



Washington State
Department of Transportation

Complete Permit Application Guidance

For projects using the Joint Aquatic Resource Permit
Application (JARPA)

December 2011

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TABLE OF CONTENTS

ACRONYMSIII

CHAPTER 1 INTRODUCTION1-1

 1.1 Why should I use this guidance?..... 1-1

 1.2 Which permits does this guidance apply to? 1-1

 1.3 How can I use this guidance? 1-2

 1.4 How is this guidance organized?..... 1-2

 1.5 What on-line resources are available? 1-3

CHAPTER 2 WDFW HYDRAULIC PROJECT APPROVAL2-1

 2.1 What is required for a complete HPA application?2-1

 2.2 How much time should I allow for HPA permit processing?2-7

 2.3 What if I want to appeal the HPA permit decision?2-8

CHAPTER 3 DEPARTMENT OF THE ARMY NATIONWIDE AND INDIVIDUAL PERMITS3-1

 3.1 What is required for a complete Nationwide Permit application?3-1

 3.2 What is required for a complete Individual Permit application?3-4

 3.3 How much time should I allow for Nationwide or Individual Permit processing?3-6

 3.4 What if I want to appeal the Nationwide or Individual Permit decision?.....3-6

CHAPTER 4 ECOLOGY SECTION 401 PERMIT AND COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY DETERMINATION4-1

 4.1 What is required for a complete Section 401 application?.....4-2

 4.2 What is required for a complete Coastal Zone Management Act (CZMA) application?.....4-4

 4.3 How much time should I allow for Section 401 or CZMA permit processing?4-5

 4.4 What if I want to appeal the Section 401 or CZMA permit decision?.....4-6

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ACRONYMS

	A
AHB	Area Habitat Biologist
	C
Corps	U.S. Army Corps of Engineers
CZMA	Coastal Zone Management Act
CZMP	Coastal Zone Management Program
	D
DCE	Documented Categorical Exclusion
DNR	Department of Natural Resources
	E
ECS	Environmental Classification Summary
ESA	Endangered Species Act
	H
HPA	Hydraulic Project Approval
HRM	Highway Runoff Manual
	J
JARPA	Joint Aquatic Resource Permit Application
	L
LOV	Letter of Verification
	M
MOA	Memorandum of Agreement
MSA	Magnuson-Stevens Fishery Conservation and Management Act
	N
NHPA	National Historic Preservation Act
NWP	Nationwide Permit
	O
OHWM	Ordinary High Water Mark
ORA	Office of Regulatory Assistance
	P
PCHB	Pollution Control Hearings Board
PS&E	Plans, Specifications, and Estimate
	R
RCW	Revised Code of Washington
	S
SEPA	State Environmental Policy Act
	T
TDA	Threshold Discharge Area
	W
WDFW	Washington State Department of Fish and Wildlife
WAC	Washington Administrative Code

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Chapter 1 Introduction

This guidance will help permit applicants for WSDOT projects reduce delays associated with the permitting process by developing a complete Joint Aquatic Resource Permit Application (JARPA). JARPA is a single permit application for development activities in or along aquatic environments. Multiple regulatory agencies (Federal, State, and Local) worked together to create one application that people can use to apply for more than one permit at a time.

1.1 Why should I use this guidance?

As a permit applicant, you need to understand what information is required when submitting a JARPA to the regulatory agencies. Each agency has different needs and requirements, depending on the permit you are seeking and the activities you are proposing. Once the agencies notify you that your JARPA submittal is complete, a “regulatory review clock” starts for each permit. WSDOT can reduce permit process timelines and increase permitting predictability by getting these **regulatory review clocks** started upon initial application submittal. This guidance is for WSDOT and therefore it references documents, processes, and protocols specific to WSDOT.

If you adhere to this guidance, it will improve your likelihood of having a complete application, which in turn should reduce permitting delays and surprises associated with incomplete JARPA submittals.

1.2 Which permits does this guidance apply to?

This guidance focuses on permits needed for highway safety and mobility construction projects. This includes:

- Hydraulic Project Approval (HPA) permits obtained from the Washington State Department of Fish and Wildlife (WDFW)

What does a JARPA submittal package consist of?

A JARPA submittal is comprised of three main parts:

- Application form
 - JARPA drawings
 - Supplemental reports
-

What does the term “regulatory review clock” mean?

This is the time an agency has to review a JARPA and issue a permit decision to WSDOT. The clock starts as soon as a regulatory agency determines the application is complete and ends when the agency issues a permit decision.

- Nationwide and Individual Permits obtained from the U.S. Army Corps of Engineers (Corps); and
- Section 401 Water Quality Certifications and Coastal Zone Management Act (CZMA) Consistency Determinations obtained from the Washington State Department of Ecology (Ecology).

This guidance does not address Department of Natural Resources (DNR) Aquatic Leases and U.S Coast Guard Section 9 permits, but WSDOT plans to work closely with these resource agencies to expand this document in the future to assist with marine project delivery.

1.3 How can I use this guidance?

Permit applicants for WSDOT projects should consider this guidance early in the design stage prior to the JARPA submittal. It is important that permit applicants coordinate with the regulatory staff (who will be reviewing the JARPA for completeness) before the application is submitted to discuss and confirm specific information needs. You can use this guidance to develop permitting schedules and timelines. You can also use the guidance to perform internal quality assurance and quality control checks just before submitting a JARPA to the agencies. You should consider this guidance when developing a scope of work for consultants hired to help obtain permits.

1.4 How is this guidance organized?

This document has a chapter devoted to each regulatory agency responsible for issuing the major permits. Chapters 2 through 4 address the following questions for each permit:

- What is required for a complete application? – Defines the minimum information that must be included with the JARPA to begin the regulatory review clock.
- What is required for a permit decision? – Lists the information agencies need to make a final permit decision.
- How much time should I allow for permit processing? – Provides the time WSDOT can expect to receive a permit from the agencies.
- What if I want to appeal the permit decision? – Provides the specific procedures WSDOT can follow if an appeal is desired and lists timeframes associated with filing an appeal.

1.5 What on-line resources are available?

You can use the following web-sites to obtain the most recent JARPA form and statewide permitting guidance:

- Office of Regulatory Assistance (ORA) 2009 JARPA Form and guidance: <http://www.epermitting.wa.gov/>.
- ORA's environmental permitting resources: <http://www.ora.wa.gov/resources/permitting.asp>.

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Chapter 2 WDFW Hydraulic Project Approval

A Hydraulic Project Approval (HPA) is a WDFW permit required by Chapter 77.55 of the Revised Code of Washington (RCW) for hydraulic projects in state waters.

WSDOT and WDFW have agreed on HPA application and review procedures through a [Memorandum of Agreement \(MOA\)](#) Concerning Administration of Hydraulic Project Approvals for Transportation Activities and Implementation of the Fish Passage Retrofit Program and Implementation of the Chronic Environmental Deficiency Program signed in May 2008. The following guidance describes the information required by WDFW when WSDOT applies for HPAs.

2.1 What is required for a complete HPA application?

For an HPA, permit applicants will start with the most recent version of the [Joint Aquatic Resources Permit Application \(JARPA\)](#). In officially declared emergencies, WSDOT may apply for an HPA verbally or in writing. There are four kinds of HPAs: Standard, Chronic Danger, Expedited, and Emergency. Each type of permit and related procedures are described in the following sub-chapters.

2.1.1 Application for Standard HPA

A complete application for a standard HPA shall include information generally derived from the Plans, Specifications, and Estimate (PS&E) package – project design, construction methods, and proposed mitigation. This information is required so that the WDFW Area Habitat Biologist (AHB) can assess project impacts and complete mitigation needs based on a thorough understanding of the project design.



What is a Hydraulic project?

Hydraulic project means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state (RCW 77.55.011).

Helpful Hint

Click on the following link for WDFW's Q&A for HPAs: <http://wdfw.wa.gov/hab/hpapage.htm>

Do I need a permit for over water work?

"An HPA is required for construction or structural work associated with any bridge structure waterward of or across the ordinary high water line of state waters." - WAC 220-110-070

Which statute defines submittal requirements for a Standard HPA?

RCW 77.55.021(1) specifies the requirements for a complete application for a standard HPA

How do I demonstrate SEPA compliance?

Your project SEPA compliance can take one of five forms:

- Exemption under RCW or WAC;
- Determination of Non-Significance (DNS);
- Mitigated DNS;
- Final Environmental Impact Statement; or
- Notice of Adoption of a NEPA (National Environmental Policy Act) action (RCW Chapter 43.21C).

Note: Compliance with SEPA generally occurs prior to submitting an HPA permit application.

What is a Chronic Danger?

A condition that may be declared by the County Legislative Authority for any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway.

When applying for a Standard HPA, WSDOT permit applicants should include in written format, the following information:

1. A set of complete drawings* for the project in general;
2. Detailed plans for those parts of the project to be constructed within the ordinary high water line in freshwater and the mean higher high water line in saltwater (see sub-chapters 2.1.5 and 2.1.6);
3. Detailed plans for construction or installation of mitigation features for identified project impacts to fish life and fish habitat (see sub-chapters 2.1.5 and 2.1.6);
4. Discussion of construction techniques which will or may be used;
5. Monitoring and reporting schedule for mitigation, or experimental techniques if required (see sub-chapter 2.1.5, *Monitoring and Contingency Correction Plan* for details);
6. Alternative and contingency plans should experimental techniques prove unsuccessful;
7. Notice of compliance with the State Environmental Policy Act (SEPA); and
8. Proposed timeline for project progress and completion (see sub-chapter 2.1.5, *Construction Timing* for details).

*Note: Drawings should depict both the existing environment and the proposed project and should include plan, profile and cross-section views and any other details necessary to describe the proposed work.

2.1.2 Application for Chronic Danger HPA

A complete, written application that contains all the elements identified for a standard HPA is required for a chronic danger HPA. However, if the project is for the restoration of an eroded or unstable streambank employing the principle of bioengineering as provided in RCW 77.55.021 (11) (b), the project is not subject to SEPA review, Chapter 43.21C RCW. Instead, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project. In those cases, the applicant shall submit a JARPA simultaneously to WDFW and the local government.

WDFW shall issue an HPA, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property.

2.1.3 Application for Expedited HPA

RCW 77.55.021 (10) and (12) specify the requirements for a complete application for an expedited HPA. If either the county legislative authority or WDFW declares that an imminent danger exists, WSDOT may apply for and WDFW shall issue an expedited HPA. In addition, if neither the county legislative authority nor WDFW had declared that an imminent threat exists but normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment, WDFW may issue an expedited HPA. In either case, a complete, written application that contains all the elements identified for a standard HPA is required for an expedited HPA. Expedited projects are not required to comply with SEPA.

What is an Imminent Danger?

An imminent danger means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

2.1.4 Application for Emergency HPA

RCW 77.55.021 (8) specifies the requirements for a complete application for an emergency HPA. If WDFW, the county legislative authority, or the governor declares an emergency, WDFW shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining an HPA prior to commencing work. Conditions of the Emergency HPA shall be communicated to WSDOT by WDFW at the time of approval and in writing within thirty days. WSDOT is then required to comply with these HPA conditions. As with Expedited projects, Emergency HPAs are not required to comply with SEPA.

What is considered an Emergency?

Emergency means an immediate threat to life, the public, property, or of environmental degradation (RCW 77.55.011(6)).

When WDFW, the county legislative authority, or the governor declares an emergency, WSDOT may request an emergency HPA verbally or in writing.

2.1.5 Required information for all projects

Permit applicants should address the following components in their application to increase the likelihood of acceptance by WDFW. WDFW will likely declare your application incomplete and request you supply the missing information if these components are not included in the application package. This may result in increased project costs due to a delay issuing the HPA.

Construction Timing

Provide an accurate construction schedule that includes the ad date, construction start and completion dates. If your project will be constructed in phases or stages complete JARPA Attachment D to provide start and end dates for each phase. The schedule must

How do I know which in-water work windows will apply to my project?

Determine the waters of the state that could be affected by your project and contact your local WDFW Area Habitat (AHB) Biologist early during the design stage so he or she can provide you with information on allowable work windows.

demonstrate that the proposed project will occur at times when vulnerable fish life stages can be protected. Review the Endangered Species Act (ESA) documents prepared for your project to check for any federal commitments pertaining to construction timing and fish and ensure these are consistent with your proposed schedule. HPAs always include work timing limitations (allowable work windows) to protect vulnerable stages of fish life, such as spawning, incubation, and early rearing. These work windows will vary depending on the work location, type of work to be conducted, and the fish species present at the work location. It may be necessary to construct portions of a project in consecutive years if the allowable work window does not provide enough time to complete the project in one season.

WDFW established new work times in November 2008, under RCW Chapter 77.55.091, designed to protect fish life during mining operations. These windows are often used as a starting point for the AHB to decide the work windows applicable to your project. Please see the [Gold and Fish Pamphlet](#) for a list of work times by specific state water. AHBs can adjust these work times based on specific locations and activities proposed. Therefore, it is critical you contact the AHB early in the design process to discuss allowable work windows.

Hydrology and Stream Reach Assessment

Constructing or repairing in-water structures may affect stream hydrology or tideland ecology. So that WDFW can fully assess the impacts of the proposed project, additional information is required. If your project involves in-water structures (such as bridges, culverts, bank protections) or stream channel changes or realignments you should include hydrologic or tidal data for the project site. Hydraulic and scour calculations, and stream reach assessments should be included (see sub-chapter 2.1.6 for additional guidance).

Where can I find WSDOT protocols established to maintain water quality?

Permit applicants for WSDOT projects should reference Chapter 6 of the WSDOT Highway Runoff Manual regarding best management practices for maintaining water quality. Applications should also reference Division 8 of the WSDOT Standard Specifications.

Water Quality Protection

You need to identify the methods proposed to maintain water quality. These include, but may not be limited to, temporary erosion and sediment control of stormwater and construction runoff, water pollution control, grading or landscaping strategies, and permanent slope and bank stabilization methods.

Riparian Area and Vegetation Protection and Restoration

WSDOT hydraulic projects frequently involve the use of heavy equipment that may damage riparian areas and vegetation. It is important that WSDOT protect these resources from project impacts to the greatest extent possible. WSDOT must restore areas

damaged by construction upon project completion. Applications should specify the methods proposed to protect and restore riparian areas and vegetation.

Work Area Isolation

When proposed work activities in state waters pose potential harm to fish life, applications need to include project plans for removing and excluding fish from work areas. In the application drawings and supplemental information, describe and show temporary water bypasses, pipes, culverts, flumes, pumps, screens, cofferdams, deflectors, or other methods to remove and exclude fish from the work area. You must ensure your JARPA demonstrates compliance with the work area isolation requirements outlined in [WAC 220-110-120](#).

Construction Site Access and Staging

Applications need to include plans for proposed timing, installation, operation, and removal of construction site access and staging in, adjacent to, or over state waters. This includes temporary fill and excavation, roads, work platforms, and other methods. Application drawings should show temporary construction site access and staging areas, as well as plans to protect and restore vegetation.

Noise Abatement

If a proposed project involves pile driving, blasting, or other activity that may result in high sound pressure waves, applications need to include a thorough justification for their use. Blasting is not usually an approved method of working in state waters that contain fish, so applications that include blasting should include blasting only if no alternative method is feasible. Applications involving pile driving should include the following information:

- Number of piles proposed and type and size of material (steel H-pile, precast concrete, wood timber, etc.);
- Type (impact or vibratory) and size of proposed driving mechanism;
- Anticipated frequency and duration of sound pressure;
- Measures proposed to minimize impacts of sound pressures (such as use of a vibratory instead of impact hammer, air bubble curtains, fewer piles, smaller diameter piles, bored shafts, and use of wood rather than steel);
- Proposed pile or blasting locations in and near the water;
- Depth of water, both at and near the work location; and
- Bottom substrate composition.

Does WSDOT have guidance for fish exclusion?

Yes, you should reference or attach the document *WSDOT Fish Exclusion Protocols and Standards (2006)* to your permit application. The document can be obtained at: <http://www.wsdot.wa.gov/Environment/Biology/BA/>

Where can I obtain information regarding pile driving and sound pressure?

Use the information from the Biological Assessment (BA) prepared for your project because it must assess potential impacts associated with pile driving.

What if WSDOT determines pile driving activities may generate sound pressures that are above disturbance level thresholds?

The BA often includes an Underwater Noise Monitoring Plan as an appendix. WSDOT does not usually need to submit the entire Biological Assessment (BA) to WDFW, but you should provide the Underwater Noise Monitoring Plan to WDFW with your application.

Mitigation of Unavoidable Impacts

In some cases, proposed projects will have impacts to fish life that WSDOT cannot avoid. WDFW can permit those projects provided appropriate compensatory mitigation is included. Applicants should include a detailed discussion of unavoidable project impacts and proposed compensatory mitigation, including location and extent of the mitigation, and timeline for its implementation. You must ensure your JARPA demonstrates compliance with WDFW's mitigation policy outlined in [Policy M5002 – Requiring or Recommending Mitigation](#).

Monitoring and Contingency Correction Plan

Applications should include a plan for monitoring, reporting, and if necessary, correcting fish passage barriers and fish habitat mitigation features. Monitoring and correction of deficient fish passage barriers are required for the life of the project. Monitoring and correction of deficient fish habitat mitigation features are required for a minimum of three years after project completion. If correction of fish habitat mitigation features is necessary to address deficiencies, additional monitoring should occur for a minimum of three years after the corrections are completed. Monitoring reports should be submitted annually to WDFW. Correction work in state waters may require revision of the original HPA (or a new HPA) and other permits.

2.1.6 Additional information required for specific types of work

In addition to the information required for all projects outlined above, WDFW also has specific information needs unique to the type of proposed work. HPAs are required for work in, over, and near state waters, such as bridge construction, bank protection, culvert replacement, and channel realignment. Following are specific application guidance for the most common types of projects. For project types not listed, WSDOT should provide written descriptions and drawings to fully describe the work and all related impacts and mitigation.

Bridges & Structures

WSDOT shall avoid pier placement waterward of the ordinary high, where practicable, and minimize the area over water and riparian areas. You must ensure your JARPA demonstrates compliance with the water crossing structures requirements and technical provisions outlined in [WAC 220-110-070](#).

Culverts

While applications for culvert projects typically should include hydraulic and scour calculations, applications for stream simulation culvert designs consistent with [Design of Road Culverts for Fish Passage](#) do not need to include those calculations. To have the best chance of approval, proposed culvert projects should minimize the length and maximize the width of the culvert, and countersink it below the elevation of the streambed. You must ensure your JARPA demonstrates compliance with the water crossing structures requirements and technical provisions outlined in [WAC 220-110-070](#).

Bank Protection

Applicants should demonstrate that WSDOT has considered relocating the highway or other structures out of the floodplain for bank protection projects where there are reoccurring issues. Applicants should describe the extent the project incorporates techniques that mimic natural processes, and how WSDOT considered design guidelines including the [Integrated Streambank Protection Guidelines](#) when selecting the proposed bank protection. The applicant should describe the risk associated with the alternatives and the proposed approach. You must ensure your JARPA demonstrates compliance with the bank protection requirements and technical provisions outlined in [WAC 220-110-050](#).

Channel Changes

Applications for channel change projects should describe the extent the projects use techniques that mimic natural processes, why it is necessary to change the stream channel, how design guidelines including the [Integrated Streambank Protection Guidelines](#) have been used to select the proposed bank protection, and the risk of the proposed approaches and alternatives. You must ensure your JARPA demonstrates compliance with the channel change/realignment requirements and technical provisions outlined in [WAC 220-110-080](#).

2.2 How much time should I allow for HPA permit processing?

In accordance with RCW 77.55.021, the following sub-chapters (2.2.1 through 2.2.4) list timelines for processing HPA applications:

2.2.1 Standard HPA

WDFW must approve or deny an application for a standard HPA within 45 days of receiving a complete, written application. If

Helpful Hint

It is important to explain in the JARPA what led to the decision to move a stream channel or protect a streambank. WDFW needs to know the alternatives considered and the logic of the proposed design solution.

When can I start the work?

Neither WSDOT's application for HPA nor WDFW's acknowledgment of receipt of an application constitutes approval by WDFW of the proposed project. Work on any hydraulic project shall not occur until WSDOT receives an electronic or hard copy of the signed HPA for standard, chronic danger, and expedited HPAs, or verbal or written approval for emergency HPAs.

WDFW receives an incomplete application, the AHB shall notify WSDOT in writing, within 10 working days of receipt of that application, why the application is incomplete and what information is needed to make it complete.

2.2.2 Chronic Danger HPA

WDFW must approve or deny an application for a standard HPA within 45 days of receiving a complete, written application. If WDFW receives an incomplete application, the AHB shall notify WSDOT in writing, within 10 working days of receipt of that application, why the application is incomplete and what information is needed to make it complete.

2.2.3 Expedited HPAs

WDFW must approve an application for an expedited HPA within 15 days of receiving a complete, written application. If WDFW receives an incomplete application, the AHB shall notify WSDOT in writing, within 10 working days of receipt of that application, why the application is incomplete and what information is needed to make it complete.

Is there a fee to obtain an HPA?

No, there are no permit fees associated with HPAs.

2.2.4 Emergency HPAs

When an immediate threat exists, WDFW shall grant verbal approval immediately, and all conditions shall be put in writing within 30 days. If work will not start for at least 24 hours, WSDOT shall secure written emergency approval to the extent practicable while not preventing the emergency response. In these cases, WDFW will provide that written approval within 24 hours or less of request.

2.3 What if I want to appeal the HPA permit decision?

If the HPA is issued with conditions unacceptable to WSDOT or the HPA is denied, WSDOT may appeal WDFW's decision within 30 days of the HPA issuance or denial. Please refer to Section 10 of the MOA between WDFW and WSDOT as it provides specific details for conflict resolution.

Chapter 3 Department of the Army Nationwide and Individual Permits

Title 33 of the Code of Federal Regulations, Parts 325.1(d) and 325.3(a) list the required contents for Department of the Army permits. WSDOT and the Seattle District of the U.S. Army Corps of Engineers (Corps) have worked together to define submittal requirements. This guidance will help you prepare a complete application for most Nationwide and Individual Permits.



3.1 What is required for a complete Nationwide Permit (NWP) application?

The Corps requires all permit applicants to submit the most recent version of the [JARPA](#) when applying for a Nationwide Permit. In order to be considered complete, the Corps also requires detailed information that is specific to the permit WSDOT is applying for.

WSDOT, in the recent past, has only used 12 of the 50 available [Nationwide Permits](#). Those Nationwide Permits include: 3, 5, 6, 12, 13, 14, 18, 23, 27, 33, 43 and 45. As a result, only those particular Nationwide Permit requirements for a complete application are discussed below for instances where a pre-construction notification is submitted.

For Nationwide Permit applications to be considered complete, the permit application package must contain the information identified in sub-chapters 3.1.1 and 3.1.2 below:

3.1.1 Information required for all Nationwide Permits

1. JARPA completely filled out and signed;
2. JARPA drawings;
3. Detailed description of the proposed activity (use JARPA form);

What is a Nationwide Permit?

Nationwide permit refers to a type of general permit which authorizes activities on a nationwide basis unless specifically limited (33 CFR 330.2).

If I completely fill out a JARPA form, does it satisfy all the requirements for a Nationwide Permit?

No, completely filling out a JARPA form typically satisfies items 1 through 3 in sub-chapter 3.1.1. For projects that will impact wetlands or other surface waters, a delineation report will be required. For projects that will impact jurisdictional ditches, a jurisdictional ditch memo will be required (see item 4).

What is a special aquatic site?

Special aquatic sites include wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, and sanctuaries and refuges as defined in 40 CFR 230.40 through 230.45

What's the difference between a conceptual mitigation plan and a draft mitigation plan?

Ecology, the Corps, and EPA worked together to create [Joint Guidance](#) for developing wetland mitigation plans. This document defines minimum requirements, provides helpful outlines, and includes a site selection checklist you can use to determine if your site is appropriate for compensatory mitigation.

What is federal lead agency?

For every proposed action subject to NEPA (or SEPA with the need for a federal permit) one federal agency must serve as the lead agency. A "lead agency" is the federal agency with primary responsibility for complying with NEPA and other federal regulations/requirements.

4. Delineation of wetlands and/or any other special aquatic site (e.g., mudflats, riffle and pool complexes, or vegetated shallows), Ordinary High Water Mark (OHWM), and jurisdictional ditches;
5. If greater than 0.10 acre of permanent wetland impact, submit a statement of how mitigation requirements will be satisfied, conceptual mitigation plan, or draft mitigation plan (please refer to [Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans, March 2006 \(Joint Guidance\)](#); and

If the Corps is a federal lead include:

6. List of Federally-listed endangered or threatened species or designated critical habitat (No Effect Letter or Biological Assessment); and
7. Cultural Resource Study (to determine if an eligible or potentially eligible resource would be impacted).

Note: The Corps shall ensure compliance with NEPA, ESA and Magnuson Stevens Fishery Conservation and Management Act (MSA) and Section 106 of the National Historic Preservation Act (NHPA) for all projects, regardless of whether they are the federal lead. However, when FHWA is the federal lead, the submittal of the items under 6 and 7 does not affect whether the application is determined complete, but the information still must be submitted to the Corps.

3.1.2 Additional information required for specific Nationwide Permits

Below are specific Nationwide Permit requirements in addition to the requirements for all Nationwide Permits listed above in sub-chapter 3.1.1.

Nationwide Permit 3, Maintenance

- Where maintenance dredging is proposed (as it would be authorized under Nationwide Permit 3), the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals.

Nationwide Permit 12, Utility Line Activities

- Drawings and/or a description of the measures that will be used to prevent permanent drainage of adjacent areas by the backfilled trench and/or along the buried utility line.

Nationwide Permit 13, Bank Stabilization, and where WSDOT proposes bank stabilization under *any other Nationwide Permit*.

- Need for the work, including the cause of the erosion and the threat posed to structures, infrastructure, and/or public safety.
- Current and expected post-project sediment movement and deposition patterns in and near the project area.
- Current and expected post-project habitat conditions, including the presence of fish, wildlife, and plant species in the project area.
- Demonstration that the proposed project incorporates the least environmentally damaging practicable bank protection methods. These methods include, but are not limited to, the use of bioengineering, biotechnical design, root wads, large woody debris, native plantings, and beach nourishment in certain circumstances. If rock must be used due to site erosion conditions, explain how the bank stabilization structure incorporated elements beneficial to fish.
- Assessment of the likely impact of the proposed work on upstream, downstream and cross-stream properties (at a minimum the area assessed should extend from the nearest upstream bend to the nearest downstream bend of the watercourse). Discuss the methodology used for determining effects.

Typically this information is included in the Biological Assessment prepared for your project.

Nationwide Permit 23, Categorical Exclusions

- A Documented Categorical Exclusion (DCE) form (an Environmental Classification Summary (ECS) form also works) signed by the FHWA with the categorical exclusion type/action listed.

Nationwide Permit 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities

- If the project involves work that would result in any loss of waters of the U.S. in a special aquatic site (e.g., mudflat, wetland, or riffle and pool complex), the notification must explain why the loss is necessary and show how it would be fully offset by the beneficial impacts of the project. The notification must describe pre-project site conditions (including photographs), general wetland and other aquatic functions the site provides, and proposed maintenance and monitoring plans.

Nationwide Permit 33, Temporary Construction, Access, and Dewatering and other Nationwide Permits where temporary impacts are proposed

- A restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

Nationwide Permit 43, Stormwater Management Facilities

- The pre-construction notification must include a maintenance plan if periodic maintenance dredging is proposed.

Nationwide Permit 45, Repair of Uplands Damaged by Discrete Events

- The pre-construction notification must be submitted within 12 months of the date of the damage and should include documentation, such as a recent topographic survey or photographs to justify the extent of the proposed restoration.

3.2 What is required for a complete Individual Permit application?

The Corps requires all permit applicants to submit the most recent version of the [JARPA](#) when applying for an Individual Permit. In order to be considered complete, the Corps also requires detailed information that is specific to the permit WSDOT is applying for.

For Individual Permit applications to be considered complete and to issue a Public Notice, the permit application package must contain the information identified in sub-chapter 3.2.1 below:

3.2.1 Information required for all Individual Permits

The Corps requires the following information for an application to be considered complete and to issue a Public Notice:

1. JARPA completely filled out and signed;
2. JARPA drawings;
3. Detailed description of proposed activity (use the JARPA form);
4. Names and addresses of adjoining property owners (use the JARPA form);
5. Location and dimensions of adjacent structures (note: a scaled drawing showing the resource and proposed structures will satisfy this requirement except in Section 10 waters where proposed structures may affect navigation. In Section 10 waters, the proposed structure will need to have the exact dimensions shown and the distance to adjoining property structures (e.g., docks and piers) called out.);

If I completely fill out a JARPA form, does it satisfy all the requirements for an Individual Permit?

No, completely filling out a JARPA form typically satisfies items 1 through 8 in sub-chapter 3.2.1, though a mitigation plan to fully satisfy item 8 may be required. For projects that will impact wetlands or other waterbodies, a delineation report will be required. For projects that will impact jurisdictional ditches, a jurisdictional ditch memo will be required. These reports satisfy the requirements in item 9.

6. List of authorizations required by other federal, interstate, state, regional, or local agencies for the work (for example, water quality certifications, shoreline permits, or U.S. Coast Guard permits), including all approvals received or denials already made (use the JARPA form);
7. If dredging is planned, the application must include a description of the type, composition, and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the material;
8. A complete list of avoidance, minimization, and compensatory mitigation efforts;
9. Delineation of wetlands and/or any other special aquatic sites, OHWM, and jurisdictional ditches;
10. Coastal Zone Management Act (CZMA) Consistency Determination form (filled out and signed); and

If the Corps is a federal lead include:

11. List of Federally-listed endangered or threatened species or designated critical habitat (No Effect Letter or Biological Assessment); and
12. Cultural Resource Study (to determine if an eligible or potentially eligible resource would be impacted).

Note: The Corps shall ensure compliance with NEPA, ESA, and Section 106 of the National Historic Preservation Act (NHPA) for all projects, regardless of whether they are the federal lead. However, when FHWA is the federal lead, the submittal of the items under 11 and 12 does not affect whether the application is determined complete, but the information still must be submitted to the Corps.

3.2.2 Information required for a final decision on Individual Permits

In order for the Corps to make a final permit decision on an Individual Permit, WSDOT must submit the following information:

1. Corps approved Final Mitigation Plan (please refer to the [Joint Guidance](#) for what information needs to be included in a final mitigation plan);
2. Demonstration of compliance with ESA and MSA (Biological Opinion and/or concurrence letter);
3. Demonstration of compliance with Section 106 (e.g., Section 106 concurrence letter, and/or a Memorandum of Agreement/Understanding);

How do I demonstrate ESA compliance?

Include a No Effect Letter, Concurrence letters or a Biological Opinion from USFWS and/or NMFS. Include FHWA's (or lead agency's) response to NMFS regarding any Essential Fish Habitat conservation recommendations.

What is a Section 404(b)(1) Alternatives Analysis?

Unless exempt, all projects involving fill in waters of the U.S. (that do not qualify for a Nationwide Permit) are required to evaluate “practicable alternatives” that would have less impact on the aquatic ecosystem.

You can find guidance for preparing an Alternatives Analysis at:

<http://www.nws.usace.army.mil/publicmenu/DOCUMENTS/REG/AltGuidance.pdf>

Is there a fee to obtain Individual and Nationwide Permits?

No, there are no permit fees associated with these permits.

4. Wild and Scenic River concurrence from the Federal agency with direct management responsibility (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, USFWS) – if applicable;
5. Section 404(b)(1) Alternatives Analysis;
6. Section 401 Water Quality Certification from Ecology, Environmental Protection Agency, or the Tribes;
7. Coastal Zone Management Act (CZMA) Consistency Determination from Ecology;
8. Federal flood control projects operated and maintained by non-federal sponsors project modification approval – if applicable;

Depending on a project and its location the Corps may ask for one or more of the following:

9. Traffic Analysis;
10. Floodplain Analysis;
11. Hydraulic Study; or
12. Stream Survey.

3.3 How much time should I allow for Nationwide or Individual Permit processing?

Processing time for a Corps Individual Permit can range from 4 to 24 months depending on the complexity of the impacts on aquatic resources, endangered species, archaeological or tribal concerns and workload. Nationally, the Corps has set a goal to process Individual Permits within 120 days of receiving a complete application. Please keep in mind that the information listed in items 1 through 8 under Section 3.2.2 must be completed/provided before the Corps can issue an Individual Permit. The Corps typically will provide WSDOT with a Nationwide Permit decision letter within 45 days of receiving a complete application. Risks to meeting the 45 day timeline for Nationwide Permits include:

- Waiting on the federal flood control projects operated and maintained by non-federal sponsors
- Project modification approval; and/or
- The Corps is the federal lead and ESA, MSA, or Section 106 of the NHPA has not been completed.

3.4 What if I want to appeal the Nationwide or Individual Permit decision?

Individual Permits can only be appealed by the applicant. The Corps division engineer must receive the appeal within 60 days of the permit issuance date. The Corps website has additional information regarding the [administrative appeal process](#).

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Chapter 4 Ecology Section 401 Permit and Coastal Zone Management Act (CZMA) Consistency Determination

Applicants seeking a Section 404 permit from the Corps may be required to obtain a Section 401 Water Quality Certification from Ecology. Issuance of a certification means that Ecology anticipates that the applicant's project will comply with state water quality standards and other aquatic resource protection requirements under Ecology's authority. The 401 Certification can cover both the construction and operation of the proposed project. Conditions of the 401 Certification become conditions of the Federal permit or license. If an applicant needs a Section 404 Individual Permit from the Corps, then they will also need a Section 401 Individual Permit (Water Quality Certification) from Ecology. Procedurally, Ecology issues the Section 401 Individual Permit before the Corps can issue the Section 404 Individual Permit.



If an applicant needs a Section 404 Nationwide Permit (NWP) from the Corps, then Ecology may need to issue a Section 401 decision. The Section 401 decision could be an Individual Permit or a Letter of Verification (LOV), depending on the type of NWP and proposed project impacts. Procedurally, Ecology issues the Section 401 Individual Permit or LOV after the Corps issues the NWP. Issuance of a LOV means WSDOT will demonstrate compliance by adhering to the State of Washington Water Quality Standards.

4.1 What is required for a complete Section 401 application?

WSDOT shall use the most recent version of the [Joint Aquatic Resources Permit Application \(JARPA\)](#) to apply for an Ecology Section 401 Water Quality Certification.

4.1.1 Information required for Section 401 applications

Ecology's Section 401 Water Quality Certification's review clock starts the day Ecology receives a signed JARPA with the "Section 401 Water Quality Certification" box checked. The clock begins regardless of the other materials contained within the application. However, Ecology's Section 401 Certification review time can be shortened significantly if WSDOT submits the information listed below with all JARPA submittals. Additionally, effective coordination between WSDOT and Ecology throughout the permitting process can help reduce permit application review timelines. Ecology will use the information below when reviewing projects for Individual 401 Certifications and LOVs.

The applicant shall submit the following information for an application to be considered complete and for Ecology to begin regulatory review (start the regulatory clock):

1. JARPA completely filled out and signed;
2. JARPA drawings;
3. Provide information on activities that will occur in the water, over the water, or on the adjacent shoreline. Discuss the following:
 - a. BMPs that will be used to protect/meet water quality standards;
 - b. BMPs that will be used to minimize impacts to the shoreline and prevent/control erosion;
 - c. BMPs that will be used to prevent/control discharges to waters of the state when working on the shoreline or over water;
 - d. Construction techniques and sequence of work;
 - e. Contingency plans;
 - f. Concrete – will it be poured on site or precast?
 - g. TESC Plans – verify that a TESC plan will be developed;
 - h. SPCC Plans – verify that WSDOT will require the contractor to develop a SPCC plan; and
 - i. Water Quality Monitoring – verify that monitoring will be conducted and specify the parameters that will be monitored.

Do I need to include specific information for activities that will occur over water, in-water, or on the adjacent shoreline?

Yes, in order to help Ecology to complete their review of the JARPA and to issue a permit decision, you need to address items 3a through 3i.

Helpful Hint

Some of the information required by WDFW in Section 2.1.5 can satisfy Ecology's in-water work informational needs.

If your project will cause wetland impacts:

4. Wetland delineation report. Refer to Appendix H of [Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans \(Version 1\), March 2006 \(Joint Guidance\)](#) for the minimum amount of information to include in a wetland delineation report. Additional information such as wetland ratings and a functions analysis also should be included; and
5. Wetland mitigation plan (at least at a conceptual level). Refer to page 6 of the [Joint Guidance](#) for which information to include.

If your project will add new impervious surface:

6. Stormwater plan (at least at a conceptual level) that discusses both water quality and flow control treatments. The stormwater plan should briefly explain how the project will meet the requirements of the Highway Runoff Manual (HRM) and include:
 - a. A table that clearly conveys the area quantities of new, replaced, and existing impervious surface.
 - b. A map or drawing depicting the Threshold Discharge Area (TDA) boundaries.
 - c. A brief description of the water quality/flow control treatment strategies including sizes/volumes of proposed facilities.
7. For stormwater components not meeting the HRM, provide documentation that describes the limitations of constructing and operating runoff treatment and flow control facilities within the sub basin and the off-site or watershed-based options for mitigating discharges (see HRM Appendix 2A).

4.1.2 What does Ecology need to issue an Individual Section 401 public notice?

The Corps and Ecology are required to issue a public notice for each project that needs an Individual Section 404 permit and Individual Section 401 Water Quality Certification. Typically, and preferably, the Corps will issue a joint public notice covering both agencies' public notice requirements. However, in some cases Ecology may issue its own public notice prior to the Corps public notice to ensure the 401 Certification timelines are met. Before Ecology will issue its public notice, it needs reasonable certainty of the project's impacts to aquatic resources and how they will be mitigated.

If the Corps issues a Nationwide permit (17, 21, 37, 41, 43, 44, 47, 49, or 50) that requires an Individual 401 Certification **OR** if the

What if my project will impact isolated wetlands?

You will need to request an Administrative Order from Ecology. This involves submitting a JARPA package, Jurisdictional Determination Letter from the Corps, and an [Isolated Wetland Information Sheet](#). WSDOT's web site contains helpful information regarding the permitting process for [isolated wetlands](#).

Where can I get information for the stormwater plan?

The stormwater plan information is usually contained in the project hydraulic report. WSDOT does not need to submit the entire hydraulic report, only the information outlined in items 5a, 5b, and 5c.

project cannot meet the [State 401 Certification General Conditions](#) (see page 82) and thus requires an individual 401 Certification, then Ecology can issue its public notice after it receives a signed JARPA. Ecology will verify that the Corps will be issuing a NWP. Again, Ecology will need reasonable certainty of the project's impacts and how those impacts will be mitigated prior to issuing its public notice.

4.1.3 What does Ecology need to issue the Individual Section 401 Water Quality Certification or LOV?

In order for Ecology to issue an Individual Section 401 Certification or LOV, WSDOT must submit the following information:

1. Documentation that SEPA is complete;
2. For an Individual Section 401 Certification, confirmation from the Corps that they have issued the Section 404 public notice;
3. For an LOV, confirmation that the Corps has issued the NWP;
If your project impacts wetlands:
4. Ecology-approved wetland delineation report (one that satisfactorily addresses Ecology's comments provided during permit application review) including correct wetland rating forms, accurate functional analysis, and verified delineations;
5. Ecology-approved final wetland mitigation plan (one that satisfactorily addresses Ecology's comments provided during permit application review). *Appendix C* of the [Joint Guidance](#) provides guidance on what information to include in draft and final mitigation plans. *Appendix J* of the same document includes a site selection checklist to use in determining if a site is appropriate for compensatory mitigation. If mitigation bank credits will be used, refer to the joint agency letter that Ecology sent to WSDOT on November 16, 2007 titled *Use of Mitigation Banking for Future WSDOT Projects.*;
If your project adds new impervious surface:
6. Ecology-approved stormwater plan (one that addresses Ecology's comments provided during permit application review) that discusses water quality and flow control treatments for the project and demonstrates how the project meets the requirements of the HRM; and
7. Ecology approval (written or verbal) of any stormwater components not meeting the HRM.

4.2 What is required for a complete Coastal Zone Management Act (CZMA) application?

Under the federal CZMA Ecology must determine that projects in [Ecology's coastal zone](#) that affect Washington's coastal resources are consistent with Washington's *Coastal Zone Management Program* (CZMP). Ecology's "consistency determination process" begins when Ecology receives the applicant's signed [CZMA consistency determination form](#). CZM consistency can also be required for projects that don't need an Individual Section 401 Certification, if there is a federal nexus.

In most cases, only **projects that need an Individual Section 401 Certification must submit the signed CZMA consistency form**. However, a signed CZMA consistency form may be required for those projects qualifying for certain Nationwide permits.

Under the NWP Program, the Corps makes an initial determination that projects under certain NWPs are already consistent with Washington's CZMP, and thus require no further CZMA review from Ecology. Ecology then must agree or disagree with the Corps determination that projects falling under those NWPs are consistent with the CZMP. Thus, Ecology either "concur", "concur with conditions", or "objects" to the Corps' determination made for those types of project. Therefore:

- **NO CZMA consistency form is needed** for NWPs 1, 2, 4, 5, 7, 9, 10, 11, 15, 18, 19, 20, 22, 25, 28, 30, and 31 because Ecology has concurred with the Corps determination.
- A CZMA **consistency form MAY be required** for NWPs 3, 6, 12, 13, 14, 16, 23, 27, 29, 32, 33, 34, 36, 38, 39, 40, 42, 45, 46, and 48. Please refer to the text of the particular Nationwide permit for more information on whether the form is required.
- A CZMA **consistency form MUST be submitted** for NWPs 8, 17, 21, 35, 37, 41, 43, 44, 47, 49, and 50 because Ecology needs to review each project issued under these NWPs to determine if it is consistent with the CZMP.

4.2.1 What does Ecology need to issue the CZMA Consistency Determination?

Ecology will issue a "Consistency Determination" for a project once it has determined that the requirements of the applicable enforceable policies of Washington's CZMP have been met. To make that determination, Ecology needs the following, **where applicable**:

Is there a fee to obtain a Section 401 Individual Water Quality Certification or CZMA Consistency Determination?

No, there are no permit fees associated with the Section 401 Certification or CZMA Consistency Determination.

1. Ecology issuance of an Individual Section 401 Water Quality Certification or LOV;
2. Confirmation that all required shoreline permits or exemptions for the project have been obtained; and
3. Confirmation that SEPA is complete.

4.3 How much time should I allow for Section 401 or CZMA permit processing?

Ecology has up to one year to approve, condition, or deny an application for an Individual 401 Water Quality Certification. However, Ecology's goal is 90 days. A LOV is usually issued shortly after the Corps NWP is issued, but can take up to 180 days.

Upon receipt of a completed CZMA Consistency form, Ecology has 180 days to issue a CZMA Consistency Determination.

4.4 What if I want to appeal the Section 401 or CZMA permit decision?

If the Individual Section 401 Water Quality Certification or LOV is issued with conditions unacceptable to WSDOT or the certification is denied, WSDOT may appeal within 30 days of Ecology's decision. Appeals shall be made to the Pollution Control Hearings Board (PCHB). PCHB may not hear the case for six or more months.

If the CZMA consistency determination is denied, WSDOT may appeal the decision to the U.S. Secretary of Commerce in accordance with Title 15, Ch IX, Part 930.125 under the Code of Federal Regulations.