chapter 90.48 RCW) was passed in 1945 to "maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof,

**Figure 5: Conditional Use Permit (CUP) or Variance Review Process**



### Notes for Figure 3:

- <sup>1</sup> SEPA requirements must be completed prior to local permit decisions.
- <sup>2</sup> Ecology is not authorized to modify local decisions on SDPs, although it may appeal them. Ecology is required to APPROVE, DENY or CONDITION CUP and Variance Permits.
- <sup>3</sup> If not appealed to Superior Court, and provided all other permits are obtained.

### Notes for Figure 4:

- <sup>1</sup> SEPA requirements must be completed prior to local permit decisions.
- <sup>2</sup> If not appealed to Superior Court, and provided all other permits are obtained.

## **Proximity and Influence**

Factors which help determine *proximity* include distance, elevation, topographic relief, and continuity of soils, vegetation and hydrology.

Factors which help determine *influence* include: ground or surface water connections, occurrence of flooding or tidal inundation, species composition of plant communities, soil types, and water salinity. Determinations of proximity and influence are made on a site-by-site basis due to the complex interactions among these physical and biological variables.

the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington.” The Act prohibits discharges of polluting matter in waters of the state, and it gives the department of Ecology “jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington”, which include wetlands. It also designates Ecology “as the state Water Pollution Control Agency for all purposes of the federal clean water act”, and it authorizes the department “to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of the act.”

## **Implementation**

The state Water Pollution Control Act is implemented through rules adopted by the Department of Ecology. These rules establish the state’s surface and ground water quality standards, sediment management standards, and the permitting and certification requirements. Some of the rules also implement provisions of the federal Clean Water Act (CWA). For instance, the department of Ecology has been delegated authority from EPA, to implement the National Pollutant Discharge Elimination System permit requirements of the CWA, and the department provides water quality certifications on all applications for federal licenses or permits to conduct activities that may result in a discharge to surface waters.

The primary rules which implement the Act and apply to wetlands include the following:

- ❖ *Water Quality Standards for Surface Waters* (Chapter 173-201A WAC);
- ❖ *Water Quality Standards for Ground Waters* (Chapter 173-200 WAC);
- ❖ *Sediment Management Standards* (Chapter 173-204 WAC);
- ❖ *State Waste Discharge Permits* (Chapter 173-216; 173-224 WAC);
- ❖ *National Pollutant Discharge Elimination System (NPDES) Permits* (Chapter 173-220 WAC);

Of these, the surface water quality standards are the primary regulations which apply to most wetland situations. These standards protect a wide range of beneficial uses including domestic, agricultural and industrial water supplies; recreation and aesthetic values; wildlife habitat; fish and shellfish support; commerce and navigation; and any other legitimate use of a waterbody. The standards contain chemical, physical and biological criteria to support these beneficial uses. The standards are used to set limits on discharges to surface waters through Ecology’s water quality program, and to place conditions on federal permits affecting state waters. They also guide Ecology’s water quality activities in areas where permits are not required.

The antidegradation policy in the water quality standards establishes the bottom line for water quality protection in Washington’s waters: “Existing beneficial uses shall be maintained and protected and no further degradation which would interfere with or become injurious to existing beneficial uses shall be allowed.” (WAC 173-201A-070). The antidegradation policy applies to any action that may lower water quality or adversely affect existing uses in any water of the state. Both point and nonpoint sources of pollution are covered. Federal regulations specify several requirements for states when developing their antidegradation policy and implementation procedures

(40 CFR 131). States are required to develop programs that provide waters with three levels of protection. The water quality standards, anti-degradation policy and the implementation methods define how the state will:

1. *Protect* existing beneficial uses and the water quality necessary to protect the uses (tier 1).
2. *Determine*, on a case-by-case basis whether, and to what extent, water quality may be lowered where water quality exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water (tier 2).
3. *Define, designate, and protect* waters that constitute an outstanding national resource (tier 3).

### **Provisions of the Law**

As noted above, the state Water Pollution Control Act prohibits discharges of polluting matter to all waters of the state, including wetlands. The water quality and sediment management standards, and the permits and certifications required by those laws and rules also apply to wetlands. For instance, an NPDES permit is required for any point source discharge of pollutants into wetlands as well as other surface waters, and a water quality certification is required for a federal license or permit to conduct any activity that may result in a discharge into wetlands. In providing a water quality certification, the department of Ecology must be able to certify that the discharge will comply with the discharge requirements of federal law and the aquatic protection requirements of state law. If those requirements are not met the department can either condition the certification to satisfy such requirements or deny the certification. A state waste discharge permit is also required for discharges or disposal of industrial, commercial, or municipal waste material into the state's ground waters, including through wetlands.

### **Regulating Agencies**

The Department of Ecology is responsible for implementing most of the requirements of the state Water Pollution Control Act, but Ecology shares responsibility for implementing the on-site sewage disposal permit requirements in Chapter 173-240 WAC with the state department of Health, and local health departments. Each of these agencies has responsibility for reviewing and approving certain sewage disposal systems depending upon the size and nature of the system.

### **Permit Information**

As with most activities, enough information must be provided to allow Ecology to fully evaluate the immediate and potential impacts of the proposed project. This generally includes a project description and location, site description, wetland functional assessment, an assessment of wetland impacts, and a mitigation plan, if necessary. The application for the different activities will specify what information is required. Ecology will notify the applicant if more information is required in order to process the application.

### **Permit Process**

The range of activities covered under the Water Pollution Control Act make it necessary to contact the Department of Ecology when planning an activity that could impact a wetland, or any other state water. Most permits are issued through the appropriate Ecology regional office. Some permits or certifications (e.g., 401 certifications) are issued or coordinated through Ecology's Environmental Review Section.

### **Permit Timing**

The permit timing will depend on the permit required and the activity proposed. Early planning, consultation, and coordination with the permitting agencies will often speed up the actual permitting process.



## Ordinary

### High Water Mark

An HPA is required for any activity within the ordinary high water mark of state waters. This line is identified by examining the bed and banks along the shore to determine where the action of the water has created a distinct mark upon the soil with respect to upland vegetation. If this line cannot be found, then the mean higher high water elevation in saltwater and the mean high water elevation in freshwater are used to determine the limit of Hydraulic Code applicability. Typically, however, field personnel from the WDF&W can assist in determining the ordinary high water line.

### Waters of the State

All marine and fresh waters within the ordinary high water lines and within the territorial boundaries of the state are subject to the Hydraulic Code.

### Fish Life

Hydraulic Code rules apply to all fish species, including but not limited to food fish, shellfish, and game fish, and all stages of development of these species.

## Hydraulic Code

### Purpose

Passed into law in 1949, the State Hydraulic Code (RCW 75.20.100-160) is intended to protect fish life from damage in all marine and fresh waters of the state. The Hydraulic Code regulates construction and other work that uses, diverts, obstructs, or changes the natural flow or bed of fresh or salt waters of the state.

### Implementation

The Hydraulic Code is implemented through a permit called the Hydraulic Project Approval (HPA) obtained from the Washington Department of Fish and Wildlife (WDF&W). A set of agency rules (Chapter 220-110 WAC) has been adopted by the department to guide their administration of the code.

While not directly aimed at the protection of wetlands, the HPA is required for any work that affects the bed or flow of state waters including all work within the ordinary high water line of state waters, which often include wetlands. Because such wetlands may provide habitat for fish and shellfish, the HPA is an important regulatory tool for the protection of fish and fish habitat.

### Provisions of the Law

Prior to construction or other work that will use, divert, obstruct, or change the natural flow or bed of any state waters, approval of the WDF&W is required. Most often, approval is in writing. However, in emergency situations, verbal approvals can be given by WDF&W personnel. The Hydraulic Code applies to any person or government agency, including individuals, public and private entities and organizations, and federal, state, and local agencies.

The major types of activities which can affect the flow or bed of freshwater that require an HPA include (but are not limited to):

- ❖ streambank protection
- ❖ construction of bridges, piers, and docks
- ❖ pile driving
- ❖ channel change or realignment
- ❖ conduit (pipeline) crossing
- ❖ culvert installation
- ❖ dredging
- ❖ gravel removal
- ❖ pond construction
- ❖ placement of outfall structures
- ❖ log, log jam or debris removal
- ❖ installation or maintenance (with equipment) of water diversions
- ❖ mineral prospecting
- ❖ projects causing the release of stormwater runoff to surface waters of the state

Some major activities which can affect the flow or bed of saltwater that require an HPA include:

- ❖ construction of bulkheads, fills, boat launches, piers, dry docks, artificial reefs, docks, floats, and marinas
- ❖ pile driving
- ❖ dredging

The Hydraulic Code Rules (WAC 220-110) contain technical provisions applicable to different types of construction or maintenance projects that may affect the flow or bed of fresh or salt waters. Additional permit provisions may also be included to address site-specific conditions.

## Regulating Agencies

The Washington Department of Fish and Wildlife administers the Hydraulic Code (see “Federal and State Agencies” on the last page of the guidebook).

## Permit Information

Applicants may obtain HPA forms in-person at any WDF&W office, by telephone, or by mail. If a Corps of Engineers or Forest Practices Act permit will also be required, application for either of them serves as an HPA application and an HPA application is not required. There is no charge for an HPA.

A complete HPA application contains general plans for the overall project, complete plans and specifications for the proposed construction or work within the ordinary high water mark, and complete plans and specifications for the proper protection of fish life.

## Permit Process

Applications are assigned to a WDF&W habitat biologist. In most cases, the representative visits the project site and tries to meet with the applicant to point out fish habitat needs and how the project may affect that habitat. Suggestions may be made to help the applicant achieve his

or her objective while protecting fish, shellfish, and their habitat.

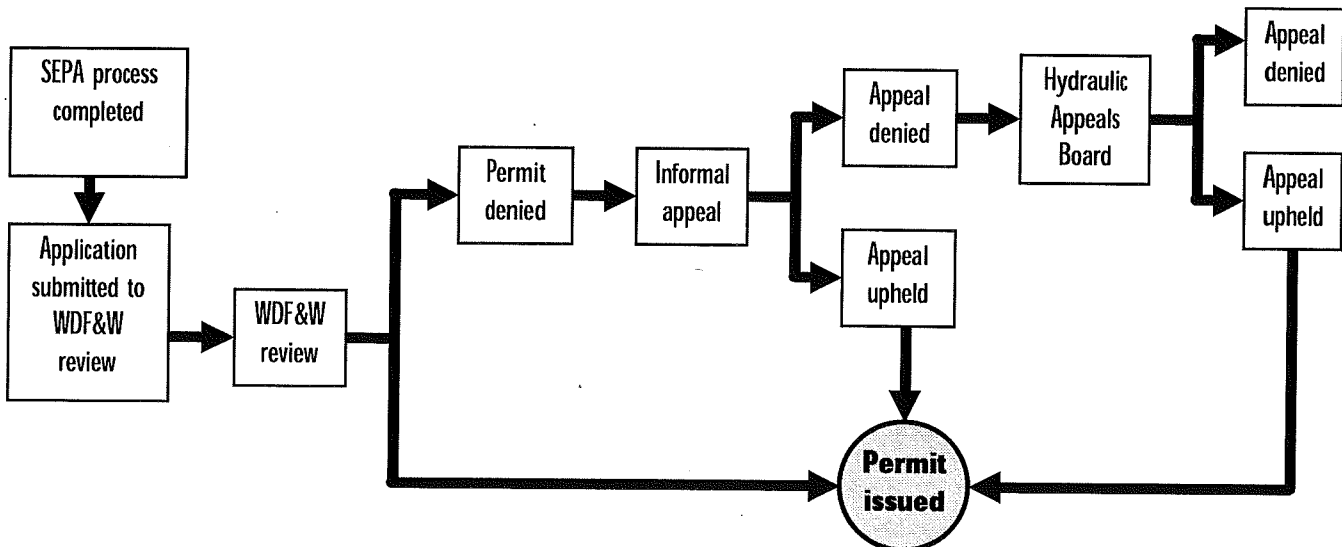
## Permit Timing

A maximum of 45 calendar days is specified in the RCW for a decision by the WDF&W to approve, condition, or deny approval of a complete application, unless certain circumstances prevent processing the application. However, most applications are processed and mailed within 30 days of receipt of a complete application and compliance with the State Environmental Policy Act (SEPA — Chapter 43.21C RCW).

## Appeal

Informal and formal appeals processes are available to an applicant or permit holder who wishes to contest denial of an HPA application or permit conditions. Informal appeals involve a review of the process by the chief of the habitat management division of the agency responsible for the site or his or her designee. If, following an informal appeal, an applicant or permit holder still feels aggrieved, he or she may request a formal hearing. Formal hearings are conducted by the Hydraulic Appeals Board or an administrative law judge as outlined in the RCW.

**Figure 6: Hydraulic Code Permitting Process**



**“Wetland”** for the Forest Practices Act, means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

## Forest Practices Act

### Purpose

Wetland provisions of the federal Clean Water Act and Washington State Water Pollution Control Act (RCW 90.48) are implemented on state and private forest lands through the state Forest Practices Act (RCW 76.09) and its implementing regulations (Chapter 222 WAC).

Wetland functions are specifically defined in the forest practices regulations to “include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.” Wetlands in the forest landscape may also contain unique or rare ecological systems. The purpose of the regulations is to provide for maintenance of these functions. Landowners are additionally encouraged to increase wetland acreage and functions over the long-term.

### Implementation

In Chapter 222 WAC, wetlands are defined using a modified version of the Clean Water Act definition (see definition in the margin).

Anyone proposing timber harvest on state or private land must submit a forest practices application to the Department of Natural Resources (DNR). The 1987 Timber, Fish and Wildlife (TFW) agreement provides for review and input from agencies, tribes and the Washington Environmental Council into forest practice application approvals. DNR, Ecology, and other TFW parties are available to assist with wetland questions.

### Provisions of the Law

Following is an overview of the wetland forest practices rules. For a complete understanding, one must refer to the forest practices regulations (available from DNR).

### Forested Wetlands —

Those wetlands that either have or are capable of having a tree canopy cover of 30 percent or greater are classed as forested wetlands. *The only exceptions to this are forested bogs.* Forested wetlands must be outlined on the forest practices application if 5 or more acres exist. Key protection measures for forested wetlands are:

- (1) harvest timing restricted to dry periods only; and,
- (2) harvest must be done in a manner that provides for low ground disturbance.

Landowners are encouraged to leave undisturbed areas of vegetation within forested wetlands. In addition, other parts of the forest practices regulations also apply in forested wetlands. For example, wildlife trees and green retention trees must be left and if there are type 1 through 3 waters on-site, riparian zone and temperature requirements must also be met.

### Non-Forested Wetlands (Marshes, Bogs, Fens and Scrub/Shrub Wetlands) —

Non-forested wetlands greater than 1/4 acre are classed for regulatory purposes as type A or B wetlands. Type A wetlands are those that are either bogs (including forested bogs), or those that have at least 1/2 acre of open water present on site for 7 consecutive days between April 1 and October 1. All others greater than 1/4 acre are type B wetlands.

Wetland management zones (WMZs) are required on type A and B wetlands as shown in the chart below. WMZs are based upon wetland size categories of 0.25 to 0.5 acres; 0.5 to 5 acres; and greater than 5 acres. The WMZ must meet the average width. However, it may be as narrow as the minimum specified and as wide as the maximum allowing wildlife and timber values to be taken into account.

## Regulating Agencies

The Department of Natural Resources is the primary agency responsible for permitting and enforcement of forest practices wetland regulations. Department of Ecology, through the state water quality laws, may also take actions regarding wetland pollution. The Washington Department of Fish and Wildlife administers the hydraulic code where work within waters is necessary. Local governmental entities who have established Memorandum of Agreements with the DNR have authority on lands to be converted to non-forestry use and on lands platted after January 1, 1960.

## Permit Information

For permit information, contact DNR regional offices at 1-800-527-3305.

## State Environmental Policy Act

### Purpose

The Washington State Environmental Policy Act (SEPA) was passed by the Legislature to provide a process to analyze the environmental impacts of development. Information provided during the SEPA process helps state and local agency decision-makers and the general public understand how a project would affect the environment. It is intended to help decision-makers at all levels of state government make better environmental decisions.

### Implementation

SEPA is not a permit. It is a process geared to mesh with already existing permits, approvals and/or licenses. First adopted in 1971, SEPA was

### Significant Impact

As used in SEPA, "significant" means a reasonable likelihood of more than a moderate adverse impact on environmental quality. Significance involves context and may vary from one physical setting to another. It also involves the intensity of an impact in terms of magnitude and duration, and the likelihood of its occurrence. SEPA focuses on likely significant adverse impacts.

**Table 5: Wetland Management Zone Widths**

Wetland Type	Acres of Nonforested Wetland	Maximum	Average	Minimum
<b>A</b>	Greater than 5	200 feet	100 feet	50 feet
<b>A</b>	0.5 to 5	100 feet	50 feet	25 feet
<b>A (Bogs)</b>	0.25 to 0.5	100 feet	50 feet	25 feet
<b>B</b>	Greater than 5	100 feet	50 feet	25 feet
<b>B</b>	0.5 to 5	25 feet	25 feet	25 feet
<b>B</b>	0.25 to 0.5	No WMZ Required		

Within each acre of WMZ trees must be left as follows: 50 trees greater than 6" DBH; 25 trees greater than 12" DBH; and 5 trees greater than 20" DBH.

*Road and Landing Construction* — Road and landing construction in wetlands is to be accomplished in the following preferential manner:

- (1) avoiding impacts;
- (2) minimizing impacts;
- (3) restoring affected areas;
- (4) reducing impacts by mitigative measures; and
- (5) replacing affected areas by creating or enhancing existing wetlands.

## **Mitigation under SEPA Includes:**

*Avoiding* adverse impacts

*Minimizing* adverse impacts by limiting the degree or magnitude of a project

*Rectifying* the impact by repairing, rehabilitating, or restoring the affected environment

*Reducing or eliminating* the impact by preservation and maintenance operations during the life of the project

*Compensating* by replacing or providing substitute resources or environments

*Monitoring* the impact and taking appropriate corrective measures

substantially revised in 1983. New implementing rules (Chapter 197-11 WAC), were adopted by Ecology in 1984.

SEPA requires evaluation of the likely significant adverse environmental impacts of a project and the identification of ways to mitigate or reduce the impacts of a project. Impacts to the natural and built environment are considered. For proposals likely to have a significant adverse environmental impact on the environment, an environmental impact statement (EIS) must be prepared.

Although SEPA has no regulatory or policy provisions directed specifically at wetlands, through the process of identifying environmental impacts, state and local agencies and the public become aware of likely impacts to wetlands and other environmental resources. Such agencies may deny permits or other approvals under SEPA if the proposal would be likely to result in significant adverse environmental impacts and if mitigation measures would be insufficient to mitigate the identified impact. SEPA rules place a particular emphasis on the identification of mitigative measures that may be required as permit conditions to avoid or reduce environmental impacts to wetlands and other environmental resources.

The consistency of a proposal with existing plans and policies, such as local shoreline master programs, comprehensive plans, zoning, and local sensitive areas ordinances, which may contain wetland policies, may be evaluated as part of the SEPA review process (either EIS or DNS) and permit review process. Completion of the SEPA process is usually necessary before agency decisions may be made on the Hydraulic Project Approval, shoreline substantial development permit, and many other local and state permits and approvals.

## **Provisions of the Law**

SEPA provides policies, goals, and procedures intended to assure that agencies consider potential environmental impacts related to their decisions on proposals. Procedural provisions distinguish between actions that are likely to have significant environmental impacts and actions that are not.

SEPA provides for a variety of proposed actions that are categorically exempt from the SEPA process. Most categorical exemptions use size criteria to differentiate between an exempt or nonexempt action.

Exempted projects include most single family homes, commercial buildings under 4,000 square feet, parking lots for 20 cars or fewer, and any landfill or excavation of 100 cubic yards or less. "Flexible thresholds" allow cities and counties to set their own size criteria within a specific range for five categories of exemptions. This means, for example, that in some areas, commercial buildings of up to 12,000 square feet may be exempt. Local planning departments have rules to determine what exemptions apply.

## **Regulating Agencies**

SEPA applies to all state and local agencies, but not the judiciary or state legislature. When agencies take certain actions, they must follow specific procedures to assure that they give appropriate consideration to environmental factors and carry out SEPA's provisions.

If review under SEPA is required, a lead agency is identified. The lead agency may be a city, county, state, or other public agency such as a port. This is based on the type of project proposed and the agencies requiring permits and/or approvals. For most private projects the lead agency is the city or county requiring permits. The lead agency makes sure that all SEPA requirements are met.

## SEPA Process

After determining that a proposal requires a permit, license, or approval, a lead agency is identified in accordance with the SEPA rules. The lead agency then determines whether the proposal is categorically exempt. If so, the SEPA process is satisfied.

The lead agency may require the applicant to prepare an environmental checklist. The checklist asks a series of questions designed to assist the lead agency in making a determination on whether the proposal would likely have a significant adverse environmental impact. If a determination of nonsignificance (DNS) is made, the lead agency issues a DNS. If certain criteria apply (contact lead agency), a 15-day comment period is required, and the lead agency will distribute the DNS and give public notice. After 15 days, the DNS becomes final unless the lead agency withdraws or revises the DNS based on new information about the proposal.

If the lead agency decides that a proposal will likely have a significant adverse environmental impact, the agency issues a determination of significance/scoping notice (DS). The DS lets other agencies and the public know that an EIS is required and asks for suggestions regarding its content. This scoping period is usually 21

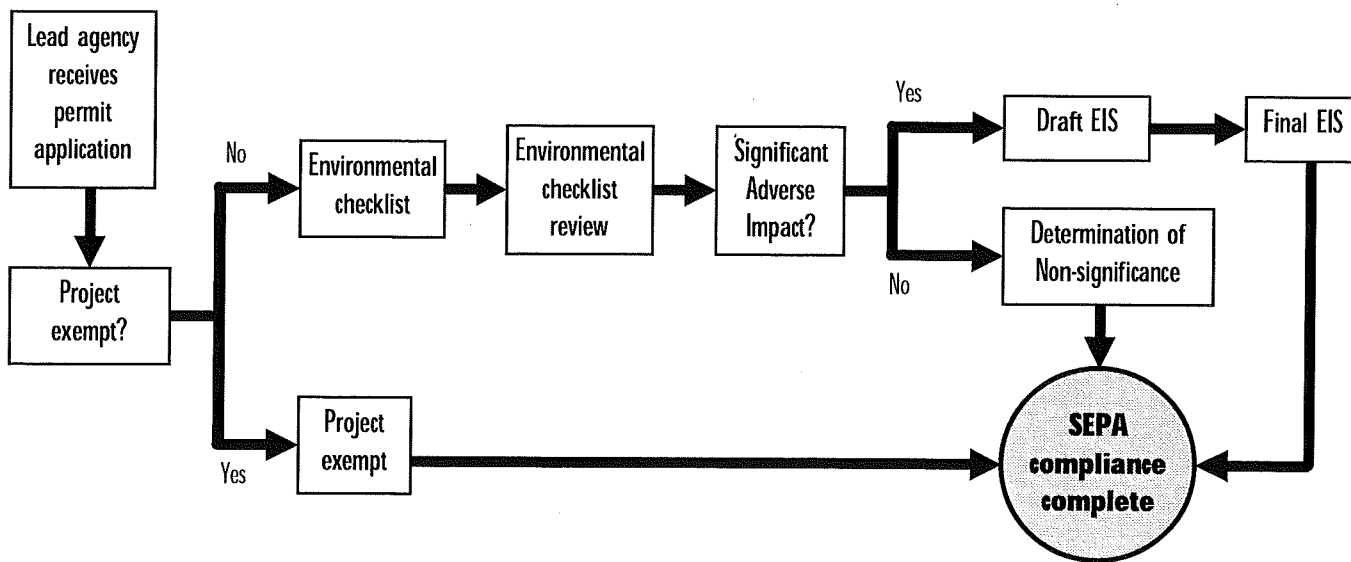
days, but can require up to 30 days to complete.

An EIS describes the proposal, alternatives to the proposal, existing environmental conditions, adverse environmental impacts that may be caused by the project, and mitigative measures that may prevent or lessen probable adverse impacts. Writing an EIS is the lead agency's responsibility, but proponents of a proposal often participate in its preparation.

A draft EIS (DEIS) is distributed to agencies with jurisdiction and other interested parties for review and comment. The lead agency must provide a 30-day comment period during which a public hearing may be held. Following the public comment period, the lead agency prepares responses to public and agency comments and issues a final EIS (FEIS). The FEIS is usually issued within 60 days of the end of the DEIS comment period, although this may be longer for complex projects. Once the FEIS is issued there is a 7-day waiting period before any decision can be made.

A supplemental EIS (SEIS) may be needed if a proposal changes substantially or if new information indicates a proposal's significant adverse impact on the environment. The review process for an SEIS is the same as for a DEIS and FEIS.

**Figure 7: SEPA Process**



## **Lead agency**

The lead agency is the state or local governmental unit with the primary responsibility for complying with SEPA's procedural requirements.

## **Determination of Significance**

"Determination of significance" (DS) means the written decision by the lead agency that a project is likely to have a significant adverse environmental impact. An EIS is required.

## **Determination of Nonsignificance**

"Determination of nonsignificance" (DNS) means the written decision by the lead agency that a project is not likely to have a significant adverse environmental impact. An EIS is not required.

## **Scope**

The "scope" means the range of proposed actions, alternatives, and impacts that will be analyzed in an environmental document. For an EIS, the scope is determined by the lead agency after a public and interagency scoping process intended to identify and narrow the range of significant issues to be addressed in the EIS.

# **Other State Laws and Regulations**

## **Floodplain Management Program**

Washington State's floodplain management program seeks to integrate local, state, and federal regulatory programs in a comprehensive effort to reduce flood damages and protect human health and safety. The core of the state's regulatory program is that local floodprone jurisdictions adopt a flood damage prevention ordinance based upon federal standards contained in the National Flood Insurance Program (NFIP). Property owners in floodprone jurisdictions with such an ordinance are eligible for federal flood insurance.

After a community is identified as being floodprone, a Flood Insurance Study is conducted, resulting in the preparation of a map indicating the extent of the floodplain and floodway, and the depth of the base flood at various points in the community. The mapped area usually encompasses the majority of a community's wetland areas associated with riparian areas, lakes and salt marshes. However, in some jurisdictions, such as Pierce County, isolated wetlands are covered under the program. The majority of communities with such ordinances regulate all development within base (100-year) floodplains. These ordinances require elevation of new or substantially improved structures to levels above the base flood and include strict standards

regulating any activity in designated floodways which might increase flood flows.

Through the Flood Control Assistance Account Program administered by Ecology, local governments participating in the NFIP and meeting state requirements are eligible for matching funds designed to repair or restore existing structural flood control facilities, for projects designed to maintain or improve channel capacity, and for the development of comprehensive flood control management plans. An optional element of this program provides for local governments to use the planning process to develop a wetlands management strategy for the community's floodprone areas. Approximately 3.5 million dollars per biennium are available for projects and plans.

Washington State (Chapter 86.16 RCW) has adopted the NFIP standards as the state minimum standard and has imposed certain other requirements upon local governments. These additional state standards are primarily aimed at protecting health and safety. While the additional standards address permitted types of development, Chapter 173-158 WAC does include an advisory standard pertaining to wetlands management. The standard points out the beneficial role wetlands play in alleviating flood damages. The advisory also suggests a program by which local governments, with technical assistance from Ecology, can identify and map critical wetland areas located within base floodplains that should not be filled.

## **Puget Sound Water Quality Act**

The Puget Sound Water Quality Act (Chapter 90.70 RCW) was enacted by the state legislature to create the Puget Sound Water Quality Authority (the Authority). The Authority was charged with development of a comprehensive plan for water quality protection in the Puget Sound Basin to be implemented by existing state and local government agencies. The 1991 Puget Sound Water Quality Management Plan contains a Wetlands Protection Program which has two goals: to ensure that federal and state agencies, and local and tribal governments coordinate programs to protect wetlands; and to achieve no net loss of wetlands functions and values in the short-term and a net gain of wetland functions and values in the long-term. The wetlands program has seven strategies to achieve these goals and assigns tasks to federal and state agencies, and local and tribal governments to carry them out.

The strategies of the wetlands program recognizes that wetlands cannot be protected through regulations alone. The program calls for non-regulatory programs such as public acquisition and management of high quality wetlands, wetlands

restoration, education, and development of local comprehensive wetlands protection programs to coordinate with the growth management planning process.

The Plan calls for rigorous enforcement of existing authorities under the Clean Water Act, Shoreline Management Act and Hydraulics Code to protect wetlands. In addition, Ecology is to include wetlands in the State Water Quality Standards.

The tasks in the wetlands program call for state agencies to: provide assistance to local governments to develop wetlands preservation programs and regulatory ordinances; develop a list of high value wetlands appropriate for acquisition and to carry out an acquisition program; promote a Soundwide wetlands inventory and tracking program; protect wetlands on state-owned lands; promote wetlands education; and begin to restore wetlands in a watershed context. The program also calls for local governments to adopt non-regulatory wetland protection programs and to use comprehensive plans as a tool to protect wetlands in addition to adopting critical areas ordinances to fulfill the Growth Management Act."



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## Local Laws and Regulations

**T**here are a multitude of local laws and regulations that apply to wetlands and activities conducted in and near wetlands, and it would be impossible to cover all of them in this guidebook. Many of them have been adopted in the form of critical area ordinances prepared pursuant to the Growth Management Act, but other local laws and regulations exist which have been adopted pursuant to the Shoreline Management Act, the State Environmental Policy Act, or other authorities, and many of these are being incorporated by reference in development regulations for the protection of critical areas under the GMA. For information regarding any local laws and regulations that may apply to your wetlands or any activities you may wish to conduct in or near wetlands, contact the city or county planning department with jurisdiction over the area.

# Appendix

## Glossary

**Anadromous Fish** Species, such as salmon, which are born in fresh water, spend a large part of their lives in the sea, and return to fresh water rivers and streams to procreate.

**Bog** A wetland with limited drainage generally characterized by extensive peat deposits and acidic waters. Vegetation includes sedges, sphagnum moss, shrubs, and trees.

**CFR** Code of Federal Regulations, the compilation of federal regulations adopted by federal agencies through a rule-making process.

**Cumulative Effects** The combined environmental impacts that accrue over time and space from a series of similar or related individual actions, contaminants, or projects. Although each action may seem to have a negligible impact, the combined effect can be severe.

**Clean Water Act** Previously known as the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

**Dredging** Any physical digging into the bottom of a water body. Dredging can be done with mechanical or hydraulic machines, and it changes the shape and form of the bottom.

**Ecology** The Washington Department of Ecology, which is responsible for implementing many environmental protection laws including the state Water Pollution Control Act and the Shoreline Management Act. Ecology is the preferred term for referring to the Department of Ecology because the abbreviation DOE causes confusion with the federal Department of Energy.

**Ecosystem** A community of living organisms interacting with one another and with their physical environment, such as a rain forest, pond, or estuary. An ecosystem, such as Puget Sound, can be thought of as a single complex system. Damage to any part may affect the whole. A system such as Puget Sound can also be thought of as the sum of many interconnected ecosystems such as the rivers, wetlands, and bays.

**EIS** Environmental impact statement, a document that discusses the likely significant impacts of a proposal, ways to lessen the impacts, and alternatives to the proposal. EISs are required by the national and state environmental policy acts.

**Estuarine** Tidal habitats that are usually semi-enclosed by land but have open, partial, or sporadic access to the open ocean, and in which ocean water is at least occasionally diluted by fresh water runoff from land. Ocean-derived salinities are usually greater than or equal to 0.5 parts per thousand (during average annual low flow) and less than or equal to 30 ppt; salinities may periodically exceed 30 ppt due to evaporation.

**Flood Desynchronization** The process by which peak flows in a watershed are stored in wetlands and slowly released, resulting in reduced and delayed flood flows.

**Floodplain** An area adjacent to a lake, stream, ocean, or other body of water lying outside of the ordinary banks of the water body and periodically inundated by flood flows.

**Flood Storage** The process by which peak flows (from precipitation, runoff, groundwater discharge, etc.) enter a wetland and are delayed in their downslope journey.

**Food Web** A community of organisms which are connected by dependence upon one another for food.

**Forest Practice** Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber. These activities include road and trail construction, final and intermediate harvesting, commercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees, and brush control.

**Groundwater** Underground water that occurs where precipitation soaks into the ground and flows down until it is collected at a point where the ground is not permeable.

**Groundwater Discharge** The movement (usually laterally or upward) of water from a groundwater body to its emergence into a surface water system (such as a wetland spring, seep, or stream channel).

**Groundwater Recharge** The movement or percolation (usually downward) of surface water through an unsaturated zone of soil or rock into a groundwater body (the subsurface zone of saturation).

**Habitat** The specific area or environment in which a particular type of plant or animal lives. An organism's habitat must provide all of the basic requirements for life and should be free of harmful contaminants.

**Hydric Soil** Soil that is wet long enough to periodically produce anaerobic conditions, thereby influencing the biota.

**Hydrological Cycle** The continual cycling of water between the land, the sea, and the atmosphere through evaporation, condensation, precipitation, absorption into the soil, and stream runoff.

**Hydrophyte** Any plant growing in water or on a substrate that is at least periodically deficient in oxygen, during some part of the growing season, as a result of excessive water content.

**Intertidal Area** The area between high and low tide levels. The alternate wetting and drying of this area makes it a transition between land and water and creates special environmental conditions.

**Marine** The open ocean and its associated high-energy coastline where ocean-derived salinities exceed 30 ppt with little or no dilution.

**Marsh** A wetland where the dominant vegetation is non-woody plants such as grasses and sedges, as opposed to a swamp where the dominant vegetation is woody plants like trees.

**Mean Annual Flow** The average amount of water that flows past a given point in one year.

**Mean High Water (MHW)** The average height (over many years) reached by the high tides.

**Organic Soil** A soil that consists primarily of plant and animal residue in various stages of decomposition.

**Nutrients** Essential chemicals needed by plants or animals for growth. Excessive amounts of nutrients can lead to degradation of water quality by promoting excessive growth, accumulation, and subsequent decay of plants, especially algae. Some nutrients can be toxic at high concentrations.

**Pollutant** A contaminant that adversely alters the physical, chemical, or biological properties of the environment. The term includes pathogens, toxic metals, carcinogens, oxygen-demanding materials, and all other harmful substances. Particularly with reference to nonpoint sources, the term is sometimes used to apply to contaminants released in low concentrations from many activities which collectively degrade water quality. As defined in the federal Clean Water Act, pollutant means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat,

wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

**Primary Production** The production of plant matter (plant tissues) from carbon dioxide and water through photosynthesis. By comparison, secondary production is the production of animal tissue. Different plant communities are often compared by measuring their rates of primary production.

**RCW** *Revised Code of Washington*, the compilation of the laws of the state of Washington published by the Statute Law Committee. For example, the law that created the Puget Sound Water Quality Authority is incorporated in the code as Chapter 90.70 RCW.

**Regulatory Framework** A particular set of laws, rules, procedures, and agencies designed to govern a particular type of activity or solve a particular problem.

**Sediment** Material suspended in or settling to the bottom of a liquid, such as the sand and mud that make up much of the shorelines and bottom of water bodies.

**Shellfish** An aquatic animal, such as a mollusk (clams and snails) or crustacean (crabs and shrimp), having a shell or shell-like exoskeleton.

**Shoreline Development** As regulated by the Shoreline Management Act, the construction over water or within a shoreline zone (generally 200 feet landward of the water) of structures such as buildings, piers, bulkheads, and breakwaters, including environmental alterations such as dredging and filling, or any project which interferes with public navigational rights on the surface waters.

**Siltation** The process by which a river, lake or other water body becomes clogged with sediment. Silt can clog gravel beds and prevent successful salmon spawning.

**Stormwater** Precipitation that does not precolate into the ground or evaporate, but flows over impervious surfaces to a drainage system or surface waterbody.

**Subtidal** Below the ebb and flow of the tide. Used to refer to the marine environment below low tide.

**Suspended Solids** Organic or inorganic particles that are suspended in and carried by the water. The term includes sand, mud, and clay particles as well as solids in wastewater.

**Swamp** A wetland where the dominant vegetation is composed of woody plants like trees, as opposed to a marsh where the dominant vegetation is non-woody plants like grasses.

**Toxic** Poisonous, carcinogenic, or otherwise directly harmful to life.

**Toxic Substances and Toxicants**

Chemical substances, such as pesticides, plastics, detergents, chlorine, and industrial wastes that are poisonous, carcinogenic, or otherwise directly harmful to life.

**Turbidity** A measure of the amount of material suspended in the water. Increasing the turbidity of the water decreases the amount of light that penetrates the water column. High levels of turbidity are harmful to aquatic life.

**USFWS Wetland Definition** Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominately hydrophytes; (2) the substrate is predominately undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

**WAC** *Washington Administrative Code*, contains all state regulations adopted by state agencies through a rule-making process. For example, Chapter 173-201A WAC contains water quality standards.

**Watershed** The geographic region within which water drains into a particular river, stream, or body of water.

**Water Table** The upper surface of groundwater or the level below which the soil is saturated with water.

**Wetland** An area having one or more of the following three attributes:  
(1) at least periodically [that substrate] is dominated by hydrophytes;  
(2) the substrate is predominantly hydric soil;  
(3) the substrate is nonsoil and is either saturated with or covered by shallow water at some time during the growing season.

NOTE: Different wetland definitions are used in the various regulations described in this guidebook. Refer to each regulation for the specific wetland definition that applies.

**Zoning** To designate, by ordinances, areas of land reserved and regulated for different land uses.

## List of Acronyms

**CFS:** *Cubic Feet per Second*

**CWA:** *Clean Water Act*

**CZMA:** *Coastal Zone Management Act*

**DCTED:** *Department of Community, Trade & Economic Development*

**DEIS:** *Draft Environmental Impact Statement*

**DNS:** *Determination of Non-Significance*

**DS:** *Determination of Significance*

**EA:** *Environmental Assessment*

**EIS:** *Environmental Impact Statement*

**EPA:** *United States Environmental Protection Agency*

**FEIS:** *Final Environmental Impact Statement*

**FONSI:** *Finding of No Significant Impact*

**GMA:** *Growth Management Act*

**HPA:** *Hydraulic Project Approval*

**NEPA:** *National Environmental Policy Act*

**NFIP:** *National Flood Insurance Program*

**NMFS:** *National Marine Fisheries Service*

**OHWM:** *Ordinary High Water Mark*

**RCW:** *Revised Code of Washington*

**SEIS:** *Supplemental Environmental Impact Statement*

**SEPA:** *State Environmental Policy Act*

**SMA:** *Shoreline Management Act*

**SMP:** *Shoreline Master Program*

**USDA:** *United States Department of Agriculture*

**USFWS:** *United States Fish and Wildlife Service*

**WAC:** *Washington Administrative Code*

**WDF&W:** *Washington Department of Fish and Wildlife*

**DNR:** *Washington Department of Natural Resources*

## **Federal and State Agencies**

### **United States Department of Agriculture Soil Conservation Service**

W. 316 Boone Avenue, Suite 450  
Spokane, WA 99201-2348  
(509) 353-2337

### **United States Army Corps of Engineers**

P.O. Box C-3755  
4735 E. Marginal Way S.  
Seattle, WA 98124-2255  
Regulatory Branch  
(206) 764-3495

### **United States Environmental Protection Agency Region X**

1200 6th Avenue, WB-138  
Seattle, WA 98101  
Environmental Evaluation Branch  
1-800-832-7828

### **Fish and Wildlife Service United States Department of the Interior**

*Ecological Services*  
3704 Griffin Lane S.E., Suite 102  
Olympia, WA 98501-2192  
(360) 753-9440

### **National Marine Fisheries Service United States Department of Commerce**

*Environmental and Technical  
Services Division*  
847 N.E. 19th Avenue, Suite 350  
Portland, OR 97232-2279  
(503) 230-5421

### **Puget Sound Water Quality Authority**

P.O. Box 40900  
Olympia, WA 98504-0900  
(360) 493-9300

### **Washington State Department of Community, Trade & Economic Development**

906 Columbia Street S.W.  
P.O. Box 48300  
Olympia, WA 98504-8300  
(360) 753-2222

### **Washington State Department of Ecology**

P.O. Box 47690  
Olympia, WA 98504-7690  
(360) 407-6000

### **Washington State Department of Fish And Wildlife**

*Habitat Management Division*  
P.O. Box 43155  
Olympia, WA 98504-3155  
(360) 902-2534

### **Washington State Department of Natural Resources**

*Forest Practices Division*  
P.O. Box 47018  
Olympia, WA 98504-7018  
(360) 902-1400