



McNary Shoreline Management Plan

Special Status Docks

U.S. ARMY CORPS OF ENGINEERS

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The Water Resources Development Act (WRDA) of 1986 (Public Law 99-662) contains language granting special status to docks already in place and in good standing that were permitted by the U.S. Army Corps of Engineers (Corps) as of Nov. 17, 1986. Contained in the Act's language are several conditions required by a dock owner in order to maintain the special status over time. Those conditions include:

- The dock must be maintained in a usable and safe condition.
- The dock must not occasion a threat to life or property.
- The holder of the permit must be in substantial compliance with the terms and conditions of the existing permit.

Failure to comply with the conditions stated above may result in revocation of the permit and special status.

The Corps has the authority to dictate the terms and conditions for any dock permit for which it has responsibility. As environmental or other conditions change over time, it is expected that the terms and conditions for private dock permits will also change.

As stated above, even those docks with special status are required to comply with the terms and conditions of their dock permit. Additionally, Section 1134(d) of WRDA 1986 restricts the Corps from requiring the removal of any dock that was lawfully installed on Lake Wallula on Dec. 31, 1989, as long as the dock complies with the conditions set out in the bulleted list above. In relation to the reference to the existing permit, as the Corps interprets it, "existing permit" means the current permit.

Dock permit conditions are established by the shoreline management regulations [36 Code of Federal Regulations (CFR) 327.30] and the Shoreline Management Plan (SMP). The regulations and SMP can change over time. If the McNary SMP is changed to require modification of docks for Endangered Species Act (ESA) purposes, those conditions will apply to all dock permits, including special status docks.

In addition, the Corps may require the removal (not just modification) of special status docks when necessary to protect ESA-listed species and/or critical habitat:

- Section 1134(d) of WRDA 1986 restricts the removal of special status docks, "except where necessary for immediate use for public purposes or higher public use."
- Section 7(a)(1) of the ESA states, "All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act." The protection/conservation of ESA-listed species is, therefore, a higher public use.

New dock criteria are directly related to protection of ESA-listed species and/or critical habitat. Not only can the Corps require the removal of docks for this purpose, we can also require modification.

The District has identified the following SMPs (only a few of many) from other Corps Districts that have required modifications to special status or "grandfathered" docks:

- Section 20.6 of the SMP for Barren River Lake, Nolin River Lake and Rough River Lake (Louisville District, 2011) requires upgrades to "grandfathered" docks when major repairs are needed or adjacent land is sold or transferred.

- Page 11 of the Lake Seminole SMP (Mobile District, 1995) requires upgrades to flotation, handrails and electrical. It states, "The public law does not exempt the permittee from complying with the conditions of the permit or any permitting requirements."
- Section 5-03(c) of the Fall River Lake SMP (Tulsa District, 1996) requires "grandfathered" docks, if beyond repair, to upgrade to open-sided structures.

The Walla Walla District did not find any other SMP with dock criteria similar to that proposed under the draft McNary SMP. However, the ESA issues found in the Columbia River Basin are much different than those of other Districts. In other areas of the Pacific Northwest that have similar ESA issues, private dock permits are issued under the regulatory process, not an SMP.

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