NWP Regional Conditions

Walla Walla Regulatory Division (State of Idaho)

March 12, 2012

The following Nationwide Permit (NWP) regional conditions will be used in the state of Idaho. Regional conditions are placed on NWPs to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns. This document also includes regional additions to the NWP General Conditions and regional additions to the definitions.

REGIONAL CONDITIONS

Watersheds Requiring Pre-Construction Notification, Specific to Anadromous Fish:

This Regional Condition applies in Idaho to NWPs 1, 3, 4, 7, 12, 13, 14, 17, 27, 28, 29, 31, 33, 35, 36, 39, 40, 43, 46, 48 and 52.

"Pre-construction notification will be required for all nationwide permits in geographic areas as shown on Figure 1: *Watersheds Requiring Pre-Construction Notification*," dated March 06, 2012. A special public notice will be issued by the Corps outlining the geographic areas (watersheds) and the pre-construction notification procedures.

Vegetation Protection and Restoration:

This Regional Condition applied in Idaho to all NWPs ***except*** 1, 2, 8, 9, 15, 21, 24, 34, 48, 49, & 50.

Permittee shall minimize the removal of native vegetation in riparian and wetland areas to the maximum extent practicable. Areas subject to temporary vegetation removal in riparian and wetland areas during construction shall be replanted with appropriate native species by the end of the first growing season following the disturbance except as waived by the District Engineer.

Select waters and wetlands:

Corps shall coordinate with Idaho Department of Fish and Game for activities in the following waters and wetlands that require notification and are authorized by NWPs 3, 6, 7, 12, 13, 14, 17, 18, 22, 23, 27, 29, 31, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 51, or 52:

Henry's Fork of the Snake River; Teton River upstream of State Highway 33; South Fork Snake River; Big Lost River upstream of the US 93 crossing south of Leslie; East Fork Big Lost River; Boise River upstream of Arrow Rock Reservoir; Salmon River and its tributaries, St Joe River; Priest River; Falls River; Big Wood River; closed Basins of Beaver-Camas Creeks; Medicine Lodge Creek and Crooked Creek Mud Lake Basin; Kootenai River Basin; Big Sand Creek; Potlatch River, Hog Meadow Creek and East Fork Palouse River; Lolo Creek; Musselshell Creek and Eldorado Creek; Camas Prairie (northern Idaho); Middle and South Fork Clearwater River Basins; Weiser River Basin in Adams and Washington Counties; or when the project would affect forested

wetlands, peat lands, vernal pools, kettles or wetlands identified in Idaho Department of Fish and Game Wetland Conservation Strategy[1] as Class I, Class II and Reference Habitat Sites. [1]

De-watering:

Discharges for temporary cofferdams and de-watering structures under NWPs 3, 12, 13, 14, 29, 33, and 39 must comply with the following conditions:

1) Water removed from within the coffered area must be pumped to a sediment basin or otherwise treated to remove suspended sediments prior to its return to the waterway;
2) The intake of the water pipe must be screened (openings <3/32 inch) to prevent entrainment of fish trapped in the coffered area; and
3) Where ESA listed fish are present, fish trapped within the coffered area shall be salvaged by a qualified professional and returned to the waterway upstream of the project area.

Waiver Requirement: Associated with NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 51 and 52:

The applicant must request the waiver in writing and provide documentation and environmentally based reasons to support the waiver request. District coordination with IDEQ and EPA (tribal lands) will be conducted prior to the District Engineer making a waiver determination to ensure the proposed activity will result in only minimal impacts and is in compliance with Section 401 Water Quality Standards.

REGIONAL CONDITIONS for SPECIFIC NATIONWIDE PERMITS

NWP 6-Survey Activities

1. Exploratory trenching activities require notification in accordance with Nationwide Permit General Condition 31(Pre-Construction Notification).

2. When exploratory trenching is performed in flowing water the trenching shall be separated from the flowing water by cofferdams or similar devices and must allow upstream and downstream fish passage, unless the District Engineer determines in writing that the discharge will only result in minimal adverse effect.

3. Materials from exploratory trenching may be temporarily side cast into the de-watered coffered area for up to 30 days but not within flowing waters. Material from exploratory trenching in wetlands may be temporarily side cast into emergent and scrub-shrub wetlands for up to 30 days. Material from exploratory trenching in forested wetlands may be temporarily side cast up to 30 days provided the District Engineer determines in writing that the discharge will only result in minimal adverse effects.

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1. [1] Idaho Department of Fish and Game (IDFG) Wetland Conservation-Strategies have been developed for the Henrys Fork Basin, Northern Idaho, Big Wood River, Southeast Idaho, East-Central Idaho and Spokane River Basin, Middle and Western Snake River and tributaries, and the Upper Snake River and adjacent wetlands. Closed basins of Beaver-Camas Creeks, Medicine Lodge Creek, Palouse River and lower Clearwater River sub-basins, Middle Fork and South Fork Clearwater Basins and Camas Prairie in northern Idaho. Refer to the internet Site at: http://fishandgame.idaho.gov/content/page/wetlands-publications-idaho-natural-heritage-program#reports

NWP 12-Utility Line Activities

1. Side casting of excavated trench material is not authorized into flowing waters. The temporary side casting of excavated trench material may be side cast into de-watered coffered areas, and emergent and shrub-scrub wetlands for up to 30 days. Temporary side casting of trenched material may be side cast into forested wetlands for up to 30 days if the District Engineer determines in writing that the discharge of dredged material would only result in minimal adverse effects.

NWP 13-Bank Stabilization

1. Native riparian plants shall be incorporated into bank stabilization projects unless the permittee demonstrates in writing that a planting plan is not appropriate or practicable.
2. Notification in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) is required for all activities involving gabion baskets placed below the ordinary high water mark.
3. Notification under General Condition 31 shall include the following:
   a. A planting plan that uses native riparian vegetation, root wads or other bio-engineering bank stabilization unless the permittee provides written documentation that this is not appropriate or practicable.
   b. A written statement of how the project is designed to avoid and minimize impacts to the aquatic environment.
   c. A written explanation which demonstrates the need for the work, including the cause of the erosion and the threat it poses to structures, private property, infrastructure and /or public safety.
4. Rock barbs, rock J-hooks or similar structures when used shall be site specifically designed by a qualified, experienced professional who is experienced in river dynamics and shall comply with the Idaho Department of Water Resources (IDWR) "Rules Governing Stream Channel Alterations" to avoid additional erosion on the opposite bank or downstream.

The IDWR bank barb design is available at http://adminrules.idaho.gov/rules/2011/37/0307.pdf

NWP 14-Linear Transportation Projects

1. Notification under General Condition 31 shall include the following:
   a. Map of the project area and existing road crossings;
   b. Evaluation of how the project has been designed to avoid and minimize impacts to the aquatic resource, to include alternatives that considered bridging and/or the use of open bottom culverts.
2. Stream simulation techniques shall be employed on streams where ESA listed fish are present unless the District Engineers determines stream simulation techniques are not warranted.

Stream simulation design criteria is available at the US Fish and Wildlife Service website at http://www.fws.gov/midwest/Fisheries/streamcrossings/StreamSimulationDesign.htm, or at the U.S. Forest Service website at: http://www.stream.fs.fed.us/fishxing/aop_pdfs.html.

NWP 23-Approved Categorical Exclusions

1. Notification under General Condition 31 is required for all regulated Nationwide Permit 23 activities. Notification must identify the approved categorical exclusion that applies and document how the project complies with the categorical exclusion.

NWP 27-Aquatic Habitat Restoration, Establishment and Enhancement Activities

1. Notification under General Condition 31 shall include a description of the pre-project conditions, photographs, general wetland function and services the site provides and benefits anticipated from project construction.
2. For projects which involve creation of stream meanders, riffle and pool complexes or pool stream structures, provide evidence the structure is designed by a specialist in river dynamics such as a hydrologist, fluvial morphologist or wetland expert.
3. Prior to verification, the Corps will coordinate the project with the Idaho Department of Fish and Game for activities in perennial, fish bearing streams.

NWP 29-Residential Developments

1. Notification under General Condition 31 shall include a copy of the current plat map and information about previous discharges of fill material into waters of the United States within the project area.
2. Dredged or fill material may not be discharged into open water to meet local government set back requirements. For example, a city may require a house to be located a minimum of 100 feet from the ordinary high water line. Discharges into a lake or stream to meet this setback requirement are not authorized under this NWP.

NWP 33-Temporary Construction, Access and Dewatering

1. Cofferdams may not be constructed by using mechanized equipment to push streambed material through flowing water. Cofferdams shall be constructed of non-erosive material such as concrete jersey barriers, sand or gravel filled bags, water bladders and other similar non-erosive devices.
2. If a diversion channel will be used to bypass flow around the construction site, the diversion channel shall be lined with plastic, large rock or otherwise protected from erosion prior to releasing flows downstream.

NWP 39-Commerical and Institutional Developments

1. Notification under General Condition 31 shall include a copy of the current plat map and information about previous discharges of fill material into waters of the United States within the project area.

2. Dredged or fill material may not be discharged into open water to meet local government set back requirements. For example, a city may require a building to be located a minimum of 100 feet from the ordinary high water line. Discharges to into a lake or stream to meet this setback requirement are not authorized under this NWP.

NWP 45-Repair of Uplands Damaged by Discrete Events

1. No material may be placed in excess of the minimum needed for erosion protection.
2. Armoring restored banks shall not exceed 500 linear feet, unless the District Engineer determines in writing that the discharge will not result in more than minimal adverse effects.
3. Native riparian vegetation shall be planted along the restored bank, unless the District Engineers determines a planting plan is not appropriate or practicable.
4. The permittee must submit with their pre-construction notification (see General Condition 31) a written explanation, if they believe a planting plan with native riparian vegetation on the restored banks is not appropriate or practicable.

GENERAL CONDITI0NS (REGIONAL ADDITIONS)

General Condition 2. Aquatic Life Movement- The streambed shall be returned to pre-construction contours after construction unless the purpose of the activity is to eliminate a fish barrier and restore the natural substrate and contour.

General Condition 4. Migratory Bird Breeding Areas- U.S. Fish and Wildlife Service (USFWS) is the primary Federal agency responsible for the conservation and management of migratory bird resources. Applicants should contact the Spokane Office USFWS at 509-893-8009, for additional information.

General Condition 9. Management of Water Flows- Expected high flows referenced in this general condition are defined at the minimum as a 25 year flood event, as identified by the Idaho Department of Water Resources (IDAPA 37.03.07. Rule 62.03.04.a). For culverts or bridges located in a community qualifying for the national flood insurance program, the minimum size culvert shall accommodate the 100-year flood design flow frequency (IDAPA 37.03.07. Rule 62.03.04.c).

General Condition 12. Soil Erosion and Sediment Controls- If the Permittee does not have a Best Management Plan, refer to the Idaho Department of Environmental Quality Catalog of Stormwater Best Management Practices for Idaho Cities and Counties.

Website: http://www.deq.idaho.gov/media/494058-entire.pdf.

Use of native vegetation is the preferred method to treat soil erosion and stabilize areas disturbed during construction. Eroded and or disturbed areas shall be replanted with native vegetation and stabilized until vegetative root mass can become established, unless the District Engineer determines this is not practicable. Non-biodegradable materials such as chicken or hog wire or plastic netting that may entrap wildlife or pose a safety concern should not be used for soil stabilization.

General Condition 13. Removal of Temporary Fills-Temporary stockpiles in waters of the United States may not be placed so a berm or levee is formed parallel to the stream that could confine flows or restrict overbank flow to the floodplain.

General Condition 18. Endangered Species- Non-federal applicants must contact either their local Idaho Department of Fish and Game or the U.S. Fish and Wildlife Service to determine if any listed species or designated critical habitat might be in the vicinity of their project. To contact U.S. Fish and Wildlife Service (USFWS) in Bonner, Boundary, Kootenai, Shoshone, Benewah and Latah Counties, contact the Spokane Office USFWS at 509-893-8009. To contact USFWS for other counties in Idaho, call Boise Office USFWS at 208-378-5388. Applicants shall notify the District Engineer of their finding.

General Condition 20. Historic Properties- Applicants must contact the Idaho State Historic Preservation Office at 208-334-3847 located in Boise, Idaho to determine if their project may affect historic properties listed in the National Register of Historic Places and notify the District Engineer of their finding.

DEFINITIONS (REGIONAL ADDITIONS)

Forested Wetlands: Wetlands characterized by woody vegetation that is 6 meters tall or taller; They are located where moisture is relatively abundant, particularly along rivers and in the mountains and normally possess an overstory of trees and an understory of young trees or shrubs and an herbaceous layer.

REFERENCE: *Classification of Wetlands and Deepwater Habitats of the United States, Mr. Lewis M. Cowardin; Office of Biological Services; Fish & Wildlife Services; 1979*

High Value Wetlands: Forested wetlands, peatlands, vernal pools, playa lakes, kettles, prairie potholes and Class I, Class II, reference and habitat sites identified in Wetland Conservation Strategies, prepared by the Idaho Department of Fish & Game, Conservation Data Center.

Invasive Species: Species of plants not native to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

REFERENCE: *Executive Order No. 13112; U.S. Department of Agriculture National Invasive Species Information Center*

Kettle: A steep sided, usually basin or bowl shaped hole or depression, commonly without surface drainage, in glacial drift deposits, often containing a lake or swamp.

REFERENCE: *Bates, Robert L. & Jackson, Julia A.; Glossary of Geology, American Geological Institute; Falls Church; 1980*

Native Species: Species that occurs naturally in a particular region, state, ecosystem and habitat without direct or indirect human actions.

REFERENCE: *Federal Native Plant Conservation Committee; 1994*

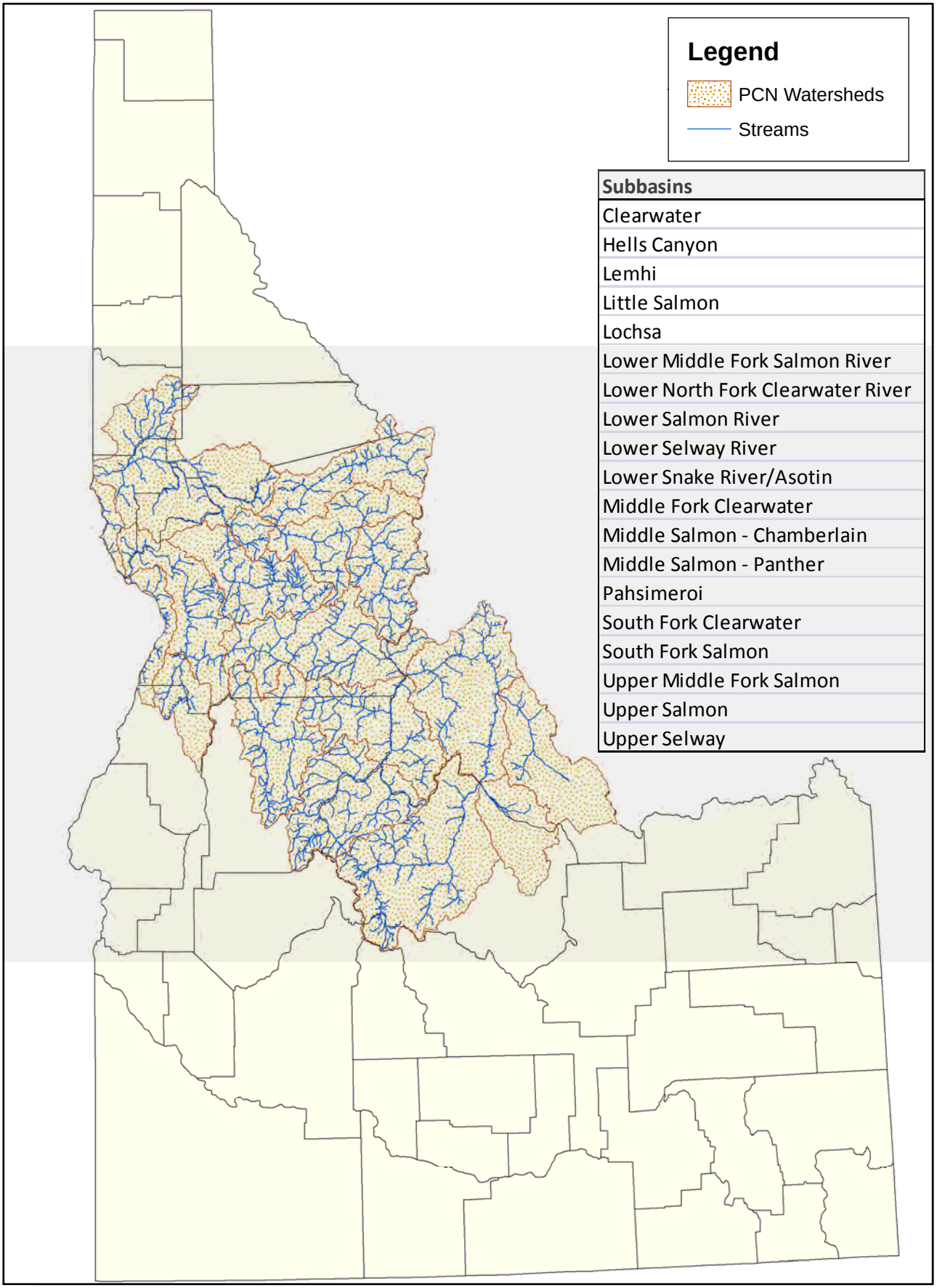
Peatland: Wetlands with waterlogged substrates and at least 30cm of peat accumulation.

REFERENCE: *Bursik, R.J. and Moseley, R.K.; Ecosystem Conservation Strategy for Idaho Panhandle Peatlands; Cooperative project between Idaho Panhandle National Forest and Idaho Department of Fish & Game; Conservation Data Center; Boise 28 pp plus Appendix; 1995*

Vernal Pools: Precipitation-filled seasonal wetlands inundated during periods when temperature is sufficient for plant growth, followed by a brief waterlogged-terrestrial stage and culminating in extreme desiccating soil conditions of extended duration.

REFERENCE: *Keely, J.E. & Zedler, P.H.; Characterization and Global Distribution of Vernal Pools; Pp 1-14 in* C.W. Witham, E.T. Bauder, D. Belk, W.R. Ferren Jr., and R. Ornduff (Editors); Ecology, Conservation, and Management of Vernal Pool Ecosystems (Proceedings from Conference, 1996); California Native Plant Society, Sacramento, CA; 1998

Watersheds Requiring Pre-Construction Notification



Subbasins
Clearwater
Hells Canyon
Lemhi
Little Salmon
Lochsa
Lower Middle Fork Salmon River
Lower North Fork Clearwater River
Lower Salmon River
Lower Selway River
Lower Snake River/Asotin
Middle Fork Clearwater
Middle Salmon - Chamberlain
Middle Salmon - Panther
Pahsimeroi
South Fork Clearwater
South Fork Salmon
Upper Middle Fork Salmon
Upper Salmon
Upper Selway

60 30 0 60 Miles

US Army Corps of Engineers