



## State of Washington

### DEPARTMENT OF FISH AND WILDLIFE

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## **RECORD OF DECISION**

### **Washington Department of Fish & Wildlife Adoption of Final Integrated Feasibility Report and Environmental Impact Statement: Puget Sound Nearshore Ecosystem Restoration**

This document serves as the Washington Department of Fish & Wildlife's (WDFW) Record of Decision for the Adoption of the Final Integrated Feasibility Report and Environmental Impact Statement (IFR/EIS) for the U.S. Army Corps of Engineers' (USACE) Puget Sound Nearshore Ecosystem Restoration project. The USACE prepared and released the Final IFR/EIS on July 15, 2016 (81 FR 46077). The USACE issued its Record of Decision on January 19, 2017. The Final EIS and Record of Decision are available on the USACE's website at: <https://bit.ly/PSNearshore>.

#### 1.0 Introduction

In accordance with Housing and Urban Development's (HUD) Regulations in 24 CFR Part 58 authorizing "units of local government to conduct environmental reviews for projects funded with HUD money", the WDFW is adopting the USACE Final Integrated Feasibility Report and Environmental Impact Statement (IFR/EIS) for the Puget Sound Nearshore Ecosystem Restoration Project for the purpose of releasing federal funding from the FY2022 Consolidated Appropriations Act, 2022, Economic Development Initiative administered by HUD in support of utility relocation actions associated with Duckabush Estuary Restoration site of the Puget Sound Nearshore Ecosystem Restoration Project.

Units of general local government are authorized under 24 CFR Part 58 to conduct environmental reviews for projects funded with HUD money, where permitted by program legislation. Local governments performing environmental review responsibilities under Part 58 are known as the Responsible Entity (RE). As the Responsible Entity, and consistent with 40 CFR 1506.3(b)(1), WDFW has determined the actions covered by the original environmental impact statement are substantially the same and is republishing the final EIS for adoption, along with comments and responses, consistent with 40 CFR 1506.10.

#### 2.0 Background

The purpose of the USACE federal action is to restore the natural processes in the nearshore zone that sustain the biological, economic, and aesthetic resources important to the people of the Puget Sound region and the nation in a cost-effective and socially feasible manner with minimal risks, and to facilitate effective monitoring and adaptive management to maximize attainment of restoration objectives.

The WDFW was not a cooperating agency on the Final IFR/EIS but is the non-federal partner for the feasibility analysis of the Puget Sound Nearshore Ecosystem Restoration Project. Consistent with 40 CFR 1506.3, WDFW re-published the Final IFR/EIS for the required 30-day review period and a Notice of Availability was published in the Federal Register on December 9, 2022. USACE's process to first inform the public about the proposal included:

- Notice of Intent published in the Federal Register October 2, 2009
- Scoping meetings (4) held Fall 2009
- Notice of Availability of Draft EIS published in Federal Register October 10, 2014

- Public meeting (1) held November 5, 2014
- Notice of Availability of Final EIS published in Federal Register July 15, 2016
- Record of Decision issued January 19, 2017

As the lead agency, the USACE conducted a review of all comments received during scoping and on the Draft EIS. Responses to comments on the Draft EIS were provided in the Final EIS Appendix H. Comments received on the Final EIS did not substantially affect the analysis presented in the Puget Sound Nearshore Ecosystem Restoration Final IFR/EIS.

### 3.0 Proposed Federal Action

The WDFW, in coordination with USACE, is proposing a suite of ecosystem restoration sites throughout the Puget Sound that address degradation of the nearshore zone. A comprehensive restoration strategy for Puget Sound identified a total of 36 sites for restoration. Of those 36 sites, three are recommended for construction authorization as the recommended plan in the Final IFR/EIS. The Final IFR/EIS considers the environmental impacts of actions necessary to execute the recommended plan, including pre-project data collection, utility relocation and monitoring and adaptive management. The recommended plan includes the following:

- Duckabush River Estuary - Construction of an elevated roadway on a 2, 100-footlong bridge to replace the Highway 101 causeway and bridges across the estuary in a new alignment upstream. Removal of berms along the river and channel excavation at their historical configurations. This will restore 38 acres of floodplain delta and channel migration and allow significant tidal exchange and distributary channel forming processes in the Duckabush River Estuary.
- Nooksack River Delta - Removal of portions of the Nooksack River's right and left bank dikes, construction of a new setback levee along the right bank, installation of large woody debris structures in the river, a new water control structure (i.e., diversion feature) installed at the confluence of the Lummi and Nooksack Rivers. Regrading the Lummi River channel will reconnect it to Nooksack River flows. On the Lummi River, the plan includes removal of a large segment of berm, construction of a new setback levee along the north bank of the Lummi River, and several road removals and/or relocations. Construction of new bridges or installation of culverts will occur on both rivers. This restores and reconnects 1,807 acres of floodplain habitat, allowing tidal exchange and shoreline complexity.
- North Fork Skagit River Delta - This project includes lowering nearly three miles of levee with several breaches along the south bank for creation of a tidal channel network, constructing a new levee along a road alignment, and lowering nearly one mile of shore armoring on the north bank. The restoration proposal includes levee lowering and excavation of new tidal channels on the eastern portion of the site on the south bank. Replanting will restore a natural riparian corridor along the river of this 256-acre site.
- The Monitoring and Adaptive Management Plan provides a framework for evaluating the effectiveness of proposed restoration actions and outlines adaptive measures if the project restoration metrics are not met. It includes monitoring to track progress and the triggers for when a new action may be taken to meet restoration objectives.

### 4.0 Purpose and Need

The need for the proposed action comes from recognizing that valuable natural resources in Puget Sound have declined to a point that the ecosystem may no longer be self-sustaining without immediate intervention to curtail significant ecological degradation. Impairment of nearshore processes and degradation of ecosystem functions are critical factors in the declining health of Puget Sound. Anthropogenic stressors causing this impairment and degradation include the direct effects of physical alterations to the landscape that have eliminated large expanses of habitat and have disrupted the major ecological processes that create and sustain habitats. The degradation and loss of nearshore ecosystems is of critical importance because the nearshore zone

serves as the connection between terrestrial, freshwater, and marine ecosystems. This means that the nearshore zone vitality, resilience, and productivity influence the productivity of the entire Puget Sound Basin. The alterations to the physiographic processes of the nearshore zone directly affect the ecosystem functions upon which humans depend such as fisheries, aquaculture, and recreation.

## 5.0 Alternatives

The final EIS analyzed the potential environmental effects of four alternatives:

- **Alternative #1: No Action** - would avoid impacts from construction, but would forego the opportunity for important ecosystem restoration benefits
- **Alternative #2: Restore 11 sites** - This alternative would restore 5,348 acres of tidal wetlands and would remove 75,162 feet of stressors from the nearshore zone.
- **Alternative #3: Restore 18 sites** - This alternative would restore 5,517 acres of tidal wetlands and would remove stressors from 113,094 feet of the nearshore zone.
- **Alternative #4: Restore 3 sites** - This alternative would restore 2,101 acres of tidal wetlands and would remove 28,860 linear feet of stressors from the nearshore zone.

The three action alternatives included different scales of activities at up to 18 potential restoration sites identified across Puget Sound that are critical to achieve the planning objectives of the Puget Sound Nearshore study. Each alternative evaluated a group of potential sites for types of habitats that would be restored and overall potential restoration of functions and processes.

Based on the comparison of effects presented in the IFR/EIS, Alternative #3 is the environmentally preferable alternative as it has the greatest net benefits to the biological and physical environment. However, this alternative was cost prohibitive. Alternative #2 was identified as the tentatively selected plan or agency preferred alternative in the Draft IFR/EIS (October 2013). Alternative #4 was developed after the Draft IFR/EIS as the recommended plan based on public and agency comments and technical and cost considerations identified by the USACE and the WDFW as the non-Federal sponsor.

## 6.0 Environmental Evaluation and Mitigation

The purpose of the proposed ecosystem restoration activities is to restore significant ecosystem function, structure, and dynamic processes that have been degraded. The intent of ecosystem restoration is to partially or fully reestablish the attributes of a naturalistic, functioning, and self-regulating system. Short and long-term construction impacts were evaluated associated with actions to achieve the stated project goals and objectives. All practical means to avoid or minimize adverse environmental effects have been incorporated into the recommended plan. Best management practices (BMPs) as detailed in the Final IFR/EIS will be implemented. These include measures to protect water quality and minimize greenhouse gas emissions, as well as timing of construction in observance of work windows to avoid and minimize impacts to ESA-listed species and other fish and wildlife. No compensatory mitigation is required.

Pursuant to section 7 of the Endangered Species Act (ESA) of 1973, as amended, the U.S. Fish and Wildlife Service (USFWS) verified in a letter dated February 4, 2016 that the recommended plan complies with the requirements of the Programmatic Biological Opinion for Fish Passage and Restoration Projects (FPRP) issued in 2008 and will not jeopardize the continued existence for species under the jurisdiction of USFWS or adversely modify their critical habitat. For species under the jurisdiction of NMFS, NMFS issued a biological opinion, dated February 11, 2016, that determined that the recommended plan will not jeopardize the continued existence of federally listed species or adversely modify designated critical habitat. All terms and conditions, conservation measures, and reasonable and prudent alternatives and measures resulting from these consultations shall be implemented in order to minimize take of endangered species and avoid jeopardizing the species.

Pursuant to section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, the USACE determined that historic properties may be adversely affected by the recommended plan. The USACE, the Washington State Historic Preservation Officer, Washington Department of Archaeology and Historic Preservation, and the Lummi Nation entered into a programmatic agreement, dated June 7, 2016. All terms and conditions resulting from the agreement shall be implemented in order to minimize adverse impacts to historic properties.

Pursuant to the Clean Water Act of 1972, as amended, any discharge of dredged or fill material associated with the recommended plan have been found to be compliant with section 404(b)(1) Guidelines (40 CFR 230). The Clean Water Act section 404(b)(1) Guidelines evaluation is found in Appendix J of the IFR/EIS. A water quality certification pursuant to section 401 of the Clean Water Act will be obtained from the Washington State Department of Ecology (WDOE) and from the Lummi Nation prior to construction. In a letter dated January 8, 2016, the WDOE stated their support of the recommended plan, pending confirmation of compliance with water quality standards based on information to be developed during the preconstruction engineering and design phase. In a letter dated November 25, 2014, the Lummi Nation similarly stated their support for the recommended plan and requested the USACE reinstate coordination for a water quality certification based on information to be developed during the Pre-construction Engineering and Design phase. All conditions of each water quality certification will be implemented to minimize adverse impacts to water quality. A determination of consistency with the State of Washington Coastal Zone Management (CZM) program pursuant to the Coastal Zone Management Act (CZMA) of 1972 will be obtained from the WDOE prior to construction. The USACE prepared a Federal CZMA consistency determination and determined the recommended plan is substantively consistent with the enforceable policies of the Washington State CZM program. The Washington State CZM program requires compliance with Clean Water Act section 401, State water quality certification. The USACE will submit the final Federal CZMA consistency determination with the water quality certification request to WDOE with the required information to be developed during the preconstruction engineering and design phase. All conditions of the consistency determination shall be implemented to minimize adverse impacts to the coastal zone.

#### 7.0 Decision

The WDFW has reviewed USACE's Final IFR/EIS for Puget Sound Nearshore Ecosystem Restoration and prepared this Record of Decision. Based on its review, the WDFW has determined that the Final IFR/EIS adequately assesses and discloses the environmental impacts of the Proposed Action and that the adoption of the Final EIS by the WDFW is authorized under 40 C.F.R. § 1506.3.

Approved:



Lisa Wood  
SEPA Responsible Official and SEPA/NEPA Coordinator  
Washington Department of Fish and Wildlife

Date: January 19, 2023