

# REGULATORY EFFORTS IN THE NORTHWEST



PNWA has been working with Congress and the federal agencies since 2000 to identify and overcome obstacles to processing permits in a fair and timely fashion. Key accomplishments of this effort have included:

- Section 214 of WRDA 2000 was passed, allowing ports and other non-federal entities, including ports, railroads, and utilities to provide funding to the Corps to hire additional permit review staff. This authority was made permanent in WRDA 2014. This authority was expanded in WRDA 2022 to include review of mitigation bank permits.
- Corps Headquarters increased the budget and assigned additional staff to the Seattle District for regulatory activities. Congress also appropriated additional funding since 2019 to reduce permit processing time nationwide. In addition to annual appropriations increases, the Corps Regulatory Program received \$160 million to assist with processing Infrastructure Investment and Jobs Act of 2021 (Bipartisan Infrastructure Law) project permits.
- The Corps Portland District and the resource agencies adopted and continue to refine SLOPES (Standard Local Operating Procedures for Endangered Species).
- In the early 2000's, the Corps of Engineers Division Commander led an Executives Task Force (Corps, NMFS, USFWS, EPA, Coast Guard) to improve coordination among the agencies. In 2002, the agencies agreed to streamline some procedures including resolution of agency disputes, quicker permit processing, and regular meetings with stakeholders. That agreement was reaffirmed in 2009.
- Corps Headquarters set a nationwide objective of reducing permit processing timelines.

## New Challenges & Opportunities

New challenges have developed which impact permitting activities, and ultimately result in a process that is unpredictable, lengthy, and expensive. PNWA has increased its engagement in this arena, with the goal of decreasing application backlogs, reducing review times, and ensuring procedures are in place to create a consistent, reliable process. In recent years, PNWA has focused on these activities:

- Assisting with communications between applicants, the Corps, and the resource agencies to address individual permitting issues
- Helping to facilitate interagency communication, specifically when there are disagreements between agencies
- Addressing shifting and unpredictable mitigation requirements
- Advocating for additional resources to address regulatory staffing shortages

## Recent efforts with NOAA Fisheries

In 2018, the NOAA Fisheries West Coast Region Office began requiring formal ESA consultations for most port maintenance activities, a major shift from the informal consultation process previously in place. In April 2018, the agency released a new internal guidance document requiring staff to consider the ongoing impacts of a preexisting structure (such as a dock) under certain circumstances, thus altering the well-established Endangered Species Act (ESA) definition of "environmental baseline". In January 2022, the Assistant Secretary of the Army for Civil Works agreed to adopt the new interpretation of environmental baseline and increased mitigation requirements. NOAA Fisheries and U.S. Fish & Wildlife Service finalized several rules in 2024 changing ESA consultation practice, critical habitat designation, and protections for ESA threatened species. PNWA is currently working with our membership, NOAA Fisheries West Coast Region, and the Corps to address these new challenges.

