

# Backyard Buoys Permitting Guidance

*Prepared for*



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## 1.0 INTRODUCTION

This Backyard Buoys Permitting Guidance (Guidance) was developed with the goal of providing permitting guidance for Backyard Buoys Community Partners aiming to deploy Spotter wave buoys (Spotters) near their communities. The objectives of the Guidance are to:

1. Identify regulatory approvals likely required for installation of Spotters on the seafloor in marine Waters of the United States;
2. Provide examples of permit applications prepared for Backyard Buoys Spotter deployments in 2023 and 2024;
3. Provide examples of final authorizations granted for these same Spotter deployments; and
4. Provide tips compiled during lessons learned while undergoing the permitting process for these Spotter deployments.

### 1.1. REQUIRED PERMITS

Experience gained during the permitting process for Backyard Buoys Spotter deployments during 2023 and 2024 laid a foundation and assisted in building a list of required authorizations specific to the locations where deployment occurred during these years. Depending on the region and specific locations chosen for future Spotter deployments, the permit examples provided in this Guidance may not represent an accurate list.

### 1.2. PERMIT APPLICATION BEST MANAGEMENT PRACTICES

The following Best Management Practices will prove helpful in developing the proper documentation for obtaining required authorizations for deploying Spotters near your communities:

1. Research required permits
  - a. Review this Guidance for initial tips on which authorizations may be required.
  - b. To identify other authorizations potentially required for deployment of your Spotter(s), determine whether your deployment will be located within any special designation boundaries (e.g., National Marine Sanctuaries, Shoreline Management Program (SMP) boundaries, etc.)
2. Apply early enough to allow for review delays and the ability to receive the authorization on time for planned Spotter deployment.
  - a. Each authorization as a suggested lead times for application submissions. Many authorizations may be received within 30 to 60 days of application submission; however, granting of certain authorizations may require longer lead times, up to six months in advance of Spotter deployment. Be sure to plan ahead.
  - b. Refer to the Regulatory Summary Tables in Appendix A for suggested approval lead times for each authorization included in this Guidance.

3. Prepare a solid Project Description.
  - a. The Project Description serves to provide the regulatory agencies with most of the information they will need for approval. The more detailed information provided, the more streamlined the regulatory review process. Spending adequate time developing a robust Project Description will pay off during the review and approval process. Based on lessons learned during 2023 and 2024, the following elements at a minimum should be included in your Project Description:
    - i. Project purpose
    - ii. Community benefits of project
    - iii. Detailed description of project
    - iv. Assessment of potential effects and suggested effects determinations
      1. This is especially important for any Endangered Species Act (ESA)-listed species and designated critical habitat.
    - v. Proposed mitigation measures
      1. Measures designed to minimize or avoid potential environmental impacts are especially important.
    - vi. Lessons learned during past Backyard Buoys Spotter deployments
    - vii. Figures meeting relevant agency requirements
      1. An overview figure should be a “zoomed out” figure showing all proposed Spotter deployment locations as well as the “buoy area polygon” representing the geographic boundaries within which Spotters may be relocated. It is helpful to overlay ESA-listed species ranges and any designated critical habitat in the area.
      2. “Zoomed in” figures should provide a greater level of detail (e.g., bathymetry contours).
    - viii. Respond to requests for additional information quickly so as to not delay approval
    - ix. Check in with agencies regularly during their review period and remind them of target deployment dates, if needed.
      1. Friendly and open communication with our regulatory partners goes a long way in receiving timely approvals and fostering positive relationships which could serve to benefit your permitting efforts for years to come.

## **2.0 UNITED STATES FEDERAL REGULATORY REQUIREMENTS**

Because the initial Backyard Buoys Initiative was funded by the federal National Science Foundation (NSF) and because Spotters may be placed in federal waters, federal permits are required, and the projects will be subject to federal regulations.

When multiple federal agencies are involved in permitting an action, one agency (usually the agency with the most authority, funding, or involvement in the project) will act as the “Lead Federal Agency” (lead agency). For Backyard Buoys deployments in 2023 and 2024, the U.S. Army Corps of Engineers (USACE) acted as the lead agency for non-federal applicants. In the case of Backyard Buoy projects undertaken by a federal agency applicant (e.g., National Park of American Samoa), the applicant serves as the lead agency.

This section provides a high-level overview of key federal regulations influencing the Backyard Buoys permitting process, provides direction on where to find additional information, and provides guidance based on experience gained during the 2023 and 2024 Backyard Buoys permitting effort.

## **2.1. NATIONAL ENVIRONMENTAL POLICY ACT**

The National Environmental Policy Act (NEPA) requires federal agencies to consider impacts on the environment of their proposed actions (i.e., issuing a permit or authorization) and the related social and economic effects. The lead agency is responsible for documenting compliance with NEPA. During 2023 and 2024 Backyard Buoys permitting efforts, the USACE assumed the lead agency role. As detailed below, Spotter deployments are covered under USACE Nationwide Permit (NWP) 5 – *Scientific Measurement Devices*. During the process of issuing the 2021 NWPs, the USACE prepared environmental assessments in compliance with NEPA which were included within the Final Decision Documents issued for each NWP. NEPA compliance was met by the [Final Decision Document for NWP 5](#) for Backyard Buoys Spotter deployments.

For future projects, if an alternate federal agency assumes the role of lead agency, NEPA compliance may be accomplished under an alternate mechanism (e.g., an agency’s Programmatic Environmental Assessment [EA] or Programmatic Environmental Impact Statement [EIS]). More information on the NEPA process can be found on the [Council on Environmental Quality’s](#) website.

## **2.2. FEDERAL CONSULTATIONS**

Lead agencies are required to undertake certain federal consultations with trust agencies prior to project approval in compliance with the ESA, the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the National Historic Preservation Act (NHPA). This section provides an overview of these federal consultation requirements where they are relevant to the Backyard Buoys permitting process. Providing adequate detail in the Project Description to support these consultations aids expedited and uncomplicated review and approval of federal permits.

### **2.2.1. ENDANGERED SPECIES ACT SECTION 7 CONSULTATION**

Section 7 of the ESA sets forth requirements for consultation (Section 7 consultation) to determine if the proposed action may affect an ESA-listed species or designated critical habitat. Section 7 consultations will be necessary when a potential for occurrence of federally ESA-listed or candidate species exists, seasonally or sporadically, in the area of selected Spotter deployment locations, and where critical habitat is designated in or near those areas.

As mentioned previously, the USACE participated in Section 7 consultation with the National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS; collectively, the “trust” agencies) during the process of issuing the 2021 Nationwide permits (NWP), including NWP 5; however, the agency must also review each project on a case-by-case basis to assess the potential for effects on ESA protected resources. If a project “may affect” an ESA-listed species or may result in adverse modification of designated critical habitat, the lead agency must initiate Section 7 consultation with the appropriate trust agency. If the proposed action is anticipated to have “no effect” on these protected resources, further consultation with the trust agencies is not required. Conditions resulting from ESA Section 7 consultations may be added to the NWP authorization. Depending on the region, project details, and species occurrence in the area of future Backyard Buoys Spotter deployments, findings of “no effect” or “may affect” may be warranted. Even in the case Section 7 consultation is warranted, the process will likely be relatively brief and straightforward, given the simple nature of the project. A robust discussion of potential impacts on ESA-listed species and critical habitat combined with a thorough list of mitigation measures in the Project Description is essential to an expedient consultation process.

### *Tips*

- Further guidance on Section 7 consultations is available on [NMFS](#) and [USFWS](#) websites.
- Include detailed justification of expected level of impact in the Project Description to aid the lead agency in its determination of effect.
- Include a thorough list of proposed mitigation measures in the Project Description.
- Example Project Descriptions are included in Appendix B.
- For federal applicants taking the lead on ESA Section 7 consultation, email request for consultation and a detailed Project Description to NMFS at: [efhesaconsult@noaa.gov](mailto:efhesaconsult@noaa.gov) and/or USFWS using the appropriate regional Ecological Services Office contact information provided at: <https://www.fws.gov/our-facilities>.
- See Appendix B for examples of Project Descriptions submitted to the lead agency (for non-federal applicants) and submitted directly to the trust agencies (for federal applicants such as National Park of American Samoa).
- See Appendix C for an example of Section 7 consultation documentation for a project with a federal applicant.

### **2.2.2. MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT CONSULTATION**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), passed in 1976 and reauthorized in 2006, is the primary law governing marine fisheries management in the U.S. The MSA requires federal agencies to consult with NMFS when any activity proposed to be permitted, funded, or undertaken by a federal agency may have adverse effects on designated Essential Fish Habitat (EFH).

The USACE (the lead agency for non-federal applicants during the 2023 and 2024 permitting efforts) undertook MSA EFH consultation with NMFS during issuance of the 2021 NWP;

however, similarly to ESA Section 7 consultation requirements, the lead agency must evaluate each proposed action for impacts on EFH. Backyard Buoys Spotter deployments could minimally affect (temporary and localized) EFH in areas where designation overlaps with areas of Spotter deployment as it would temporarily remove availability of habitat in the area directly impacted by the mooring anchor footprint. As discussed in the [Decision Document for NWP 5](#), procedures are in place to help ensure individual and cumulative impacts on essential fish habitat are no more than minimal. For example, division and district engineers may impose regional and special conditions to ensure projects authorized under the NWP will result in no more than minimal adverse effects on essential fish habitat. Compliance with General Conditions 3 (Spawning Areas) and 5 (Shellfish Beds) will ensure projects do not adversely affect important spawning areas and concentrated shellfish populations.

During the 2023 and 2024 permitting efforts, even in cases where a proposed Spotter deployment is located within EFH, the agency review has been brief and straightforward, given the simple nature of the project.

### *Tips*

- An adequate discussion of potentially affected EFH specific to relevant lifestages combined with a thorough list of mitigation measures in the Project Description is essential to an expedient consultation process.
- It will be important to identify any EFH within or near your project area in the Project Description.
  - The [National EFH Mapping Tool](#) can be used to identify EFH by lifestage in your project area.
    - The tool will assist in identifying the appropriate localized Fishery Management Plan providing additional details to inform the Project Description.
- See Appendix B for examples of Project Descriptions submitted to the lead agency (for non-federal applicants) and submitted directly to NMFS (for federal applicants such as National Park of American Samoa).
- For federal applicants taking the lead on MSA EFH consultation, email request for consultation and Project Description to [efhesaconsult@noaa.gov](mailto:efhesaconsult@noaa.gov). See Appendix B for an example of a Project Description submitted for consultation on behalf of a federal agency (National Park of American Samoa).

### **2.2.3. NATIONAL HISTORIC PRESERVATION ACT SECTION 106 CONSULTATION**

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider and evaluate the effect that federal actions (i.e. authorizations) may have on historic properties. The PCN or JARPA required by USACE for NWP 5 will provide information to assist USACE in identifying potential effects on historic properties. In accordance with General



Condition 20 the 2021 NWP, UASCE will initiate consultation with SHPO if there is potential for effects based on regionally selected Spotter deployment locations.

### ***Tips***

- It will be important to identify any *known* historic properties within or near your project area.
- Federal applicants should provide a request for review and/or consultation to the local [State Historic Preservation Office \(SHPO\)](#) to inquire about any known historic properties which may be affected by deployment of Spotters on the seafloor.

## **2.3. FEDERAL PERMITS AND APPROVALS**

Federal authorizations presented in this section include those required for Backyard Buoys Spotters deployed during 2023 and 2024. Depending on site- and project-specific details, additional federal permits may be also required.

### **2.3.1. U.S. ARMY CORPS OF ENGINEERS – COVERAGE UNDER NATIONWIDE PERMIT 5**

The United States Army Corps of Engineers (USACE) administers Section 404 of the Clean Water Act (CWA), Section 10 of the Rivers and Harbors Act of 1899 (RHA), and Section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA), regulating activities that may impact wetlands and waters of the United States. Backyard Buoys Spotters deployed within USACE jurisdiction require authorization under Section 10 of the RHA, because the mooring constitutes an obstruction in navigable waters. Because Backyard Buoys projects meet both national and regional conditions of NWP 5 – *Scientific Measurement Devices*, approval may be granted relatively quickly after a review of project elements and anticipated environmental effects.

During the 2023 and 2024 permitting efforts, Backyard Buoys was successful in obtaining authorization for Spotter deployments within a regional polygon rather than at a single location. This was essential to maintaining the ability to relocate Spotters to different locations based on lessons learned and environmental conditions.

#### **2.3.1.1. APPROVAL PROCESS**

The following general instructions describe the process for requesting and receiving project approval:

1. Submit the following project documentation to the appropriate district regulatory inbox, as listed in the following regional-specific instructions below, at least 3 months prior to anticipated deployment to allow adequate time for review, consultations, and approval:
  - a. Cover Letter (*optional*)
  - b. Project Description

- c. Completed PCN or JARPA (for Spotters placed in State of Washington jurisdictional waters)
  - i. Links to PCN and JARPA are included in Table 1.
2. The application package will be reviewed for completeness.
3. The assigned Project Manager will respond to the submission email with a permit identification number.
  - a. You should reference this number in the subject line of any subsequent correspondence with USACE.
4. Consultation Requirements
  - a. For non-federal applicants, the USACE will likely serve as the lead agency for compliance with federal laws and regulations as described in Section 2.2. This means the USACE may use information provided in the project description to support consultations with other federal and state agencies and tribes on the applicant's behalf. They may reach out for additional information if questions arise during those consultations.
  - b. Federal applicants, as the lead agency, request consultations with other federal agencies on their own behalf. Documentation of the consultation must be provided to the USACE prior to approval of coverage under the NWP.
5. Once outstanding questions and issues are resolved and consultation requirements are satisfied, USACE will send a verification letter approving coverage under the NWP as well as General, Regional, and Special Conditions.
6. Upon completion of all project activities covered under the NWP (not each year, but after activities in all covered years are complete) the certification form attached to the verification letter must be signed and submitted to the USACE according to directions on the form.

### ***Tips***

- You may need to save the PCN file to your computer in order to view the file.
- See Appendix C for examples of completed PCN forms and JARPAs.
- See Appendix B for examples of Project Descriptions meeting USACE requirements.
- See Appendix D for examples of granted verifications letters for coverage under NWP 5.

### **2.3.1.2. REGIONAL SPECIFIC GUIDANCE**

#### **AOOS**

- Submit the Preconstruction Notification (PCN) and Project Description to the Alaska District regulatory inbox at [regpagemaster@usace.army.mil](mailto:regpagemaster@usace.army.mil) or via the Regulatory Request System.

- Links to the PCN and JARPA forms as well as other useful information are included in Table 1.
- The AEWG Project Description included in Appendix B provides an example for projects in Alaska.

## NANOOS

- To streamline the environmental permitting process, multiple regulatory agencies in the State of Washington joined forces to create one application to apply for more than one permit at once – the Joint Aquatic Resources Permit Application (JARPA). The USACE accepts the JARPA application to request coverage under NWPs. This is helpful if the Spotter will be placed in State waters and state and/or county permits are required. For Spotters placed in federal waters only, USACE has requested submission of a PCN form in lieu of the JARPA for simplicity. Links to the PCN, JARPA, and other useful information are included in Table 1.
- Submit JARPA/PCN form and Project Description to the Seattle District regulatory inbox at [nws-permitapp@usace.army.mil](mailto:nws-permitapp@usace.army.mil) or via the Regulatory Request System.
- Links to the PCN and other useful information are included in Table 1.

## PacIOOS

- Submit the Preconstruction Notification (PCN) and Project Description to the Honolulu District regulatory inbox at [CEPOH-RO@usace.army.mil](mailto:CEPOH-RO@usace.army.mil) or via the [Regulatory Request System](#).
- NMFS conducted a programmatic consultation numerous in-water and near-shore activities routinely permitted by the USACE Honolulu District with standard local operating procedures for endangered species (Pac-SLOPES) that would result in insignificant or discountable impacts on ESA-listed marine species and designated critical habitat. Activities covered under NWP 5 qualify under the Pac-SLOPES consultation as long as the following conditions are met:
  - The project conforms with applicable requirements included in the [Biological Evaluation](#);
  - The general conditions listed in the Biological Evaluation can be applied to the project; and
  - The range of potential effects on ESA-listed marine species or critical habitat are within the of effects considered in the programmatic consultation.

Include a brief description of how the Spotter deployment conforms with the requirements of Pac-SLOPES in the Project Description submitted to the USACE along with the PCN.

- Links to the PCN and other useful information are included in Table 1.

### 2.3.1.3. SUPPLEMENTAL INFORMATION

Table 1 presents supplemental information to assist in understanding and requesting USACE approval.

**Table 1. USACE Nationwide Permit 5 Supplemental Information**

LINK TO SUPPLEMENTAL INFORMATION	DESCRIPTION
<a href="#">NWP 5</a>	Description of projects which qualify for coverage under NWP 5
<a href="#">2021 General Conditions</a>	List of all general conditions which must be followed regardless of region
<a href="#">2021 Alaska Regional Conditions</a>	Conditions specific to projects located in the Alaska District
<a href="#">2021 Seattle District Regional Conditions</a>	Conditions specific to projects located in the Seattle District
<a href="#">2021 Honolulu District Regional Conditions</a>	Conditions specific to projects located in the Honolulu District
<a href="#">Biological Evaluation Authorization Letter Pac-SLOPES Conditions Combined</a>	Documentation to support the Honolulu District Programmatic Consultation (Pac-SLOPES)
<a href="#">Drawing Checklist</a>	Checklist for required drawings format. Disregard irrelevant fields.
<a href="#">Preconstruction Notification</a>	Form used to request coverage under a NWP <i>*Note: You may need to save to your computer in order to view the file.</i>
<a href="#">Joint Aquatic Resources Permit Application Form</a>	JARPA application form and instructions for projects occurring Washington
<a href="#">Regulatory Request System</a>	New Beta System for submission of permit application materials.

### 2.3.2. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION – NATIONAL MARINE SANCTUARY PERMIT

NOAA requires authorization for Spotters installed within the boundaries of a National Marine Sanctuary (e.g., Olympic Coast National Marine Sanctuary).

#### 2.3.2.1. APPROVAL PROCESS

The following general instructions describe the process for requesting and receiving project approval:

1. Submit the following project documentation to the appropriate sanctuary-specific contact information, as presented in the link in Table 2, at least 60 days prior to anticipated deployment to allow adequate time for review and approval:
  - a. Cover Letter (optional)

- b. Project Description
  - c. Completed National Marine Sanctuary permit application
2. The application package will be reviewed for completeness.
  3. Once agency questions and consultation requirements are satisfied, NOAA will send the granted permit including terms and conditions and reporting requirements.

### 2.3.2.2. SUPPLEMENTAL INFORMATION

Table 2 presents supplemental information to assist in understanding and requesting NOAA National Marine Sanctuary permit approval.

**Table 2. NOAA National Marine Sanctuary Permit Supplemental Information**

LINK TO SUPPLEMENTAL INFORMATION	DESCRIPTION
<a href="#">Website</a>	National Marine Sanctuary permit website
<a href="#">Application Form</a>	Description of projects which qualify for coverage under NWP 5
<a href="#">Application Instructions</a>	Instructions for filling out the application form
<a href="#">Permit Contact Information</a>	Sanctuary-specific contact information for submitting permit application packages

### 2.3.3. U.S. COAST GUARD – PRIVATE AID TO NAVIGATION APPROVAL

Private Aids to Navigation (PATON; i.e., a buoy, light or daybeacon owned and maintained by any individual or organization other than the USCG) are regulated by USCG under 33 CFR 66. Although Spotters are not “aids to navigation,” they are treated as such by USCG for evaluation of navigational safety. USCG approval is required for Spotters placed for a period of six months or longer (i.e., permanent aids). Approval is not required for Spotters placed for a period of six months or less (i.e., temporary aids); however, information must be provided to USCG regardless of length of deployment to inform USCG-issued Local Notice to Mariners (LNM), which advises local mariners of navigational hazards.

#### 2.3.3.1. APPROVAL PROCESS

The following general instructions describe the process for requesting and receiving project approval:

1. Submit the following project documentation to the appropriate district Waterways Manager, as presented in Table 3, at least 120 days prior to anticipated deployment to allow adequate time for review and approval:
  - a. Cover Letter (optional)
  - b. Project Description

2. If instructed to complete an application for approval, submit the PATON application form (Form CG-2554) or application questionnaire, as instructed. Links are included in Table 3.
3. The application package will be reviewed for completeness.

***For Permanent Aids:***

4. Once agency questions are satisfied, USCG will send the granted permit.
5. After Spotters are deployed, accurate deployment locations and water depths should be sent to USCG to include in the LNM.

***For Temporary Aids:***

4. The process for USCG review of temporary aids has varied depending on District. You should rely on instructions from the Waterways Manager. After Spotters are deployed, accurate deployment locations and water depths should be sent to USCG to include in the LNM. He or she may ask you to draft language for the LNM or the LNM may be issued without a request for further input.

**2.3.3.2. SUPPLEMENTAL INFORMATION**

Table 3 presents supplemental information to assist in understanding and requesting USCG PATON approval.

**Table 3. USCG Private Aids to Navigation Approval Supplemental Information**

SUPPLEMENTAL INFORMATION	DESCRIPTION
<a href="#">CG-2554 Application Form and Instructions</a>	Application Form and instructions
<a href="#">PATON Application Questionnaire</a>	Should be filled out only upon request by the Waterways Manager
<a href="#">LNM Fact Sheet</a>	This Fact Sheet was created by District 13; however, the content is relevant to all districts.
<b>District 13 (Oregon and Washington) Contact Information</b>	Phone: (206) 220-7285 Email: <a href="mailto:d13-pf-paton@uscg.mil">d13-pf-paton@uscg.mil</a>
<b>District 14 (Hawaii, Guam, Commonwealth of Northern Mariana Islands, American Samoa, Singapore, and Japan) Contact Information</b>	Phone: (808) 535-3275 Email: <a href="mailto:D14-DG-PJ-dpw@uscg.mil">D14-DG-PJ-dpw@uscg.mil</a>
<b>District 17 (Alaska) Contact Information</b>	Phone: 907-463-2269 Email: <a href="mailto:smb-d17juneau-lnm@uscg.mil">smb-d17juneau-lnm@uscg.mil</a>

## **3.0 STATE REGULATORY REQUIREMENTS**

Buoy locations in nearshore waters may be subject to State regulations. The seaward boundary for state waters varies by state; however, the boundary extent is 3-miles from shore for Alaska, Hawaii, and Pacific Northwest regions. Permits included in this section include those required for Spotters deployed off the coasts of Alaska and Washington during 2023 and 2024. Depending on the state and site- and project-specific details, additional permits may be required.

### **3.1. STATE SPECIFIC INFORMATION**

#### **3.1.1. ALASKA**

##### **3.1.1.1. ALASKA DEPARTMENT OF NATURAL RESOURCES – LAND USE PERMIT**

The Alaska Department of Natural Resources requires a Land Use Permit for Spotters deployed in state waters (i.e., within 3 miles of the coastline). Permits may be issued for periods up to five years.

#### **Approval Process**

1. Submit the following project documentation to the appropriate Regional Land Office, as presented in Table 4, at least 60 days prior to anticipated deployment to allow adequate time for review and approval:
  - a. Cover Letter (optional)
  - b. Project Description
  - c. Land Use Permit Application form and Supplemental Questionnaire for Use of State-Owned Waters (attached to form).  
  
\*The other supplemental questionnaires may be deleted from the final pdf prior to submission.
2. The application package may be subject to a 14-day agency review and public notice to provide interested parties the opportunity to comment.
3. Once all questions or issues have been satisfied, a Memorandum of Decision is executed and sent back to you for review. In the Memorandum of Decision, ADNR may require proof of insurance, a performance guaranty (bond), and/or an annual land use fee.
4. Once all required deliverables are provided to ADNR (including the signed permit), the permit will be officially issued.
5. Amendments may be requested for changes in buoy locations outside of the geographic sections included in the final permit. A fee of \$240 is required for each amendment.

## Supplemental Information

Table 4 presents supplemental information to assist in understanding and requesting ADNR Land Use permit approval.

**Table 4. ADNR Land Use Permit Supplemental Information**

SUPPLEMENTAL INFORMATION	DESCRIPTION
<b>Regional Contact Information</b>	
<a href="#">Northern Region Land Office</a>	Phone: (907) 451-2740 Email: <a href="mailto:nro.lands@alaska.gov">nro.lands@alaska.gov</a>
<a href="#">Southcentral Region Land Office</a>	Phone: (907) 269-8503 Email: <a href="mailto:dnr.scro.permitting@alaska.gov">dnr.scro.permitting@alaska.gov</a>
<a href="#">Southeast Region Land Office</a>	Phone: (907) 465-3400 Email: <a href="mailto:sero@alaska.gov">sero@alaska.gov</a>
<b>Other Supplemental Information</b>	
<a href="#">Permit Application Form and Instructions</a>	The main application form with supplemental questionnaires attached
<a href="#">Website</a>	Includes applicant information and guidance

### 3.1.2. WASHINGTON

#### 3.1.2.1. WASHINGTON DEPARTMENT OF FISH AND WILDLIFE – HYDRAULIC PROJECT APPROVAL

The Washington Department of Fish and Wildlife (WDFW) requires a Hydraulic Project Approval for Spotters deployed in state waters (i.e., within 3 miles of the coastline). Permits may be issued for periods up to five years.

#### Approval Process

1. Submit the following project documentation by either using the APPS online permitting system or the email address provided in Table 5 at least 60 days prior to anticipated deployment to allow adequate time for review and approval:
  - a. Cover Letter (optional)
  - b. Project Description
  - c. JARPA
2. WDFW reviews application for completeness
3. Once all questions or issues have been satisfied, the application is deemed complete
4. WDFW determines appropriate mitigation
5. Permit is issued



## TIPS

- APPS can be used to produce a draft JARPA that includes information submitted in the online APPS application. You can then complete the JARPA outside of APPS and submit it to other permitting agencies requiring a JARPA form.
- The application will not be deemed complete until proof of SEPA compliance is received by WDFW. For WWU’s Backyard Buoys projects, we provided the following as proof of compliance: “Skagit County indicated a non-exempt permit is not required; therefore the project is exempt from SEPA pursuant to WAC 197-11-835(2).”

## Supplemental Information

Table 5 presents supplemental information to assist in understanding and requesting WDFW Hydraulic Project Approval.

**Table 5. WDFW Hydraulic Project Approval Supplemental Information**

SUPPLEMENTAL INFORMATION	DESCRIPTION
<b>HPA application submission</b>	Email: <a href="mailto:hpaapplications@dfw.wa.gov">hpaapplications@dfw.wa.gov</a> *optional method for submitting JARPA and/or supplemental information
<a href="#">APPS online permitting system</a>	Agency preferred method for submitting the JARPA.
<a href="#">Website</a>	Website providing applicant information and guidance
<a href="#">Application Process Schematic</a>	Details the steps of the permit application process
<a href="#">JARPA website</a>	Includes links to the JARPA form and instructions

### 3.1.2.2. WASHINGTON DEPARTMENT OF NATURAL RESOURCES – AQUATIC USE AUTHORIZATION

The Washington Department of Natural Resources (WDNR) requires an Aquatic Use Authorization for Spotters deployed in state waters (i.e., within 3 miles of the coastline) using a boat anchor for periods longer than 30 days. In the case of placing a Spotter buoy in state-owned waters, a Right of Entry Use Authorization is required. These authorizations may be granted for periods up to five years.

#### Approval Process

1. Submit the following project documentation to the email address provided in the link in Table 6 at least **six months** prior to anticipated deployment to allow adequate time for review and approval:
  - a. Cover Letter (optional)
  - b. Project Description
  - c. JARPA
  - d. JARPA Attachment E Form

- e. Project Drawing meeting requirements/elements listed under “TIPS,” below
2. WDNR reviews application for completeness
3. Land Manager evaluates proposed uses
4. Once the Land Manager determines the use “appropriate”, a signed JARPA Attachment E is returned to you.
5. The Land Manager drafts the contract, calculates “rent”, and meets with you to discuss lease terms
6. District Manager reviews lease terms
7. Lease contract packet is mailed to you.
8. You sign, notarize, and return the packet along with pre-bill payment to the WDNR district office
9. Supervisor reviews lease conditions and “rent”
10. Right of Entry Use Authorization is granted

### ***TIPS***

- A \$25 application processing fee is required
- A project drawing meeting the following requirements/elements will be required (an example of the final drawing approved for WWU is included in Appendix C:
  - DNR Right of Entry/Use Authorization number – *to be provided by Aquatics Land Manager*
  - Note or reference specifying:
    - The exhibit is for a DNR Right of Entry agreement
    - The aquatic land type(s) “bedlands”
    - Project elements such as anchor, anchor line, monitoring buoy, and any other element locations
    - North arrow
    - Graphic scale
    - List the Government Lot (if possible), Section, Township, Range & County
    - Name of waterbody
    - Exhibit creation date, author name
    - Approximate authorization area square footage and/or acreage
    - GPS coordinates used to identify the Property should consist of at least two points on or in the authorization site, including the following coordinate data information:
      - Coordinate North and Easting or Latitude/Longitude

- If geographic coordinates recorded in following formats:
  - Decimal degrees, display must record to at least the fifth decimal point
  - Degrees and decimal minutes, record to at least the third decimal point
  - Degrees, minutes, and decimal seconds, record to at least one decimal point
  - Northing and Easting coordinates, record to the nearest foot
- Horizontal Datum of the coordinates recorded in either:
  - North American Datum NAD83 North or South Zone
  - WGS84 (World Geodetic System)
  - Other applicable NGS or State defined coordinate system
- Specific make and model of GPS collection device
- Description of the occupied position (e.g. “center of WDFW boat ramp at water’s edge”)
- A Certificate of Insurance for General Liability, Workers’ Compensation, Employer’s Liability, Protection & Indemnity, and Hull Insurance will be required for granting the Right of Entry Use Authorization. These are the typical requirements for any project taking place with a vessel involved.
- This application (i.e., in Part 2 – “Applicant” and Part 11 – “Authorizing Signatures”) must be signed by an official signatory, or someone authorized to sign a legal contract between the insured party and WDNR (e.g., a Vice President). The WDNR Land Manager will be able to provide additional signatory guidance, if needed.
- The Backyard Buoys project lead (e.g., Sam Kastner for WWU) should sign Part 3 – “Authorized Agent or Contact”.
- WDNR will offer the final agreement for signature through DocuSign.
- All required permits must be issued before the Right of Entry can be granted.
- Cost for the authorization is \$500 for the first year and \$100 for each additional year.

## Supplemental Information

Table 6 presents supplemental information to assist in understanding and requesting WDNR Aquatic Use Authorization approval.

**Table 6. WDNR Aquatic Use Authorization Supplemental Information**

SUPPLEMENTAL INFORMATION	DESCRIPTION
<a href="#">Contacts for application submission</a>	Includes contact information by region
<a href="#">Website</a>	Website providing applicant information and guidance
<a href="#">Application Process Schematic</a>	Details the steps of the permit application process
<a href="#">JARPA website</a>	Includes links to the JARPA form, JARPA Attachment E, and instructions

## 4.0 LOCAL REGULATORY REQUIREMENTS

Certain local regulations may apply to buoy locations within local land management boundaries. Spotters located in state waters are more likely to fall under other local jurisdiction and regulations. Check local land management regulations to determine what local permits may be required. Some examples of might include:

- County permits - such as shoreline permits or exemptions
- Borough permits
- Landowner authorizations

Local permits included in this section include those required for Spotters deployed off the coasts of Alaska and Washington during 2023 and 2024.

### 4.1. REGIONAL SPECIFIC INFORMATION

#### 4.1.1. AOS

##### 4.1.1.1. NORTH SLOPE BOROUGH –STUDY PERMIT

The North Slope Borough (NSB) requires a Study Permit for placement of Spotters within three nautical miles off the coast of borough lands. Permits are valid up to one year.

### Approval Process

1. Contact the NSB Land Management Administrator at the phone number listed in Table 7 to discuss your permit application prior to submission. The Administrator will assign a Land Management Specialist to review the application and provide the appropriate email addresses for electronic submission.
2. Send the following project documentation to the Land Management Administrator at the physical address presented in Table 7 and electronically to the Land Management

Specialist's email address provided by the Administrator, at least 30 days prior to anticipated deployment to allow adequate time for review and approval:

- a. Cover Letter (optional)
  - b. Project Description
  - c. NSB Form 400
  - d. Check in the amount of \$1,500 (or \$200 for non-profit applicants)
3. NSB reviews application for completeness
  4. Land Management Regulation (LMR) staff prepares permit recommendations to approve permit
  5. Land Management Administrator approves permit
  6. Approved permit issued

### **TIPS**

- The permit application form indicates the following is required:
  - Wildlife Interaction Plan
  - Waste Management Plan
    - Spill Prevention and Response Plan, and
  - Emergency and Medical Plan.

\*In lieu of submitting these as separate plans, AEWC was successful in including adequate information to meet these requirements within the Project Description. See example of AEWC's Project Descriptions in Appendix B.

- NSB may require a copy of a \$100,000 liability insurance policy.
- A permit processing fee of \$1,500 is required for most applicants. Non-profit applicants are required to pay a \$200 permit processing fee. A permit fee waiver can be requested if the applicant is the NSB, State of AK, federal, local, or tribal government.
- NSB requires hard-copy applications be sent via mail to the address included in Table 7. Additionally, NSB requires electronic submission of the permit package and GIS mapfiles. NSB will often indicate that the permit application will not be reviewed until the permit processing fee is paid. This can be hand-delivered or sent with the hard-copy application in the mail. Often, they will agree to begin reviewing an electronically-submitted application package while they wait for the hardcopy package to arrive if a digital photocopy of the signed check is also sent with the email submission. Email submissions may be sent to the Land Management Administrator.

## Supplemental Information

Table 7 presents supplemental information to assist in understanding and requesting NSB Study Permit approval.

**Table 7. NSB Study Permit Supplemental Information**

SUPPLEMENTAL INFORMATION	DESCRIPTION
NSB Address for Hardcopy Application Submission	North Slope Borough, Department of Planning and Community Services, Land Management Administrator PO Box 69 Barrow, Alaska 99723 Phone: (907) 852-0440
<a href="#">Instructions for Completing Application</a>	Includes general information for completing the application form
<a href="#">Form 400 Study Permit Application</a>	Application form

### 4.1.2. NANOOS

#### 4.1.2.1. SKAGIT COUNTY – SHORELINE EXEMPTION

The Shoreline Management Act and the Skagit County Shoreline Master Program (SMP) regulate shoreline uses and modifications within shoreline jurisdiction of Skagit County. The County requires a Shoreline Exemption for placement of Spotters within Skagit County SMP jurisdiction. Shoreline exemptions are valid indefinitely once granted as long as the permittee remains in compliance with permit conditions and standards.

#### Approval Process

1. Submit the following project documentation through the Skagit County Portal at the link provided in Table 8 at least 30 to 60 days prior to anticipated deployment to allow adequate time for review and approval:
  - a. Cover Letter (optional)
  - b. Project Description
  - c. Shoreline Exemption Application Package
2. Pay the Application fee of \$269.57
3. Skagit County reviews application for completeness
4. After all questions or issues are satisfied, Shoreline Exemption is issued

#### TIPS

- If the buoy location is in close proximity to tribal lands, the tribe will need to approve the location prior to the county issuing the exemption.

- Skagit county will accept the abbreviated JARPA form generated during submission of a WDFW HPA application, if that permit is also needed. If an HPA is not required, the complete JARPA form should be filled out through Part 6. The remaining sections may be disregarded for purposes of a Shoreline Exemption.
- Credit card payment of the application fee may be made via phone by calling a permit tech at (360) 416-1320, as described in Table 8.
- The Critical Areas Checklist does not need to be filled out if the buoy is not located in a Critical Area. The link presented in Table 8 provides
- The Ownership Certificate can be disregarded if the buoy is located in state-owned waters.
- Skagit County typically provides SEPA compliance documentation during issuance of shoreline permits. Since a non-exempt permit is not required by the county for deployment of Spotters (i.e., only a Shoreline Exemption is required), the project is exempt from SEPA, pursuant to WAC 197-11-835(2). This information should be provided to any state agencies issuing authorizations for the project.

### Supplemental Information

Table 8 presents supplemental information to assist in understanding and requesting Skagit County Shoreline Exemption approval.

**Table 8. Skagit County Shoreline Exemption Supplemental Information**

SUPPLEMENTAL INFORMATION	DESCRIPTION
<a href="#">Application Form</a>	Shoreline exemption packet in its entirety (i.e., including submission checklist, fact sheet, ownership certification, and JARPA).
<a href="#">Skagit County Customer Portal</a>	Portal for submission of shoreline exemption application package
<b>Contact information for permit questions or to pay application fee via phone</b>	Phone: (360) 416-1320 Email: <a href="mailto:pds@co.skagit.wa.us">pds@co.skagit.wa.us</a>

### 4.1.3. PACIOOS

Local permits for Spotter deployments have not been identified in the PacIOOS region. This document will be updated should any local permits be required during the course of this project.

## **Appendix A**

### **Regulatory Summary Tables**

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1. Table A-1. Federal Permits and Authorizations for Spotters Deployed in Waters of the United States
2. Table A-2. Permits and Authorizations for Spotters Deployed in State and Local Jurisdiction Waters



**Table A-1. Federal Permits and Authorizations for Spotters Deployed in Waters of the United States<sup>1</sup>**

Agency/Section Reference <sup>2</sup>	Permit/Authorization/ Consultation Name	Driver	Est. time to issuance	Notes	Links to Additional Information
USACE/2.3.1	NWP 5 (Section 10 and Section 404 Authorities)	For scientific measurement devices such as tide and current gauges, meteorological stations and similar structures.	35 to 45 days	There is no impacted acreage limit for this NWP for equipment such as wave buoys. A PCN is required under NWP 5 in any areas where ESA-listed species or critical habitat may occur, in accordance with General Condition 18. Under this permit, all devices and associated structures must be removed upon completion. In addition to all General Conditions for the 2021 NWPs, each applicant will also need to ensure compliance with the appropriate Regional Conditions for the region in which the Spotters will be deployed.	<ul style="list-style-type: none"> <li>• <a href="#">NWP 5</a></li> <li>• <a href="#">NWP 5 Decision Document</a></li> <li>• <a href="#">2021 NWP General Conditions (bottom of page)</a></li> <li>• <a href="#">2021 Alaska District Regional Conditions</a></li> <li>• <a href="#">2021 Honolulu District Regional Conditions</a></li> <li>• <a href="#">Honolulu District Pac-SLOPES Biological Evaluation</a></li> <li>• <a href="#">Honolulu District Pac-SLOPES Authorization Letter</a></li> <li>• <a href="#">Honolulu District Pac-SLOPES Conditions Combined</a></li> <li>• <a href="#">2021 Seattle District Regional Conditions</a></li> <li>• <a href="#">PCN Form</a></li> </ul> <p><i>*Note: You may need to save to your computer in order to view the file.</i></p> <ul style="list-style-type: none"> <li>• <a href="#">Drawing Checklist</a></li> <li>• <a href="#">JARPA</a></li> <li>• <a href="#">Regulatory Request System</a></li> </ul>

Backyard Buoys Permitting Guidance

Agency/Section Reference <sup>2</sup>	Permit/Authorization/ Consultation Name	Driver	Est. time to issuance	Notes	Links to Additional Information
NOAA/2.4.2	National Marine Sanctuary Permit	For Spotters deployed within the boundaries of a National Marine Sanctuary (e.g., Olympic Coast National Marine Sanctuary).	60 days	NOAA will reach out to nearby tribes for input on the proposed project.	<ul style="list-style-type: none"> <li>• <a href="#">Website</a></li> <li>• <a href="#">Application Form</a></li> <li>• <a href="#">Application Instructions</a></li> <li>• <a href="#">Permit Contact Information</a></li> </ul>
USFWS/2.2.1	ESA Section 7 Consultation	For Spotters deployed in areas potentially occupied by and/or potentially affecting ESA-listed USFWS trust species.	Up to 90 days, if required	Section 7 consultation may not be required if covered by NWP 5. The PCN form will identify any ESA-listed species and critical habitat. The lead agency (likely the USACE) may determine there is no likely effect. If they determine there may be an effect on an ESA-listed species, consultation will be initiated with USFWS.	<ul style="list-style-type: none"> <li>• <a href="#">USFWS Section 7 Guidance</a></li> </ul>
NOAA/2.2.1	ESA Section 7 Consultation	For Spotters deployed in areas potentially occupied by and or potentially affected ESA-listed NOAA trust species.	Up to 90 days, if required	Section 7 consultation may not be required if covered by NWP 5. The PCN form will identify any ESA-listed species and critical habitat. The lead agency may determine there is no likely effect. If they determine there may be an effect on an ESA-listed species, consultation will be initiated with NOAA.	<ul style="list-style-type: none"> <li>• <a href="#">NOAA Section 7 Guidance</a></li> <li>• <a href="#">EFH Mapping Tool</a></li> </ul>
NOAA/2.2.2	EFH Consultation	For Spotters deployed in areas with potential effects on EFH.	Up to 60 days, if required	USACE assessed potential effects on EFH during issuance of 2021 NWPs; however, a site-specific evaluation of potential effects will be made on a case-by-case basis prior to authorization. If USACE determines EFH may “adversely” affect EFH, consultation with NOAA Fisheries will be initiated. EFH consultation usually requires submittal of an EFH Assessment documenting species and life stage EFH present, potential effects, and proposed mitigation.	<ul style="list-style-type: none"> <li>• <a href="#">NOAA EFH Consultation Guidance</a></li> </ul>

Appendix A: Permit Summary Table

Backyard Buoys Permitting Guidance

Agency/Section Reference <sup>2</sup>	Permit/Authorization/ Consultation Name	Driver	Est. time to issuance	Notes	Links to Additional Information
SHPO/2.2.3	NHPA Section 106 Consultation	For Spotters deployed in areas potentially affecting a historic or archaeological property.	30-60 days, if required	If the USACE determines buoy placement may have the potential to cause effects to historic properties Section 106 of the NHPA will be initiated.	<ul style="list-style-type: none"> <li>• <a href="#">SHPO Office Directory</a></li> </ul>
USCG/2.3.3	PATON approval (33 CFR 66)	For PATONs on navigable waters regulated by the federal government	Up to 120 days	Approval needed for “permanent aids” (i.e., Spotters to be deployed for six months or longer). “Temporary Aids” are Spotters to be deployed for less than six months. For both temporary and permanent aids, specific buoy information will be required for inclusion in Notice to Mariners.	<ul style="list-style-type: none"> <li>• <a href="#">CG-2554 Application Form and Instructions</a></li> <li>• <a href="#">PATON Application Questionnaire</a></li> </ul>

Acronyms: EFH = Essential Fish Habitat; ESA = Endangered Species Act; NHPA = National Historic Preservation Act; NOAA = National Oceanic and Atmospheric Administration; NWP = Nationwide Permit; PATON = Private Aids to Navigation; PCN = Preconstruction Notice; SHPO = State Historic Preservation Office; USACE = United States Army Corps of Engineers; USCG = United States Coast Guard; USFWS = United States Fish and Wildlife Service;

<sup>1</sup>Permits and authorizations included in this table were required for Spotters deployed in 2023 and 2024. Additional federal approvals may be required depending on project details and site-specific location and conditions.

<sup>2</sup>See referenced section in Permitting Guidance for additional details including submittal procedures and contact information.

**Table A-2. Permits and Authorizations for Spotters Deployed in State and Local Jurisdiction Waters<sup>1</sup>**

Agency/Section Reference <sup>2</sup>	Permit/Authorization/ Consultation Name	Driver	Est. time to issuance	Notes	Links to Additional Information
<b>AOOS Region</b>					
ADNR/3.1.1.1	Land Use Permit	For Spotters deployed in state waters.	30 days after application deemed complete	Authorization granted for a term of up to five years. Spotter deployment does not qualify as a “generally allowed use” of state land, because the buoy is not for personal use of the upland owner. Marine waters supplemental form should be attached to Land Use Permit Application.	<ul style="list-style-type: none"> <li>• <a href="#">General permitting information</a></li> <li>• <a href="#">Land Use Permit Application</a></li> </ul>

Backyard Buoys Permitting Guidance

Agency/Section Reference <sup>2</sup>	Permit/Authorization/ Consultation Name	Driver	Est. time to issuance	Notes	Links to Additional Information
NSB/4.1.1.1	LMR/Study Permit	Required for deployment of Spotters within 3 nautical miles from shore.	Typically 10 days, but up to 90 days	<p>Requires a Wildlife Interaction Plan, Waste Management Plan, Spill Prevention and Response Plan, and Emergency and Medical Plan; however, these may be incorporated into the Project Description. Also requires a copy of a \$100,000 liability insurance policy. Fee of \$1,500 required for all except non-profit applicants. Each amendment would also require the same permit fee. A permit fee waiver can be requested if the applicant is the NSB, State of AK, federal, local, or tribal government. Permits are valid for one year. Hardcopy application and check for permit fee must be sent via mail or hand delivered prior to processing of permit.</p> <p>Similar permits may be required for Spotters deployed within the jurisdiction of other boroughs (e.g., NWAB).</p>	<ul style="list-style-type: none"> <li>• <a href="#">Application Instructions</a></li> <li>• <a href="#">Application Form</a></li> </ul>
<b>NANOOS Region</b>					
WDFW/3.1.2.1	Hydraulic Project Approval	For Spotters deployed in state waters (i.e., within 3 miles of the coastline).	60 days	Approval may be granted for a term of up to five years. JARPA may be submitted via email or via the online APPS system (agency preferred).	<ul style="list-style-type: none"> <li>• <a href="#">APPS Permitting System</a></li> <li>• <a href="#">Website</a></li> <li>• <a href="#">Application Process Schematic</a></li> <li>• <a href="#">JARPA</a></li> </ul>
WDNR/3.1.2.2	Aquatic Use Authorization	For Spotters deployed in state waters (i.e., within 3 miles of the coastline) using a boat anchor for periods longer than 30 days.	Up to 6 months	Authorization may be granted for a term of up to five years. The application must be signed by an “official signatory.” Requires proof of insurance and Right of Entry fee of \$500 for the first year and \$100 for each additional year. JARPA serves as application. Attachment E to the JARPA is also required.	<ul style="list-style-type: none"> <li>• <a href="#">Website</a></li> <li>• <a href="#">Application Process Schematic</a></li> <li>• <a href="#">JARPA</a></li> </ul>

Appendix A: Permit Summary Table

Backyard Buoys Permitting Guidance

Agency/Section Reference <sup>2</sup>	Permit/Authorization/ Consultation Name	Driver	Est. time to issuance	Notes	Links to Additional Information
Skagit County/4.1.2.1	Shoreline Exemption	For Spotters deployed within Skagit County SMP jurisdiction.	Up to 60 days	<p>Similar shoreline permits may be required for Spotter deployments in other county jurisdictions. See appropriate county website for more information.</p> <p>In Washington, the county must demonstrate compliance with SEPA. If a shoreline exemption is granted, SEPA will likely be exempted.</p> <p>Skagit county will stipulate an application fee (it was \$269.57 for WWU).</p> <p>Applications submitted via Customer Portal.</p>	<ul style="list-style-type: none"> <li>• <a href="#">Application Form</a></li> <li>• <a href="#">Skagit County Customer Portal</a></li> </ul>
<b>PacIOOS Region</b>					
N/A – No State/Local permits or authorizations were required for Spotters deployed in the PacIOOS region during 2023 or 2024.					

Acronyms: ADNR = Alaska Department of Natural Resources; AK = Alaska; AOOS = Alaska Ocean Observing System; APPS = Aquatic Protection Permitting System; JARPA = Joint Aquatic Resources Permit Application; LMR = Land Management Regulations; N/A = Not Applicable; NANOOS = Northwest Association of Networked Ocean Observing Systems; NSB = North Slope Borough; NWAB = Northwest Arctic Borough; PacIOOS = Pacific Islands Ocean Observing System; SEPA = State Environmental Policy Act; SMP = Shoreline Management Program; TLUI = Traditional Land Use Inventory; WDFW = Washington Department of Fish and Wildlife; WDNR = Washington Department of Natural Resources; WWU = Western Washington University

<sup>1</sup>Permits and authorizations included in this table were required for Spotters deployed in 2023 and 2024. Additional state and local approvals may be required depending on project details and site-specific location and conditions.

<sup>2</sup>See referenced section in Permitting Guidance for additional details including submittal procedures and contact information.

## **Appendix B**

### **Project Description Examples**

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1. 2023 Western Washington University Project Description
2. 2023 National Park of American Samoa Project Description
3. 2024 Alaska Eskimo Whaling Commission Project Description
4. 2023 Quinault Indian Nation Project Description



# Backyard Buoys

## Project Description

**August 2023**

*Prepared by:*



Weston Solutions, Inc.  
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(907) 343-2700

## 1.0 Introduction

Western Washington University (WWU) proposes to deploy a single Spotter wave buoy near Kiket Island in Puget Sound, Washington. The buoy is housed with integrated solar power, satellite data connectivity, sea surface temperature, and a wave sensor to provide wave data for educational purposes to inform students of important data; this data will also be shared with the Swinomish Indian Tribal Community (SITC). Near real time data will be served on existing regional data visualization systems and customized applications developed during the Backyard Buoys Program based on user interviews and iterative feedback. With accessible data tools, these data will serve educational and other community needs for decisions on scales from daily (e.g., safety for maritime operations and coastal hazards) to longer planning horizons (e.g., resilience for climate change and ecosystem function).

## 2.0 Description of Activities

WWU plans to deploy a Sofar Spotter wave buoy (Spotter) in marine waters near Kiket Island to collect real-time wave data (Figure 1). WWU personnel and/or students will deploy, maintain, and retrieve the Spotter buoy. WWU worked with SITC to identify the initial buoy location: 48.416961° latitude, -122.570932° longitude. Figure 1 displays the buoy area polygon as well as the initial buoy location. The buoy may be moved up to 5 times within the buoy polygon area during the project timeframe.



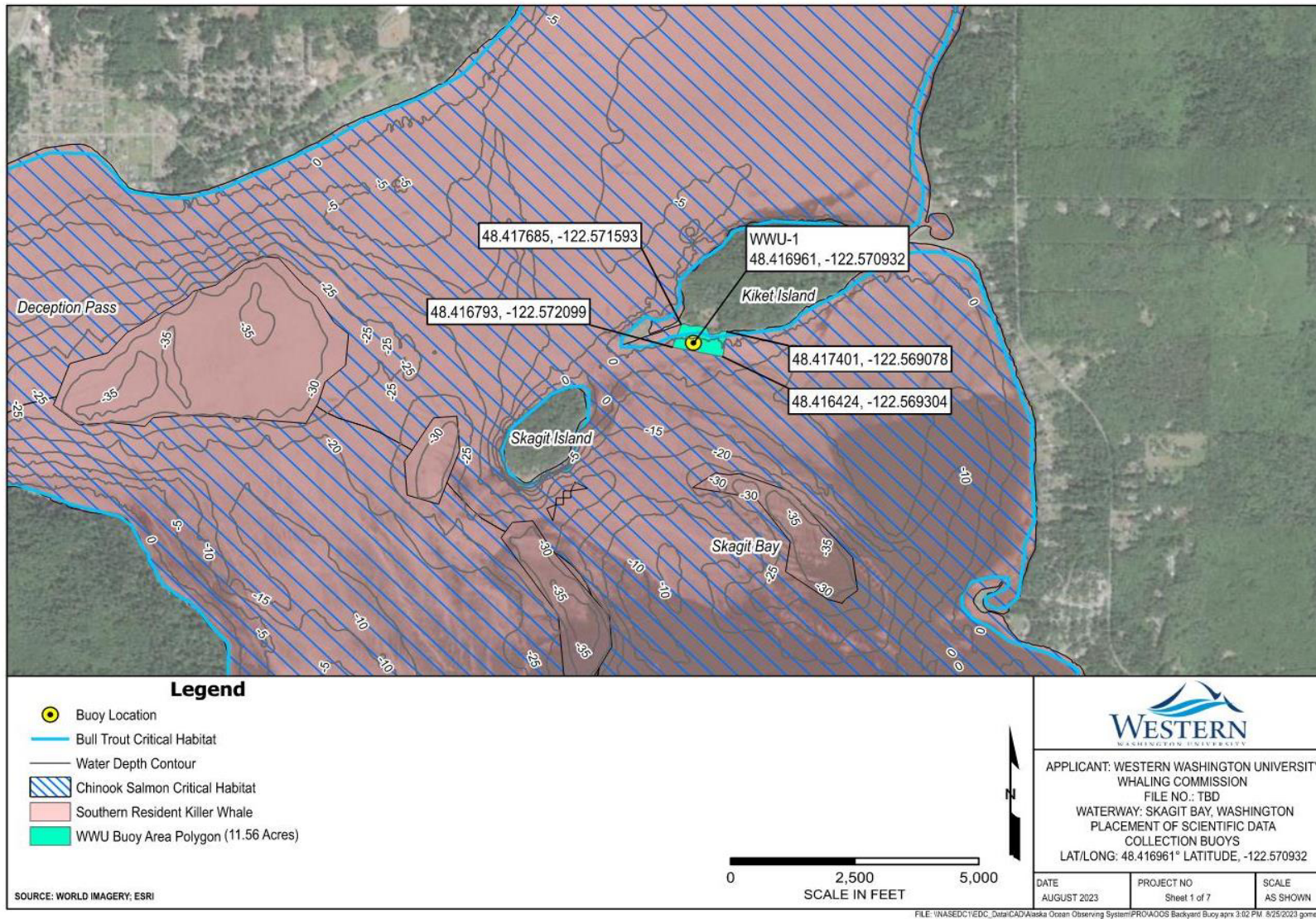
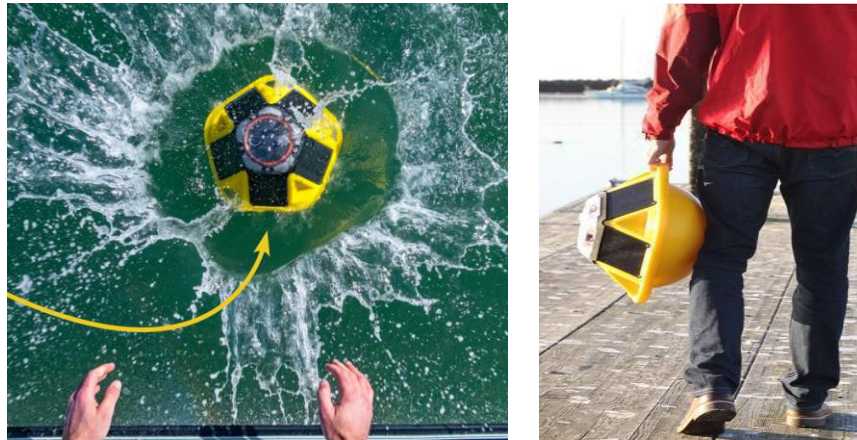


Figure 1. Vicinity of WWU Backyard Buoy near Kiket Island in Puget Sound, Washington

The Spotter is a compact and lightweight instrument consisting of a waterproof hull, solar panel array, and electronics package (Photo 1). Photo 2 shows dimensions of the Spotter. The Spotter will be anchored on the seafloor using one 33 lb bruce-type anchor - Photo 3 shows dimensions of a typical boat anchor similar to that which would be used for the Spotter buoy. A conservative impacted seafloor surface area for the anchor is 4.33 sq ft. (0.0001 ac).



**Photo 1. Spotter Buoy**



**Photo 2. Spotter Buoy Dimensions**

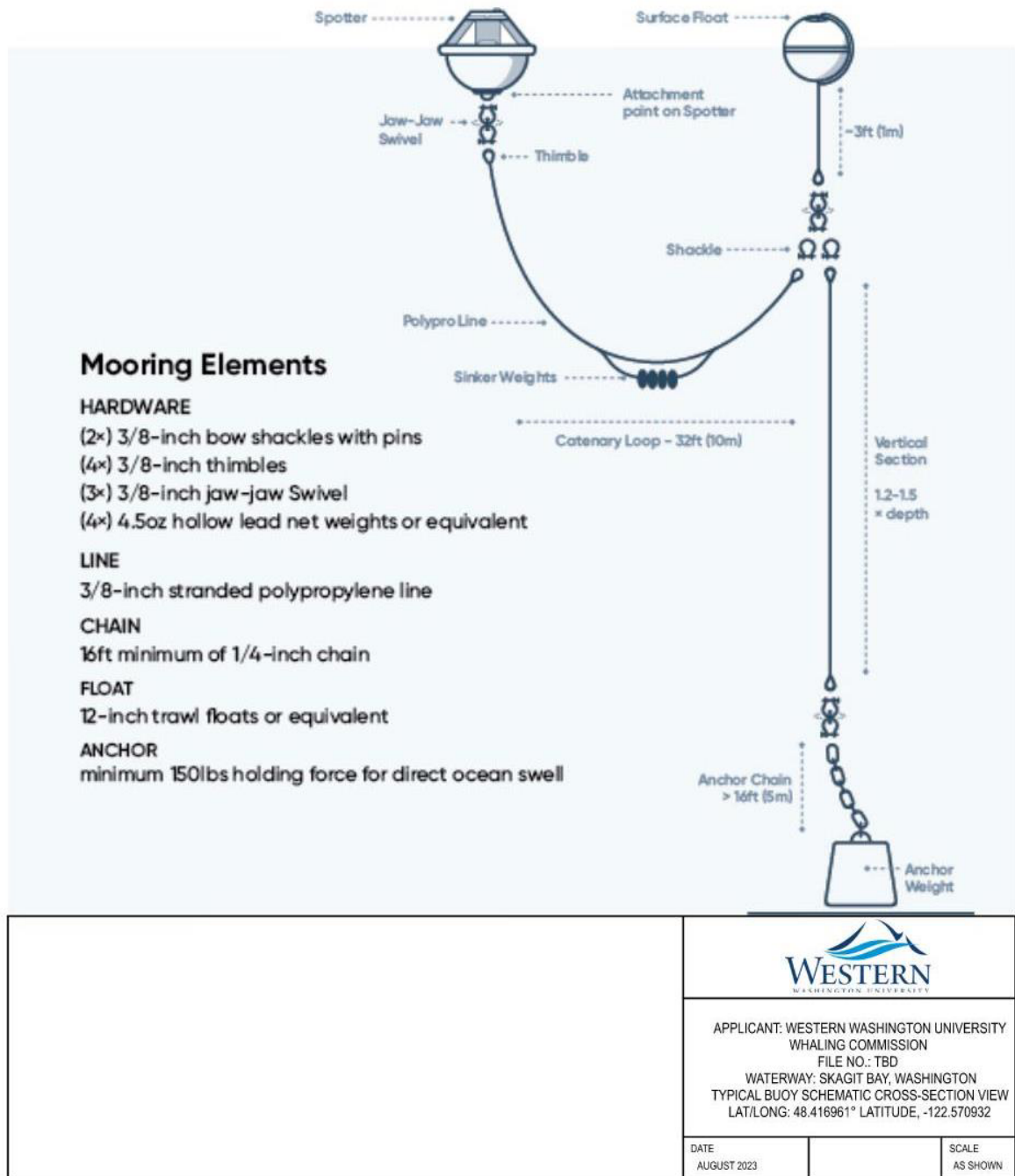


$$A = 32'' \quad B = 15.5'' \quad C = 19.5'' \quad D = 19''$$

### Photo 3. Typical Boat Anchor Dimensions

The Spotter will be anchored to the seafloor in water depths up to 16.4 feet (ft.) (5 meters [m]) using a simple mooring design (Figure 2). The mooring system is the underwater extension of the Spotter platform. The system includes the following (from seabed to surface):

- 33 lb bruce-type anchor
- 13.1 ft (4 m) of  $\frac{3}{8}$ " galvanized chain
- 26.2 ft (8 m) of lead-free sinking crab pot line
- Spotter buoy



**Figure 2. Typical Mooring Element Schematic**

WWU will deploy the Spotter over the side of a single boat within the buoy area polygon. It will similarly be retrieved by pulling the buoy, mooring system, and anchor over the side of a single boat. The boat used for deployment will be WWU’s *R/V Magister* (Photo 4), which is similar to a typical aluminum fishing boat with twin outboard motors (500 HP), approximately 34 ft. (10.4 m) in length. Up to 120 gallons of fuel will be stored on the boat.



Source: Shannon Point Marine Center

**Photo 4. *R/V Magister Deploying Scientific Equipment Not Related to the Backyard Buoys Project***

### **3.0 Mitigation Measures/Wildlife Interaction Procedures**

The following mitigation measures are proposed to be implemented, as appropriate, during implementation of the WWU Backyard Buoys Project:

- Spotter will not be placed such that it blocks access of any species to an area (e.g. it will not prevent movement in or out of a river or channel).
- Spotter, mooring, and anchor setup will be inspected and any required maintenance performed at least twice a year, when it is retrieved for relocation, and following storm events that may have moved or dislodged the Spotter to ensure that equipment and anchors are still in place and have not moved.
- All personnel associated with Spotter deployment will be instructed about the potential presence of species protected under the ESA and the MMPA.
- On-site personnel will observe water-related activities for the presence of protected species.
- Any collision with and/or injury to a protected species during Spotter deployment, maintenance, or retrieval operations will be reported immediately, or as soon as practical, to the following:
  - NMFS' Office of Protected Resources at ITP.Fowler@noaa.gov, and
  - West Coast Marine Mammal Stranding Network at (866) 767-6114.
- Any observed stranded, injured, or dead marine mammals (not resulting from proposed project activities) observed during Spotter deployment, maintenance, or retrieval operations shall be reported immediately to the West Coast Marine Mammal Stranding Network at (866) 767-6114.

- All boat operators shall watch for and avoid collision with protected species. Boat operators must avoid potential interactions with protected species and operate in accordance with the following protective measures:
  - Operation of the boat shall cease immediately if a listed species is observed within a 50-ft. (15.24-m) radius of the boat and shall not resume until the species has departed the area of its own volition.
  - If the detection of protected species is not possible during certain weather conditions (e.g., fog, rain, wind), then in-water operations will cease until weather conditions improve and detection is again feasible.
  - Boats will avoid approaching within 328 ft. (100 m) of marine mammals.
  - When these animals are sighted while the boat is underway, the boat will attempt to remain parallel to the animal's course.
  - Boats will avoid multiple or abrupt changes in direction or speed.
  - Boats will maintain a general speed of 5 miles per hour (4 knots) or less when near protected species and when safe to do so.
  - In-water mooring setups will include as little line as possible in the water column in order to measure wave movement and collect quality data. To the extent practical in order to collect quality data, excess line in the water column will be kept to a minimum to minimize the risk for marine mammal entanglement.

## 4.0 Assessment of Potential Effects on Endangered Species Act-Listed Species in Buoy Area Polygon

Endangered Species Act (ESA) listed species occur in the WWU Backyard Buoys Project Area. Table 2 presents ESA-listed species and associated Critical Habitat which occur within the WWU buoy area polygon.

**Table 2. ESA-Listed Species and Critical Habitat Occurring within Proposed WWU Buoy Area Polygon**

Species (Management Unit)	ESA Status	Critical Habitat Present in Project Area? (Yes/No)	Expected Effect from Spotter Deployment and Operation
Killer whale <i>Orcinus orca</i> (Southern resident DPS)	Endangered	Yes	No Effect
Humpback whale <i>Megaptera novaeangliae</i> (Central America DPS, Mexico DPS)	Endangered	No	No Effect
Bull trout <i>Salvelinus confluentus</i> (Coastal Puget Sound)	Threatened	Yes	No Effect
Chinook salmon <i>Oncorhynchus tshawytscha</i> (Puget Sound ESU)	Threatened	Yes	No Effect
Chum salmon <i>Oncorhynchus keta</i>	Threatened	No	No Effect

Species (Management Unit)	ESA Status	Critical Habitat Present in Project Area? (Yes/No)	Expected Effect from Spotter Deployment and Operation
(Hood Canal Sumer-run ESU)			
Dolly Varden <i>Salvelinus malma</i>	Proposed similarity of appearance	N/A	No Effect
Eulachon <i>Thaleichthys pacificus</i> (Southern DPS)	Threatened	No	No Effect
Green sturgeon <i>Acipenser medirostris</i> (Southern DPS)	Threatened	No	No Effect
Steelhead trout <i>Oncorhynchus mykiss</i> (Puget Sound DPS)	Threatened	No	No Effect
Boccacio <i>Sebastes paucispinis</i> (Puget Sound-Georgia Basin DPS)	Endangered	No	No Effect
Marbled murrelet <i>Brachyramphus marmoratus</i>	Threatened	No	No Effect
Short-tailed albatross <i>Phoebastria albatrus</i>	Endangered	N/A	No Effect
Sunflower sea star <i>Pycnopodia helianthoides</i>	Proposed Threatened	N/A	No Effect

The Spotter does not emit sound into the marine environment. Given Spotter size and design, and by implementing the proposed mitigation measures, the Spotter does not create an obstruction to animal movement, introduce lighting, encourage aggregations of predators, or disrupt wave patterns. It is too small to attract fish and larger predators that would increase predation, and it is too small to disrupt wave patterns. Lighting is not incorporated into the buoy design.

## 1.1 Routes of Effect

ESA-listed species have the potential to be affected by a number of “routes of effect.” These routes of effect, and WWU’s assessment of whether and how they affect ESA-listed species and/or critical habitat, are described in the sections below. In particular, we assessed the potential for the following routes of effect to have an effect on ESA-listed species and critical habitat occurring in the buoy area polygons:

- Direct physical effects from placement of buoy anchors on seafloor;
- Effects from turbidity from disturbed seafloor sediments during anchor placement;
- Entanglement with Spotter mooring line; and
- Boat collision.

### ***Direct Physical Effects from Placement of Buoy Anchor on Seafloor***

The anchor setup will create a conservative footprint of approximately 4.33 sq ft. (0.0001 ac) on the seafloor. Potential for direct physical harm to protected species requires they be present in this disturbance footprint. The proposed and listed species which may be present within the physical bounds of the wave

buoy anchor are bull trout, Chinook salmon, chum salmon, eulachon, green sturgeon, steelhead trout, and sunflower sea star.

Placement of the mooring system could contact protected fish, invertebrates, and/or habitat. Direct exposure of listed fish or the sunflower sea star to anchor disturbance is limited to the potential impacts from anchor placement on the seafloor. Fish have the ability to flee areas where disturbance is occurring; and therefore, direct impacts on fish are unlikely. Slower-moving sea stars may be present on the substrate and unable to move quickly enough to avoid injury or crushing from the anchor weight; however the likely hood is low that a sunflower sea star would be present within the small anchor footprint during deployment. Even if a sea star were injured or killed during mooring placement, no population level effects would occur.

A single Spotter will be deployed, and it may be moved up to 5 times during the span of the project. If the buoy is moved 5 times, the most conservative total seafloor impact area would be approximately 21.65 sq ft. (0.0005 ac). Any impacts on fish and other benthic organism populations, which may be prey to certain protected species, would be temporary, as the area would likely be recolonized by benthic animals within a short timeframe upon removal of the anchor setup. Impacts on benthic foraging habitat would also be limited to the footprint of the anchor setup. Injuring or killing benthic prey in this relatively small area would not adversely affect available critical habitat for ESA-listed species as the impacted area would be a small fraction of area of critical habitat available to ESA-listed species. Physical placement of the anchor setup on the seafloor is expected to have no effect on ESA-listed species or critical habitat.

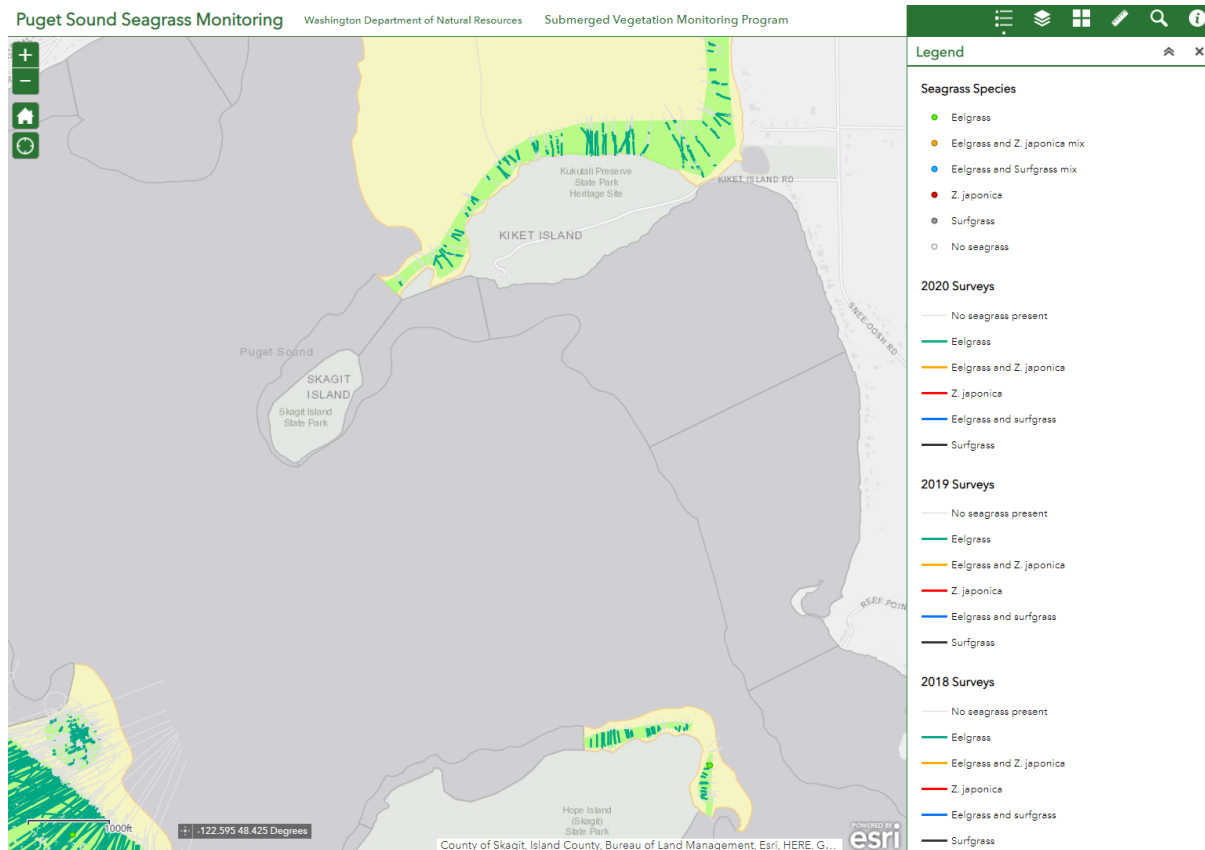
Western Washington University is not aware of any identified submerged cultural or archaeological resources within the proposed buoy area polygons. Any sites identified by Washington State Department of Archaeology and Historical Preservation during consultation with the State of Washington and USACE, or identified while conducting project-related activities, will be avoided and a buffer of at least 500 ft. (152.4 m) will be implemented to mitigate any potential impacts on cultural or archaeological resources.

### ***Effects from Turbidity from Disturbed Seafloor Sediments During Anchor Placement***

A small and temporary increase in turbidity would likely result from placement of the anchor weight on the seafloor. This slight increase is expected to return to ambient levels within a short time frame after anchor placement. The rise in turbidity is expected to be no greater than many natural processes which might cause increased turbidity (e.g. marine mammal foraging, weather). No sediments will be removed during anchor placement. Impacts on ESA-listed species will be localized to the small immediate area and temporary. No effects on local populations are anticipated.

Submerged aquatic vegetation, particularly eelgrass communities, are important habitat for a wide variety of aquatic life, including groundfish and salmon, whose prey (forage fish such as Pacific herring and surf smelt) are abundant in this habitat type. Figure 3 shows the boundaries of mapped eelgrass and other sea grasses in the vicinity of the proposed buoy location. Buoy placement is not proposed in areas of mapped eelgrass (Washington Department of Natural Resources 2023).





**Figure 3. Mapped Eelgrass Extents Near Proposed Buoy Location**

Suspended sediments resulting from substrate disturbance during anchor placement are likely to settle locally, outside of mapped eelgrass, or be dispersed and re-settle at densities that would not smother eelgrass communities.

The slight and brief effect of increased turbidity in the water column is expected to have no effect on ESA-listed species, critical habitat, or EFH.

### ***Entanglement with Spotter Mooring Line***

ESA-listed SRKW (and the less-likely humpback whale) could become entangled by encountering in-water lines, such as Spotter mooring lines. The risk to whales depends on the number of in-water loops created by lines attached to surface floats and on the extent of excess line in the water column. The nature of wave buoy data collection necessitates some excess line in order for the buoy to rise and fall with the wave action. Surface floats are also necessary in order to allow for proper buoy movement for data collection. Depending on typical wave conditions for a particular location, more surface floats may be needed in order to collect quality data and limit the risk of the buoy being pulled underwater or damaged. Proposed moorings will be installed in a manner to minimize the risk of entanglement (i.e. as few looping lines and as little excess line in the water column as practical in order to collect quality wave data). Limiting the quantity of a Spotter buoys to a single buoy in the water further limits the risk of whale entanglement. Therefore, deployment of the proposed Spotter buoy is expected to have no effect on ESA-listed whales from entanglement with underwater mooring lines.

## Boat Collision

Increased boat traffic in the marine environment could increase the potential for boat collisions with ESA-listed species. Proposed Spotter buoy deployment will not result in more than an incremental increase in vessel traffic in offshore waters within the buoy area polygons, and as such it is extremely unlikely that the project will increase the incidence of boat collisions with ESA-listed species. The *R/V Magister* regularly frequents these waters for other non-Backyard Buoys related activities. It will add an incrementally small number of trips in the same region with the same boat. Furthermore, the proposed mitigation measures (e.g. reduced speed when protected species are present, ceasing buoy deployment and retrieval operations when weather conditions prevent detection of protected species, etc.) will further mitigate the potential for collisions with animals, resulting in no effect on ESA-listed species from collisions with the project boat during buoy deployment, maintenance, and retrieval.

## 1.2 Summary of Effects

Based on the nature of the proposed project and the proposed mitigation measures, WWU anticipates the following effects determinations, as summarized in Table 2.

**Table 3. Summary of Anticipated Effects on ESA-Listed Species from WWU Backyard Buoys Project**

Potential Routes of Effect	Anticipated Effect on ESA-Listed Species	Anticipated Effect on Critical Habitat
Direct Physical Effects from Placement of Spotter Buoy Anchors on Seafloor	No Effect	No Destruction or Adverse Modification
Effects from Turbidity from Disturbed Seafloor Sediments During Anchor Placement	No Effect	No Destruction or Adverse Modification
Entanglement with Spotter Mooring Lines	No Effect	No Destruction or Adverse Modification
Boat Collision	No Effect	No Destruction or Adverse Modification

A similar Backyard Buoys project consisting of deployment of 18 Spotter buoys conducted by AEWG was recently authorized under NWP 5 off the North Slope of Alaska (POA-2023-00217), and similar determinations were made by USACE. Additionally, similar determinations of effect on ESA-listed species and critical habitat from marine placement of scientific measurement devices were made by NMFS in its ESA Section 7 Consultation Programmatic Biological Opinion for Authorization of Minor In-Water Activities Throughout the Geographic Area of Jurisdiction of the U.S. Army Corps of Engineers Jacksonville District, including Florida and the U.S. Caribbean (NMFS 2017).

## 5.0 Permits

WWU will not conduct buoy deployment activities until all federal, state, and local authorizations are received. Table 4 presents permits and authorizations which will be requested.

**Table 4. List of Permits Requested**

Permit	Agency	Status
<b>Nationwide Permit 5 – Scientific Measurement Devices</b>	U.S. Army Corps of Engineers	Application Submitted
<b>Clean Water Act Section 401 Water Quality Certification</b>	State of Washington, Department of Ecology	Granted for NWP 5
<b>Coastal Zone Management Program Consistency Determination</b>	State of Washington, Department of Ecology	Issued for NWP 5
<b><i>Aquatic Use Authorization</i></b>	<i>State of Washington, Department of Natural Resources</i>	<i>Indicated as not required by Department of Natural Resources</i>
<b>Hydraulic Project Approval</b>	State of Washington, Department of Fish and Wildlife	Application Submitted
<b>Shoreline Exemption</b>	Skagit County	Application Submitted
<b>Private Aids to Navigation Approval</b>	U.S. Coast Guard	Application Submitted

## 6.0 Spill Prevention and Response

As the boat will be powered by an outboard motor, the deployment crew will ensure a spill kit, including absorbents, is available on the boat. All personnel will be briefed on the location of the spill kit and proper use in the case of an accidental fuel release. Any spill will be reported in accordance with federal, state, and local regulations.

## 7.0 References

NMFS. 2017. Endangered Species Act – Section 7 Consultation. Biological Opinion. Authorization of Minor In-Water Activities throughout the Geographic Area of Jurisdiction of the U.S. Army Corps of Engineers Jacksonville District, including Florida and the U.S. Caribbean. United States Army Corps of Engineers, Jacksonville District. Available online at <http://cdm16021.contentdm.oclc.org/utls/getfile/collection/p16021coll3/id/577>. Accessed on 3/23/2023.

Washington Department of Natural Resources. 2023. Puget Sound Seagrass Monitoring. Accessed online at: <https://wadnr.maps.arcgis.com/apps/webappviewer/index.html?id=83b8389234454abc8725827b49272a31>.



# Backyard Buoys- American Samoa

## Project Description

**December 2023**

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## 1.0 Introduction

The National Park Service (NPS), in consultation with local fishers and the Pacific Islands Ocean Observing System (PacIOOS), proposes to deploy 2 Spotter wave buoys near harbors on the island of Ta'u, American Samoa (Figures 1 through 3). Each buoy is housed with integrated solar power, satellite data connectivity, sea surface temperature, and a wave sensor to provide critical wave data for the communities on the island of Ta'u and to researchers and resource management agencies. Near real time data will be served on existing regional data visualization systems and customized applications developed during the Backyard Buoys Program based on user interviews and iterative feedback. With accessible data tools, these data will serve community needs for decisions on scales from daily (e.g., safety for maritime operations and coastal hazards) to longer planning horizons (e.g., resilience for climate change and ecosystem function).

## 2.0 Description of Activities

NPS plans to deploy 2 Sofar Spotter wave buoys (Spotters) in marine waters near Faleasao Harbor and Ta'u Harbor to support indigenous communities on the island of Ta'u by collecting real-time wave data (Figure 1) in Year 1 of the study. Should additional locations be included in Year 2 of the study, NPS will ensure proper approvals are received and/or amended. NPS worked with local fishers in each community to identify initial buoy locations as presented in Table 1. Figure 1 displays each of the buoy areas proposed for Year 1 as well as the anticipated initial buoy locations.

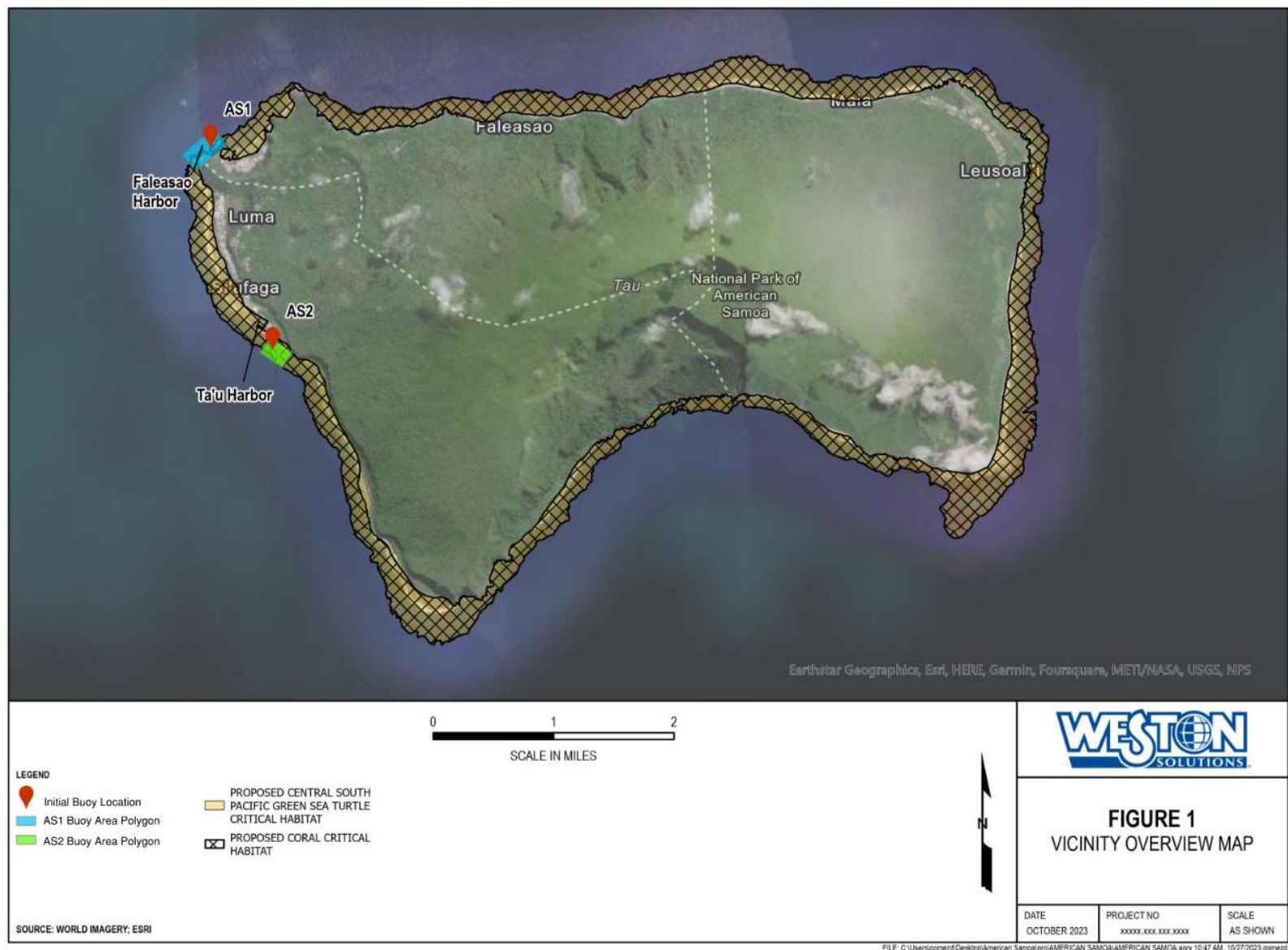
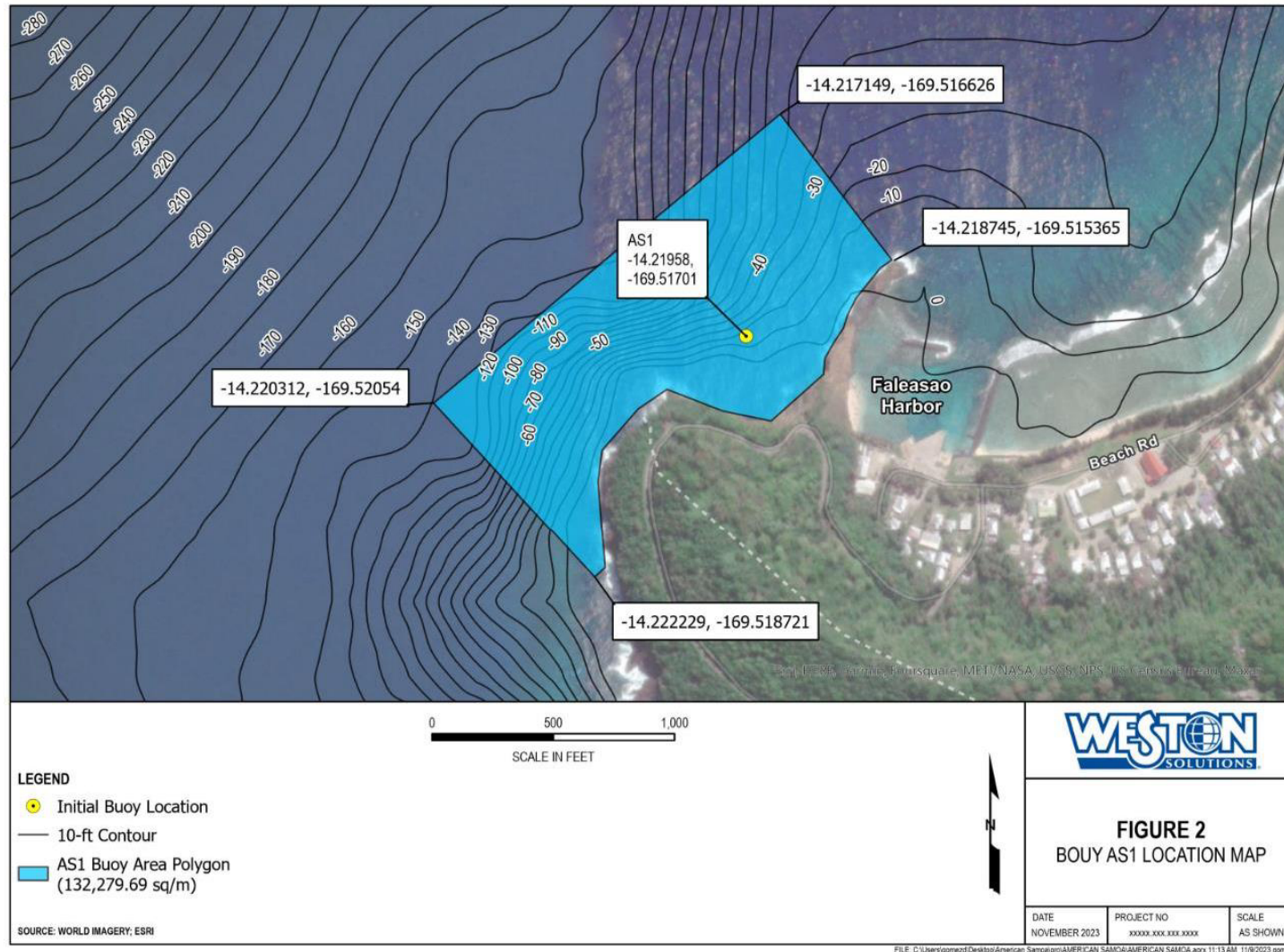


Figure 1. Ta’u Buoy Area Overview Map



**Figure 2. AS-1 Buoy Area and Initial Buoy Location**



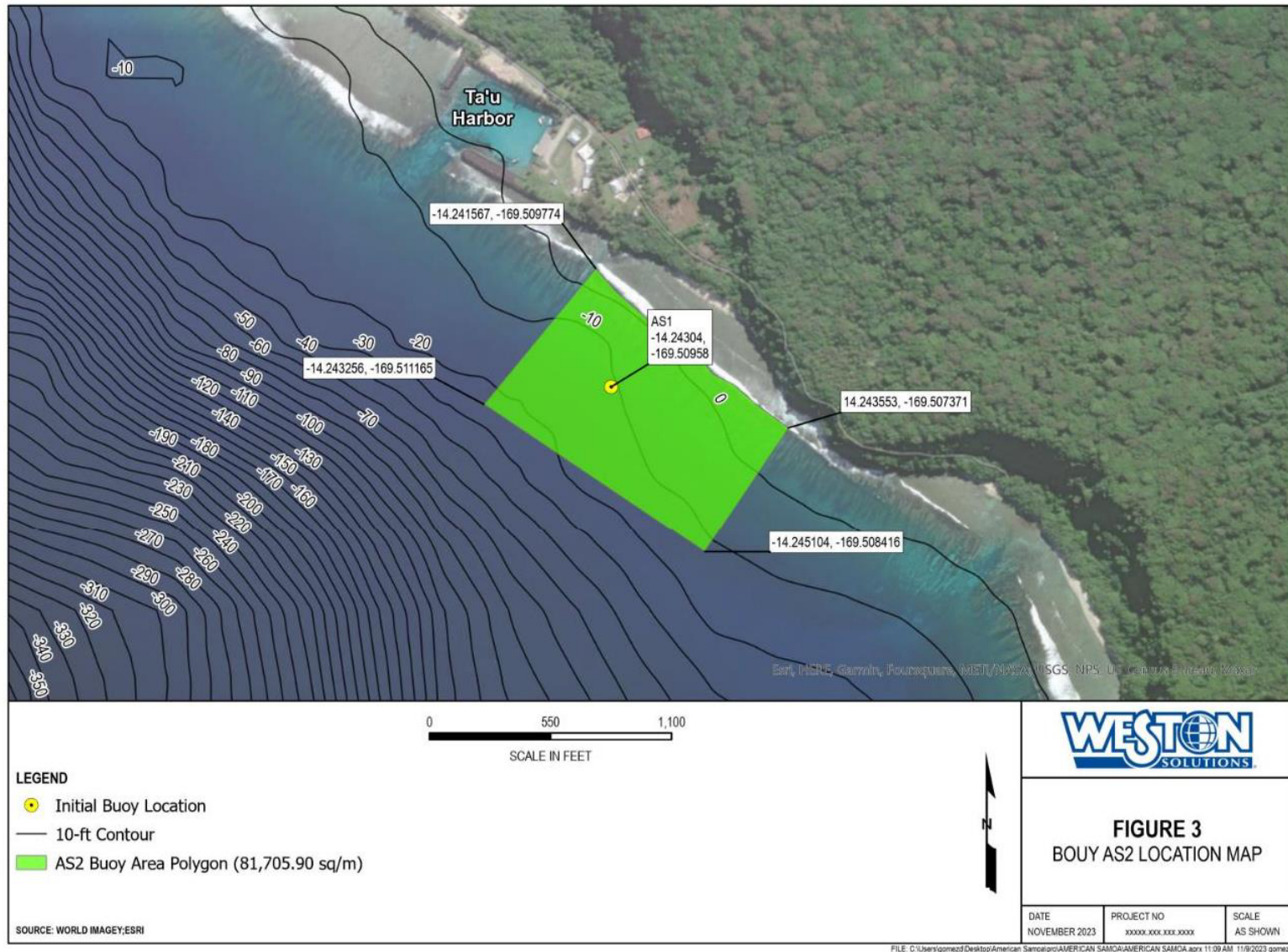


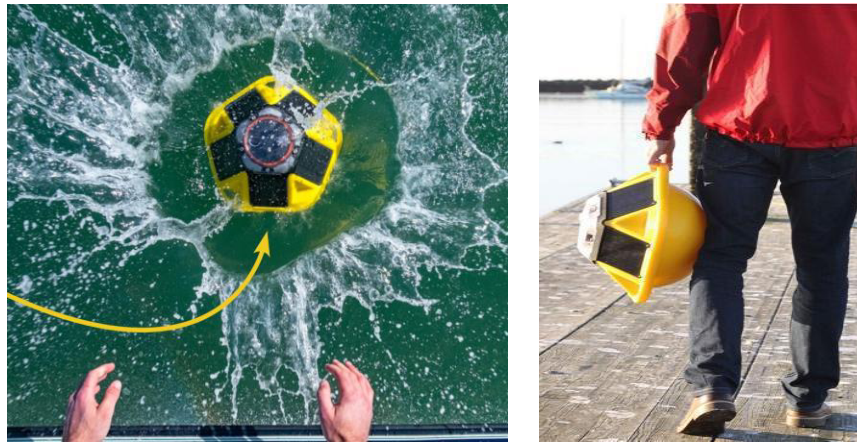
Figure 3. AS-2 Buoy Area and Initial Buoy Location

**Table 1. Initial Backyard Buoy Locations<sup>1</sup>**

Buoy Number	Location Description	Latitude	Longitude
AS-1	0.04 mi. (0.07 km) offshore, northwest of Faleasao Harbor	-14.21958	-169.51701
AS-2	0.05 mi. (0.08 km) offshore, southwest of Ta'u Harbor	-14.24304	-169.50958

Notes: mi.=mile(s); km=kilometer(s)

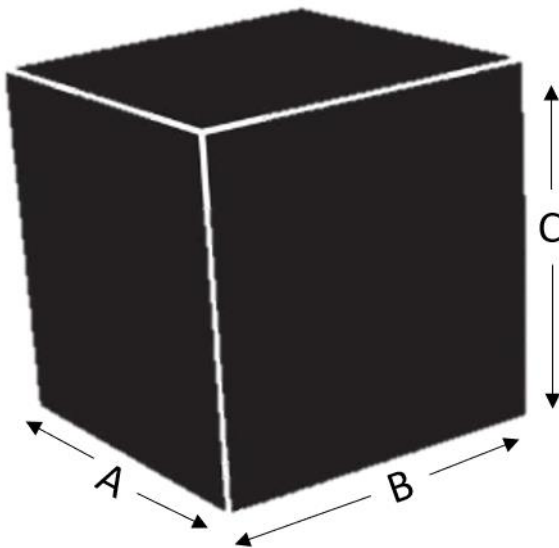
Spotters are compact and lightweight instruments consisting of a waterproof hull, solar panel array, and electronics package (Photo 1). Photo 2 shows dimensions of the Spotter. Each Spotter will be anchored on the seafloor using a 300-400 lb (136-181 kg) anchor made from a low-profile design of metal (iron or steel) pieces (Photo 3). A conservative impacted seafloor surface area for each anchor is 9 square feet (sq ft.) (0.0002 acres [ac]).



**Photo 1. Spotter Buoy Photos**



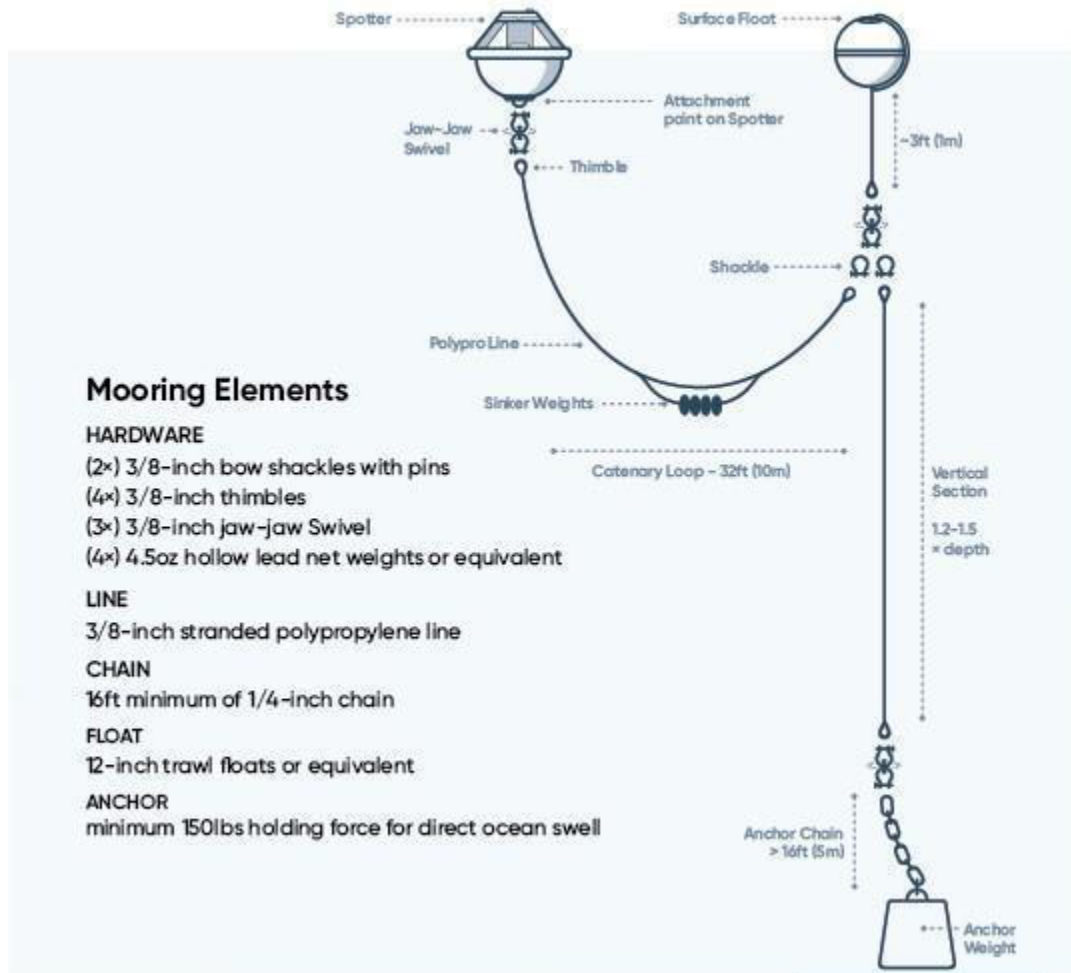
**Photo 2. Spotter Buoy Dimensions**



**A=3 feet B=3 feet C= 3 feet**

**Photo 3. Estimated Dimensions of Anchor Weight**

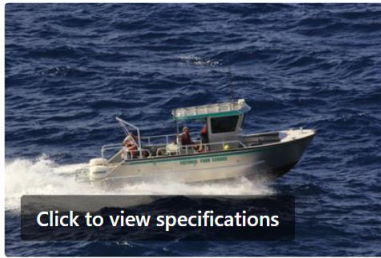
The Spotters will be anchored to the seafloor in water depths approximately 66 (ft.) (20 meters [m]) using a mooring system (Figure 4). The mooring system is the underwater extension of the Spotter platform.



**Figure 4. Typical Mooring Element Schematic**

Initial site surveys by NPS staff will examine the benthic structure and composition in 49 to 66 ft. (15-20 m) of water to select an ideal area for the anchor to minimize impact on benthic assemblages or cultural resources. Sandy/coral rubble substrate absent of live coral and human historical artifacts is a preferred habitat. Snorkelers will release a surface marker buoy and the point will be marked by GPS on the surface, then the mooring anchor and buoy assembly will be lowered from the boat. Once the anchor is down, divers will examine the anchor positioning and, if necessary, adjust using lift bags. The mooring anchor will consist of a low-profile design of metal pieces (iron or steel), with a potential weight of 300 to 400 lbs (136 to 181 kg). The maximum target depth for each buoy is 66 ft. (20 m), though a shallower deployment (~49 ft. [15 m]) may be considered depending on weather conditions and substrate.

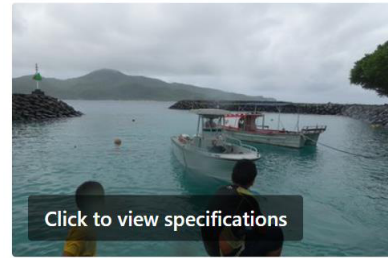
The boats used for deployment will be typical monohull or catamaran boats with outboard motors (150-300 HP), approximately 18-33 ft. (5.5-10.0 m) in length (Photo 4). The *M/V Moana* is the boat most likely to be used for deployment, accompanied by either the *R/V Malie* or the *R/V Poge* (Photo 4). If these particular boats become unavailable, similar boat(s) will be used. Photo 4 shows typical boats, similar to those which will be used for proposed buoy deployment and retrieval.



MV Moana- 33 ft Lee Shore SwiftCat Series



RV Malie-24 ft Zodiac Hurricane Series



RV Poge- 24 ft Boston Whaler Justice Series

#### Photo 4. Typical Buoy Deployment Boats

### 3.0 Mitigation Measures/Wildlife Interaction Procedures

For the purposes of compliance with the ESA, we anticipate the project will have no effect on ESA-listed species and result in no destruction or adverse modification of designated critical/essential habitat, as described in Section 4.2. If ESA Section 7 consultation is required, the Backyard Buoys project in American Samoa will likely fall under the range of activities covered by the consultation for Standard Local Operating Procedures in the Central and Western Pacific Region (Pac-SLOPES; NMFS 2022). The following mitigation measures include relevant measures from the Pac-SLOPES Biological Evaluation and other similar projects and are proposed to be implemented, as appropriate, during the American Samoa Backyard Buoys Project:

- NPS will conduct a survey of the seafloor using divers to verify that deployment locations minimize impacts to ESA-listed species, including coral, essential fish habitat, critical sea turtle habitat, and other significant natural resources and cultural resources.
- Anchors will be lowered to the seafloor in a controlled manner.
- Spotters will not be placed such that they block access of any species to an area (e.g. they will not prevent movement in or out of a river or channel).
- Spotters will be deployed year-round and not removed unless damaged or requiring maintenance.
- Spotters, moorings, and anchor setups will be inspected and any required maintenance performed at least twice a year, when they are retrieved for relocation, and following storm events that may have moved or dislodged the Spotter to ensure that equipment and anchors are still in place and have not moved.
- All personnel associated with Spotter deployment will be instructed about the potential presence of species protected under the ESA and the MMPA.
- NPS will follow all regional and general conditions associated with Nationwide Permit (NWP) 5.
- All debris, ropes and garbage will be secured and/or disposed of properly to prevent unintentional releases to the environment for protection of marine life.
- On-site personnel will observe water-related activities for the presence of protected species to minimize interaction of gear and protected species.
- Constant vigilance for protected species will be kept during deployment operations and operations will be suspended if mobile protected species (e.g., sea turtles) enter in the area..
- Any collision with and/or injury to a protected species during Spotter deployment, maintenance, or retrieval operations will be reported immediately, or as soon as practical, to the following:
  - American Samoa Field Office: (684) 633-7629

- Any observed stranded, injured, or dead marine mammals (not resulting from proposed project activities) observed during Spotter deployment, maintenance, or retrieval operations shall be reported immediately to the Pacific Islands Marine Mammal Response Network at the American Samoa Department of Marine and Wildlife Resources at (684) 633-4456 or (684) 252-0445. NPS shall assign a competent observer to survey/watch for ESA-listed species during all marine activities.
- No personnel shall attempt to feed, touch, ride, or otherwise intentionally interact with any protected species.
- The project footprint will be limited to the minimum necessary to complete the project.
- Boat operators must avoid potential interactions with protected species and operate in accordance with the following protective measures:
  - Operation of buoy deployment boats shall cease immediately if a listed species is observed within a 50-ft. (15.24-m) radius of the boat and shall not resume until the species has departed the area of its own volition.
  - If the detection of protected species is not possible during certain weather conditions (e.g., fog, rain, wind), then in-water operations will cease until weather conditions improve and detection is again feasible.
  - Buoy deployment boats will avoid approaching within 328 ft. (100 m) of whales and within 164 ft. (50 m) of sea turtles and other marine mammals.
  - When these animals are sighted while the boat is underway, the boat will attempt to remain parallel to the animal's course.
  - Buoy deployment boats will avoid multiple or abrupt changes in direction or speed.
  - Buoy deployment boats will reduce speed to 11.5 mph (10 kts) or less when in the proximity of marine mammals, and to 6 mph (5 kts) or less when in areas of known or suspected turtle activity when safe to do so.
  - If approached by a marine mammal or turtle, put the engine in neutral and allow the animal to pass.
  - Buoy deployment boat(s) will not encircle or trap marine mammals or sea turtles between multiple boats or between boats and the shore.
  - In-water mooring setups will include as little line as possible in the water column in order to measure wave movement and collect quality data, accounting for tidal fluctuations. To the extent practical in order to collect quality data, excess line in the water column will be kept to a minimum to minimize the risk for marine mammal entanglement.
  - Mooring lines will consist of a single line. No other material capable of entangling marine life will be attached to the mooring line.
  - Mooring systems will use a mid-line float when appropriate to eliminate scouring of corals or entanglement of the line on the substrate.
  - Mooring systems will use a mid-line float when appropriate to eliminate scouring of corals or entanglement of the line on the substrate.
  - Any sites identified by the Advisory Council on Historic Preservation during Section 106 consultation, or identified while conducting project-related activities, will be avoided, and a buffer of at least 500 ft. (152.4 m) will be implemented to mitigate any potential impacts on cultural resources.

## 4.0 Assessment of Potential Effects on Endangered Species Act-Listed Species in Buoy Area Polygons

Endangered Species Act (ESA) listed species occur in the American Samoa Backyard Buoys Project Area. Table 2 presents ESA-listed species and associated Critical Habitat which occur within the American Samoa buoy area polygons. Sperm, blue, fin, and sei whales are listed under the ESA and known to occur near in offshore waters of American Samoa; however, given the nearshore environment and shallow waters in the proposed buoy area polygons, these whales are not expected to occur in the project area. Any effects on these whales would be discountable. The chambered nautilus and oceanic white tip shark are also listed under the ESA but are not expected to occur in nearshore and shallow waters in the proposed buoy area polygons.

**Table 2. ESA-Listed Species and Critical Habitat Occurring within Proposed Buoy Area Polygons**

Species	ESA Status	Critical Habitat Present in Project Area? (Yes/No)	Occurrence in the Buoy Areas	Expected Level of Effect on Species (D = Discountable; I = Insignificant) <sup>a</sup>				
				Human Presence	Placement of Anchor on Seafloor	Turbidity from Disturbed Seafloor Sediments	Entanglement with Mooring Line	Boat Collision
Sperm whale	Endangered	N/A	No	D	D	D	D	D
Blue whale	Endangered	N/A	No	D	D	D	D	D
Fin whale	Endangered	N/A	No	D	D	D	D	D
Sei whale	Endangered	N/A	No	D	D	D	D	D
Humpback whale ( <i>Megaptera novaeangliae</i> ) <sup>b</sup>	Endangered	No	Yes <sup>c</sup>	D	D	D	D	D
Central South Pacific green turtle ( <i>Chelonia mydas</i> )	Endangered	Yes - proposed	Yes <sup>d</sup>	I	I	I	I	I
Hawksbill turtle ( <i>Eretmochelys imbricata</i> )	Endangered	No	Yes <sup>e</sup>	I	I	I	I	I
Leatherback turtle ( <i>Dermochelys coriacea</i> )	Endangered	No	Yes <sup>f</sup>	I	I	I	I	I
South Pacific loggerhead turtle ( <i>Caretta caretta</i> )	Endangered	N/A	Yes <sup>g</sup>	I	I	I	I	I
Olive Ridley turtle ( <i>Lepidochelys olivacea</i> )	Threatened	N/A	Yes <sup>g</sup>	I	I	I	I	I
Indo-West Pacific Scalloped Hammerhead Shark ( <i>Sphyrna lewini</i> )	Threatened	N/A	Yes <sup>h</sup>	I	I	I	D	I

Species	ESA Status	Critical Habitat Present in Project Area? (Yes/No)	Occurrence in the Buoy Areas	Expected Level of Effect on Species (D = Discountable; I = Insignificant) <sup>a</sup>				
				Human Presence	Placement of Anchor on Seafloor	Turbidity from Disturbed Seafloor Sediments	Entanglement with Mooring Line	Boat Collision
Oceanic whitetip shark ( <i>Carcharhinus longimanus</i> )	Threatened	N/A	No <sup>i</sup>	D	D	D	D	D
Giant manta ray ( <i>Manta birostris</i> )	Threatened	N/A	Yes <sup>j</sup>	I	I	I	D	I
Coral ( <i>Acropora globiceps</i> )	Threatened	Yes - proposed	Yes <sup>k</sup>	I	I	I	I	I
Coral ( <i>Acropora jacquelineae</i> )	Threatened	Yes - proposed	Yes <sup>k</sup>	I	I	I	I	I
Coral ( <i>Acropora retusa</i> )	Threatened	Yes - proposed	Yes <sup>k</sup>	I	I	I	I	I
Coral ( <i>Acropora speciosa</i> )	Threatened	Yes - proposed	Yes <sup>k</sup>	I	I	I	I	I
Coral ( <i>Euphyllia paradivisa</i> )	Threatened	Yes - proposed	Yes <sup>k</sup>	I	I	I	I	I
Coral ( <i>Isopora crateriformis</i> )	Threatened	Yes - proposed	Yes <sup>k</sup>	I	I	I	I	I
Chambered nautilus ( <i>Nautilus pompilius</i> )	Threatened	N/A	No <sup>l</sup>	D	D	D	D	D
Giant clam ( <i>Tridacna derasa</i> )	Candidate	N/A	Yes <sup>m</sup>	I	I	I	D	I
Giant clam ( <i>Tridacna squamosa</i> )	Candidate	N/A	Yes <sup>m</sup>	I	I	I	D	I
Giant clam ( <i>Tridacna gigas</i> )	Candidate	N/A	Yes <sup>m</sup>	I	I	I	D	I
Giant clam ( <i>Hippopus hippopus</i> )	Candidate	N/A	Yes <sup>m</sup>	I	I	I	D	I

<sup>a</sup>Discountable effects are those which are extremely unlikely to occur. Insignificant effects relate to the size of the impact and would not reach the scale where take would occur. For insignificant effects, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects.

<sup>b</sup>Sperm, blue, fin, and sei whales are also known to occur near in offshore waters of American Samoa; however, given the nearshore environment and shallow waters in the proposed buoy area polygons, these whales are not expected to occur in the project area.

<sup>c</sup>Craig et al. 2005; NOAA, 2009; Garrigue et al. 2020.

<sup>d</sup>NMFS and FWS, 1998a; Maison et al. 2010

<sup>e</sup>Kamel and Mrosovsky, 2006; Craig pers. comm. 2007; NOAA Grant Report# NA08NMF4540506 and NA09NMF4540267; Tagarino 2015; Joa 2023.

<sup>f</sup>NMFS and FWS, 1998b; Tuato'o-Bartley et al. 1993; Utzurum 2002; Joa 2023

<sup>g</sup>Tuato'o-Bartley et al. 1993; Utzurum 2002; Joa 2023.

<sup>h</sup>Miller et al. 2014



<sup>1</sup>Backus et al. 1956; Strasburg 1958; Compagno 1984; Nakano et al. 1997; Bonfil et al. 2008; Clarke et al. 2012; Hall and Roman 2013; Tolotti et al. 2013; Young et al. 2017; Joa 2023.

<sup>2</sup>Miller et al. 2017

<sup>3</sup>NMFS 2019; 85 FR 76262

<sup>4</sup>Dunstan et al. 2011; Miller 2018.

<sup>5</sup>NOAA 2023

## 4.1 Routes of Effect

ESA-listed species have the potential to be affected by a number of “routes of effect.” These routes of effect, and NPS’s assessment of whether and how they affect ESA-listed species and/or critical habitat, are described in the sections below. In particular, we assessed the potential for the following routes of effect to have an effect on ESA-listed species and critical habitat occurring in the buoy area polygons:

- Direct physical effects from placement of buoy anchors on seafloor;
- Effects from turbidity from disturbed seafloor sediments during anchor placement;
- Entanglement with Spotter mooring line; and
- Boat collision.

The Spotters do not emit sound into the marine environment. Given Spotter size and design, and by implementing the proposed mitigation measures, the Spotters do not create obstructions to animal movement, introduce lighting, encourage aggregations of predators, or disrupt wave patterns. They are too small to attract fish and larger predators that would increase predation, and they are too small to disrupt wave patterns. Lighting is not incorporated into the buoy design. Assessment of potential effects from the project were based on the following NMFS-provided definitions:

**Discountable:** Discountable effects are extremely unlikely to occur.

**Insignificant:** Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects.

**Beneficial:** Beneficial effects have contemporaneous positive effects without any adverse effects on the species or habitat.

### 4.1.1 Effects from Human Presence

Divers could encounter ESA-listed species during pre-deployment surveys, potentially disturbing them temporarily. However, divers will be trained in how to respond to the presence of protected species when they are in close proximity underwater.

Effects on whales, nautilus, and oceanic white-tipped sharks from human presence would be discountable due to the species’ wide distribution and low abundance in the project area. Furthermore, the buoys will be placed in nearshore shallow water (approximately 66 ft. (20 m) in depth), and these species would likely occur in deeper water further offshore.

SCUBA operations could potentially occur in areas where protected sea turtles, sharks, clams, and fish are resting, or traveling. However, dive teams will maintain situational awareness while conducting in-water work to identify listed species. Divers will not enter an area when an ESA-listed marine mammal, turtle, or fish is already present. Further, if an ESA-listed species move into an area where a diver is already working, the diver(s) would stay still until the animal leaves on its own, considering dive safety requirements. Thus, if an interaction occurs, the effects on its behavior would be insignificant.

### **4.1.2 Direct Physical Effects from Placement of Buoy Anchor on Seafloor**

Placement of the mooring system could contact individuals of ESA-listed or candidate species. Each anchor weight setup will create a conservative footprint of approximately 9 sq ft. (0.00021 ac) on the seafloor. Effects on whales, nautilus, and oceanic white-tipped sharks from placement of the buoy anchors would be discountable due to the species' wide distribution and low abundance in the project area. Furthermore, the buoys will be placed in nearshore shallow water (approximately 66 ft. (20 m) in depth), and these species would likely occur in deeper water further offshore. Personnel will observe for protected species prior to buoy deployment.

Potential for direct physical harm to protected species (e.g. protected corals and giant clams) requires they be present in this disturbance footprint. There is also a potential that anchor setup placement could smother or crush non-protected benthic organisms, some of which are prey for protected species; however, as described previously, NPS will perform a survey prior to deployment to choose locations with no direct impact on live corals or cultural resources.

Two Spotters are proposed to be deployed, and each one may be moved up to 10 times each year to determine optimal locations for both wave climate information and preservation of the environment. If all buoys were moved 10 times, the most conservative total seafloor impact area each year would be approximately 180 sq ft. (0.004 ac).

Fish have the ability to flee areas where disturbance is occurring; and therefore, direct impacts on fish are unlikely and expected to be insignificant. Slower-moving invertebrates may be present on the substrate and unable to move quickly enough to avoid injury or crushing from the anchor weight; however the likelihood is low that a protected clam or coral would be present within the small anchor footprint during deployment, given divers will assist in anchor placement. In the unlikely case a benthic individual were injured or killed during mooring placement, no population level effects would occur given the relatively small area of impact.

Anchors will not be placed on areas with live coral coverage. Any direct effects from placement of the anchor on the seafloor would be temporary, as the area would likely be recolonized by benthic animals within a short timeframe upon removal of the anchor setup. Impacts on benthic foraging habitat would also be limited to the footprint of the anchor setup. Injuring or killing benthic prey in this relatively small area would not adversely affect available critical habitat for ESA-listed species as the impacted area would be a small fraction of area of critical habitat available to ESA-listed species. Physical placement of the anchor setup on the seafloor is expected to have insignificant effects on protected corals, sharks, fish, clams, nautilus and sea turtles.

Based on the following, direct physical effects from placement of buoy anchors on the seafloor are anticipated to be discountable (for whales, nautilus, and oceanic white-tipped sharks) or insignificant (for protected corals, sharks, fish, clams, and sea turtles) and no destruction or adverse modification of critical habitat will result from the proposed activities:

1. NPS will conduct a survey of the seafloor using divers to verify that deployment locations minimize impacts to ESA-listed species, including coral, essential fish habitat, critical sea turtle habitat, and other significant natural resources and cultural resources.
2. Anchors will be lowered to the seafloor in a controlled manner.

NPS is not aware of any identified submerged cultural resources within the proposed buoy area polygons. Any sites identified by the Advisory Council on Historic Preservation during Section 106 consultation, or identified while conducting project-related activities, will be avoided, and a buffer of at least 500 ft. (152.4 m) will be implemented to mitigate any potential impacts on cultural resources.

### **4.1.3 Effects from Turbidity from Disturbed Seafloor Sediments During Anchor Placement**

A small and temporary increase in turbidity would likely result from placement of the anchor weight on the seafloor. This slight increase is expected to return to ambient levels within a short time frame after anchor placement. The rise in turbidity is expected to be no greater than many natural processes which might cause increased turbidity (e.g. marine wildlife foraging, weather). No sediments will be removed during anchor placement.

Effects on whales, nautilus, and oceanic white-tipped sharks from turbidity resulting from disturbed seafloor sediments during anchor placement would be discountable due to the species' wide distribution and low abundance in the project area. Furthermore, the buoys will be placed in nearshore shallow water (approximately 66 ft. (20 m) in depth), and these species would likely occur in deeper water further offshore. Personnel will observe for protected species prior to buoy deployment.

Figure 1 shows general coral extents in and near the proposed buoy area polygons. A seafloor survey conducted prior to buoy deployment will identify buoy locations with minimal impacts on benthic assemblages, including coral, and cultural resources. Impacts on protected species would be localized to the small immediate area and temporary. No effects on local populations are anticipated.

Suspended sediments resulting from substrate disturbance during anchor placement are likely to settle locally, outside of mapped eelgrass, or be dispersed and re-settle at densities that would not smother eelgrass communities.

Based on the following, effects are expected to be discountable (for ESA-listed whales, nautilus, and oceanic white-tipped sharks) or insignificant for ESA-listed corals, sharks, fish, clams, and sea turtles:

1. A small quantity of Spotter buoys (up to 2 total) will be deployed in the water column at any given time.
2. Buoy anchors are relatively small with limited amounts of in-water disturbance.
3. Increase in turbidity is expected to be temporary and no greater than many natural processes.
4. NPS will conduct a survey of the seafloor using divers to verify that deployment locations minimize impacts to ESA-listed species, including coral, essential fish habitat, critical sea turtle habitat, and other significant natural resources and cultural resources.
5. Anchors will be lowered to the seafloor in a controlled manner.

No destruction or adverse modification of critical habitat or EFH from placement of buoy anchors on the seafloor is anticipated.

### **4.1.4 Entanglement with Spotter Mooring Line**

ESA-listed whales and sea turtles can become entangled by encountering in-water lines, such as Spotter mooring lines. The risk to whales and sea turtles depends on the number of in-water loops created by lines attached to surface floats and on the extent of excess line in the water column. The nature of wave buoy data collection necessitates some excess line in order for the buoy to rise and fall with the wave action. Surface floats are also necessary in order to allow for proper buoy movement for data collection. Depending on typical wave conditions for a particular location, more surface floats may be needed in order to collect quality data and limit the risk of the buoy being pulled underwater or damaged. Proposed moorings will be installed in a manner to minimize the risk of entanglement (i.e. as few looping lines and as little excess line in the water column as practical in order to collect quality wave data). The small quantity of Spotter buoys

in the water at any given time (up to 3 total during the first year) further limits the risk of whale or sea turtle entanglement.

Effects on whales, nautilus, and white-tipped sharks from entanglement with mooring lines would be discountable due to the species' wide distribution and low abundance in the project area. Furthermore, the buoys will be placed in nearshore shallow water (approximately 66 ft. [20 m] in depth), and these species would likely occur in deeper water further offshore. Personnel will observe for protected species prior to buoy deployment. Effects on other protected sharks, fish, and clams from entanglement with mooring line is also discountable given the nature of the species and unlikelihood that they would have the ability to become entangled with the line.

Based on the following, and similar to determinations made during ESA Section 7 consultation for Pac-SLOPES (NMFS 2022), effects from entanglement with Spotter mooring lines on ESA-listed corals, sharks, fish, clams, and sea turtles are anticipated to be insignificant, and no destruction or adverse modification of critical habitat will result from the proposed activities:

1. A small quantity of Spotter buoys (up to 3 total) will be deployed in the water column at any given time.
2. Mooring systems will employ the minimum line length necessary to account for expected fluctuations in water depth due to tides and wave action.
3. Mooring systems have been designed to keep the line as tight as possible to eliminate the potential for loops to form.
4. Mooring lines will consist of a single line. No other material capable of entangling marine life will be attached to the mooring line.
5. Mooring systems will use a mid-line float when appropriate to eliminate scouring of corals or entanglement of the line on the substrate.
6. Spotters, moorings, and anchor setups will be inspected and any required maintenance performed at least twice a year, when they are retrieved for relocation, and following storm events that may have moved or dislodged the Spotter to ensure that equipment and anchors are still in place and have not moved.
7. When possible and safe to do so, spotters and mooring systems will be completely removed at the end of the project.

#### **4.1.5 Boat Collision**

Increased boat traffic in the marine environment could increase the potential for boat collisions with ESA-listed species. Proposed Spotter buoy deployment will not result in more than an incremental increase in vessel traffic in nearshore waters within the buoy area polygons, and as such it is extremely unlikely that the project will increase the incidence of boat collisions with ESA-listed species. Boats proposed for this project are the same boats transiting through the area for fishing activities and transport among islands. They will be adding an incrementally small number of trips in the same region with the same boats. Vessel speeds will be slow since the buoy area polygons are nearshore and in shallow water.

Effects on whales, nautilus, and white-tipped sharks from collisions with project boats would be discountable due to the species' wide distribution and low abundance in the project area. Furthermore, the buoys will be placed in nearshore shallow water (approximately 66 ft. (20 m) in depth), and these species would likely occur in deeper water further offshore. Personnel will observe for protected species prior to buoy deployment.

Based on the following and similar to the determination made during ESA Section 7 consultation for Pac-SLOPES (NMFS 2022), effects on protected corals, sharks, fish, clams, and sea turtles from collisions with project buoy deployment boats during buoy deployment, maintenance, and retrieval are anticipated to be insignificant, and no destruction or adverse modification of critical habitat will result from the proposed activities:

1. Relatively low number of boat trips are expected to be conducted annually as part of the American Samoa Backyard Buoys project.
2. Boats will be operated in accordance with the mitigation measures listed in Section 3.0 (e.g. reduced speed when protected species are present, ceasing buoy deployment and retrieval operations when weather conditions prevent detection of protected species, etc.)

## 4.2 Summary of Effects

Based on the assessment presented in Section 4.1, *Routes of Effect*, the nature of the proposed project and the proposed mitigation measures, NPS concluded effects determinations, as summarized in Table 3.

**Table 3. Summary of Anticipated Effects on ESA-Listed Species from American Samoa Backyard Buoys Project**

Potential Routes of Effect	Anticipated Effect on ESA-Listed Species	Anticipated Effect on Critical Habitat
Direct Physical Effects from Placement of Spotter Buoy Anchors on Seafloor	May Affect but Not Likely to Adversely Affect	No Destruction or Adverse Modification
Effects from Turbidity from Disturbed Seafloor Sediments During Anchor Placement	May Affect but Not Likely to Adversely Affect	No Destruction or Adverse Modification
Entanglement with Spotter Mooring Lines	May Affect but Not Likely to Adversely Affect	No Destruction or Adverse Modification
Boat Collision	May Affect but Not Likely to Adversely Affect	No Destruction or Adverse Modification

A similar Backyard Buoys project consisting of deployment of 18 Spotter buoys conducted by AEWG was recently authorized under NWP 5 off the North Slope of Alaska (POA-2023-00217). Additionally, similar determinations for ESA-listed species and critical habitat were reached during ESA Section 7 consultation for Pac-SLOPES during issuance of the current NWPs (NMFS 2022).

## 5.0 Permits

NPS will not conduct buoy deployment activities until all federal, state, and local authorizations are received. Table 4 presents permits and authorizations which will be requested.

**Table 4. List of Permits Requested**

Permit	Agency	Status
Nationwide Permit 5 – Scientific Measurement Devices	U.S. Army Corps of Engineers	Application Submitted
Scientific Study and Collection Permit	Department of Marine and Wildlife Resources, American Samoa Government	Application Approved
Private Aids to Navigation Approval	U.S. Coast Guard	Application Pending

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**ALASKA**ESKIMO  
WHALING COMMISSION

# Backyard Buoy

## Project Description

**April 2024**  
**Revision 2**

*Prepared by:*



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## 1.0 Introduction

As part of the Backyard Buoys Program, the Alaska Eskimo Whaling Commission (AEWC) proposes to deploy up to 29 Spotter wave buoys (Spotters) near seven Indigenous communities offshore of the Beaufort, Chukchi, and Bering Sea coasts in Alaska. Each buoy is housed with integrated solar power, satellite data connectivity, sea surface temperature, and a wave sensor to provide critical wave data for the communities of Gambell, Savoonga, Little Diomed, Point Hope, Wainwright, Utqiagvik, and Kaktovik and to researchers and resource management agencies. Near real time data will be served on existing regional data visualization systems and customized applications developed during the Backyard Buoys Program based on user interviews and iterative feedback. With accessible data tools, these data will serve community needs for decisions on scales from daily (e.g., safety for maritime operations and coastal hazards) to longer planning horizons (e.g., resilience for climate change and ecosystem function). Wave buoy data from Year 1 is currently available on the Alaska Ocean Observing System (AOOS) data portal (<https://portal.aos.org/#metadata/2346/affiliate>).

Thirteen Spotters were deployed in 2023, Year 1 of the Backyard Buoys program, by AEW offshore of the communities of Point Hope, Wainwright, and Utqiagvik. Section 6 presents permits obtained during Year 1. Buoys were not deployed offshore of Little Diomed or Kaktovik in Year 1, as originally planned. During 2024, Year 2 of the Program, AEW proposes to deploy Spotters offshore of the original five communities with additional buoys near Wainwright and Utqiagvik and also expand its scope to include Spotter deployments offshore of two additional communities: Gambell and Savoonga.

## 2.0 Description of Activities

AEWC plans to deploy up to 29 Spotters in marine waters near the communities of Gambell, Savoonga, Little Diomed, Point Hope, Wainwright, Utqiagvik, and Kaktovik to collect real-time wave data (Figure 1) in Year 2 of the study. Additional communities may be included in Year 3 of the study. A village facilitator from each community will be hired by AEW to deploy, maintain, and retrieve Spotters. AEW worked with each community to identify initial buoy locations as presented in Table 1. Figures 2 through 8 display the buoy areas for each community for Year 2 as well as anticipated initial buoy locations.

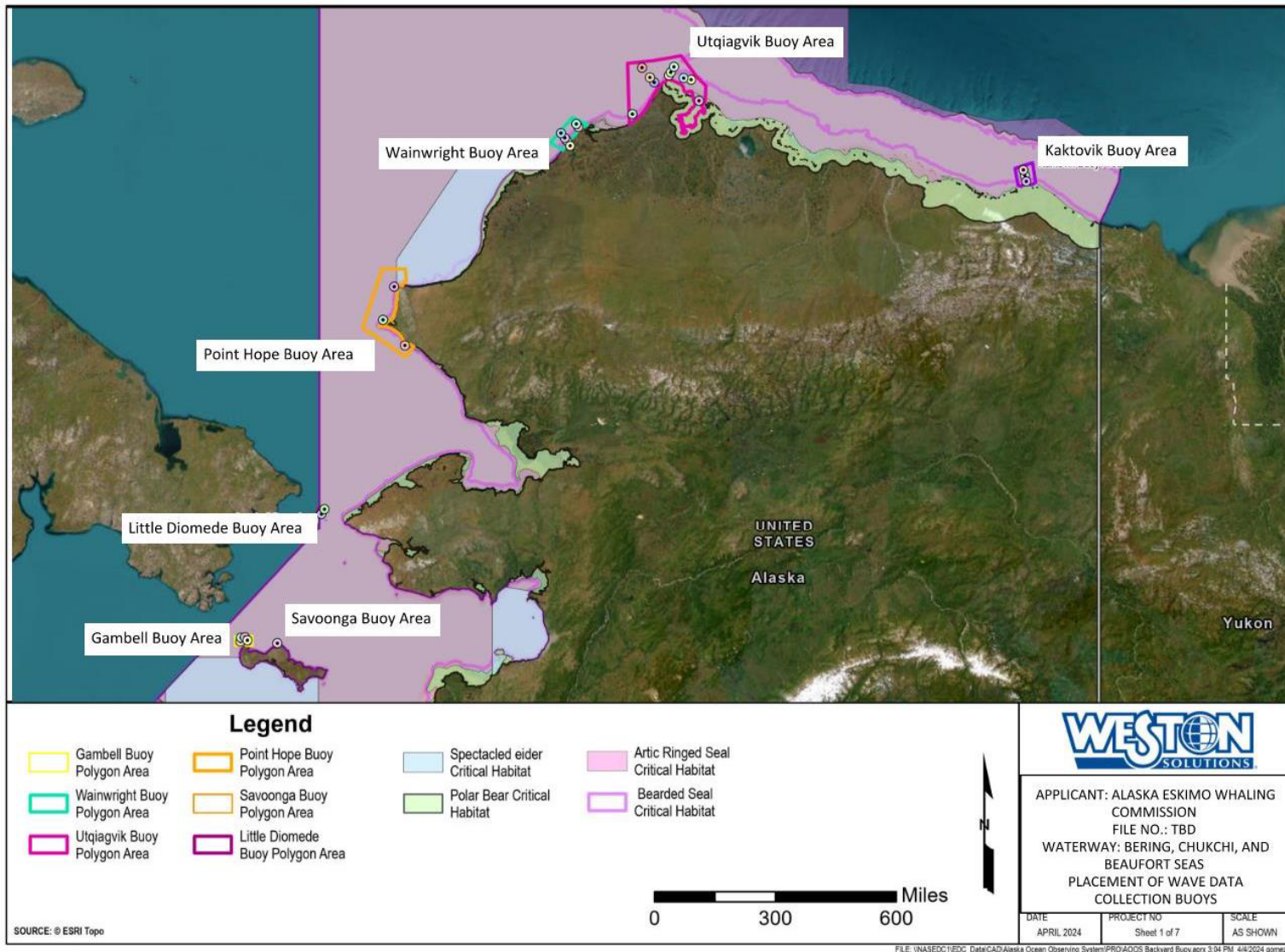
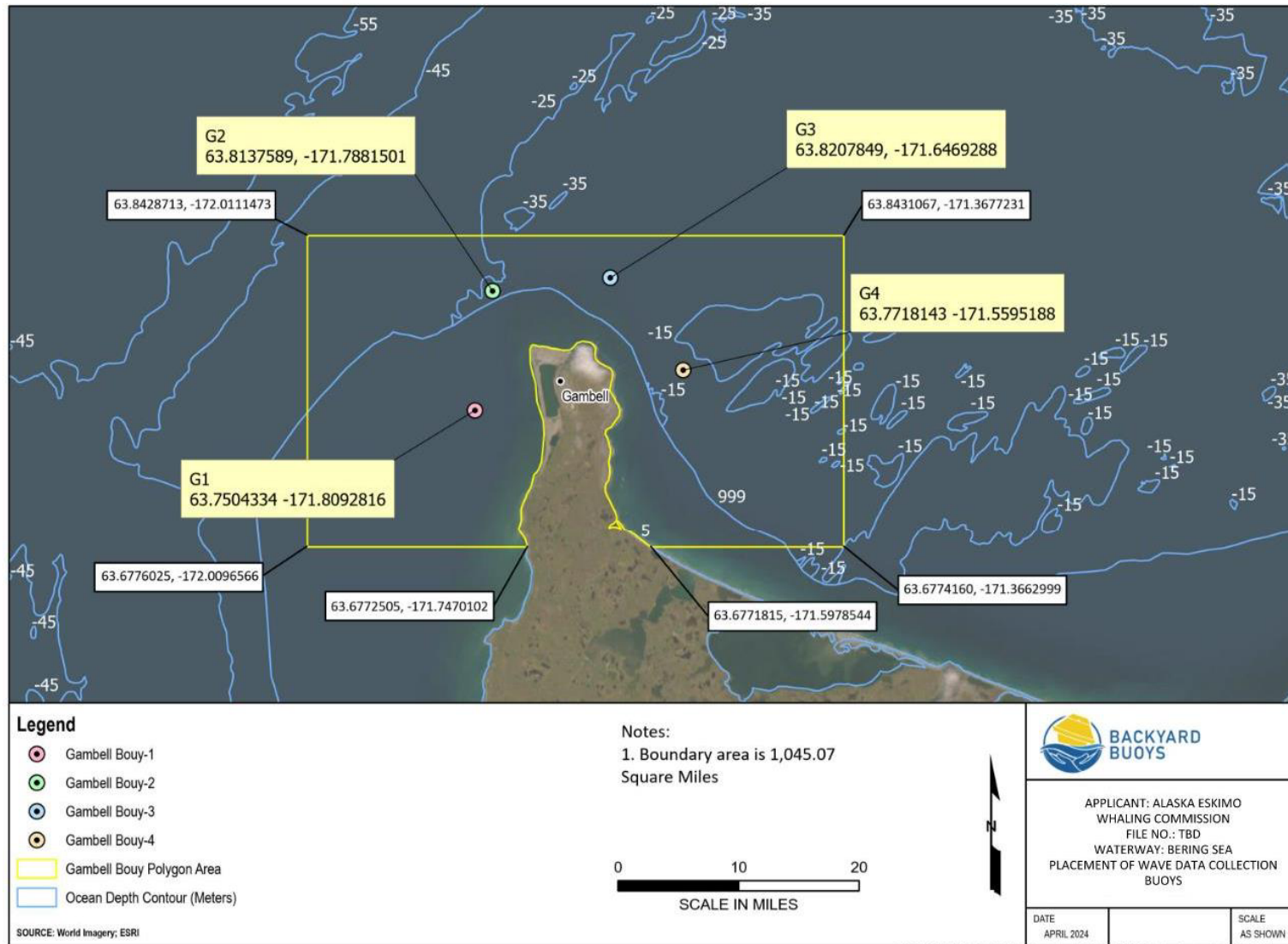
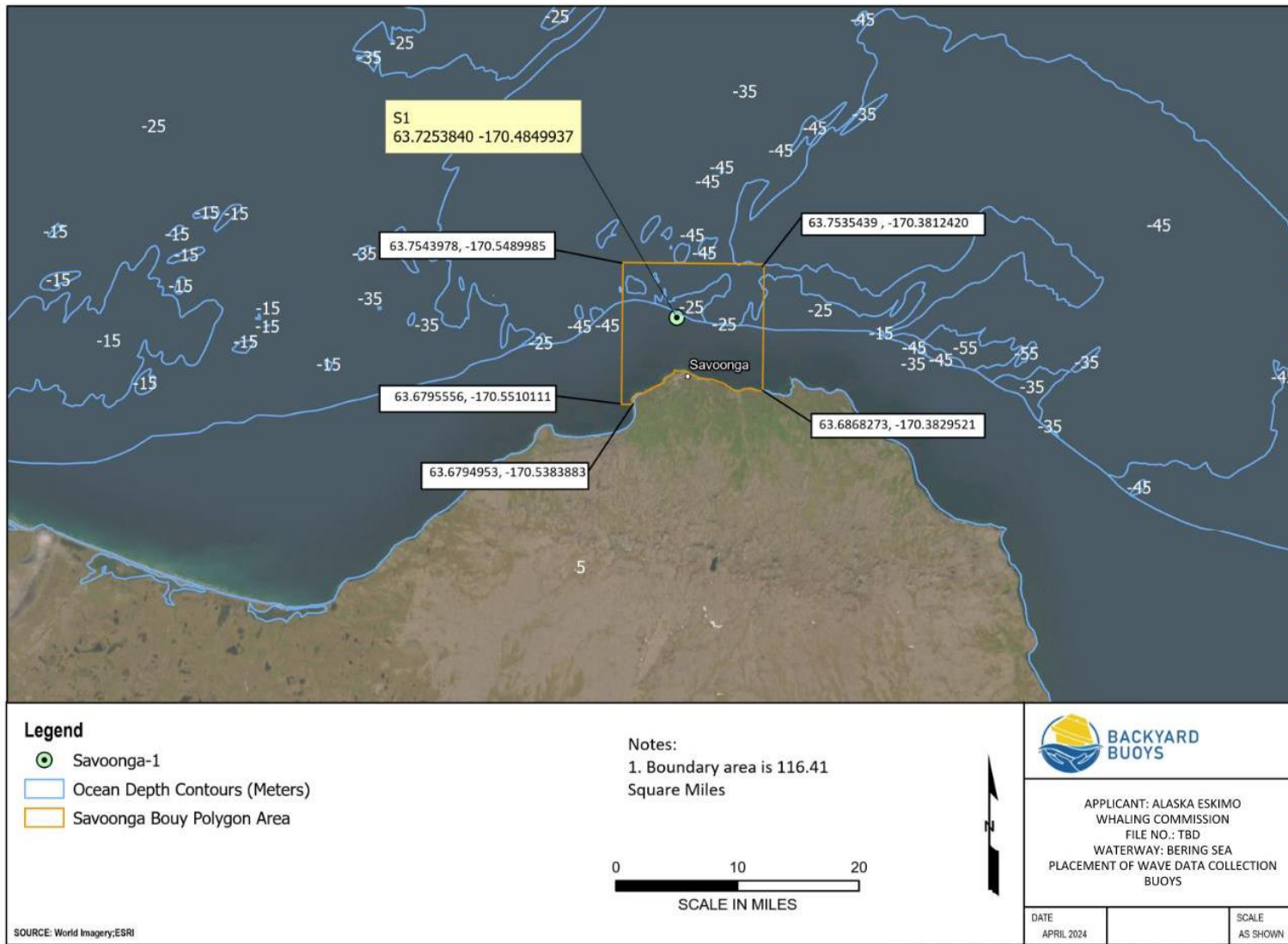


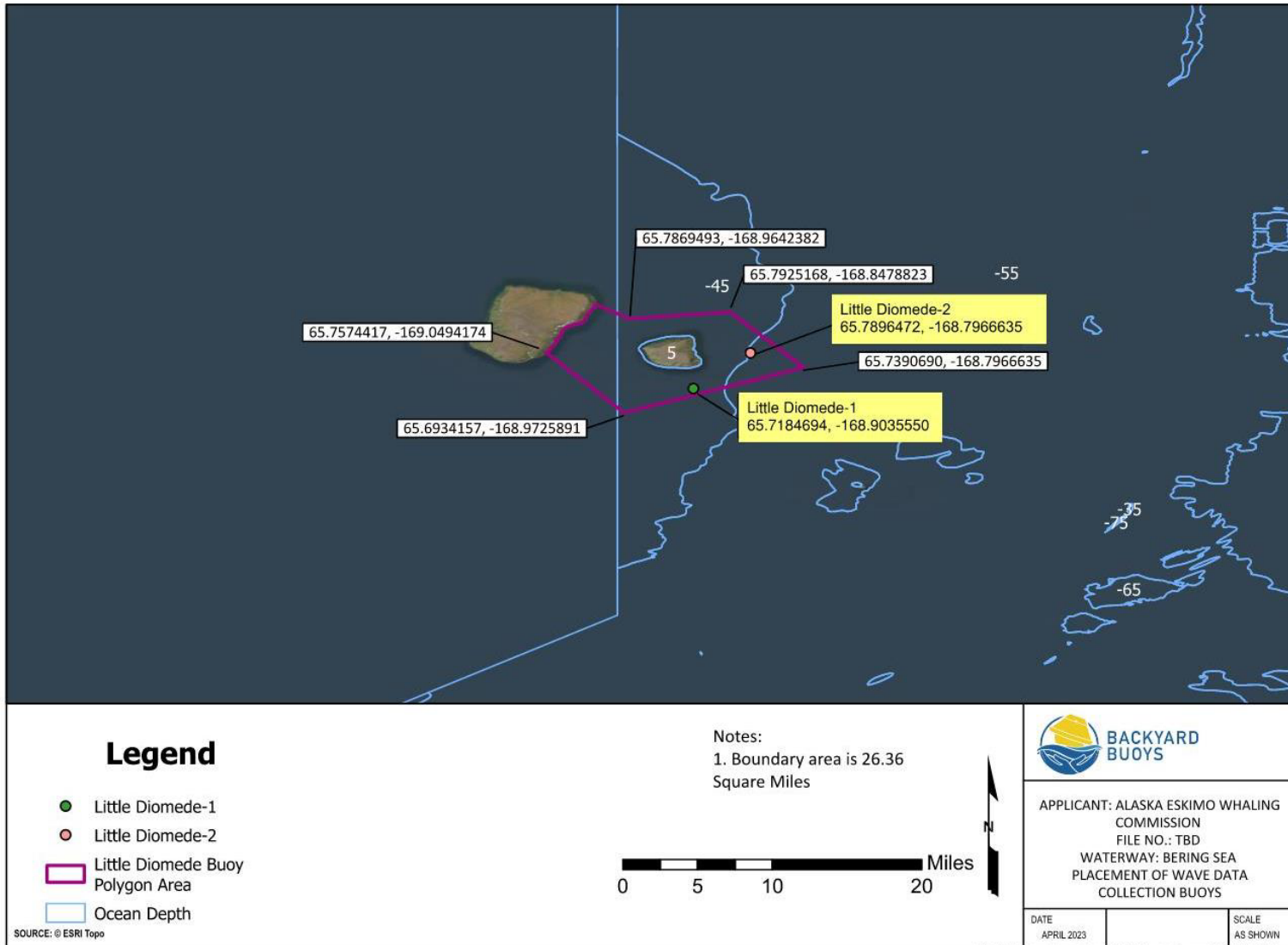
Figure 1. Vicinity of AEWC Backyard Buoy Areas



**Figure 2. Gambell Buoy Area and Initial Buoy Locations**



**Figure 3. Savoonga Buoy Area and Initial Buoy Locations**



**Figure 4. Little Diomede Buoy Area and Initial Buoy Locations**

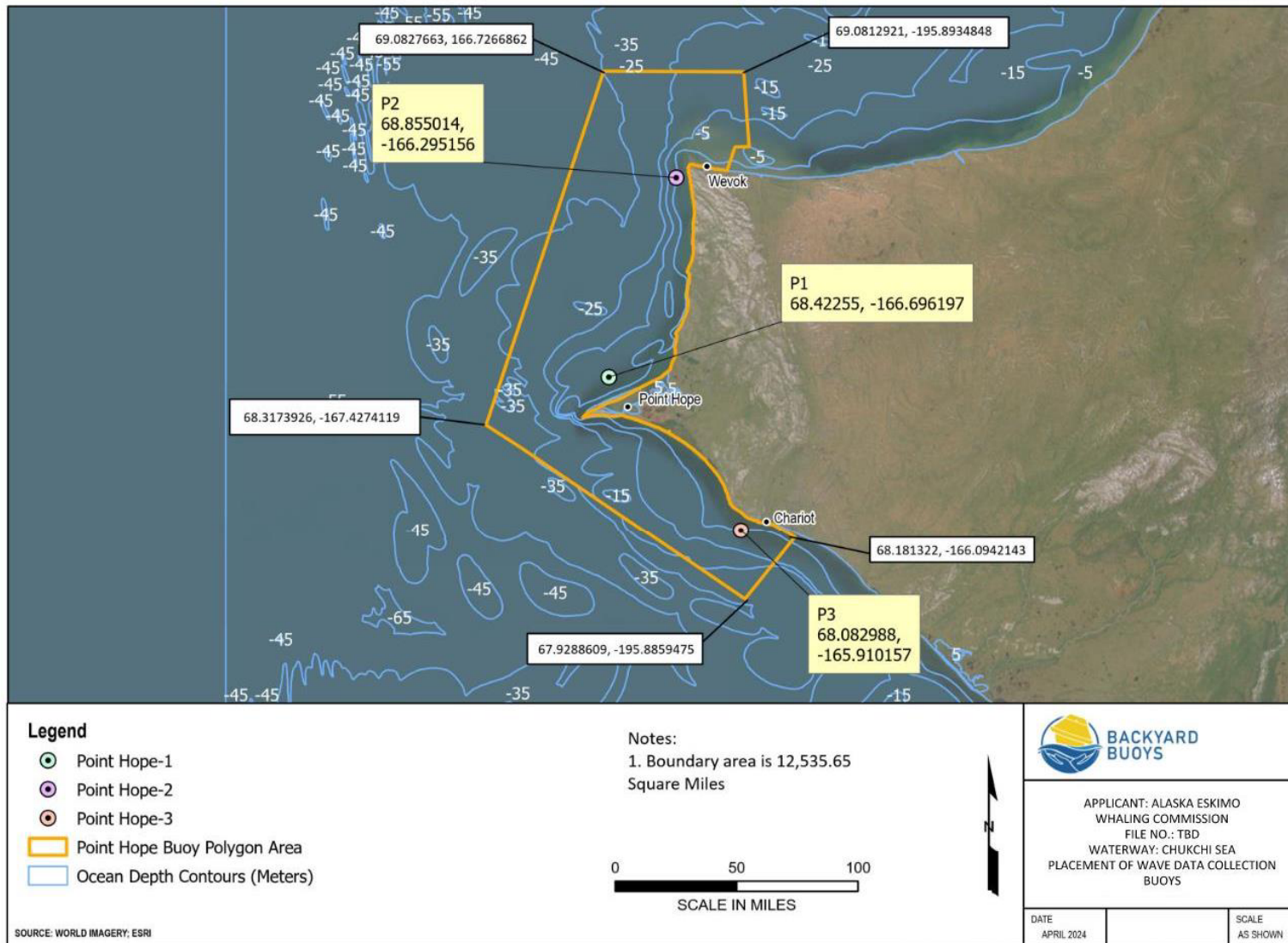
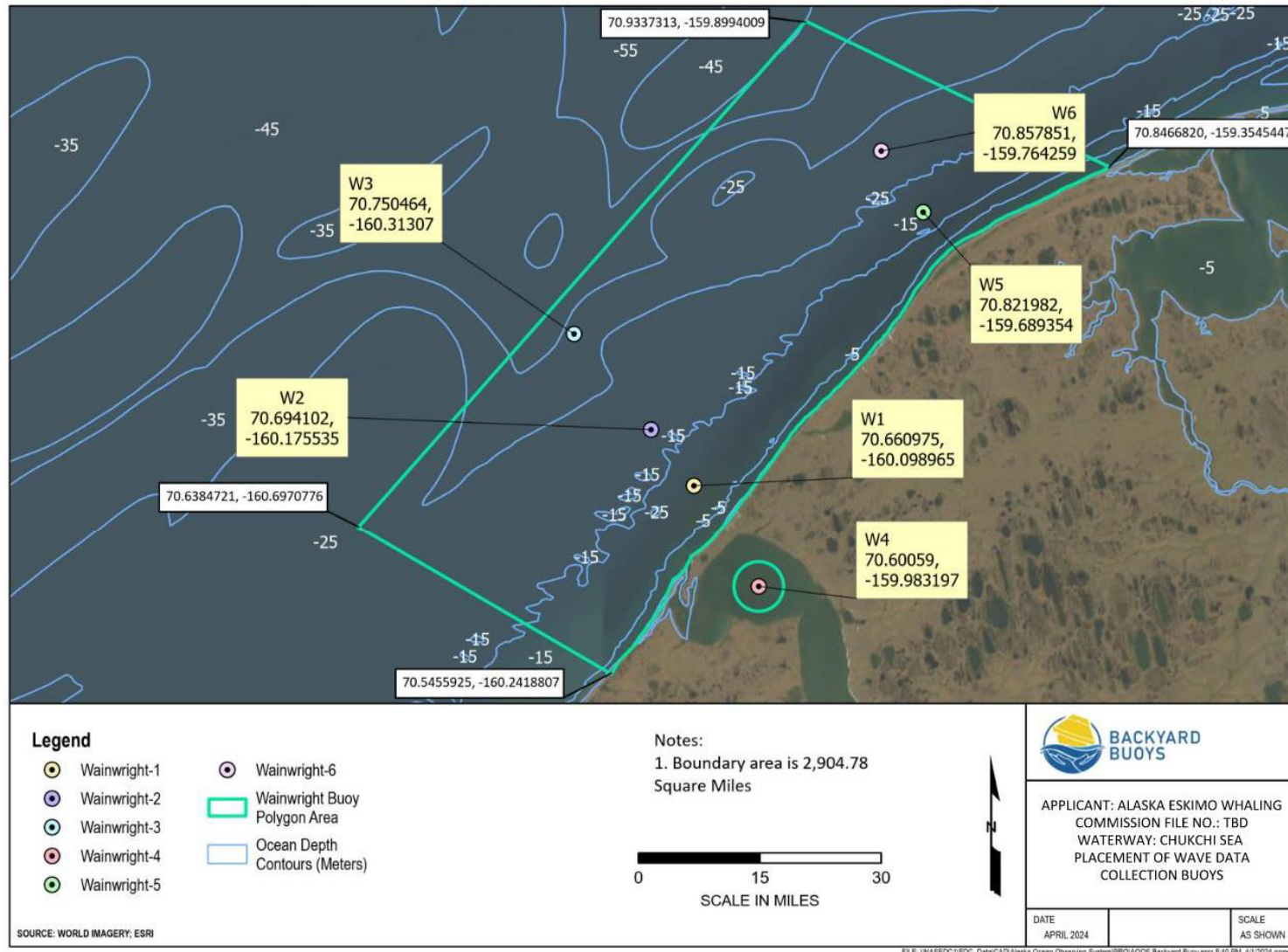
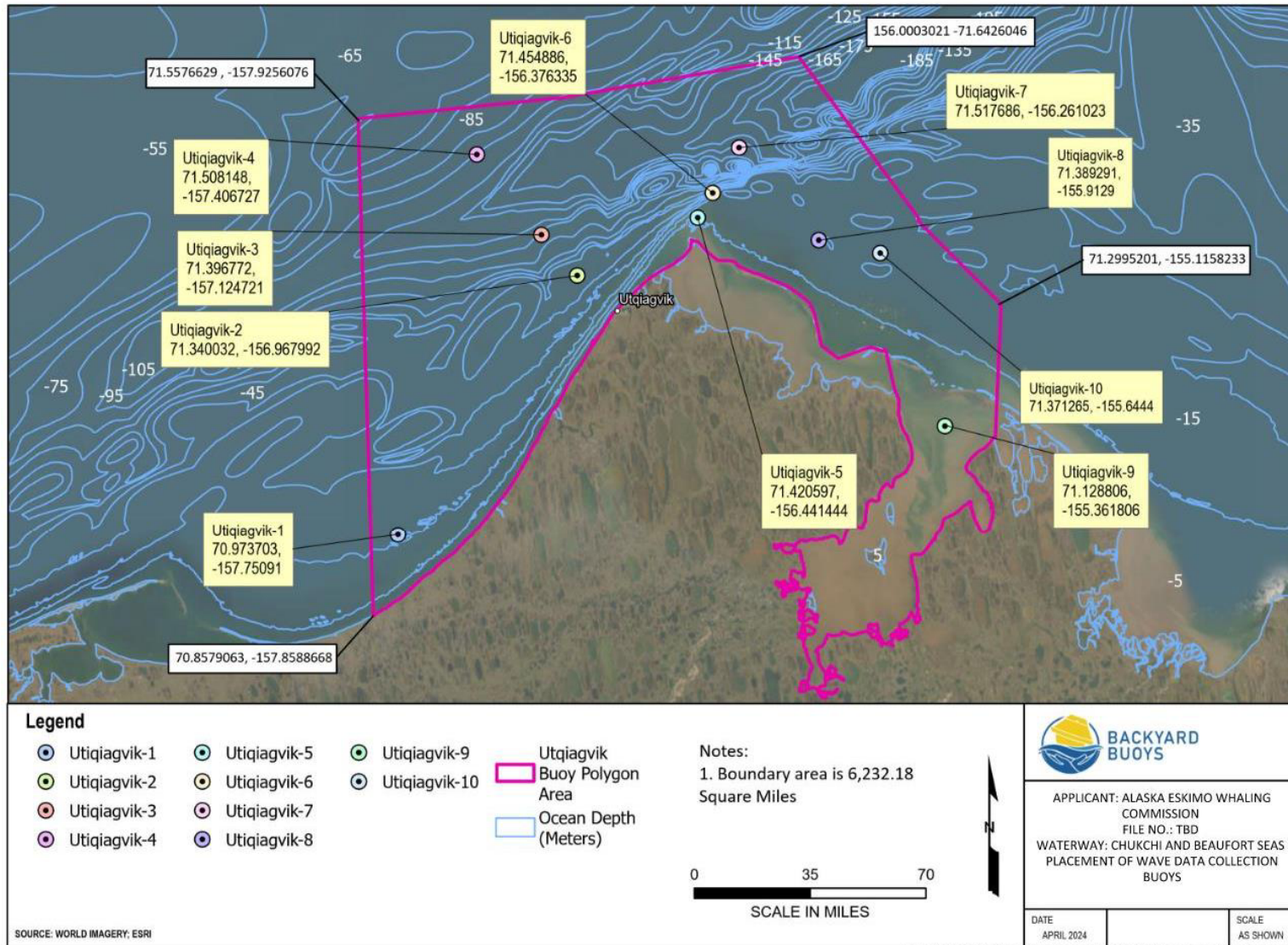


Figure 5. Point Hope Buoy Area and Initial Buoy Locations

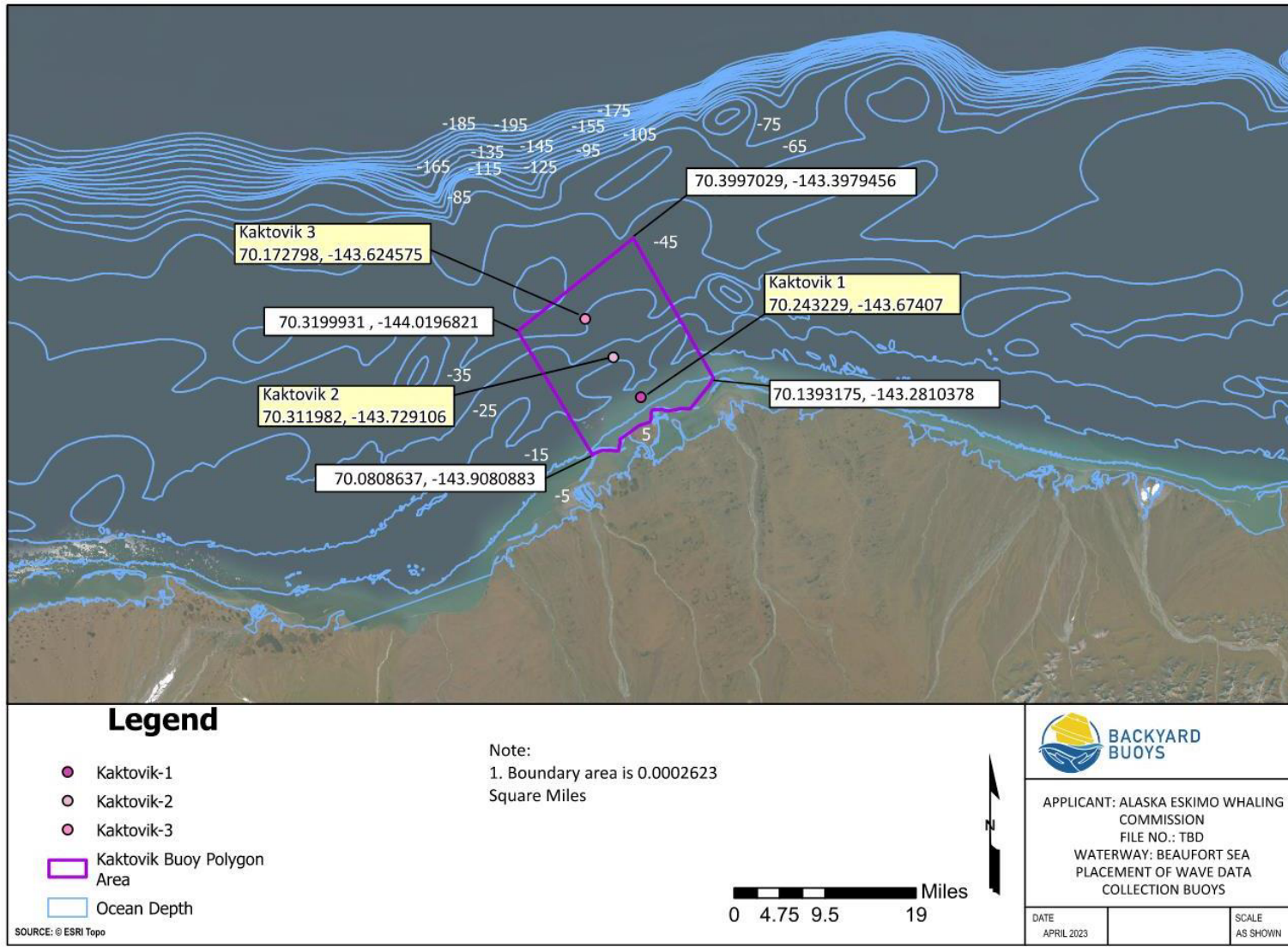


**Figure 6. Wainwright Buoy Area and Initial Buoy Locations**





**Figure 7. Utqiagvik Buoy Area and Initial Buoy Locations**



**Figure 8. Kaktovik Buoy Area and Initial Buoy Locations**

**Table 1. Year 2 Initial AEWG Spotter Locations<sup>1,2</sup>**

Buoy Number	Location Description	Latitude	Longitude
Kaktovik-1	2 mi. (3.2 km) offshore of Barter Island	70.243229	-143.67407
Kaktovik-2	7 mi. (11.3 km) offshore of Barter Island	70.311982	-143.729106
Kaktovik-3	12 mi. (19.3 km) offshore of Barter Island	70.172798	-143.624575
Utqiagvik-1	5 mi. (8 km) offshore	70.9737029	-157.7509101
Utqiagvik-2	5 mi. (8 km) offshore to the west of Point Barrow	71.3400318	-156.9679922
Utqiagvik-3	10 mi. (16.1 km) offshore to the west of Point Barrow	71.3967719	-157.1247207
Utqiagvik-4	20 mi. (32.2 km) offshore to the west of Point Barrow	71.5081480	-157.4067273
Utqiagvik-5	2 mi. (3.2 km) offshore of Point Barrow	71.4205973	-156.4414439
Utqiagvik-6	5 mi. (8 km) offshore of Point Barrow	71.4548860	-156.3763348
Utqiagvik-7	10 mi. (16.1 km) offshore of Point Barrow	71.5176863	-156.2610227
Utqiagvik-8	5 mi. (8 km) off Tapkaluk Islands	71.3892910	-155.9129004
Utqiagvik-9	Dease Inlet	71.128806	-155.361806
Utqiagvik-10	8 mi. (12.9 km) off Plover Islands	71.3712646	-155.6444003
Wainwright-1	2 mi. (3.2 km) offshore near Wainwright	70.6609747	-160.0989654
Wainwright-2	5 mi. (8.0 km) offshore near Wainwright	70.6941025	-160.1755350
Wainwright-3	10 mi. (16.1 km) offshore near Wainwright	70.7504644	-160.3130703
Wainwright-4	Wainwright Inlet	70.6005902	-159.9831969
Wainwright-5	2 mi (3.2 km) offshore near Wainwright	70.8219820	-159.6893540
Wainwright-6	5 mi (8 km) offshore near Wainwright	70.8578511	-159.7642590
Point Hope-1	3.4 mi. (5.5 km) offshore near Point Hope	68.4225504	-166.6961973
Point Hope-2	2 mi. (3.2 km) offshore of Cape Lisburne	68.855014	-166.295156
Point Hope-3	2 mi. (3.2 km) offshore of Chariot Area	68.082988	-165.910157
Little Diomedede-1	1.5 mi. (2.4 km) south of Little Diomedede	65.7184694	-168.9035550
Little Diomedede-2	1.5 mi. (2.4 km) east of Little Diomedede	65.7896472	-168.7966635
Gambell-1	2.5 mi. (4 km) offshore of Gambell	63.7504334	-171.8092816
Gambell-2	2.5 mi. (4 km) offshore of Gambell	63.8137589	-171.7881501
Gambell-3	2.5 mi. (4 km) offshore of Gambell	63.8207849	-171.6469288
Gambell-4	2.5 mi. (4 km) offshore of Gambell	63.7718143	-171.5595188
Savoonga-1	2 mi. (3.2 km) offshore of Savoonga	63.7253840	-170.4849937

Notes: mi.=mile(s); km=kilometer(s)

<sup>1</sup>Initial buoy locations for rows highlighted in blue are within 3 mi. (4.83 km) of the Alaska coastline.

<sup>2</sup>Locations (latitude/longitude) highlighted in green are new locations added or locations modified for Year 2.

Spotters are compact and lightweight instruments consisting of a waterproof hull, solar panel array, and electronics package (Figure 8). Figure 9 shows dimensions of the Spotter. Each Spotter will be anchored on the seafloor using one of the following anchor options (to be decided by the Village Facilitators):

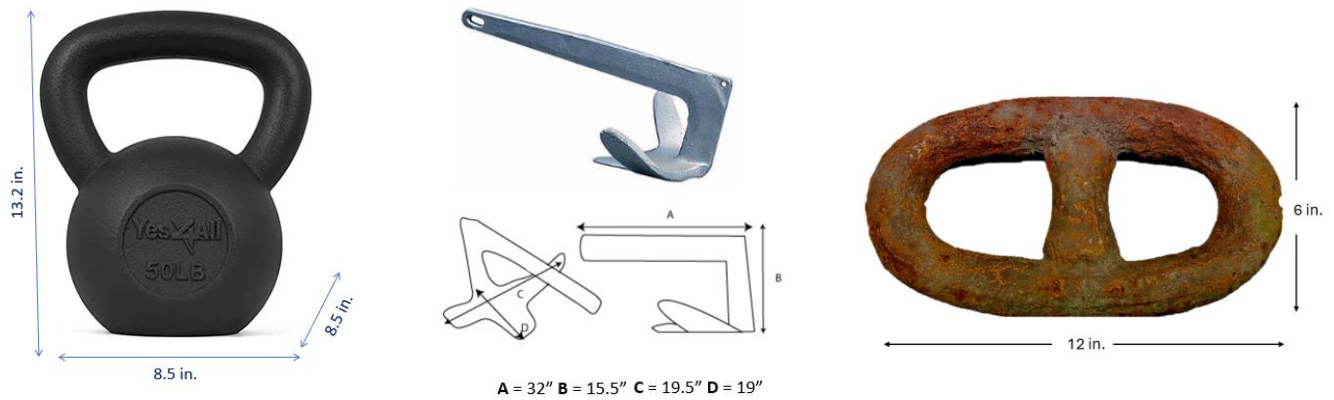
1. **Up to three 50-lb (22.7 kg) kettlebells connected with a chain to the mooring line** – Figure 10 shows dimensions of a typical 50-pound (lb) (22.7 kilogram [kg]) kettlebell similar to that which would be used for Spotters. A conservative impacted seafloor surface area for each 3-kettlebell anchor option, is 3.63 square feet (sq ft.) (0.00008 acres [ac]).
2. **A single 50-lb kettlebell attached by a chain to a small boat anchor** - Figure 10 shows dimensions of a typical boat anchor similar to that which would be used for Spotters. A conservative impacted seafloor surface area for each kettlebell/boat anchor option is 5.079 sq ft. (0.0001 ac).
3. **Four anchor chain links** – Figure 10 shows dimensions of a typical anchor chain link similar to that which would be used for Spotters. A conservative impacted seafloor surface area for each 4-chain link anchor option is 1.5 sq ft. (.00003 ac).



**Figure 8. Spotter Buoy Photos**



**Figure 9. Spotter Buoy Dimensions**



**Figure 10. Typical Anchor**

### Options

The Spotters will be anchored to the seafloor in water depths up to 164 feet (ft.) (50 meters [m]) using a mooring system similar to those depicted in Figures 11 and 12. The mooring system is the underwater extension of the Spotter Platform. Figure 11 presents the typical mooring system used during Year 1 deployments. As a result of experiences during Year 1 and feedback gathered from village facilitators post deployment, the mooring system will be altered in certain locations. Float capacity will be increased in areas with high currents to prevent the Spotter from submerging, maximizing data collection. Larger floats and/or flags may be incorporated, as presented in Figure 12, to increase visibility, aiding in locating the buoy during recovery and reducing risk of entanglement with passing vessels. Decisions regarding modifications of the mooring system will be made by facilitators responsible for buoy deployment.

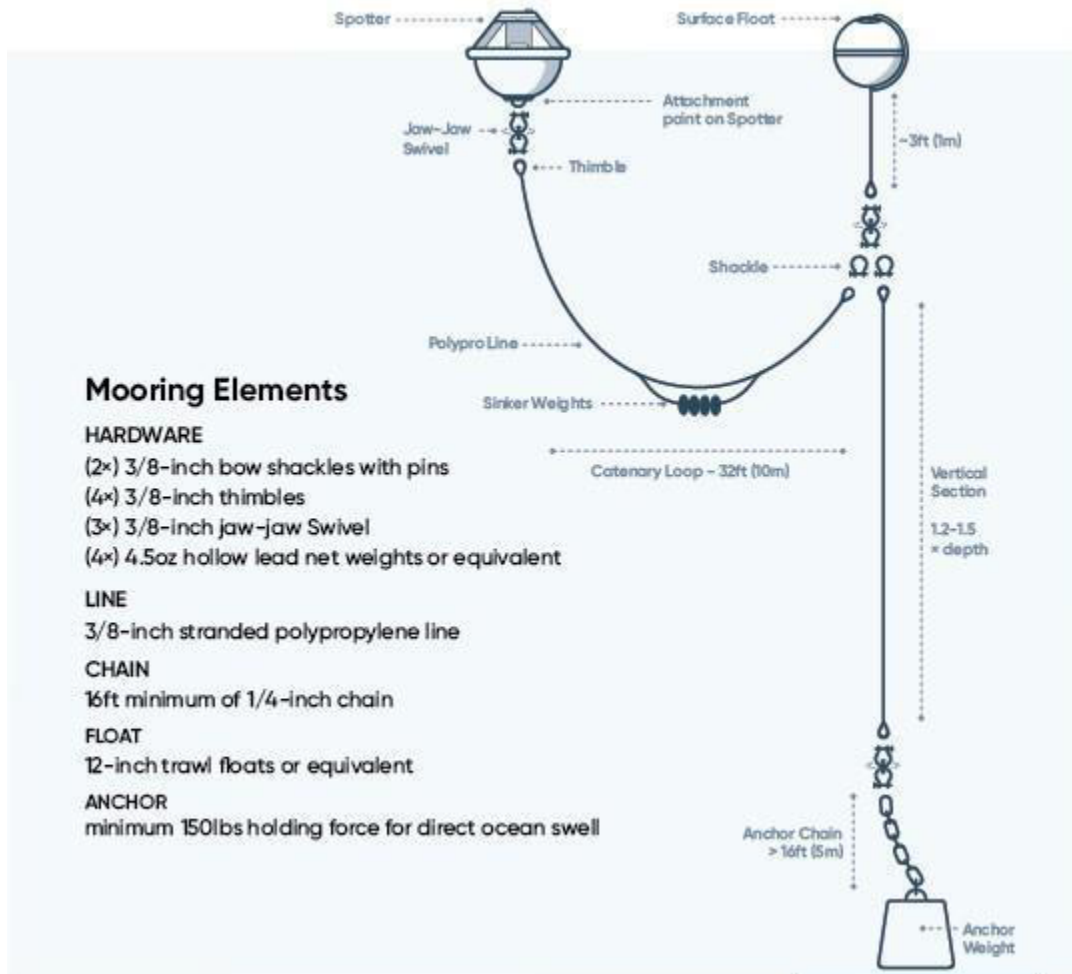


Figure 11. Typical Mooring System Used During Year 1

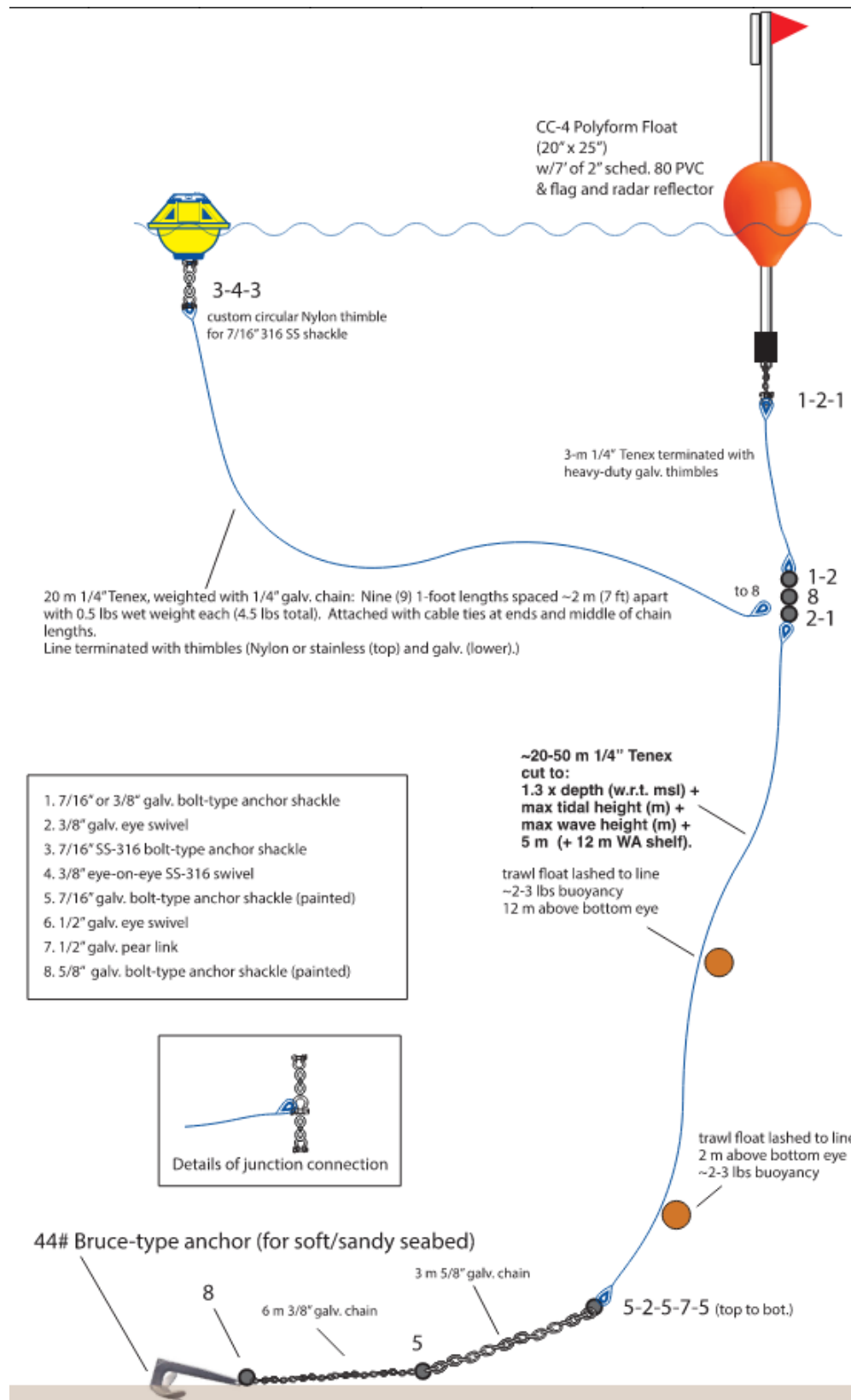


Figure 12. Typical Mooring System with Modified Surface Float

Personnel will deploy Spotters over the side of a single whaling captain boat within each buoy area polygon. Buoys will similarly be retrieved by pulling the buoy, mooring system, and anchor over the side of a single whaling captain boat. The boats used for deployment will be typical open aluminum whaling captain boats with outboard motors (typically up to 250 HP), approximately 18-24 ft. (5.5-7.3 m) in length. Up to 120 gallons of fuel will be stored on the whaling captain boat. Figure 13 shows typical whaling captain boats, similar to those which will be used for proposed buoy deployment and retrieval.



Source: Jenny Evans

**Figure 13. Typical Whaling Captain Boats**

### 3.0 Mitigation Measures/Wildlife Interaction Procedures

The following mitigation measures are proposed to be implemented, as appropriate, during implementation of the AEWC Backyard Buoys Project:

- Spotters will not be placed such that they block access of any species to an area (e.g., they will not prevent movement in or out of a river or channel).
- Spotters will be removed annually prior to ice advancing over the buoy area polygons at the end of the open water season.
- Spotters will be re-deployed once the ice has retreated from the buoy area polygons.
- All personnel associated with Spotter deployment will be instructed about the potential presence of species protected under the Endangered Species Act (ESA) and the MMPA.
- All on-site personnel will observe water-related activities for the presence of protected species.
- Any collision with and/or injury to a protected species during Spotter deployment, maintenance, or retrieval operations will be reported immediately, or as soon as practical, to the following:
  - NMFS' Office of Protected Resources at [jolie.harrison@noaa.gov](mailto:jolie.harrison@noaa.gov) (for whales, seals, or sea lions);
  - Alaska Regional Stranding Hotline at (877) 925-7773 (for whales, seals, or sea lions);



- USFWS' Marine Mammals Management at fw7\_ak\_marine\_mammals@fws.gov (800) 362-5148 during business hours or the Alaska Sealife Center at (888) 774-7325 after hours (for polar bears); and
- USFWS' Endangered Species Branch (Ted Swem) at (907) 456-0441 (for spectacled eiders or Stellers' eiders).
- Any observed stranded, injured, or dead marine mammals (not resulting from proposed project activities) observed during Spotter deployment, maintenance, or retrieval operations shall be reported immediately to the Alaska Marine Mammal Stranding Hotline at (877) 925-7773.
- All whaling captain boat operators shall watch for and avoid collision with protected species. Whaling captain boat operators must avoid potential interactions with protected species and operate in accordance with the following protective measures:
  - Operation of whaling captain boats shall cease immediately if a listed species is observed within a 50-ft. (15.24-m) radius of the whaling captain boat and shall not resume until the species has departed the area of its own volition.
  - If the detection of protected species is not possible during certain weather conditions (e.g., fog, rain, wind), then in-water operations will cease until weather conditions improve and detection is again feasible.
  - Whaling captain boats will avoid approaching within 328 ft. (100 m) of marine mammals.
  - When these animals are sighted while the whaling captain boat is underway, the boat will attempt to remain parallel to the animal's course.
  - Whaling captain boats will avoid multiple or abrupt changes in direction or speed.
  - Whaling captain boats will maintain a general speed of 5 miles per hour (4 knots) or less when near protected species and when safe to do so.
  - In-water mooring setups will include as little line as possible in the water column in order to measure wave movement and collect quality data. To the extent practical in order to collect quality data, excess line in the water column will be kept to a minimum to minimize the risk for marine mammal entanglement.

## 4.0 Assessment of Potential Effects on Endangered Species Act-Listed Species in Buoy Area Polygons

Endangered Species Act (ESA) listed species occur in the AEWC Backyard Buoys Project Area. Table 2 presents ESA-listed species and associated Critical Habitat which occur within the AEWC buoy area polygons.

**Table 2. ESA-Listed Species and Critical Habitat Occurring within Proposed AEWC Buoy Area Polygons**

Species	ESA Status	Critical Habitat Present in Project Area? (Yes/No)	Population Estimate	Occurrence in the AEWC Buoy Areas	Expected Effect from Spotter Deployment and Operation
Bowhead whale	Endangered	N/A <sup>a</sup>	16,820 <sup>b</sup>	Kaktovik, Utqiagvik, Wainwright, Point Hope, Little Diomede Gambell Savoonga	No Effect
Fin whale	Endangered	N/A <sup>a</sup>	3,168 <sup>b</sup>	Point Hope, Little Diomede Gambell Savoonga	No Effect
North Pacific right whale	Endangered	No	31 <sup>b</sup>	Little Diomede Gambell Savoonga	No Effect
Humpback whale	Endangered	No	1,107 <sup>b</sup> 1,918 <sup>c</sup>	Utqiagvik, Wainwright, Point Hope, Little Diomede Gambell Savoonga	No Effect
Steller sea lion	Endangered	No	43,201 <sup>b</sup>	Little Diomede Gambell Savoonga	No Effect

Species	ESA Status	Critical Habitat Present in Project Area? (Yes/No)	Population Estimate	Occurrence in the AEWC Buoy Areas	Expected Effect from Spotter Deployment and Operation
Ringed seal	Threatened	Yes, including: Kaktovik Utqiagvik Wainwright Point Hope Little Diomede Gambell Savoonga	158,507 <sup>b</sup>	Kaktovik Utqiagvik Wainwright Point Hope Little Diomede Gambell Savoonga	No Effect
Bearded seal	Threatened	Yes, including: Kaktovik Utqiagvik Wainwright Point Hope Little Diomede Gambell Savoonga	273,676 <sup>b</sup>	Kaktovik Utqiagvik Wainwright Point Hope Little Diomede Gambell Savoonga	No Effect
Polar bear	Threatened	Yes, including: Kaktovik Utqiagvik Wainwright Point Hope Little Diomede Gambell Savoonga	900 <sup>d</sup> (Southern Beaufort Sea Stock) 2,000 <sup>e</sup> (Chukchi/Bering Sea Stock)	Kaktovik Utqiagvik Wainwright Point Hope Little Diomede Gambell Savoonga	No Effect
Spectacled eider	Threatened	No	6,956 <sup>f</sup>	Utqiagvik Wainwright Point Hope Little Diomede Gambell Savoonga	No Effect
Steller's eider	Threatened	No	199 <sup>g</sup>	Utqiagvik, Wainwright Point Hope Gambell Savoonga	No Effect

<sup>a</sup>No critical habitat has been designated.

<sup>b</sup>Muto et al. 2021

<sup>c</sup>Caretta et al. 2019

<sup>d</sup>Bromaghin et al. 2015

<sup>e</sup>Stishov 1991

<sup>f</sup>Wilson et al. 2018; ACP breeding population

<sup>g</sup>Larned 2012a; ACP breeding population

The Spotters do not emit sound into the marine environment. Given Spotter size and design, and by implementing the proposed mitigation measures, the Spotters do not create obstructions to animal movement, encourage aggregations of predators, or disrupt wave patterns. They are too small to attract fish and larger predators that would increase predation, and they are too small to disrupt wave patterns.

A village facilitator and Whaling Captain (John Hopson Jr of Wainwright) provided feedback during a project meeting in response to his initial concerns that the buoys might result in unintended impacts (i.e. deflection) on bowhead whale migration routes and affect subsistence hunting success. During the 2023 Fall whaling season, the first whale landed was less than 0.5 miles from one of the buoys. He noted the buoys did not seem to disrupt the whale migration. In fact, as they were pulling the first whale, they saw many others passing by. He said this observation reassured him the buoys would not impact their subsistence hunt.

## 1.1 Routes of Effect

ESA-listed species have the potential to be affected by a number of “routes of effect.” These routes of effect, and AEWC’s assessment of whether and how they affect ESA-listed species and/or critical habitat, are described in the sections below. In particular, we assessed the potential for the following routes of effect to have an effect on ESA-listed species and critical habitat occurring in the buoy area polygons:

- Direct physical effects from placement of buoy anchors on seafloor;
- Effects from turbidity from disturbed seafloor sediments during anchor placement;
- Entanglement with Spotter mooring line; and
- Boat collision.

### ***Direct Physical Effects from Placement of Buoy Anchor on Seafloor***

Table 3 presents the estimated impact area for each of the three anchor options. Placing the anchor setup is not anticipated to directly affect ESA-listed species. There is a potential that anchor setup placement could smother or crush benthic organisms, some of which are prey to ESA-listed species such as bearded seals, gray whales, and spectacled and Steller’s eiders. For bearded seals, benthic prey is also a Physical and Biological Feature of designated critical habitat which occurs within all buoy area polygons.

**Table 3. Estimated Impacted Area by Anchor Option**

<b>Anchor Option</b>	<b>Estimated Area of Impact on Seafloor Per Mooring (sq ft./ac)</b>	<b>Estimated Total Area of Impact on Seafloor for All Moorings (sq ft./ac)</b>
Up to three 50-lb (22.7 kg) kettlebells connected with a chain to the mooring line	3.63/0.00008	105.27/0.00232
A single 50-lb kettlebell attached by a chain to a small boat anchor	5.079/0.0001	147.291/0.0029
Four anchor chain links	1.5/0.00003	43.5/0.00087

sq ft.=square feet; ac=acres

Up to 29 total Spotters which will be deployed, and each one may be moved up to 10 times during a single open water season. If all buoys were moved 10 times, the most conservative total seafloor impact area each

year would be approximately 1,472.91 sq ft. (0.029 ac). Any impacts on benthic organism populations would be temporary, as the area would likely be recolonized by benthic animals within a short timeframe upon removal of the anchor setup. Impacts on benthic foraging habitat would also be limited to the footprint of the anchor setup. Injuring or killing benthic prey in this relatively small area would not adversely affect available critical habitat for ESA-listed species as the impacted area would be a small fraction of area of critical habitat available to ESA-listed species. Physical placement of the anchor setup on the seafloor is expected to have no effect on ESA-listed species or critical habitat.

AEWC is not aware of any identified Critical Sites within the proposed buoy area polygons. Any sites identified by North Slope Borough (NSB), by State Historic Preservation Office (SHPO) during consultation with the State of Alaska and USACE, or identified while conducting project-related activities, will be avoided and a buffer of at least 500 ft. (152.4 m) will be implemented to mitigate any potential impacts on Critical Sites. Geographical positioning system (GPS) coordinates and geographical information system (GIS) data will be provided to NSB for any sites identified in the field during project activities.

### ***Effects from Turbidity from Disturbed Seafloor Sediments During Anchor Placement***

A small and temporary increase in turbidity would likely result from placement of the anchor weights on the seafloor. This slight increase is expected to return to ambient levels within a short time frame after anchor placement. The rise in turbidity is expected to be no greater than many natural processes which might cause increased turbidity (e.g., marine mammal foraging, weather). No sediments will be moved during anchor placement. The slight and brief effect of increased turbidity in the water column is expected to have no effect on ESA-listed species or critical habitat.

### ***Entanglement with Spotter Mooring Line***

ESA-listed whales can become entangled by encountering in-water lines, such as Spotter mooring lines. The risk to whales depends on the number of in-water loops created by lines attached to surface floats and on the extent of excess line in the water column. The nature of wave buoy data collection necessitates some excess line in order for the buoy to rise and fall with the wave action. Surface floats are also necessary in order to allow for proper buoy movement for data collection. Depending on typical wave conditions for a particular location, more surface floats may be needed in order to collect quality data and limit the risk of the buoy being pulled underwater or damaged. As described above, whaling crews landed whales in near proximity to the Spotters deployed offshore of Wainwright, and the whales' migration path did not appear to be affected by presence of the buoys (J. Hopson, personnel communication). Proposed moorings will be installed in a manner to minimize the risk of entanglement (i.e., as few looping lines and as little excess line in the water column as practical in order to collect quality wave data). The small quantity of Spotter buoys in the water at any given time (up to 29 total across all seven communities, no more than 10 total near each community during 2024 [Year 2]) further limits the risk of whale entanglement. Therefore, deployment of the proposed Spotter buoys is expected to have no effect on ESA-listed whales from entanglement with underwater mooring lines.

### ***Boat Collision***

Increased boat traffic in the marine environment could increase the potential for boat collisions with ESA-listed species. Proposed Spotter buoy deployment will not result in more than an incremental increase in vessel traffic in offshore waters within the buoy area polygons, and as such it is extremely unlikely that the project will increase the incidence of boat collisions with ESA-listed species. Boats proposed for this project are the same whaling captain boats transiting through the area for subsistence hunting. They will be adding

an incrementally small number of trips in the same region with the same whaling captain boats. Furthermore, the proposed mitigation measures (e.g., reduced speed when protected species are present, ceasing buoy deployment and retrieval operations when weather conditions prevent detection of protected species, etc.) will further mitigate the potential for collisions with animals, resulting in no effect on ESA-listed species from collisions with project whaling captain boats during buoy deployment, maintenance, and retrieval.

## 1.2 Summary of Effects

Based on the nature of the proposed project and the proposed mitigation measures, AEW anticipates effects determinations as presented in Table 4.

**Table 4. Summary of Anticipated Effects on ESA-Listed Species from AEW Backyard Buoys Project**

Potential Routes of Effect	Anticipated Effect on ESA-Listed Species	Anticipated Effect on Critical Habitat
Direct Physical Effects from Placement of Spotter Buoy Anchors on Seafloor	No Effect	No Destruction or Adverse Modification
Effects from Turbidity from Disturbed Seafloor Sediments During Anchor Placement	No Effect	No Destruction or Adverse Modification
Entanglement with Spotter Mooring Lines	No Effect	No Destruction or Adverse Modification
Boat Collision	No Effect	No Destruction or Adverse Modification

Similar determinations of effect on ESA-listed species and critical habitat from marine placement of Spotters were made by USACE for Backyard Buoy projects in other regions (Puget Sound [NWS-2023-648] and off the Olympic Coast [NWS-2023-912]).

## 5.0 Lessons Learned from Year 1 (2023) Deployments

Lessons learned were documented during Year 1 activities and resulting adaptive management measures will be implemented for 2024 activities (Table 5). John Hopson Jr. of Wainwright (village facilitator, Whaling Captain, and AEW Chair) provided feedback during a project meeting in response to his initial concerns that the buoys might result in unintended impacts (i.e., deflection) on bowhead whale migration routes and affect subsistence hunting success. During the 2023 Fall whaling season, the first whale landed was less than 0.5 miles from one of the buoys. He noted the buoys did not seem to disrupt the whale migration. In fact, as they were pulling the first whale, they saw many others passing by. He said this observation reassured him the buoys would not impact their subsistence hunt. John also noted that the data from the buoys at 5 and 10 miles offshore provided valuable information in making decisions to launch the boat each day.

**Table 5. Year 1 (2023) Lessons Learned Summary**

Issue	Action
Buoy P1 near Point Hope was originally deployed in a location where the current was too strong.	The buoy was retrieved and redeployed in an area with less current. Modifications to the mooring design for Year 2 may prevent buoys from becoming submerged in areas with stronger current.
Buoy P2 near Cape Lisburne separated from the mooring within a few days of being deployed. It free-floated around the Chukchi Sea, still transmitting data all season, until presumably the ice or lack of sun caused it to stop transmitting.	Year 2 mooring design will include stronger shackles and connection points.
Buoy deployed at Barrow, 2 miles from shore, was entangled by a transiting sailboat and dragged for a distance before being released.	Mooring design will be modified for Year 2 in certain areas to increase buoy visibility, reducing the likelihood of entanglements with transiting vessels.
The anchors are heavy to pull with only 2 people, particularly in deeper water.	Facilitators changed tactics to pull in as much line as they could and then tied off the line to the boat. They used the boat to pull the mooring to shore and used a truck to pull it onto the beach. A pot puller will be used where available in Year 2. Facilitators choose different anchor options in certain areas, as presented in Section 2.0, based on experiences during Year 1.
Buoys can be hard to see until you are in very close proximity	Year 2 mooring design may be modified in certain areas to increase float visibility – using A4 or A5 surface floats.
Certain buoys stopped transmitting data. It was suspected the current was too strong for mooring design, and the buoy submerged.	Year 2 mooring design may be modified in certain areas to prevent buoys from submerging in stronger currents. Additional floats will be used.
In certain light conditions, the orange surface floats are hard to see.	Surface float color will be taken into consideration for Year 2 modified mooring design.

## 6.0 Permits

AEWC secured permits listed in Table 6 prior to Year 1 deployments. For those permits covering multiple years, amendments are requested to reflect changes made for Year 2 deployments.

**Table 6. Permits and Authorizations**

Permit	Agency	Year 1 Authorization	Status for Year 2
Nationwide Permit 5 – Scientific Measurement Devices	U.S. Army Corps of Engineers	POA-2023-00217	Amendment request for Year 2 plan submitted
Clean Water Act Section 401 Water Quality Certification	State of Alaska, Department of Environmental Conservation	Granted during issuance of NWP 5	No change
Study Permit/Administrative Approval	North Slope Borough	NSB 23-455	Application for Year 2 Deployments submitted
Land Use Permit	State of Alaska, Department of Natural Resources	LAS 34581	Amendment for 2024 plan submitted
Private Aids to Navigation Approval	U.S. Coast Guard	Not required per USCG District 17. Form CG-2554 submitted to USCG, providing information for Local Notice to Mariners.	New Form CG-2554 will be submitted to USCG upon deployment.

## 7.0 Spill Prevention and Response

As each whaling captain boat will be powered by an outboard motor, each Village Facilitator will ensure a spill kit, including absorbents, is available on the boat. All personnel will be briefed on the location of the spill kit and proper use in the case of an accidental fuel release. Any spill will be reported in accordance with federal, state, and local regulations.

## 8.0 Emergency and Medical Events

Village Facilitators and assisting personnel will be equipped with a cell phone and VHF radios onboard each whaling captain boat. In the case of an emergency or medical event during proposed activities, personnel will contact NSB Police and/or NSB Search and Rescue for assistance.



## 9.0 References

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# Backyard Buoy

## Project Description

**December 2023**

*Prepared by:*



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## 1.0 Introduction

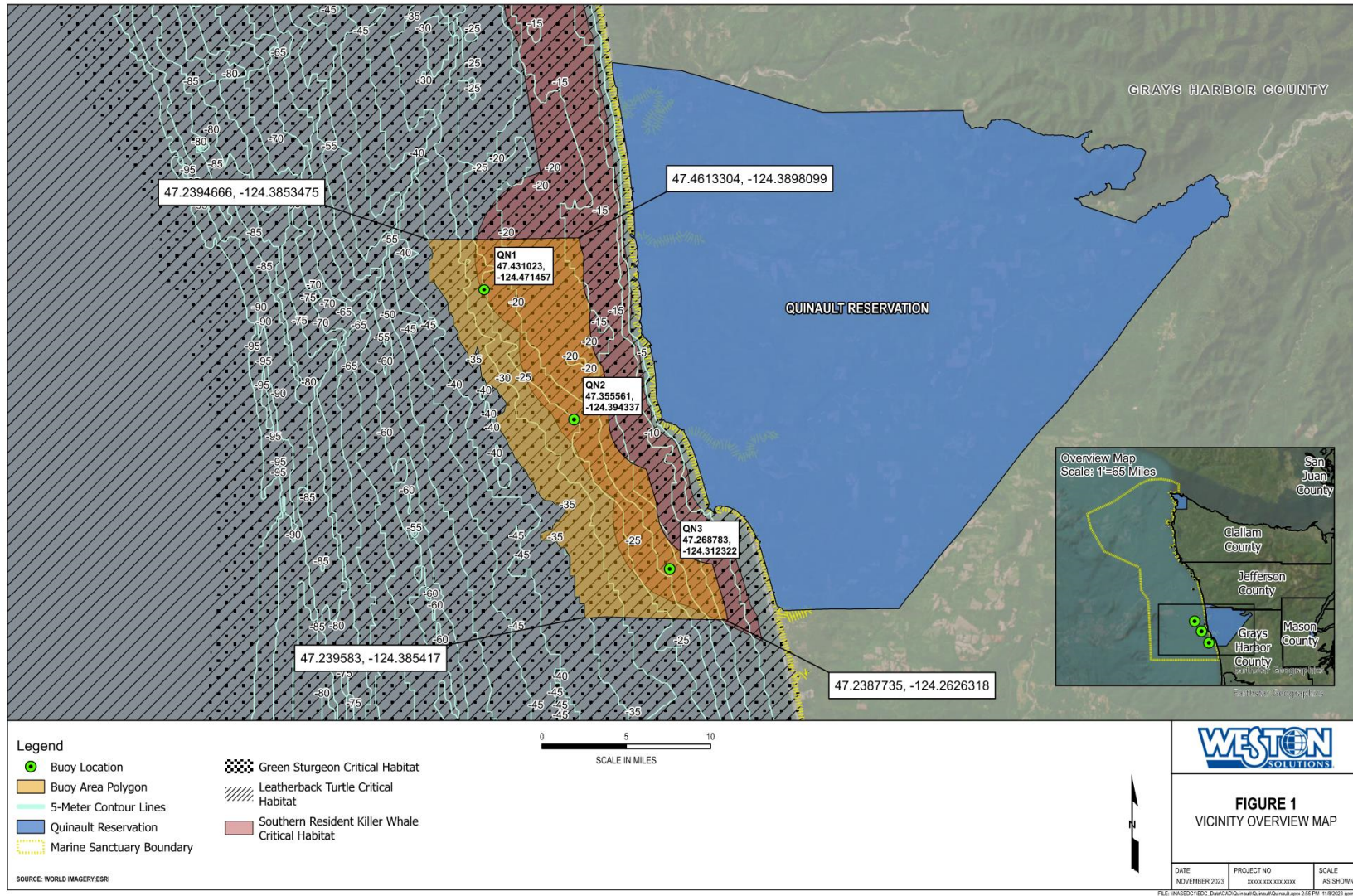
Quinault Indian Nation (QIN) proposes to deploy 3 Spotter wave buoys in marine waters offshore of the QIN Reservation and Grays Harbor county, Washington. The buoy is housed with integrated solar power, satellite data connectivity, sea surface temperature, and a wave sensor to provide wave data serving to develop an understanding of wave dynamics for shoreline user safety and small vessel safety. Near real time data will be served on existing regional data visualization systems and customized applications developed during the Backyard Buoys Program based on user interviews and iterative feedback. With accessible data tools, these data will serve educational and other community needs for decisions on scales from daily (e.g., safety for maritime operations and coastal hazards) to longer planning horizons (e.g., resilience for climate change and ecosystem function).

## 2.0 Description of Activities

QIN plans to deploy Sofar Spotter wave buoys (Spotters) in marine waters in nearshore waters within the Olympic Coast National Marine Sanctuary off of the QIN Reservation to collect near real-time wave data (Figure 1). QIN personnel will deploy, maintain, and retrieve the Spotter buoys, with assistance from a field technician from the Applied Physics Laboratory at the University of Washington. QIN worked with local fishers and tribal members to identify initial buoy locations (Table 1). Figure 1 displays the buoy area polygon as well as the initial buoy locations.

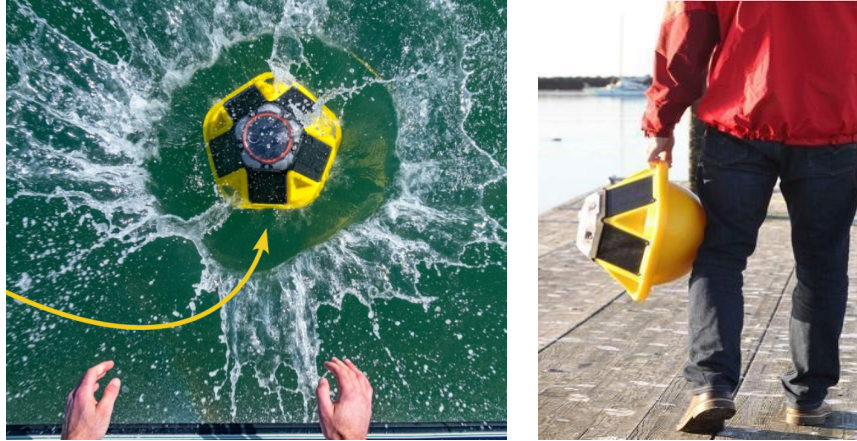
**Table 1. Initial Buoy Locations**

Buoy	Latitude	Longitude	Water Depth (m)	Substrate
QN1	47.431023	-124.471457	25	Sandy/rocky
QN2	47.355561	-124.394337	25	Sandy/rocky
QN3	47.268783	-124.312322	23.17	Sandy/rocky

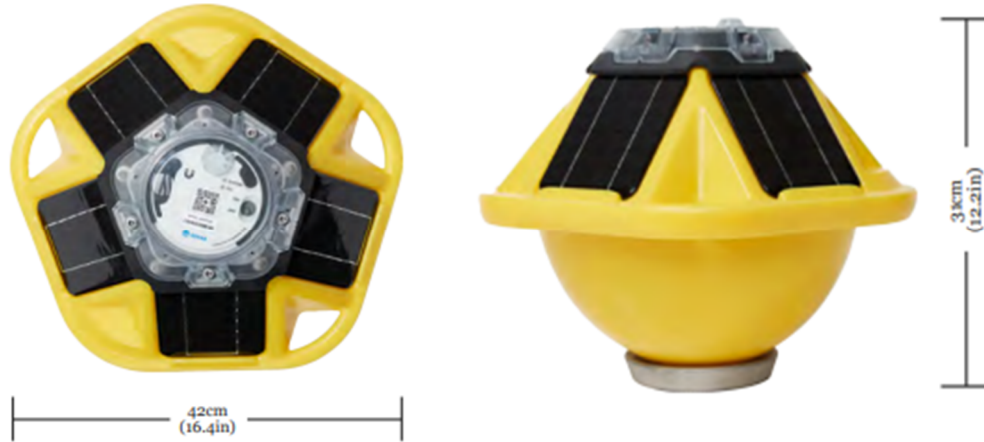


**Figure 1. Proposed Initial Buoy Locations and Buoy Area Polygon offshore of the Quinault Indian Nation Reservation, Washington**

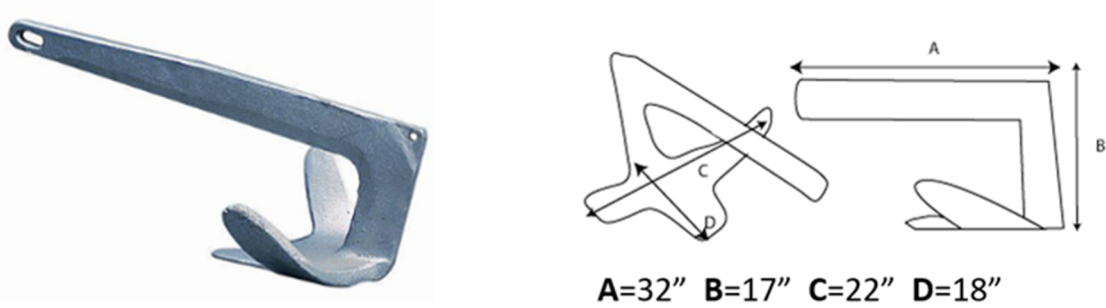
The Spotters are compact and lightweight instruments consisting of a waterproof hull, solar panel array, and electronics package (Photos 1 and 2). Photo 3 shows Spotter dimensions. The Spotters will be anchored to the seafloor using a small bruce-type boat anchor. Photo 4 shows dimensions of a typical boat anchor similar to that which would be used for the Spotter buoy. A conservative impacted seafloor surface area for the bruce-type boat anchor option, which includes 9 m of chain, is approximately 314 sq m (0.0776 ac).



**Photo 2. Spotter Buoy Photos**



**Photo 3. Spotter Buoy Dimensions**



**Photo 4. Typical Mooring Anchor Dimensions**

The Spotter will be anchored to the seafloor in water depths up to 35 m (115 ft.) using a mooring system similar to that shown in Figure 2. The mooring system is the underwater extension of the Spotter platform.

Version 4.2: October 18, 2023.

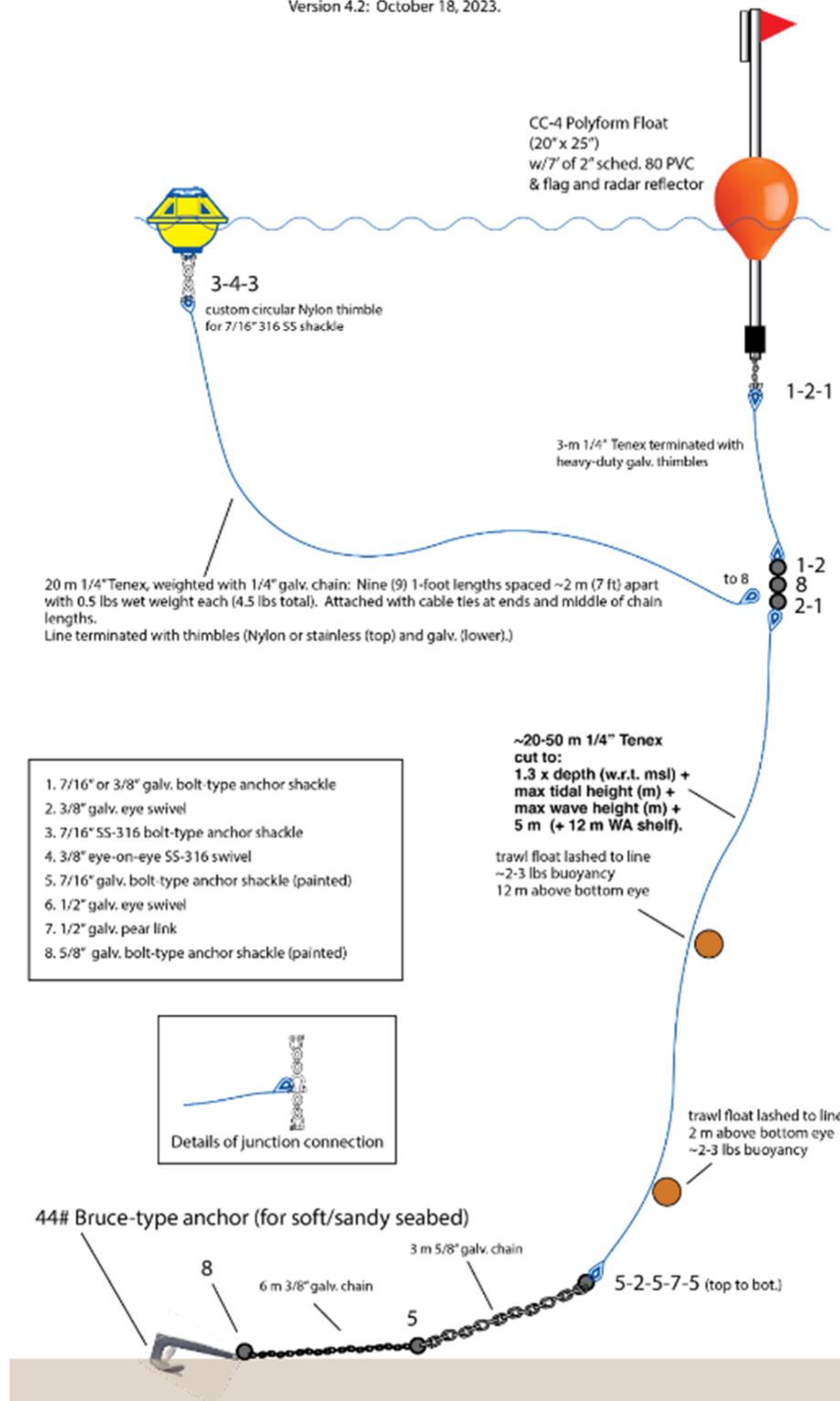


Figure 2. Typical Mooring Element Schematic

QIN will deploy the Spotter over the side of a single boat within the buoy area polygon. It will similarly be retrieved by pulling the buoy, mooring system, and anchor over the side of a single boat. The boat used for deployment will be a QIN crab fishing vessel, such as the *Seeker*, which is a commercial-type fishing vessel typical of the Westport, WA fleet. The *Seeker*, shown in Figure 5, is a 55ft long vessel with internal diesel engines. Up to 500 gallons of fuel will be stored on the boat within the fuel tanks of the vessel. Other QIN crab fishing vessels that may be used have similar specifications.



Source: Dennis Wise, UW Media

**Photo 5. F/V *Seeker***

### **3.0 Mitigation Measures/Wildlife Interaction Procedures**

The following mitigation measures are proposed to be implemented, as appropriate, during implementation of the QIN Backyard Buoys Project:

- Spotter will not be placed such that it blocks access of any species to an area (e.g. it will not prevent movement in or out of a river or channel).
- Spotter, mooring, and anchor setup will be inspected and any required maintenance performed at least twice a year to ensure that equipment and anchors are still in place and have not moved: 1) when it is retrieved for relocation, and 2) following storm events that may have moved or dislodged the Spotter.
- All personnel associated with Spotter deployment will be instructed about the potential presence of species protected under the ESA and the MMPA.
- All on-site personnel will observe water-related activities for the presence of protected species.
- Any collision with and/or injury to a protected species during Spotter deployment, maintenance, or retrieval operations will be reported immediately, or as soon as practical, to the following:



- NMFS Office of Protected Resources at [PR.ITP.MonitoringReports@noaa.gov](mailto:PR.ITP.MonitoringReports@noaa.gov) and [ITP.Fowler@noaa.gov](mailto:ITP.Fowler@noaa.gov) (for marine mammals);
- West Coast Regional Stranding Network at (866) 767-6114 (for marine mammals); or
- Washington Department of Fish and Wildlife (for ESA-listed birds).
- Any observed stranded, injured, or dead marine mammals (not resulting from proposed project activities) observed during Spotter deployment, maintenance, or retrieval operations shall be reported immediately to the West Coast Regional Stranding Network at (866) 767-6114.
- All boat operators shall watch for and avoid collision with protected species. Boat operators must avoid potential interactions with protected species and operate in accordance with the following protective measures:
  - Operation of boat shall cease immediately if a listed species is observed within a 50-ft. (15.24-m) radius of the boat and shall not resume until the species has departed the area of its own volition.
  - If the detection of protected species is not possible during certain weather conditions (e.g., fog, rain, wind), then in-water operations will cease until weather conditions improve and detection is again feasible.
  - Boats will avoid approaching within 328 ft. (100 m) of marine mammals.
  - When these animals are sighted while the boat is underway, the boat will attempt to remain parallel to the animal's course.
  - Boats will avoid multiple or abrupt changes in direction or speed.
  - Boats will maintain a general speed of 5 miles per hour (4 knots) or less when near protected species and when safe to do so.
  - In-water mooring setups will include as little line as possible in the water column in order to measure wave movement and collect quality data. To the extent practical in order to collect quality data, excess line in the water column will be kept to a minimum to minimize the risk for marine mammal entanglement.

## 4.0 Assessment of Potential Effects on Endangered Species Act-Listed Species in Buoy Area Polygon

Endangered Species Act (ESA) listed species occur in the QIN Backyard Buoys Project Area. Table 2 presents ESA-listed species and associated Critical Habitat which occur within the QIN buoy area polygon. The buoy area polygon is comprised of areas of Essential Fish Habitat for all lifestages of groundfish and coastal pelagic species including: finfish and krill (NOAA 2023). Since the buoy area polygon is just outside of the 3-nm state waters boundary, it does not include any Habitat Areas of Particular Concern (HAPC). Waters and sea bottom in Washington State waters 1-3 nm from shore are designated as a HAPC by the Pacific Fishery Management Council.

**Table 2. ESA-Listed Species and Critical Habitat Occurring within Proposed Quinault Indian Nation Buoy Area Polygon**

Species (Management Unit)	ESA Status	Critical Habitat Present in Project Area? (Yes/No)	Expected Effect from Spotter Deployment and Operation
<b>Killer whale</b> <i>Orcinus orca</i> (Southern resident DPS)	Endangered	Yes	No Effect
<b>Humpback whale</b> <i>Megaptera novaeangliae</i> (Central America DPS, Mexico DPS)	Endangered	No	No Effect
<b>Leatherback sea turtle</b> <i>Dermochelys coriacea</i>	Endangered	Yes	No Effect
<b>Green sturgeon</b> <i>Acipenser medirostris</i> (Southern DPS)	Threatened	Yes	No Effect
<b>Sunflower sea star</b> <i>Pycnopodia helianthoides</i>	Proposed Threatened	N/A	No Effect

The Spotter does not emit sound into the marine environment. Given Spotter size and design, and by implementing the proposed mitigation measures, the Spotter does not create an obstruction to animal movement, introduce lighting, encourage aggregations of predators, or disrupt wave patterns. It is too small to attract fish and larger predators that would increase predation, and it is too small to disrupt wave patterns.

## Routes of Effect

ESA-listed species have the potential to be affected by a number of “routes of effect.” These routes of effect, and QIN’s assessment of whether and how they affect ESA-listed species and/or critical habitat, are described in the sections below. In particular, we assessed the potential for the following routes of effect to have an effect on ESA-listed species and critical habitat occurring in the buoy area polygons:

- Direct physical effects from placement of buoy anchors on seafloor;
- Effects from turbidity from disturbed seafloor sediments during anchor placement;
- Entanglement with Spotter mooring line; and
- Boat collision.

### ***Direct Physical Effects from Placement of Buoy Anchor on Seafloor***

Each mooring anchor setup will create a conservative footprint of approximately 314 sq m (0.0776 ac). Potential for direct physical harm to protected species requires they be present in this disturbance footprint.

Placing the anchor setup could affect protected fish, invertebrates, and habitat. Direct exposure of listed fish or the sunflower sea star to anchor disturbance is limited to the potential impacts from anchor placement on the seafloor. Fish, mammals, and sea turtles have the ability to flee areas where disturbance is occurring; and therefore, direct impacts on fish are unlikely. Slower-moving sea stars may be present on the substrate and unable to move quickly enough to avoid injury or crushing from the anchor weight.

Up to three Spotters would be deployed, and each may be moved up to 3 times during a single year of deployment. If each buoy is moved 3 times, the most conservative total seafloor impact area each year would be approximately 2,826 sq m (0.7 ac). Any impacts on fish and other benthic organism populations

would be temporary, as the area would likely be recolonized by benthic animals within a short timeframe upon removal of the anchor setup. Impacts on benthic foraging habitat would also be limited to the footprint of the anchor setup. Injuring or killing benthic prey in this relatively small area would not adversely affect available critical habitat for ESA-listed species as the impacted area would be a small fraction of area of critical habitat available to ESA-listed species. Physical placement of the anchor setup on the seafloor is expected to have no effect on ESA-listed species or critical habitat.

QIN is not aware of any identified Critical Sites within the proposed buoy area polygons. Any sites identified by Washington State Department of Archaeology and Historical Preservation during consultation with the State of Washington and USACE, or identified while conducting project-related activities, will be avoided and a buffer of at least 500 ft. (152.4 m) will be implemented to mitigate any potential impacts on Critical Sites.

### ***Effects from Turbidity from Disturbed Seafloor Sediments During Anchor Placement***

A small and temporary increase in turbidity would likely result from placement of the anchor weight on the seafloor. This slight increase is expected to return to ambient levels within a short time frame after anchor placement. The rise in turbidity is expected to be no greater than many natural processes which might cause increased turbidity (e.g. marine mammal foraging, weather). No sediments will be moved during anchor placement. Impacts on ESA-listed species will be localized to the small immediate area and temporary. No effects on local populations are anticipated.

Submerged aquatic vegetation, particularly seaweed communities, are important habitat for a wide variety of aquatic life. Eelgrass is not common along the Olympic Coast. Buoy placement is not proposed in areas with abundant aquatic vegetation, and they will be deployed in areas of approximately 25 m water depth.

Suspended sediments resulting from substrate disturbance during anchor placement are likely to settle locally or be dispersed and re-settle at densities that would not smother submerged aquatic vegetation, if present. The Washington Department of Ecology determined that activities conducted under NWP 5 will not violate applicable state water quality standards.

The slight and brief effect of increased turbidity in the water column is expected to have no effect on ESA-listed species, critical habitat, or EFH.

### ***Entanglement with Spotter Mooring Line***

ESA-listed loggerhead sea turtles, SRKW, and humpback whales could become entangled by encountering in-water lines, such as Spotter mooring lines. The risk to turtles and whales depends on the number of in-water loops created by lines attached to surface floats and on the extent of excess line in the water column. The nature of wave buoy data collection necessitates some excess line in order for the buoy to rise and fall with the wave action. Surface floats are also necessary in order to allow for proper buoy movement for data collection. Depending on typical wave conditions for a particular location, more surface floats may be needed in order to collect quality data and limit the risk of the buoy being pulled underwater or damaged. Proposed moorings will be installed in a manner to minimize the risk of entanglement (i.e. as few looping lines and as little excess line in the water column as practical in order to collect quality wave data). Limiting the quantity to 3 Spotter buoys within the buoy area polygon further limits the risk of turtle or whale entanglement. Therefore, deployment of the proposed Spotter buoy is expected to have no effect on ESA-listed turtles and whales from entanglement with underwater mooring lines.

## Boat Collision

Increased boat traffic in the marine environment could increase the potential for boat collisions with ESA-listed species. Proposed Spotter buoy deployment will not result in more than an incremental increase in vessel traffic in offshore waters within the buoy area polygons, and as such it is extremely unlikely that the project will increase the incidence of boat collisions with ESA-listed species. The *Seeker*, or similar (i.e., other QIN fishing vessels) regularly frequents these waters for other activities. It will add an incrementally small number of trips in the same region with the same types of boats. Furthermore, the proposed mitigation measures (e.g. reduced speed when protected species are present, ceasing buoy deployment and retrieval operations when weather conditions prevent detection of protected species, etc.) will further mitigate the potential for collisions with animals, resulting in no effect on ESA-listed species from collisions with the project boat during buoy deployment, maintenance, and retrieval.

### 1.1 Summary of Effects

Based on the nature of the proposed project and the proposed mitigation measures, QIN anticipates the following effects determinations, as summarized in Table 2.

**Table 3. Summary of Anticipated Effects on ESA-Listed Species from WWU Backyard Buoys Project**

Potential Routes of Effect	Anticipated Effect on ESA-Listed Species	Anticipated Effect on Critical Habitat
Direct Physical Effects from Placement of Spotter Buoy Anchors on Seafloor	No Effect	No Destruction or Adverse Modification
Effects from Turbidity from Disturbed Seafloor Sediments During Anchor Placement	No Effect	No Destruction or Adverse Modification
Entanglement with Spotter Mooring Lines	No Effect	No Destruction or Adverse Modification
Boat Collision	No Effect	No Destruction or Adverse Modification

The Quileute Tribe was recently granted a permit for similar buoy deployments to the north of the QIN buoy area polygon (OCNMS-2023-004). A similar Backyard Buoys project comprised of deployment of 18 Spotter buoys conducted by AEWG was also recently authorized under NWP 5 off the North Slope of Alaska (POA-2023-00217), and similar determinations were made by USACE. Additionally, similar determinations of effect on ESA-listed species and critical habitat from marine placement of scientific measurement devices were made by NMFS in its ESA Section 7 Consultation Programmatic Biological Opinion for Authorization of Minor In-Water Activities Throughout the Geographic Area of Jurisdiction of the U.S. Army Corps of Engineers Jacksonville District, including Florida and the U.S. Caribbean (NMFS 2017).

## 5.0 Permits

Table 4 presents permits and authorizations which will be requested for future buoy deployments.

**Table 4. List of Permits Requested**

Permit	Agency	Status
Nationwide Permit 5 – Scientific Measurement Devices	U.S. Army Corps of Engineers	Application Submitted
Clean Water Act Section 401 Water Quality Certification	Environmental Protection Agency	Granted for NWP 5
Private Aids to Navigation Approval	U.S. Coast Guard	Application Submitted
Olympic Coast National Marine Sanctuary Research Permit	Olympic Coast National Marine Sanctuary	Application Submitted

## 6.0 Spill Prevention and Response

All QIN commercial fishing vessels have internal diesel engines and the deployment crew will ensure a spill kit, including absorbents, is available on the boat. All personnel will be briefed on the location of the spill kit and proper use in the case of an accidental fuel release. Any spill will be reported in accordance with federal, state, and local regulations.

## 7.0 References

NMFS. 2017. Endangered Species Act – Section 7 Consultation. Biological Opinion. Authorization of Minor In-Water Activities throughout the Geographic Area of Jurisdiction of the U.S. Army Corps of Engineers Jacksonville District, including Florida and the U.S. Caribbean. United States Army Corps of Engineers, Jacksonville District. Available online at <http://cdm16021.contentdm.oclc.org/utils/getfile/collection/p16021coll3/id/577>. Accessed on 3/23/2023.

## **Appendix C**

### **Permit Application Examples**

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1. 2023 Alaska Eskimo Whaling Commission Land Use Permit Application
2. 2023 Western Washington University JARPA
3. 2023 Western Washington University JARPA Attachment E
4. 2024 Alaska Eskimo Whaling Commission Study Permit Application
5. 2024 Alaska Eskimo Whaling Commission USACE Pre-Construction Notification
6. 2021 Quileute Tribe NOAA National Marine Sanctuaries Permit Application
7. 2023 National Park of American Samoa SHPO Correspondence

**STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES  
Division of Mining, Land and Water**

**LAND USE PERMIT APPLICATION**

AS 38.05.850

**Applicants must complete all sections of this application. In addition, applicants proposing:**

- the use of the uplands must also complete the Supplemental Questionnaire for Use of State-Owned Uplands accompanying this application;
- off-road travel must also complete the Supplemental Questionnaire for Off-Road Travel accompanying this application; and/or
- the use of shorelands, tidelands, and submerged lands must also complete the Supplemental Questionnaire for Use of State-Owned Waters accompanying this application.

**Other items that must accompany the completed application are:**

- a (non-refundable) application fee; see current Director's Fee Order or contact your regional office for applicable fees;
- a topographic map or aerial photo showing the location of the proposed activity;
- additional items identified and required in any supplemental questionnaire(s) to this application; and
- additional pages if more space is necessary to answer the questions completely.

**Completed Land Use Permit Applications should be submitted electronically or mailed to one of the following offices:**

Northern Region Land Office  
3700 Airport Way  
Fairbanks, AK 99709-4699  
(907) 451-2740  
[nro.lands@alaska.gov](mailto:nro.lands@alaska.gov)

Southcentral Region Land Office  
550 West 7<sup>th</sup> Ave, Suite 900C  
Anchorage, AK 99501-3577  
(907) 269-8503  
[dnr.scro.permitting@alaska.gov](mailto:dnr.scro.permitting@alaska.gov)

Southeast Region Land Office  
P. O. Box 111020  
Juneau, AK 99811-1020  
(907) 465-3400  
[sero@alaska.gov](mailto:sero@alaska.gov)

Statewide TTY – 771 for Alaska Relay or 1-800-770-8973

LAS # \_\_\_\_\_

(Applicant please provide if known)

**Applicant Information:**

Name: Lesley Hopson

Date of Birth: N/A

Doing Business As: Alaska Eskimo Whaling Commission

Business License #: 265771

Mailing Address: P.O. Box 570

EIN: 92-0081760

Utqiagvik, AK 99723

Contact Person: Stacey Korsmo (Contractor)

Home Phone: N/A

Work Phone: (907) 852.2392

Email Address: LHopson@aewc-alaska.com

Cell Phone: N/A

Fax: (907) 852.2392

LAS #: \_\_\_\_\_



**If you are applying for a corporation, give the following information:**

**Name, address and place of incorporation:**

Alaska Eskimo Whaling Commission  
1078 Kiogak St.  
Barrow, AK 99723

**Is the corporation qualified to do business in Alaska?** Yes  No

**If yes, provide name, address and phone number of the resident agent:**

Sarah Espelin  
Mile 129 Parks Highway  
Trapper Creek, AK 99683  
(907)

**Type of User (Select One):**  Private non-commercial (personal use)  Commercial Recreation or Tourism  
 Public Non-profit including Federal, State, Municipal Government Agency  Other commercial or industrial

**Duration of Project:** The proposed activity will require the use of state land for: **(Check one)**

A single term of less than one year. **Beginning month:** \_\_\_\_\_ **Ending month:** \_\_\_\_\_  
 A multi year term for up to 5 years. **Beginning year:** 2023 **Ending year:** 2027

If multi year and seasonal, mark months of use in each year.

Jan,  Feb,  Mar,  Apr,  May,  Jun,  Jul,  Aug,  Sept,  Oct,  Nov,  Dec

**Project Location:**

**Latitude/Longitude or UTM:** See Project Description \_\_\_\_\_ or

**Section:** N/A **Township:** N/A **Range:** N/A **Meridian:** N/A

**Section:** N/A **Township:** N/A **Range:** N/A **Meridian:** N/A

Proposed project will require the use of up to 0.02 acres.

(Please add additional sheets for this section as necessary)

LAS #: \_\_\_\_\_

**Project Description:** Describe in detail your intended use of state land. (State land also includes all tide and submerged lands beneath coastal waters and all shorelands beneath other navigable waterbodies of the state.) Discuss development and activities. (Attach additional pages as necessary.)

AEWC plans to deploy 17 Sofar Spotter wave buoys (Spotters) annually in marine waters near the communities of Kaktovik, Utqiavik, Wainwright, Point Hope, and Little Diomedes to collect real-time wave data. With accessible data tools, these data will serve community needs for decisions on scales from daily (e.g., safety for maritime operations and coastal hazards) to longer planning horizons (e.g., resilience for climate change and ecosystem function). See Project Description for additional details.

Should a portion of the permitted area be closed to the general public? Yes  No  .

If yes, explain which portion and provide justification for exclusive use.

N/A

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**Site Description:** Briefly describe the current condition of the proposed site of use, noting any trash, garbage, debris or signs of possible site contamination. (If significant, we recommend you provide pictures to establish initial conditions.) The buoy area polygons are in marine waters near the communities of Kaktovik, Utqiavik, Wainwright, Point Hope, and Little Diomedes. Site conditions are good with no known accumulations of garbage, debris, or contamination.

LAS #: \_\_\_\_\_

Are there improvements or materials on the site now? Yes  No  If yes, briefly describe the improvements, their approximate value, and who owns them. (We recommend you provide pictures of improvements.)  
N/A

Describe the natural vegetation – ground cover, trees, shrubs – and any proposed changes. Describe the location of any estuarine, riparian, or wetlands and any noticeable animal use of area.  
The buoys are located offshore in the Bering, Chukchi, and Beaufort seas in areas with little to no seafloor vegetation.

---

**Site Access:** Describe how you plan to access the site, and your mode of transportation.  
Sites will be accessed using aluminum whaling captain boats up to 24' in length and equipped with an outboard motor.

If your access is by aircraft, specify the type and size of aircraft:  
N/A

To access the site, the aircraft is equipped with floats  wheels  skis .

---

**Number of people:**

1. Indicate the number of employees and supervisors who will be working on the site. up to 3
2. Indicate the number of customers who will be using the site per year or season. N/A
3. Indicate the number of days the site will be used per year or season. Up to 155

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LAS #: \_\_\_\_\_  
Land Use Permit Application Form 102-1084A  
(Rev.9/21)

**Environmental Risk / Hazardous Substances:** In the course of your proposed activity will you generate, use, store, transport, dispose of, or otherwise come in contact with toxic and/or hazardous materials, and/or hydrocarbons?

Yes  No  . If yes, please describe:

Each whaling captain boat will be powered by an outboard motor which runs on hydrocarbon fuel.

The types and volumes of fuel or other hazardous substances present or proposed:

Up to 120 gallons of gasoline will be stored on each whaling captain boat.

The specific storage location(s):

Fuel will be stored onboard in whaling boat fuel storage container.

The spill plan and prevention methods:

Each Village Facilitator will ensure a spill kit, including absorbents, is available on the boat. All personnel will be briefed on the location of the spill kit and proper use in the case of an accidental fuel release. Any spill will be reported in accordance with federal, state, and local regulations.

If you plan to use either above or below ground storage containers (like tanks, drums, or other containers) for hazardous material storage, answer the following questions for each container:

Where will the container be located?

N/A

What will be stored in the container?

N/A

What will be the container's size in gallons? N/A

LAS #: \_\_\_\_\_

Give a description of any secondary containment structure, including volume in gallons, the type of lining material, and configuration:

N/A

Will the container be tested for leaks? Yes  No  .

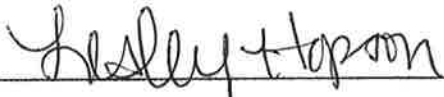
Will the container be equipped with leak detection devices? Yes  No  . If no, describe:

N/A

Do you have any reason to suspect, or do you know if the site may have been previously contaminated?

Yes  No  . If yes, please explain:

N/A



Signature of Applicant or Authorized Representative

Executive Director

Title

4/20/2023

Date

**This form must be filled out completely and submitted with the applicable fees. Failure to do so will result in a delay in processing your permit. AS 38.05.035(a) authorizes the director to decide what information is needed to process an application for the sale or use of state land and resources. This information is made a part of the state public land records and becomes public information under AS 40.25.110 and 40.25.120 (unless the information qualifies for confidentiality under AS 38.05.035(a)(8) and confidentiality is requested, AS 43.05.230, or AS 45.48). Public information is open to inspection by you or any member of the public. A person who is the subject of the information may challenge its accuracy or completeness under AS 44.99.310, by giving a written description of the challenged information, the changes needed to correct it, and a name and address where the person can be reached. False statements made in an application for a benefit are punishable under AS 11.56.210.**

**In submitting this form, the applicant certifies that he or she has not changed the original text of the form or any attached documents provided by the Division. In submitting this form, the applicant agrees with the Department to use "electronic" means to conduct "transactions" (as those terms are used in the Uniform Electronic Transactions Act, AS 09.80.010 – AS 09.80.195) that relate to this form and that the Department need not retain the original paper form of this record: the department may retain this record as an electronic record and destroy the original.**

**For Department Use Only**  
Application received date stamp

Receipt Type:  7A  RR  FF

LAS #: \_\_\_\_\_

**LAND USE PERMIT APPLICATION SUPPLEMENTAL QUESTIONNAIRE FOR:  
Use of State-Owned Waters (Shorelands, Tidelands & Submerged Lands)**

**Shorelands** are those below ordinary high water mark of non-tidally influenced navigable waterbodies. **Tidelands** are that portion of the intertidal zone below the elevation of mean high water. This elevation varies by location. Contact the nearest Department of Natural Resources (DNR) regional office for assistance. **Submerged lands** are those below the lowest tidal elevation. The State of Alaska, with few exceptions, owns these lands out to three miles offshore. If your activity includes the use of State shorelands, tidelands, or submerged lands and the waters above them, answer the questions within applicable sections below. All site development details identified in this section must be represented graphically in the scaled drawings on page 9 of the supplement.

Does the applicant own the directly adjacent, upland waterfront property? **Yes**  **No**

If no, give name(s) and current address/phone number of the property owner.  
State of Alaska

Give names and current addresses and/phone numbers for both upland property owners on either side of the above waterfront property.

N/A

**Note:** You must obtain the upland owner's written permission for any use of uplands you do not own including for waste disposal, access roads, waterlines, power lines, or shore ties above MHW, and you must provide a copy to DNR before a permit is issued. If not the immediately adjacent upland property owner, does the applicant have legal access across the uplands? **Yes**  **No**  Please explain.

Village Facilitators are members of the community and will access the water using publicly available access points. These personnel and whaling captain boats will enter the marine environment in the same way they do for subsistence hunting activities.

Will your tideland use involve any use of adjacent State-owned uplands? **Yes**  **No**  (If Yes, indicate uses and show on your development plan diagram.)  Shore tie  Waterline  Power line  Access to roads  Other – Explain.

N/A

**Type of Use, Activity, Development (Answer All).**

Will you be developing / using a Mooring Buoy or anchoring a commercial or industrial use vessel for more than 14 days?

**Yes**  **No**  (If yes, please also answer all questions in **Part 1 on page 2** and **Part 6 on pages 10, 11.**)

LAS # \_\_\_\_\_

Land Use Permit Supplemental Questionnaire for

Use of State-Owned Waters (Shorelands, Tidelands & Submerged Lands) Form 102-1084C (Rev 09/21)

Will you be anchoring or mooring a commercial or industrial related floating facility that is or can be occupied, i.e. a float camp or floating lodge, a float house you rent, a seafood processor?

Yes  No  (If yes, please also answer all questions in Part 2, on page 3 and Part 6 on pages 10, 11.)

Will you be anchoring or mooring your own personal use Float house?

Yes  No  (If yes, please also answer all questions in Part 2, on pages 3 and Part 6 on pages 10, 11.)

Will you be placing non-occupied structures including but not limited to Piling, Dolphins, Fixed docks, Floating docks, or other floating structures?

Yes  No  (If yes, please also answer all questions in Part 3, on page 4 and Part 6 on pages 10, 11.)

Are you seeking authorization to use or develop a Log Transfer Facility, a floating Log Storage area, or a Log Ship Loading site?

Yes  No  (If yes, please also answer all questions in Part 4, pages 5, 6, 7 and Part 6 on pages 10, 11.)

Will you be placing fill or dredging material on a beach?

Yes  No  (If yes, please also answer all questions in Part 5, pages 8, 9 and Part 6 on pages 10, 11.)

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### Part 1. Anchoring vessels and mooring buoy systems

Does the proposed use location include a known anchorage? Yes  No  If yes, have alternative locations been considered to reduce impact to the anchorage? Yes  No  If no, explain why.

N/A

What type of vessel will use the site?  Commercial Fish Tender / Processor  Log Ship  General Cargo Ship  
 Unoccupied Barge  Fuel Barge  Passenger Vessel  Other: N/A

Does the anchoring vessel require the ability to be able to occupy this site all year long? Yes  No

If no, what months will the site be used? From N/A to N/A

What is the maximum swing radius of vessel at anchor? Length: N/A feet (distance from anchor to the aft of the vessel).

Will the vessel require the placement of a mooring buoy system? Yes  No  Number of buoys: N/A

If placing buoys, fill out applicable parts of Part 3 to explain the anchoring system.

---

**Part 2. Floathouses and Commercial, Industrial Floating Lodges, Float camps, Caretaker Residences** (including seafood processors)

Description of Facility Note: The structures and dimensions must be shown on the development plan diagram.

Float Dimensions: float N/A x N/A float N/A x N/A float N/A x \_\_\_\_\_ Total float area N/A sq ft

Living quarters total area: N/A sq ft. Number of stories: N/A. Maximum occupancy: N/A persons

Describe other structures on floats, such as storage and generator sheds; give structure dimensions.

N/A

Describe anchoring system and address all that apply: No. of anchors N/A Type N/A Weight N/A

No. of Rock bolts: N/A No. of Shore ties: N/A

Other methods:

N/A

Grounding is prohibited. What is the water depth beneath the facility at extreme low tide? N/A

How many feet of maximum draft does the floating facility have? N/A

Describe your potable Water Source: type, location, ownership of the source:

N/A

Wastewater System. Describe how you will handle human waste, black water, grey water:

N/A

Do you have an approved Alaska Department of Environmental Conservation marine sanitation system? Yes  No

Approval # N/A

Describe how you will dispose of all solid waste including human waste and household garbage generated on facility:

N/A

---

LAS # \_\_\_\_\_



**Part 3. Non occupied structures - Piling, Dolphins, fixed docks, floating docks, or other floating structures.**

Select all boxes that apply for structures located below MHW and show all on the development plan diagram.

- Fixed pile-supported dock, wharf or landing (non-floating) – dimensions N/A x N/A feet. No. of pilings N/A
- Ramp to floating dock - dimensions N/A x N/A feet
- Boat haulout or non-floating ramp - dimensions N/A x N/A feet
- Floating dock dimensions N/A x N/A feet, N/A x N/A feet, N/A x N/A feet, N/A x N/A feet, N/A x N/A feet
- Floating breakwater - materials: N/A Dimensions N/A x N/A
- Other floating structures (e.g., net pens, gear storage float) - describe materials, structures, dimensions:  
17 Sofar Spotter buoys will be deployed offshore of five North Slope communities. See Project Description for additional information.

- Storage sheds or similar structures on docks - description N/A Dimensions N/A x N/A
- Bulkhead - type (log crib, sheet pile, etc.) N/A  
Dimensions N/A x N/A Cubic Yards of Fill
- Individual pilings not counted under fixed dock above. Number N/A
- Dolphins - Number N/A Number of pilings per dolphin N/A
- Anchor - Number 17 Type kettlebell and/or boat anchor Weight up to 150 lb
- Rock bolts - Number N/A
- Shore ties – Number N/A Note: You must obtain the upland owner’s permission to place shore ties above MHW before a permit is issued.

**Note: Grounding is prohibited.**

What is the water depth beneath the floating structures at extreme low tide?        feet

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**Part 4. Temporary log transfer facility (LTF) including floating log storage area.**

Siting of an LTF which discharges wood into the marine waters must meet the 1985 Alaska Timber Task Force siting criteria guidelines and the criteria established under the US Environmental Protection Agency's (USEPA) - National Pollutant Discharge Elimination System (NPDES) general permit and the Alaska Department of Environmental Conservation (ADEC) 401 certification.

What is the maximum length of time that you will need to use the facility? N/A years.

What will be your seasonal periods of operation? N/A

What is the total timber volume you need to transfer across this LTF? N/A mmbf.

How many total acres do you need for this facility? N/A acres.

Note: This acreage must include all improvements including the anchors and lines. It must include the area required for such items as log raft construction, off-shore storage, associated barge and vessel moorage, and shore-ties.

Does the associated transfer site require a log raft building area? Yes  No  If yes then:

How many boom logs N/A and anchors N/A and what is the total length of boom logs N/A feet, that you need for the rafting area?

Will the log rafts ground or be moored in water at depths less than 40 feet as measured from MLLW?

Yes  No

What is the near shore depth N/A feet, and the offshore depth N/A feet, of the log rafting area as measured from MLLW (0.0' elevation)?

What nautical chart did you use for reference N/A, please include a copy of this area of the chart with the attachments.

Will you need an associated in-water log storage area? Yes  No  If Yes, then answer the set of questions in the **Floating Log Storage Area section of Part 4.**

Will you need an associated log ship moorage and loading area? Yes  No  If yes then complete Part 1 on Pg 2.

What kind of transfer facility do you propose to operate? (i.e. A-Frame letdown, slide ramp, drive down ramp, barge ramp)  
N/A

**Will you be transferring logs into the marine waters?**

**No, logs will never be discharged into the water, they will always be transported directly onto barges.**

**Yes - new facility.** The applicant must conduct a dive survey of the near shore area to document the pre-project underwater topography and habitat conditions that will be covered by the discharge of bark on to the likely one-acre zone of deposit. The initial dive survey must be done to guidelines established for bark monitoring by the USEPA and the ADEC. A written report of findings including photographic documentation must be submitted prior to review and consideration of this application.

LAS # \_\_\_\_\_

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**Part 4.** (continued)

**Yes - existing facility.** Include a report of the last dive survey with attachments. The applicant / operator is responsible to conduct bark monitoring dive surveys, done to the guidelines established by the USEPA and the ADEC to document the current extent of bark accumulation at the site. A written report of current monitoring findings must be submitted prior to review and consideration of this application.

Is this an existing LTF that has been fully approved and used to transport timber in the past? **Yes**  **No**

If Yes, then answer the following set of questions. If No, you are finished with **Part 4.**

Was the facility constructed before 1985? **Yes**  **No**

Is the facility currently authorized? **Yes**  **No**  If Yes, provide the Army Corps of Engineer's Permit Name and number (i.e. Mud Bay 43) N/A and attach a copy of it and all modifications.

What is the US EPA - NPDES authorization number? N/A Date of approval N/A  
and who is the authorized operator: N/A

When was the facility last actively used? N/A How long was it used before? N/A

How much volume was transferred? N/A mmbf

What type of log entry system is currently authorized? (i.e. A-Frame letdown, slide ramp, drive down ramp, barge ramp)  
N/A

Is there a tideland survey for the site? **Yes**  **No**  , ATS # N/A N/A

Does the existing facility require a physical modification? **Yes**  **No**  If Yes, please submit your modification request to the USACE and include a copy with this application. Please briefly explain the modification.  
N/A

**Floating Log Storage Area**

Will the storage area be inside the permit area at the log transfer facility? **Yes**  **No**  If No, Will there be a separate tract or tracts? **Yes**  **No**  If Yes, how many tracts do you need? N/A and list below the acreage of each tract.  
N/A

How long do you need to use the storage area(s)? N/A

How much volume will be moved thru this storage area? N/A mmbf

How many log booms and anchors and what is the total length of the log boom perimeter that will be needed for storage?

# of log booms N/A , # of anchors N/A total length of all log booms N/A feet.

Will you be using shore ties? **Yes**  **No**  If Yes, provide a copy of this permission, if No, you need to obtain and provide this.

LAS # \_\_\_\_\_

**Part 4.** (continued)

Will the log rafts ground or be moored in water at depths less than 40 feet as measured from MLLW?

Near shore depth N/A feet, Offshore depth N/A feet.

What nautical chart did you use for reference? N/A If possible, please include a copy with the attachments.

If the log storage area is one which has been fully approved and used to store log rafts in the past, then answer the following:

When was the site last actively used? N/A and for how long? N/A

If known, how much volume was stored here? N/A mmbf

Is the facility currently authorized? Yes  No  If Yes, provide the Army Corps of Engineer's Permit Name and number (i.e. Mud Bay 43): N/A and attach a copy of the permit and all modifications.

What is the DNR authorization number? N/A

What is the US EPA - NPDES authorization number? N/A Date of approval N/A  
and who is the authorized operator: N/A

Has there been a recent dive survey completed? Yes  No  If Yes, then include a copy of this report with the attachments.

Note: The applicant may have to conduct a dive survey of the log storage area to document the underwater topography and habitat that would be covered by the bark zone of deposit or to establish current bark accumulation levels. If required due to level of use, a bark monitoring dive survey must be done to guidelines established by the US EPA and the ADEC to document the current conditions at the site.

LAS # \_\_\_\_\_

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**Part 5. Use that involves dredging, placing fill material or altering beaches.**

NOTE: When altering the location of the line of mean high water on a beach by placing fill on or seaward of this line you need to be aware of the following. The line of ordinary high water (OHW) or mean high water (MHW) is the boundary where State (public) ownership of shorelands, tidelands and submerged land begins. For OHW, the boundary is the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For MHW, this boundary is an elevation contour on the beach and is determined by the tidal stage of MHW water elevation against the beach topography. These lines are not fixed by a past survey of the upland property if that land survey shows a meandered boundary as is typically done. A meandered boundary is intended to be dynamic and move over time; natural forces can either erode material or deposit material and as a result, the boundary can naturally move. Another natural way that boundaries can change is in tidal areas where glaciers have recently receded and the land is rebounding or uplifting over time. When any natural process is interrupted by the actions of man, such as placing material to stop erosion, the boundary line typically becomes fixed from that point on. When altering the boundary line through fill below MHW or (OHW), the upland owner will not gain ownership of the newly filled areas; these areas remain in State (public) ownership.

What is the elevation of the line of MHW at the proposed permit site? \_\_\_\_\_ feet

Are you proposing to alter the line of MHW in any manner? Yes  No  If Yes, explain what you intent to do.  
N/A

**Placing fill material on a beach.**

What is the purpose of the fill?  
N/A

Is there an upland survey that has established a meandered boundary line? Yes  No

If Yes, Survey # N/A (if a subdivision survey please provide a legible copy)  
(ATS, ASLS, US Survey #)

Will heavy equipment be used below the mean high-water line to alter the beach? Yes  No  If Yes, explain:  
N/A

How many cubic yards of fill are you proposing to place at and below the line of MHW? N/A cubic yards

What are the dimensions of fill area below MHW elevation? N/A

How many linear feet along the (beach) line of MHW will be covered with fill? N/A feet

Is there more than one area along the beach which will be filled? Yes  No  Identify the location of each area on the development plan diagram.

LAS # \_\_\_\_\_

**Part 5.** (continued)

Will any of the fill material come from State owned uplands or tide and submerged lands? Yes  No  If Yes, then what is the source?

N/A \_\_\_\_\_ and how many cubic yards? N/A \_\_\_\_\_

If you are intending to limit beach fill to the area above the current line of MHW will any of the fill or associated retaining wall material including the toe of the fill or retaining wall extend beyond the line of MHW? Yes  No

Is the adjacent upland property encumbered with a public easement along the waterfront boundary? Yes  No

How will the fill affect public access along the beach?

N/A

**Excavation of materials from a beach.**

What is the purpose of the excavation?

N/A

How many linear feet along the beach will be affected? N/A \_\_\_\_\_ feet

To what depth will you be excavating? N/A \_\_\_\_\_ feet

How many cubic yards will be excavated from the area seaward of the line of MHW? N/A \_\_\_\_\_ cubic yards and what will this excavated material be used for or where will it be disposed?

N/A

**Part 6. Dismantle, Removal, Restoration Plan** - The permit will require that upon expiration, completion, or termination the site shall be vacated and all improvements and personal property removed. The site shall be left in a clean, safe condition acceptable to the Regional Manager. Your answers to the following questions will establish your proposed restoration plan.

**A.** Explain how you plan to dismantle and remove the improvements and restore the site to a clean, safe condition acceptable to the Regional Manager. **Note:** One acceptable alternative is returning the permit site to the condition that existed before the site was developed or used.

Buoys will be retrieved by pulling the buoy, mooring system, and anchor over the side of a single whaling captain boat. All buoys will be removed annually prior to ice advancing over the buoy area polygons.

**B.** If your project involves fill describe how it will be removed and where will it be removed to. How will you document that the original line of Mean High Water has been restored? (e.g. photo documentation, resurvey)

N/A

**C.** If your project involves anchors and/or pilings how do you plan on removing them? Where is the nearest community that provides this type of removal equipment / service?

Buoys will be retrieved by hand pulling the buoy, mooring system, and anchor over the side of a single whaling captain boat.

**D.** Describe the disposal method and identify the disposal site or sites for structural components, solid wastes, and hazardous wastes.

N/A

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**Part 6.** (continued)

E. If components can be reused for other projects, such as anchors, identify where they would be stored?  
N/A

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**This form must be filled out completely and submitted with the applicable fees. Failure to do so will result in a delay in processing your permit. AS 38.05.035(a) authorizes the director to decide what information is needed to process an application for the sale or use of state land and resources. This information is made a part of the state public land records and becomes public information under AS 40.25.110 and 40.25.120 (unless the information qualifies for confidentiality under AS 38.05.035(a)(8) and confidentiality is requested or AS 45.48). Public information is open to inspection by you or any member of the public. A person who is the subject of the information may challenge its accuracy or completeness under AS 40.25.310, by giving a written description of the challenged information, the changes needed to correct it, and a name and address where the person can be reached. False statements made in an application for a benefit are punishable under AS 11.56.210.**

**In submitting this form, the applicant certifies that he or she has not changed the original text of the form or any attached documents provided by the Division. In submitting this form, the applicant agrees with the Department to use "electronic" means to conduct "transactions" (as those terms are used in the Uniform Electronic Transactions Act, AS 09.80.010 – AS 09.80.195) that relate to this form and that the Department need not retain the original paper form of this record: the department may retain this record as an electronic record and destroy the original.**

LAS # \_\_\_\_\_

Land Use Permit Supplemental Questionnaire for

Use of State-Owned Waters (Shorelands, Tidelands & Submerged Lands) Form 102-1084C (Rev 09/21)





# WASHINGTON STATE

## Joint Aquatic Resources Permit Application (JARPA) Form<sup>1,2</sup> [\[help\]](#)

USE BLACK OR BLUE INK TO ENTER ANSWERS IN THE WHITE SPACES BELOW.



US Army Corps  
of Engineers®  
Seattle District

AGENCY USE ONLY

Date received: \_\_\_\_\_

Agency reference #: \_\_\_\_\_

Tax Parcel #(s): \_\_\_\_\_  
\_\_\_\_\_

### Part 1—Project Identification

**1. Project Name** (A name for your project that you create. Examples: Smith's Dock or Seabrook Lane Development) [\[help\]](#)

Kukutali Wave Buoy

### Part 2—Applicant

The person and/or organization responsible for the project. [\[help\]](#)

**2a. Name** (Last, First, Middle)

Patrick, David

**2b. Organization** (If applicable)

Western Washington University

**2c. Mailing Address** (Street or PO Box)

516 High Street, Old Main 530

**2d. City, State, Zip**

Bellingham, WA 98225

**2e. Phone** (1)

360-650-2884

**2f. Phone** (2)

N/A

**2g. Fax**

N/A

**2h. E-mail**

david.patrick@wwu.edu

<sup>1</sup>Additional forms may be required for the following permits:

- If your project may qualify for Department of the Army authorization through a Regional General Permit (RGP), contact the U.S. Army Corps of Engineers for application information (206) 764-3495.
- Not all cities and counties accept the JARPA for their local Shoreline permits. If you need a Shoreline permit, contact the appropriate city or county government to make sure they accept the JARPA.

<sup>2</sup>To access an online JARPA form with [\[help\]](#) screens, go to

[http://www.epermitting.wa.gov/site/alias\\_resourcecenter/jarpa\\_jarpa\\_form/9984/jarpa\\_form.aspx](http://www.epermitting.wa.gov/site/alias_resourcecenter/jarpa_jarpa_form/9984/jarpa_form.aspx).

For other help, contact the Governor's Office for Regulatory Innovation and Assistance at (800) 917-0043 or [help@oria.wa.gov](mailto:help@oria.wa.gov).

### Part 3—Authorized Agent or Contact

Person authorized to represent the applicant about the project. (Note: Authorized agent(s) must sign 11b of this application.) [\[help\]](#)

<b>3a. Name</b> (Last, First, Middle)			
Kastner, Samuel, Evan			
<b>3b. Organization</b> (If applicable)			
Western Washington University			
<b>3c. Mailing Address</b> (Street or PO Box)			
Dept. of Environmental Sciences (c/o Sam Kastner) 516 High St, MS 9181			
<b>3d. City, State, Zip</b>			
Bellingham, WA, 98225			
<b>3e. Phone</b> (1)	<b>3f. Phone</b> (2)	<b>3g. Fax</b>	<b>3h. E-mail</b>
360-650-8626	585-350-8626	360-650-7284	kastnes@wwu.edu

### Part 4—Property Owner(s)

Contact information for people or organizations owning the property(ies) where the project will occur. Consider both **upland and aquatic** ownership because the upland owners may not own the adjacent aquatic land. [\[help\]](#)

- Same as applicant. (Skip to Part 5.)
- Repair or maintenance activities on existing rights-of-way or easements. (Skip to Part 5.)
- There are multiple upland property owners. Complete the section below and fill out [JARPA Attachment A](#) for each additional property owner.
- Your project is on Department of Natural Resources (DNR)-managed aquatic lands. If you don't know, contact the DNR at (360) 902-1100 to determine aquatic land ownership. If yes, complete [JARPA Attachment E](#) to apply for the Aquatic Use Authorization.

<b>4a. Name</b> (Last, First, Middle)			
Project will occur solely on State of Washington-owned aquatic lands.			
<b>4b. Organization</b> (If applicable)			
N/A			
<b>4c. Mailing Address</b> (Street or PO Box)			
N/A			
<b>4d. City, State, Zip</b>			
N/A			
<b>4e. Phone</b> (1)	<b>4f. Phone</b> (2)	<b>4g. Fax</b>	<b>4h. E-mail</b>
N/A	N/A	N/A	N/A

## Part 5–Project Location(s)

Identifying information about the property or properties where the project will occur. [\[help\]](#)

- There are multiple project locations (e.g. linear projects). Complete the section below and use [JARPA Attachment B](#) for each additional project location.

<b>5a.</b> Indicate the type of ownership of the property. (Check all that apply.) <a href="#">[help]</a>			
<input type="checkbox"/> Private <input type="checkbox"/> Federal <input type="checkbox"/> Publicly owned (state, county, city, special districts like schools, ports, etc.) <input type="checkbox"/> Tribal <input checked="" type="checkbox"/> Department of Natural Resources (DNR) – managed aquatic lands (Complete <a href="#">JARPA Attachment E</a> )			
<b>5b.</b> Street Address (Cannot be a PO Box. If there is no address, provide other location information in 5p.) <a href="#">[help]</a>			
N/A - Project located offshore of Kiket Island. See Project Description			
<b>5c.</b> City, State, Zip (If the project is not in a city or town, provide the name of the nearest city or town.) <a href="#">[help]</a>			
Skagit County, Washington, 98257			
<b>5d.</b> County <a href="#">[help]</a>			
Skagit County			
<b>5e.</b> Provide the section, township, and range for the project location. <a href="#">[help]</a>			
¼ Section	Section	Township	Range
N/A - Offshore	N/A - Offshore	N/A - Offshore	N/A - Offshore
<b>5f.</b> Provide the latitude and longitude of the project location. <a href="#">[help]</a>			
<ul style="list-style-type: none"> <li>Example: 47.03922 N lat. / -122.89142 W long. (Use decimal degrees - NAD 83)</li> </ul>			
48.416961 N Lat., -122.570932 W. Long.			
<b>5g.</b> List the tax parcel number(s) for the project location. <a href="#">[help]</a>			
<ul style="list-style-type: none"> <li>The local county assessor's office can provide this information.</li> </ul>			
N/A - Offshore			
<b>5h.</b> Contact information for all adjoining property owners. (If you need more space, use <a href="#">JARPA Attachment C.</a> ) <a href="#">[help]</a>			
Name	Mailing Address	Tax Parcel # (if known)	

<b>5i.</b> List all wetlands on or adjacent to the project location. <a href="#">[help]</a>
N/A - Offshore
<b>5j.</b> List all waterbodies (other than wetlands) on or adjacent to the project location. <a href="#">[help]</a>
Kiket Bay/Skagit Bay
<b>5k.</b> Is any part of the project area within a 100-year floodplain? <a href="#">[help]</a>
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know
<b>5l.</b> Briefly describe the vegetation and habitat conditions on the property. <a href="#">[help]</a>
Project located in marine waters. See attached Project Description.
<b>5m.</b> Describe how the property is currently used. <a href="#">[help]</a>
Recreational boating and commercial fishing. See attached Project Description.
<b>5n.</b> Describe how the adjacent properties are currently used. <a href="#">[help]</a>
Kiket Island is a jointly managed preserve with the WA state parks and the Swinomish Indian Tribal Community (SITC).
<b>5o.</b> Describe the structures (above and below ground) on the property, including their purpose(s) and current condition. <a href="#">[help]</a>
N/A
<b>5p.</b> Provide driving directions from the closest highway to the project location, and attach a map. <a href="#">[help]</a>
<p>Directions provided below to Kukutali preserve trailhead (from the Washington Trails Association). For a map, see the Project Description.</p> <p>From Highway 20, turn south on Reservation Road for 1.5 mi. Turn right on Snee Oosh Road for 1.4 mi. The entrance to Kukutali Preserve is on the right and the trailhead is not easily seen from Snee Oosh Road. You are looking for a small, unmarked road, with a gate across it. A discover Pass is required to park at the preserve.</p>

## Part 6–Project Description

**6a.** Briefly summarize the overall project. You can provide more detail in 6b. [\[help\]](#)

We will deploy a scientific wave measurement buoy offshore of Kiket Island as part of the National Science Foundation funded Backyard Buoys project. For more detail, see attached Project Description.

**6b.** Describe the purpose of the project and why you want or need to perform it. [\[help\]](#)

This buoy will provide wave measurements to the nearby Swinomish Indian Tribal Community, and be used for class projects for a course at Western Washinton Univeristy in winter quarter 2024. For more information, see the attached Project description.

**6c.** Indicate the project category. (Check all that apply) [\[help\]](#)

- Commercial     
  Residential     
  Institutional     
  Transportation     
  Recreational  
 Maintenance     
  Environmental Enhancement

**6d.** Indicate the major elements of your project. (Check all that apply) [\[help\]](#)

- |   |   |  |   |
|---|---|--|---|
| <input type="checkbox"/> Aquaculture          | <input type="checkbox"/> Culvert              | <input type="checkbox"/> Float               | <input type="checkbox"/> Retaining Wall (upland)                  |
| <input type="checkbox"/> Bank Stabilization   | <input type="checkbox"/> Dam / Weir           | <input type="checkbox"/> Floating Home       | <input type="checkbox"/> Road                                     |
| <input type="checkbox"/> Boat House           | <input type="checkbox"/> Dike / Levee / Jetty | <input type="checkbox"/> Geotechnical Survey | <input checked="" type="checkbox"/> Scientific Measurement Device |
| <input type="checkbox"/> Boat Launch          | <input type="checkbox"/> Ditch                | <input type="checkbox"/> Land Clearing       | <input type="checkbox"/> Stairs                                   |
| <input type="checkbox"/> Boat Lift            | <input type="checkbox"/> Dock / Pier          | <input type="checkbox"/> Marina / Moorage    | <input type="checkbox"/> Stormwater facility                      |
| <input type="checkbox"/> Bridge               | <input type="checkbox"/> Dredging             | <input type="checkbox"/> Mining              | <input type="checkbox"/> Swimming Pool                            |
| <input type="checkbox"/> Bulkhead             | <input type="checkbox"/> Fence                | <input type="checkbox"/> Outfall Structure   | <input type="checkbox"/> Utility Line                             |
| <input type="checkbox"/> Buoy                 | <input type="checkbox"/> Ferry Terminal       | <input type="checkbox"/> Piling/Dolphin      |   |
| <input type="checkbox"/> Channel Modification | <input type="checkbox"/> Fishway              | <input type="checkbox"/> Raft                |   |

Other:

<b>6e.</b> Describe how you plan to construct each project element checked in 6d. Include specific construction methods and equipment to be used. <a href="#">[help]</a>	
<ul style="list-style-type: none"> <li>Identify where each element will occur in relation to the nearest waterbody.</li> <li>Indicate which activities are within the 100-year floodplain.</li> </ul>	
<p>The anchor and line used for the wave buoy deployment will be assembled at the WWU Shannon Point Marine Center, no construction will occur on site. We will drop the buoy and mooring assemblage, and then recover it.</p> <p>More detail is provided in the attached Project Description.</p>	
<b>6f.</b> What are the anticipated start and end dates for project construction? (Month/Year) <a href="#">[help]</a>	
<ul style="list-style-type: none"> <li>If the project will be constructed in phases or stages, use <a href="#">JARPA Attachment D</a> to list the start and end dates of each phase or stage.</li> </ul>	
Start Date: <u>January 2024</u>	End Date: <u>January 2025</u> <input type="checkbox"/> See JARPA Attachment D
<b>6g.</b> Fair market value of the project, including materials, labor, machine rentals, etc. <a href="#">[help]</a>	
\$9,000.00	
<b>6h.</b> Will any portion of the project receive federal funding? <a href="#">[help]</a>	
<ul style="list-style-type: none"> <li>If <b>yes</b>, list each agency providing funds.</li> </ul>	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know	The National Science Foundation funds the Backyard Buoys Project, which purchased the buoy.

## Part 7–Wetlands: Impacts and Mitigation

- Check here if there are wetlands or wetland buffers on or adjacent to the project area.  
(If there are none, skip to Part 8.) [\[help\]](#)

<b>7a.</b> Describe how the project has been designed to avoid and minimize adverse impacts to wetlands. <a href="#">[help]</a>	
<input checked="" type="checkbox"/> Not applicable	
<b>7b.</b> Will the project impact wetlands? <a href="#">[help]</a>	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know	
<b>7c.</b> Will the project impact wetland buffers? <a href="#">[help]</a>	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know	

**7d.** Has a wetland delineation report been prepared? [\[help\]](#)

- If **Yes**, submit the report, including data sheets, with the JARPA package.

Yes  No

**7e.** Have the wetlands been rated using the Western Washington or Eastern Washington Wetland Rating System? [\[help\]](#)

- If **Yes**, submit the wetland rating forms and figures with the JARPA package.

Yes  No  Don't know N/A

**7f.** Have you prepared a mitigation plan to compensate for any adverse impacts to wetlands? [\[help\]](#)

- If **Yes**, submit the plan with the JARPA package and answer 7g.
- If **No, or Not applicable**, explain below why a mitigation plan should not be required.

Yes  No  Don't know N/A

**7g.** Summarize what the mitigation plan is meant to accomplish, and describe how a watershed approach was used to design the plan. [\[help\]](#)

A mitigation plan is not required as no wetlands will be impacted. The Project Description lists mitigation measures to be implemented for environmental protection.

**7h.** Use the table below to list the type and rating of each wetland impacted, the extent and duration of the impact, and the type and amount of mitigation proposed. Or if you are submitting a mitigation plan with a similar table, you can state (below) where we can find this information in the plan. [\[help\]](#)

Activity (fill, drain, excavate, flood, etc.)	Wetland Name <sup>1</sup>	Wetland type and rating category <sup>2</sup>	Impact area (sq. ft. or Acres)	Duration of impact <sup>3</sup>	Proposed mitigation type <sup>4</sup>	Wetland mitigation area (sq. ft. or acres)
N/A	N/A	N/A	N/A	N/A	N/A	N/A

<sup>1</sup> If no official name for the wetland exists, create a unique name (such as "Wetland 1"). The name should be consistent with other project documents, such as a wetland delineation report.

<sup>2</sup> Ecology wetland category based on current Western Washington or Eastern Washington Wetland Rating System. Provide the wetland rating forms with the JARPA package.

<sup>3</sup> Indicate the days, months or years the wetland will be measurably impacted by the activity. Enter "permanent" if applicable.

<sup>4</sup> Creation (C), Re-establishment/Rehabilitation (R), Enhancement (E), Preservation (P), Mitigation Bank/In-lieu fee (B)

Page number(s) for similar information in the mitigation plan, if available: \_\_\_\_\_

**7i.** For all filling activities identified in 7h, describe the source and nature of the fill material, the amount in cubic yards that will be used, and how and where it will be placed into the wetland. [\[help\]](#)

N/A

**7j.** For all excavating activities identified in 7h, describe the excavation method, type and amount of material in cubic yards you will remove, and where the material will be disposed. [\[help\]](#)

N/A

## Part 8–Waterbodies (other than wetlands): Impacts and Mitigation

In Part 8, “waterbodies” refers to non-wetland waterbodies. (See Part 7 for information related to wetlands.) [\[help\]](#)

Check here if there are waterbodies on or adjacent to the project area. (If there are none, skip to Part 9.)

**8a.** Describe how the project is designed to avoid and minimize adverse impacts to the aquatic environment. [\[help\]](#)

Not applicable

The project was designed to use a single small anchor to minimize impact. See Project Description for a full list of proposed mitigation measures for environmental protection.

**8b.** Will your project impact a waterbody or the area around a waterbody? [\[help\]](#)

Yes  No



**8c.** Have you prepared a mitigation plan to compensate for the project’s adverse impacts to non-wetland waterbodies? [\[help\]](#)

- **If Yes**, submit the plan with the JARPA package and answer 8d.
- **If No, or Not applicable**, explain below why a mitigation plan should not be required.

Yes     No     Don't know

The project will have temporary and minimal effects. See Project Description for a discussion of potential environmental impacts and a list of proposed mitigation measures for environmental protection.

**8d.** Summarize what the mitigation plan is meant to accomplish. Describe how a watershed approach was used to design the plan.

- If you already completed 7g you do not need to restate your answer here. [\[help\]](#)

N/A

**8e.** Summarize impact(s) to each waterbody in the table below. [\[help\]](#)

Activity (clear, dredge, fill, pile drive, etc.)	Waterbody name <sup>1</sup>	Impact location <sup>2</sup>	Duration of impact <sup>3</sup>	Amount of material (cubic yards) to be placed in or removed from waterbody	Area (sq. ft. or linear ft.) of waterbody directly affected
Deployment/Operations/Recovery	Kiket Bay	Waterbody	1 year	No material to be placed or removed. 1 anchor moved up to 5 times will disturb the seafloor. Approximately 4.33 sq ft. (0.0001 ac) of seafloor will be disturbed each time the anchor is placed.	21.65 sq ft. (0.0005 ac) of seafloor disturbed if the anchor is moved 5 times.)

<sup>1</sup> If no official name for the waterbody exists, create a unique name (such as “Stream 1”) The name should be consistent with other documents provided.

<sup>2</sup> Indicate whether the impact will occur in or adjacent to the waterbody. If adjacent, provide the distance between the impact and the waterbody and indicate whether the impact will occur within the 100-year flood plain.

<sup>3</sup> Indicate the days, months or years the waterbody will be measurably impacted by the work. Enter “permanent” if applicable.

**8f.** For all activities identified in 8e, describe the source and nature of the fill material, amount (in cubic yards) you will use, and how and where it will be placed into the waterbody. [\[help\]](#)

The anchor and mooring setup will be deployed on the seafloor. No fill material will be placed or removed. A single anchor, moved up to 5 times, will disturb the seafloor. Approximately 4.33 sq ft. (0.0001 ac) of seafloor will be disturbed each time the anchor is placed. Approximately 21.65 sq ft. (0.0005 ac) of seafloor will be disturbed if the anchor is moved 5 times. More detail is available in the attached Project Description.

**8g.** For all excavating or dredging activities identified in 8e, describe the method for excavating or dredging, type and amount of material you will remove, and where the material will be disposed. [\[help\]](#)

N/A

## Part 9—Additional Information

Any additional information you can provide helps the reviewer(s) understand your project. Complete as much of this section as you can. It is ok if you cannot answer a question.

**9a.** If you have already worked with any government agencies on this project, list them below. [\[help\]](#)

Agency Name	Contact Name	Phone	Most Recent Date of Contact
Washington DNR	Andra Nordin	360-854-2866	12/5/2023
Skagit County	Leah Forbes	360-416-1337	8/17/2023

**9b.** Are any of the wetlands or waterbodies identified in Part 7 or Part 8 of this JARPA on the Washington Department of Ecology’s 303(d) List? [\[help\]](#)

- If **Yes**, list the parameter(s) below.
- If you don’t know, use Washington Department of Ecology’s Water Quality Assessment tools at: <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-improvement/Assessment-of-state-waters-303d>.

Yes    No

PCBs, methyl mercury found in tissue samples from dungeness crab (*metacarcinus magister*).

**9c.** What U.S. Geological Survey Hydrological Unit Code (HUC) is the project in? [\[help\]](#)

- Go to <http://cfpub.epa.gov/surf/locate/index.cfm> to help identify the HUC.

171100191100

**9d.** What Water Resource Inventory Area Number (WRIA #) is the project in? [\[help\]](#)

- Go to <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-availability/Watershed-look-up> to find the WRIA #.

6

**9e.** Will the in-water construction work comply with the State of Washington water quality standards for turbidity? [\[help\]](#)

- Go to <https://ecology.wa.gov/Water-Shorelines/Water-quality/Freshwater/Surface-water-quality-standards/Criteria> for the standards.

Yes    No    Not applicable

**9f.** If the project is within the jurisdiction of the Shoreline Management Act, what is the local shoreline environment designation? [\[help\]](#)

- If you don't know, contact the local planning department.
- For more information, go to: <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Shoreline-laws-rules-and-cases>.

Urban    Natural    Aquatic    Conservancy    Other: \_\_\_\_\_

**9g.** What is the Washington Department of Natural Resources Water Type? [\[help\]](#)

- Go to <http://www.dnr.wa.gov/forest-practices-water-typing> for the Forest Practices Water Typing System.

Shoreline    Fish    Non-Fish Perennial    Non-Fish Seasonal

**9h.** Will this project be designed to meet the Washington Department of Ecology's most current stormwater manual? [\[help\]](#)

- **If No**, provide the name of the manual your project is designed to meet.

Yes    No   N/A

Name of manual: This project will not have stormwater implications.

**9i.** Does the project site have known contaminated sediment? [\[help\]](#)

- **If Yes**, please describe below.

Yes    No

**9j.** If you know what the property was used for in the past, describe below. [\[help\]](#)

No.

**9k.** Has a cultural resource (archaeological) survey been performed on the project area? [\[help\]](#)

- **If Yes**, attach it to your JARPA package.

Yes    No

**9l.** Name each species listed under the federal Endangered Species Act that occurs in the vicinity of the project area or might be affected by the proposed work. [\[help\]](#)

The following species are listed under the ESA and may occur in the vicinity of the project area: southern resident killer whales, humpback whales, bull trout, chinook salmon, chum salmon, dolly varden, eulachon, green sturgeon, steelhead trout, bocaccio, marbled murrelet, short-tailed albatross, and sunflower sea star (proposed threatened). See Section 4.0 of the attached Project Description for additional information on anticipated effects on ESA-listed species.

**9m.** Name each species or habitat on the Washington Department of Fish and Wildlife's Priority Habitats and Species List that might be affected by the proposed work. [\[help\]](#)

Pacific herring (Georgia Basin DPS)/breeding area - *Clupea pallasii* (candidate)  
Big brown bat - *Eptesicus fuscus*  
Little brown bat - *Myotis lucifugus*

The proposed project is not anticipated to affect bats, as it will not provide areas for roosting, affect bat prey species or habitat, or act as a bat attractant. Pacific herring are not expected to be affected for the same reasons other fish species are not expected to be affected. See Project Description for more information on environmental effects of the proposed project.

## Part 10—SEPA Compliance and Permits

Use the resources and checklist below to identify the permits you are applying for.

- Online Project Questionnaire at <http://apps.oria.wa.gov/opas/>.
- Governor's Office for Regulatory Innovation and Assistance at (800) 917-0043 or [help@oria.wa.gov](mailto:help@oria.wa.gov).
- For a list of addresses to send your JARPA to, click on [agency addresses for completed JARPA](#).

**10a.** Compliance with the State Environmental Policy Act (SEPA). (Check all that apply.) [\[help\]](#)

- For more information about SEPA, go to <https://ecology.wa.gov/regulations-permits/SEPA-environmental-review>.

A copy of the SEPA determination or letter of exemption is included with this application.

A SEPA determination is pending with \_\_\_\_\_ (lead agency). The expected decision date is \_\_\_\_\_.

I am applying for a Fish Habitat Enhancement Exemption. (Check the box below in 10b.) [\[help\]](#)

This project is exempt (choose type of exemption below).

Categorical Exemption. Under what section of the SEPA administrative code (WAC) is it exempt?  
\_\_\_\_\_

Other: \_\_\_\_\_

SEPA is pre-empted by federal law.

**10b.** Indicate the permits you are applying for. (Check all that apply.) [\[help\]](#)

**LOCAL GOVERNMENT**

**Local Government Shoreline permits:**

- Substantial Development     Conditional Use     Variance  
 Shoreline Exemption Type (explain): \_\_\_\_\_

Skagit County procedure is to permit scientific monitoring buoys as Shoreline Exemptions.

**Other City/County permits:**

- Floodplain Development Permit     Critical Areas Ordinance

**STATE GOVERNMENT**

**Washington Department of Fish and Wildlife:**

- Hydraulic Project Approval (HPA)     Fish Habitat Enhancement Exemption – [Attach Exemption Form](#)

**Washington Department of Natural Resources:**

- Aquatic Use Authorization

Complete [JARPA Attachment E](#) and submit a check for \$25 payable to the Washington Department of Natural Resources.  
**Do not send cash.**

**Washington Department of Ecology:**

- Section 401 Water Quality Certification  
 Authorization to impact waters of the state, including wetlands (Check this box if the proposed impacts are to waters not subject to the federal Clean Water Act)

**FEDERAL AND TRIBAL GOVERNMENT**

**United States Department of the Army (U.S. Army Corps of Engineers):**

- Section 404 (discharges into waters of the U.S.)     Section 10 (work in navigable waters)

**United States Coast Guard:**

For projects or bridges over waters of the United States, contact the U.S. Coast Guard at:

- Bridge Permit: [D13-SMB-D13-BRIDGES@uscg.mil](mailto:D13-SMB-D13-BRIDGES@uscg.mil)  
 Private Aids to Navigation (or other non-bridge permits): [D13-SMB-D13-PATON@uscg.mil](mailto:D13-SMB-D13-PATON@uscg.mil)

**United States Environmental Protection Agency:**

Section 401 Water Quality Certification (discharges into waters of the U.S.) on tribal lands where tribes do not have treatment as a state (TAS)

**Tribal Permits:** (Check with the tribe to see if there are other tribal permits, e.g., Tribal Environmental Protection Act, Shoreline Permits, Hydraulic Project Permits, or other in addition to CWA Section 401 WQC)

Section 401 Water Quality Certification (discharges into waters of the U.S.) where the tribe has treatment as a state (TAS).

## Part 11—Authorizing Signatures

Signatures are required before submitting the JARPA package. The JARPA package includes the JARPA form, project plans, photos, etc. [\[help\]](#)

### 11a. Applicant Signature (required) [\[help\]](#)

I certify that to the best of my knowledge and belief, the information provided in this application is true, complete, and accurate. I also certify that I have the authority to carry out the proposed activities, and I agree to start work only after I have received all necessary permits.

I hereby authorize the agent named in Part 3 of this application to act on my behalf in matters related to this application. \_\_\_\_\_ (initial)

By initialing here, I state that I have the authority to grant access to the property. I also give my consent to the permitting agencies entering the property where the project is located to inspect the project site or any work related to the project. \_\_\_\_\_ (initial)

David Patrick

Applicant Printed Name

Applicant Signature

Date

### 11b. Authorized Agent Signature [\[help\]](#)

I certify that to the best of my knowledge and belief, the information provided in this application is true, complete, and accurate. I also certify that I have the authority to carry out the proposed activities and I agree to start work only after all necessary permits have been issued.

Samuel Kastner

Authorized Agent Printed Name

Authorized Agent Signature

Date

### 11c. Property Owner Signature (if not applicant) [\[help\]](#)

Not required if project is on existing rights-of-way or easements (provide copy of easement with JARPA).

I consent to the permitting agencies entering the property where the project is located to inspect the project site or any work. These inspections shall occur at reasonable times and, if practical, with prior notice to the landowner.

Property Owner Printed Name

Property Owner Signature

Date

18 U.S.C §1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.

If you require this document in another format, contact the Governor's Office for Regulatory Innovation and Assistance (ORIA) at (800) 917-0043. People with hearing loss can call 711 for Washington Relay Service. People with a speech disability can call (877) 833-6341. ORIA publication number: ORIA-16-011 rev. 09/2018



**WASHINGTON STATE**  
**Joint Aquatic Resources Permit**  
**Application (JARPA) [\[help\]](#)**



US Army Corps  
of Engineers  
Seattle District

AGENCY USE ONLY

Date received: \_\_\_\_\_;  Town  
 Application Fee Received;  Fee N/A  
 New Application;  Renewal Application  
Type/Prefix #: \_\_\_\_\_; NaturE Use Code: \_\_\_\_\_  
LM Initials & BP#: \_\_\_\_\_  
RE Assets Finance BP#: \_\_\_\_\_  
New Application Number: \_\_\_\_\_  
Trust(s): \_\_\_\_\_; County: \_\_\_\_\_  
AQR Plate #(s): \_\_\_\_\_  
Gov Lot #(s): \_\_\_\_\_  
Tax Parcel #(s): \_\_\_\_\_

**Attachment E:**  
**Aquatic Use Authorization on**  
**Department of Natural Resources**  
**(DNR)-managed aquatic lands [\[help\]](#)**

Complete this attachment and submit it with the completed JARPA form only if you are applying for an Aquatic Use Authorization with DNR. Call (360) 902-1100 or visit <http://www.dnr.wa.gov/programs-and-services/aquatics/leasing-and-land-transactions> for more information.

- DNR recommends you discuss your proposal with a DNR land manager before applying for regulatory permits. Contact your regional land manager for more information on potential permit and survey requirements. You can find your regional land manager by calling (360) 902-1100 or going to <http://www.dnr.wa.gov/programs-and-services/aquatics/aquatic-districts-and-land-managers-map>. [\[help\]](#)
- The applicant may not begin work on DNR-managed aquatic lands until DNR grants an Aquatic Use Authorization.
- Include a \$25 non-refundable application processing fee, payable to the "Washington Department of Natural Resources." (Contact your Land Manager to determine if and when you are required to pay this fee.) [\[help\]](#)

DNR may reject the application at any time prior to issuing the applicant an Aquatic Use Authorization. [\[help\]](#)

Use black or blue ink to enter answers in white spaces below.

<b>1. Applicant Name (Last, First, Middle)</b>	
Patrick, David	
<b>2. Project Name (A name for your project that you create. Examples: Smith's Dock or Seabrook Lane Development) <a href="#">[help]</a></b>	
Kukutali Wave Buoy	
<b>3. Phone Number and Email</b>	
360-650-2884	
<b>4. Which of the following applies to Applicant? Check one and, if applicable, attach the written authority – bylaws, power of attorney, etc. <a href="#">[help]</a></b>	
<input type="checkbox"/> Corporation <input type="checkbox"/> Limited Partnership <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Liability Company  Home State of Registration: _____	<input type="checkbox"/> Individual <input type="checkbox"/> Marital Community (Identify spouse): _____ <input type="checkbox"/> Government Agency <input checked="" type="checkbox"/> Other (Please Explain): University affiliation _____

<b>5.</b> Washington UBI (Unified Business Identifier) number, if applicable: <a href="#">[help]</a>
N/A
<b>6.</b> Are you aware of any existing or previously expired Aquatic Use Authorizations at the project location?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know If Yes, Authorization number(s): _____
<b>7.</b> Do you intend to sublease the property to someone else?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, contact your Land Manager to discuss subleasing.
<b>8.</b> If fill material was used previously on DNR-managed aquatic lands, describe below the type of fill material and the purpose for using it. <a href="#">[help]</a>
N/A

**To be completed by DNR and a copy returned to the applicant.**

Signature for projects on DNR-managed aquatic lands:

Applicant must obtain the signature of DNR Aquatics District Manager OR Assistant Division Manager if the project is located on DNR-managed aquatic lands.

I, a designated representative of the Dept. of Natural Resources, am aware that the project is being proposed on Dept. of Natural Resources-managed aquatic lands and agree that the applicant or his/her representative may pursue the necessary regulatory permits. My signature does not authorize the use of DNR-managed aquatic lands for this project.

<b>Printed Name</b>	<b>Signature</b>	<b>Date</b>
Dept. of Natural Resources District Manager or Assistant Division Manager	Dept. of Natural Resources District Manager or Assistant Division Manager	

If you require this document in another format, contact the Governor's Office for Regulatory Innovation and Assistance (ORIA) at (800) 917-0043. People with hearing loss can call 711 for Washington Relay Service. People with a speech disability can call (877) 833-6341. ORIA Publication ORIA-16-016 rev. 10/2016





# North Slope Borough

Department of Planning and Community Services

## Form 400- Study Permit Application

Administrative Approval

### PART 1 – APPLICANT INFORMATION

New Permit No. \_\_\_\_\_  Renewal of NSB Permit No. \_\_\_\_\_  Amendment to NSB Permit No. \_\_\_\_\_

Application Date: \_\_\_\_\_ Proposed Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_ Date Received at NSB: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Location: Township: \_\_\_\_\_ Range: \_\_\_\_\_ Section: \_\_\_\_\_ NSB Zoning District: \_\_\_\_\_

Applicant Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Company Address: \_\_\_\_\_ Cell: \_\_\_\_\_

\_\_\_\_\_ Fax: \_\_\_\_\_

\_\_\_\_\_ Email: \_\_\_\_\_

### PART 2 – PROPERTY OWNERSHIP (check all the boxes that apply)

NSB  State of Alaska  Federal Government

Native Allotment(s)  ASRC Regional Corporation  Village Corporation \_\_\_\_\_

Other Public Land: \_\_\_\_\_  Other Private Land: \_\_\_\_\_

Name of Landowner Access Agreement: \_\_\_\_\_ Date Issued: \_\_\_\_\_

### PART 3 – STUDY TYPE (check all the boxes that apply)

Type of Study – Check all boxes that apply.

- Wildlife/Habitat  Subsistence  Land Surveying or Mapping  Onshore
- Air Quality Study  IHLC Clearance  Geological Survey  Offshore
- Ice or Permafrost Study  Socio-Economic  Water Study  Soil Study
- Other Archeological or Paleontological  Engineering  Other Geotechnical, Meteorological, or Hydrological

Other: \_\_\_\_\_

**PART 4 – USES AND DEVELOPMENTS** (check and fill-in all the boxes that apply)

**Transportation Methods**

- Fixed Wing Aircraft : Tail Number: \_\_\_\_\_ Color: \_\_\_\_\_ Make/Model: \_\_\_\_\_
- Fixed Wing Aircraft : Tail Number: \_\_\_\_\_ Color: \_\_\_\_\_ Make/Model: \_\_\_\_\_
- Fixed Wing Aircraft : Tail Number: \_\_\_\_\_ Color: \_\_\_\_\_ Make/Model: \_\_\_\_\_
- Helicopter: Tail Number: \_\_\_\_\_ Color: \_\_\_\_\_ Make/Model: \_\_\_\_\_
- Helicopter: Tail Number: \_\_\_\_\_ Color: \_\_\_\_\_ Make/Model: \_\_\_\_\_
- Vessel: USCG Number: \_\_\_\_\_ Color: \_\_\_\_\_ Make/Model: \_\_\_\_\_
- Vessel: USCG Number: \_\_\_\_\_ Color: \_\_\_\_\_ Make/Model: \_\_\_\_\_
- Vehicle: License Number: \_\_\_\_\_ Color: \_\_\_\_\_ Make/Model: \_\_\_\_\_
- Vehicle: License Number: \_\_\_\_\_ Color: \_\_\_\_\_ Make/Model: \_\_\_\_\_
- Vehicle: License Number: \_\_\_\_\_ Color: \_\_\_\_\_ Make/Model: \_\_\_\_\_
- Snowmachine(s)     ATV(s)     Rolligon (s)
- Other: \_\_\_\_\_

**Uses and Developments at Sites:** Note that permanent structures and gravel or ice roads/pads cannot be authorized under this type of application.

- Temporary Structures                                       Camping/Campfires                                       Study Equipment
- Fuel Storage      Approximate Quantity: \_\_\_\_\_ (gallons)      Fuel storage more than 660 gallons requires secondary containment
- Type of Fuel:                       Diesel                                       Gasoline                                       Aviation Gas
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_

**Waste Disposal Method:** Check all boxes that apply and provide the name of the disposal facility that will be used.

- Backhaul to NSB Service Area 10 Facility                                       Other Landfill: \_\_\_\_\_
- Other Sewage Treatment Plant: \_\_\_\_\_                                       Other : \_\_\_\_\_

**PART 5 – REQUIRED ATTACHMENTS TO THE APPLICATION FORM** (as appropriate for your study)

1. **Maps:** (a) General Vicinity Map, (b) Location Map showing: township, range, section; proposed area of use; land ownership (including private, government, and Native land ownership); natural features; villages within 10 miles of the study sites, (c) map showing planned route to and from each study location.
2. **Scope of Study:** A detailed written description of the study.
3. **Contact Information:** Provide contact information for all affected state, federal, private, Regional Corporation, Village Corporation, and Native Allotment Owners.
4. **Permit Information:** A list of tribal, state, and federal authorizations and permits required for your study and the approval status at the time your NSB application is submitted.
5. **Land Owner Authorization:** A copy of the landowner letter of non-objection to use the land in your study area.
6. **Wildlife Interaction Plan:** A plan for avoiding interactions with bears and other wildlife in the project area.
7. **Photographs:** A photograph of each aircraft, vehicle, vessel, and other transportation equipment that will be used in study. Clearly show the aircraft tail numbers, vehicle license plates and USCG vessel numbers in the photos.
8. **Water Use and Waste Management Plan:** Provide a written plan describing water resources use (location of source, transportation method, and daily use rate) and waste management plan (type, amount and disposal method).
9. **Spill Prevention & Response Plan:** Provide a written plan describing spill prevention and response methods that will be used.
10. **Emergency and Medical Plan:** Provide a written plan that explains how emergencies and medical issues will be handled.
11. **Insurance:** A copy of a \$100,000 liability insurance policy (under which the NSB Search and Rescue is a named beneficiary) adequate to cover the cost of NSB search and rescue operations, or proof that your company has its own emergency service capability (provide details in your Emergency & Medical Plan).
12. **Fees:** A check made payable to the North Slope Borough for the application fee.

Submit one signed hard copy with a check for the fee payment, one electronic version (pdf) of the application and all attachments, and one GIS map file.

**Mail Application To:**

NORTH SLOPE BOROUGH, DEPARTMENT OF PLANNING AND COMMUNITY SERVICES, LAND MANAGEMENT ADMINISTRATOR  
 PO BOX 69, BARROW, ALASKA 99723  
 PHONE: (907) 852-0440

I HEREBY CERTIFY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. ALL APPLICATION MATERIAL IS CONSIDERED PART OF THE PERMANENT NSB RECORDS FOR THIS PROJECT. I HEREBY AGREE TO DEFEND, INDEMNIFY AND HOLD THE NORTH SLOPE BOROUGH HARMLESS FROM ANY AND ALL CLAIMS, DAMAGES, SUITS, LOSSES, LIABILITIES AND EXPENSES RELATED TO THE INJURY TO OR DEATH OF PERSONS AND DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE ENTRY ON AND USE OF PROPERTY WITHIN THE NORTH SLOPE BOROUGH BOUNDARIES BY ME, THE COMPANY I REPRESENT, AND ANY AND ALL OF MY CONTRACTORS, SUBCONTRACTORS AND THEIR EMPLOYEES INVOLVED.

*Jessley Hopm*

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Title

- FEE PAID**
- |                          |  |         |
|--------------------------|--|---------|
| <input type="checkbox"/> | Administrative Approval (all except non-profit)                            | \$1,500 |
| <input type="checkbox"/> | Administrative Approval for Non-Profit Researcher (i.e., BASC, University) | \$200   |

**DECISION**

- ADMINISTRATIVELY APPROVED       PERMIT DENIED       PERMIT ELEVATED

\_\_\_\_\_  
**Land Management Administrator**

\_\_\_\_\_  
 Date

If you wish to appeal this decision, you must submit written notice to the Commission Clerk of the Planning Commission (P.O. Box 69, Barrow, Alaska, 99723) within 30 days of the issuance of this decision, stating the policy or policies in question and the reason you believe the decision is incorrect. NSBMC § 19.30.130.

**U.S. Army Corps of Engineers (USACE)  
NATIONWIDE PERMIT PRE-CONSTRUCTION NOTIFICATION (PCN)**

For use of this form, see 33 CFR 330; the proponent agency is CECW-CO-R.

**Form Approved -  
OMB No. 0710-0003  
Expires: 08-31-2023**

**DATA REQUIRED BY THE PRIVACY ACT OF 1974**

**Authority** Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Regulatory Program of the Corps of Engineers (Corps); Final Rule 33 CFR 320-332.

**Principal Purpose** Information provided on this form will be used in evaluating the nationwide permit pre-construction notification.

**Routine Uses** This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of the agency coordination process.

**Disclosure** Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued.

The public reporting burden for this collection of information, 0710-0003, is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at . Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

**PLEASE DO NOT RETURN YOUR RESPONSE TO THE ABOVE EMAIL.**

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see *sample drawings and/or instructions*) and be submitted to the district engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

**(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)**

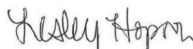
1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
--------------------	----------------------	------------------	------------------------------

**(ITEMS BELOW TO BE FILLED BY APPLICANT)**

<p>5. APPLICANT'S NAME</p> <p>First - Lesley                      Middle -                      Last - Hopson</p> <p>Company - Alaska Eskimo Whaling Commission</p> <p>Company Title - Executive Director</p> <p>E-mail Address - L.Hopson@aewc-alaska.com</p>	<p>8. AUTHORIZED AGENT'S NAME AND TITLE (<i>agent is not required</i>)</p> <p>First - Stacey                      Middle - Nicole                      Last - Korsmo</p> <p>Company - Weston Solutions</p> <p>E-mail Address - Stacey.Aughe@westonsolutions.com</p>																
<p>6. APPLICANT'S ADDRESS</p> <p>Address- P.O. Box 570</p> <p>City - Utqiagvik                      State - AK                      Zip - 99723                      Country - USA</p>	<p>9. AGENT'S ADDRESS</p> <p>Address- 101 W. Benson Blvd., Suite 312</p> <p>City - Anchorage                      State - AK                      Zip - 99503                      Country - USA</p>																
<p>7. APPLICANT'S PHONE NOs. with AREA CODE</p> <table border="0"> <tr> <td>a. Residence</td> <td>b. Business</td> <td>c. Fax</td> <td>d. Mobile</td> </tr> <tr> <td>N/A</td> <td>(907) 852-2392</td> <td>(907) 852-2303</td> <td>N/A</td> </tr> </table>	a. Residence	b. Business	c. Fax	d. Mobile	N/A	(907) 852-2392	(907) 852-2303	N/A	<p>10. AGENT'S PHONE NOs. with AREA CODE</p> <table border="0"> <tr> <td>a. Residence</td> <td>b. Business</td> <td>c. Fax</td> <td>d. Mobile</td> </tr> <tr> <td>N/A</td> <td>(907) 301-5815</td> <td>N/A</td> <td>(907) 301-5815</td> </tr> </table>	a. Residence	b. Business	c. Fax	d. Mobile	N/A	(907) 301-5815	N/A	(907) 301-5815
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a. Residence	b. Business	c. Fax	d. Mobile														
N/A	(907) 301-5815	N/A	(907) 301-5815														

**STATEMENT OF AUTHORIZATION**

11. I hereby authorize,                     Stacey Korsmo                       to act in my behalf as my agent in the processing of this nationwide permit pre-construction notification and to furnish, upon request, supplemental information in support of this nationwide permit pre-construction notification.



\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
DATE

**NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY**

12. PROJECT NAME or TITLE (*see instructions*)  
Backyard Buoys - Alaska Eskimo Whaling Commission

## NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

13. NAME OF WATERBODY, IF KNOWN <i>(if applicable)</i> Offshore, Beaufort and Chukchi Seas. See Project Description for additional details.		14. PROPOSED ACTIVITY STREET ADDRESS <i>(if applicable)</i> N/A	
15. LOCATION OF PROPOSED ACTIVITY <i>(see instructions)</i> Latitude °N Longitude °W See Project Description See Project Description See Project Description See Project Description		City: N/A	State: Zip: AK N/A
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN <i>(see instructions)</i>			
State Tax Parcel ID N/A		Municipality N/A	
Section N/A	Township N/A	Range N/A	
17. DIRECTIONS TO THE SITE See Project Description			
18. IDENTIFY THE SPECIFIC NATIONWIDE PERMIT(S) YOU PROPOSE TO USE NWP 5 - Scientific Measurement Devices			
19. DESCRIPTION OF PROPOSED NATIONWIDE PERMIT ACTIVITY <i>(see instructions)</i> The Alaska Eskimo Whaling Commission proposes to deploy 29 Sofar Spotter wave buoys (Spotters) in marine waters of the Chukchi and Beaufort Seas near the communities of Kaktovik, Utqiagvik, Wainwright, Point Hope, Little Diomedede, Gambell, and Savoonga to collect real-time wave data. See Project Description for additional details.			
20. DESCRIPTION OF PROPOSED MITIGATION MEASURES <i>(see instructions)</i> See Project Description for a list of proposed mitigation measures.			
21. PURPOSE OF NATIONWIDE PERMIT ACTIVITY <i>(Describe the reason or purpose of the project, see instructions)</i> Data collected by Spotter buoys will serve community needs for decisions on scales from daily (e.g., safety for maritime operations and coastal hazards) to longer planning horizons (e.g., resilience for climate change and ecosystem function). See Project Description for additional details.			
22. QUANTITY OF WETLANDS, STREAMS, OR OTHER TYPES OF WATERS DIRECTLY AFFECTED BY PROPOSED NATIONWIDE PERMIT ACTIVITY <i>(see instructions)</i>			
Acres 0.029	Linear Feet N/A	Cubic Yards Dredged or Discharged N/A	
<b>Each PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site.</b>			
23. List any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. <i>(see instructions)</i> N/A			
24. If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and requires pre-construction notification, explain how the compensatory mitigation requirement in paragraph (c) of general condition 23 will be satisfied, or explain why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required for the proposed activity. N/A			

25. Is any portion of the nationwide permit activity already complete?  Yes  No If Yes, describe the completed work:

N/A

26. List the name(s) of any species listed as endangered or threatened under the Endangered Species Act that might be affected by the proposed NWP activity or utilize the designated critical habitat that might be affected by the proposed NWP activity. (see instructions)

See Project Description for a description of ESA-listed species and critical habitat occurring in the buoy area polygons.

27. List any historic properties that have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic property or properties. (see instructions)

No historic properties are expected to be affected by the proposed project.

28. For a proposed NWP activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, identify the Wild and Scenic River or the "study river":

N/A

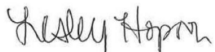
29. If the proposed NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, have you submitted a written request for section 408 permission from the Corps district having jurisdiction over that project?  Yes  No

If "yes", please provide the date your request was submitted to the Corps district:

30. If the terms of the NWP(s) you want to use require additional information to be included in the PCN, please include that information in this space or provide it on an additional sheet of paper marked Block 30. (see instructions)

N/A

31. Pre-construction notification is hereby made for one or more nationwide permit(s) to authorize the work described in this notification. I certify that the information in this pre-construction notification is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.



4/1/2024



4/1/2024

SIGNATURE OF APPLICANT

DATE

SIGNATURE OF AGENT

DATE

The pre-construction notification must be signed by the person who desires to undertake the proposed activity (applicant) and, if the statement in Block 11 has been filled out and signed, the authorized agent.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

**Instructions for Preparing a  
Department of the Army  
Nationwide Permit (NWP) Pre-Construction Notification (PCN)**

**Blocks 1 through 4.** To be completed by the Corps of Engineers.

**Block 5. Applicant's Name.** Enter the name and the e-mail address of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the name of the organization and responsible officer and title. If more than one party is associated with the preconstruction notification, please attach a sheet of paper with the necessary information marked Block 5.

**Block 6. Address of Applicant.** Please provide the full address of the party or parties responsible for the PCN. If more space is needed, attach an extra sheet of paper marked Block 6.

**Block 7. Applicant's Telephone Number(s).** Please provide the telephone number where you can usually be reached during normal business hours.

**Blocks 8 through 11.** To be completed, if you choose to have an agent.

**Block 8. Authorized Agent's Name and Title.** Indicate name of individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer, consultant, or any other person or organization. Note: An agent is not required.

**Blocks 9 and 10. Agent's Address and Telephone Number.** Please provide the complete mailing address of the agent, along with the telephone number where he / she can be reached during normal business hours.

**Block 11. Statement of Authorization.** To be completed by the applicant, if an agent is to be employed.

**Block 12. Proposed Nationwide Permit Activity Name or Title.** Please provide a name identifying the proposed NWP activity, e.g., Windward Marina, Rolling Hills Subdivision, or Smith Commercial Center.

**Block 13. Name of Waterbody.** Please provide the name (if it has a name) of any stream, lake, marsh, or other waterway to be directly impacted by the NWP activity. If it is a minor (no name) stream, identify the waterbody the minor stream enters.

**Block 14. Proposed Activity Street Address.** If the proposed NWP activity is located at a site having a street address (not a box number), please enter it in Block 14.

**Block 15. Location of Proposed Activity.** Enter the latitude and longitude of where the proposed NWP activity is located. Indicate whether the project location provided is the center of the project or whether the project location is provided as the latitude and longitude for each of the "corners" of the project area requiring evaluation. If there are multiple sites, please list the latitude and longitude of each site (center or corners) on a separate sheet of paper and mark as Block 15.

**Block 16. Other Location Descriptions.** If available, provide the Tax Parcel Identification number of the site, Section, Township, and Range of the site (if known), and / or local Municipality where the site is located.

**Block 17. Directions to the Site.** Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site. You may also provide a description of the location of the proposed NWP activity, such as lot numbers, tract numbers, or you may choose to locate the proposed NWP activity site from a known point (such as the right descending bank of Smith Creek, one mile downstream from the Highway 14 bridge). If a large river or stream, include the river mile of the proposed NWP activity site if known. If there are multiple locations, please indicate directions to each location on a separate sheet of paper and mark as Block 17.

**Block 18. Identify the Specific Nationwide Permit(s) You Propose to Use.** List the number(s) of the Nationwide Permit(s) you want to use to authorize the proposed activity (e.g., NWP 29).

**Block 19. Description of the Proposed Nationwide Permit Activity.** Describe the proposed NWP activity, including the direct and indirect adverse environmental effects the activity would cause. The description of the proposed activity should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal. Identify the materials to be used in construction, as well as the methods by which the work is to be done.

Provide sketches when necessary to show that the proposed NWP activity complies with the terms of the applicable NWP(s). Sketches usually clarify the activity and result in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed NWP activity (e.g., a conceptual plan), but do not need to be detailed engineering plans.

The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach an extra sheet of paper marked Block 19.

**Block 20. Description of Proposed Mitigation Measures.** Describe any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed NWP activity. The description of any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or additional mitigation measures.

**Block 21. Purpose of Nationwide Permit Activity.** Describe the purpose and need for the proposed NWP activity. What will it be used for and why? Also include a brief description of any related activities associated with the proposed project. Provide the approximate dates you plan to begin and complete all work.

**Block 22. Quantity of Wetlands, Streams, or Other Types of Waters Directly Affected by the Proposed Nationwide Permit Activity.** For discharges of dredged or fill material into waters of the United States, provide the amount of wetlands, streams, or other types of waters filled, flooded, excavated, or drained by the proposed NWP activity. For structures or work in navigable waters of the United States subject to Section 10 of the Rivers and Harbors Act of 1899, provide the amount of navigable waters filled, dredged, or occupied by one or more structures (e.g., aids to navigation, mooring buoys) by the proposed NWP activity.

For multiple NWPs, or for separate and distant crossings of waters of the United States authorized by NWPs 12 or 14, attach an extra sheet of paper marked Block 21 to provide the quantities of wetlands, streams, or other types of waters filled, flooded, excavated, or drained (or dredged or occupied by structures, if in waters subject to Section 10 of the Rivers and Harbors Act of 1899) for each NWP. For NWPs 12 and 14, include the amount of wetlands, streams, or other types of waters filled, flooded, excavated, or drained for each separate and distant crossing of waters or wetlands. If more space is needed, attach an extra sheet of paper marked Block 22.

**Block 23. Identify Any Other Nationwide Permit(s), Regional General Permit(s), or Individual Permit(s) Used to Authorize Any Part of Proposed Activity or Any Related Activity.** List any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. For linear projects, list other separate and distant crossings of waters and wetlands authorized by NWPs 12 or 14 that do not require PCNs. If more space is needed, attach an extra sheet of paper marked Block 23.

**Block 24. Compensatory Mitigation Statement for Losses of Greater Than 1/10-Acre of Wetlands When Pre-Construction Notification is Required.** Paragraph (c) of NWP general condition 23 requires compensatory mitigation at a minimum one-for-one replacement ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation is more environmentally appropriate or the adverse environmental effects of the proposed NWP activity are no more than minimal without compensatory mitigation, and provides an activity-specific waiver of this requirement. Describe the proposed compensatory mitigation for wetland losses greater than 1/10 acre, or provide an explanation of why the district engineer should not require wetland compensatory mitigation for the proposed NWP activity. If more space is needed, attach an extra sheet of paper marked Block 24.

**Block 25. Is Any Portion of the Nationwide Permit Activity Already Complete?** Describe any work that has already been completed for the NWP activity.

**Block 26. List the Name(s) of Any Species Listed As Endangered or Threatened under the Endangered Species Act that Might be Affected by the Nationwide Permit Activity.** If you are not a federal agency, and if any listed species or designated critical habitat might be affected or is in the vicinity of the proposed NWP activity, or if the proposed NWP activity is located in designated critical habitat, list the name(s) of those endangered or threatened species that might be affected by the proposed NWP activity or utilize the designated critical habitat that might be affected by the proposed NWP activity. If you are a Federal agency, and the proposed NWP activity requires a PCN, you must provide documentation demonstrating compliance with Section 7 of the Endangered Species Act.

**Block 27. List Any Historic Properties that Have the Potential to be Affected by the Nationwide Permit Activity.** If you are not a Federal agency, and if any historic properties have the potential to be affected by the proposed NWP activity, list the name(s) of those historic properties that have the potential to be affected by the proposed NWP activity. If you are a Federal agency, and the proposed NWP activity requires a PCN, you must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

**Block 28. List the Wild and Scenic River or Congressionally Designated Study River if the Nationwide Permit Activity Would Occur in such a River.** If the proposed NWP activity will occur in a river in the National Wild and Scenic River System or in a river officially designated by Congress as a "study river" under the Wild and Scenic Rivers Act, provide the name of the river. For a list of Wild and Scenic Rivers and study rivers, please visit .

**Block 29. Nationwide Permit Activities that also Require Permission from the Corps Under 33 U.S.C. 408.** If the proposed NWP activity also requires permission from the Corps under 33 U.S.C. 408 because it will temporarily or permanently alter, occupy, or use a Corps federal authorized civil works project, indicate whether you have submitted a written request for section 408 permission from the Corps district having jurisdiction over that project.



**Block 30. Other Information Required For Nationwide Permit Pre-Construction Notifications.** The terms of some of the Nationwide Permits include additional information requirements for preconstruction notifications:

- \* NWP 3, Maintenance –information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals.
- \* NWP 31, Maintenance of Existing Flood Control Facilities –a description of the maintenance baseline and the dredged material disposal site.
- \* NWP 33, Temporary Construction, Access, and Dewatering –a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- \* NWP 44, Mining Activities –if reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification.
- \* NWP 45, Repair of Uplands Damaged by Discrete Events –documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration.
- \* NWP 48, Commercial Shellfish Aquaculture Activities –(1) a map showing the boundaries of the project area, with latitude and longitude coordinates for each corner of the project area; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) whether canopy predator nets will be used; (4) whether suspended cultivation techniques will be used; and (5) general water depths in the project area (a detailed survey is not required).
- \* NWP 49, Coal Remining Activities –a document describing how the overall mining plan will result in a net increase in aquatic resource functions must be submitted to the district engineer and receive written authorization prior to commencing the activity.
- \* NWP 50, Underground Coal Mining Activities –if reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification.

If more space is needed, attach an extra sheet of paper marked Block 30.

**Block 31. Signature of Applicant or Agent.** The PCN must be signed by the person proposing to undertake the NWP activity, and if applicable, the authorized party (agent) that prepared the PCN. The signature of the person proposing to undertake the NWP activity shall be an affirmation that the party submitting the PCN possesses the requisite property rights to undertake the NWP activity (including compliance with special conditions, mitigation, etc.).

#### **DELINEATION OF WETLANDS, OTHER SPECIAL AQUATIC SITES, AND OTHER WATERS**

Each PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current wetland delineation manual and regional supplement published by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. The 45 day PCN review period will not start until the delineation is submitted or has been completed by the Corps.

#### **DRAWINGS AND ILLUSTRATIONS**

##### **General Information.**

Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, a Plan View or a Typical Cross-Section Map. Identify each illustration with a figure or attachment number. For linear projects (e.g. roads, subsurface utility lines, etc.) gradient drawings should also be included. Please submit one original, or good quality copy, of all drawings on 8½x11 inch plain white paper (electronic media may be substituted). Use the fewest number of sheets necessary for your drawings or illustrations. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, and contain all necessary information.

#### **ADDITIONAL INFORMATION AND REQUIREMENTS**

For proposed NWP activities that involve discharges into waters of the United States, water quality certification from the State, Tribe, or EPA must be obtained or waived (see NWP general condition 25). Some States, Tribes, or EPA have issued water quality certification for one or more NWPs. Please check the appropriate Corps district web site to see if water quality certification has already been issued for the NWP(s) you wish to use. For proposed NWP activities in coastal states, state Coastal Zone Management Act consistency concurrence must be obtained, or a presumption of concurrence must occur (see NWP general condition 26). Some States have issued Coastal Zone Management Act consistency concurrences for one or more NWPs. Please check the appropriate Corps district web site to see if Coastal Zone Management Act consistency concurrence has already been issued for the NWP(s) you wish to use.



# NOAA NATIONAL MARINE SANCTUARIES PERMIT APPLICATION

OMB # 0648-0141  
Expires: 11/30/2024

Refer to "Instructions for Submitting Applications for National Marine Sanctuary Permits and Authorizations" for guidance on how to properly complete this application. Applicants are responsible for reviewing the instructions in their entirety to ensure the application meets all requirements.

**Note:** for certain activities, completion of this application may not be required. Consult the Office of National Marine Sanctuaries (ONMS) [permitting webpage](#) or contact the local permit coordinator (under "Where to Apply" on the webpage) prior to completing and submitting this application. Review the list of [sanctuary prohibitions](#) to see if your proposed project involves an otherwise prohibited activity for a sanctuary, and would therefore require a permit.

Section A – General		
Sanctuary or sanctuaries in which you are applying to work:		
<input type="checkbox"/> Channel Islands	<input type="checkbox"/> Gray's Reef	<input type="checkbox"/> Monterey Bay
<input type="checkbox"/> Cordell Bank	<input type="checkbox"/> Greater Farallones	<input checked="" type="checkbox"/> Olympic Coast
<input type="checkbox"/> NMS of American Samoa	<input type="checkbox"/> Hawaiian Islands Humpback Whale	<input type="checkbox"/> Stellwagen Bank
<input type="checkbox"/> Florida Keys	<input type="checkbox"/> Malloes Bay-Potomac River	<input type="checkbox"/> Thunder Bay
<input type="checkbox"/> Flower Garden Banks	<input type="checkbox"/> Monitor	<input type="checkbox"/> Other
Select one of the following:		Enter any previously issued ONMS permit number(s) relevant to this project or issued to the applicant:
<input checked="" type="radio"/> New application		OCNMS-2021-003
<input type="radio"/> Amendment or modification to previously issued permit, including request for permit time extension <i>(Note: expired permits cannot be amended or modified)</i>		

Section B – Applicant Information		
Jennifer	Hagen	L
Honorific	First Name	Last Name
Title	Institution represented (if applicable)	Department (if applicable)
Marine Policy Advisor	Quileute Tribe	Natural Resources
Organization address:		Phone:
Address Line 1: PO Box 187		360-640-4430
Address Line 2:		Ext:
City: La Push		Email:
State: WA		jennifer.hagen@quileutetribe.co
Zip Code: 98350		
Co-applicant (if applicable):		
Honorific	First Name	Last Name
Middle Initial		
Organization address:		Phone:
Address Line 1:		Ext:
Address Line 2:		
City:		Email:
State:		
Zip Code:		
Title	Institution represented (if applicable)	Department (if applicable)

**Section C – Project Information**

Project title and summary (maximum 300 characters):

Quileute Backyard Buoys project will result in the placement of up to three wave height sensor buoys in the vicinity of La Push, Washington. Featuring a Real-time data stream that will be made available to local fishers to improve safety at sea. Data will also aid in understanding storm events.

Project dates (mm/dd/yyyy format):

Requested permit start date: 5/1/2023

Requested permit end date: 5/1/2028

Project abstract (maximum 3000 characters – field will expand as needed):

Backyards Buoy Initiative is a consortium of communities from around the Pacific Ocean (Alaska, Marshall Islands, Samoa, Hawaii, and Washington) with the need for ocean wave height information. This information can provide a tool to improve safety for ocean users in real time. The data will also serve to develop an understanding of wave dynamics and how it translated to flooding in the village of La Push. Up to three wave height sensor buoys will be placed at locations North, South and West of the Quileute Harbor entrance, data will be made available real-time through phone applications and the Northwest Association of Networked Ocean Observing Systems (<https://nvs.nannos.org/Explorer>).

Ocean users often can only tell the behavior of the ocean swell and wind waves from shore and this is limited. Indigenous communities such as the Quileute Tribe have relied on the ocean resources for millennia, but climate change is causing more rapidly fluctuating and less predictable ocean. Access to ocean data is essential for our communities well being, yet

Methods and protocols proposed to be employed (maximum 10000 characters – field will expand as needed). For field experiments or monitoring, provide details on what will occur, how, when, where, and for how long. If equipment is required, fully describe and attach supporting diagrams, as applicable. For collections, provide sampling season and frequency and justification for sample numbers. For all projects (including lab component) provide experimental design and statistical analysis methods:

Wave sensor buoys are fabricated by SoFar Ocean Technologies in San Francisco (see <https://www.sofarocan.com>). The buoys will then be customized through the project relationship between SoFar Ocean Technologies, the Northwest Association of Networked Ocean Observing program and Backyard Buoy Consortium. Here in the northwest we will work through engineers at the University of Washington Applied Physics Laboratory to assemble the buoys for the particular depths we are working in (30-45 meter depth). Because of their light weight, these sensors will be deployed from fishing vessels or other available vessels.

As part of this project a smart phone application is being developed to provide Quileute fishers direct access to current readings at the buoy locations. Information will also be provided via the [NANOOS.org/NVS](https://NANOOS.org/NVS) data hub.

**Section C – Project Information (Continued)**

Proposed location of activities:

Will this activity occur within any special management zone (such as marine reserves, no-take areas, research areas, sanctuary preservation areas, or state preserves)?

No

Yes – List zone names in box to right and provide justification in Section E

Describe specific location(s) within the sanctuary or sanctuaries where activities are proposed to be conducted. Provide a map showing GPS coordinates in decimal degrees for individual points, point with radius, or polygon(s) with bounding coordinates. List any special management zone(s) by name.

Project sites are located within the Usual and Acustomed Treaty Fishing areas of the Hoh and Quileute Tribes. Within the boundary of the Olympic Coast National Marine Sanctuary. see attached map

**Section D – Collections Data**

Complete this section when requesting collections as part of this activity. Collections include biological, geological and hydrological samples. Describe the type, quantity, and size of sample to be collected. Also, describe the intended sampling location. Provide scientific nomenclature where possible. Complete/attach additional pages if necessary. Leave blank if project does not include collections.

Type of Collection (e.g., species name, sediment type, or water sample).	Quantity: Identify number of samples per year or per permit period (if less than one year).	Sample Limits: Identify maximum or minimum size, or other relevant parameters.	Location: Identify GPS coordinates in decimal degrees, site name, and note if in special management zone.

### Section E – Environmental Effects

Answer the following questions as accurately as possible. Maximum 1000 characters per question.

Describe any direct effects on sanctuary resources or qualities that would occur at the same time and place as a result of this activity (e.g., if equipment is used, describe level and scope of disturbance to species, habitats, or maritime heritage resources. If samples are proposed, explain resulting effects to individuals or populations.):

This project will measure and record wave height data. Placement of the anchor for the buoy will cause temporary disruption of the sediment surface. Deployment location will be shifted so as to NOT deploy in areas where kelp is present.

Describe any indirect effects on sanctuary resources or qualities that would be caused by the action that are later in time or farther removed in distance, or incidental to other species or habitats as result of the activity, but still reasonably foreseeable (e.g., If equipment is used, does it have the potential to move and cause unintended effects to species, habitats, or maritime heritage resources? Will field experiments alter the behavior of non-target species?):

- 1) No indirect impacts are anticipated, however we may shift some design features to avoid whale interactions: minimize line in water, paint lines red.
- 2) Buoys will be regularly checked and have cell or sat phone modems on-board to notify if the buoy moves

### Section F – Rationale

Answer the following questions as accurately as possible. Maximum 1000 characters per question.

1. Describe how the proposed activity would be conducted in a manner compatible with the National Marine Sanctuaries Act's primary objective to protect sanctuary resources and qualities.

This proposed activity is more about protecting the humans that utilize marine waters within the Sanctuary. This could potentially serve to decrease the number of vessel that travel through the area when ocean conditions are not favorable, and perhaps fewer sinkings.

2. Describe why this activity needs to be conducted within the sanctuary or sanctuaries to achieve its purpose.

This project is designed to directly benefit the Quileute Tribal Community and visiting ocean users to the La Push marina, it will add another level of safety at-sea protection. The Olympic Coast National Marine Sanctuary is located within the boundaries of the Quileute Tribes Usual and Accustomed Treaty Fishing Area.

3. Describe any benefits this activity would have for the national marine sanctuary or national marine sanctuary system.

Provide added safety at-sea to visitors of the sanctuary promoting public use of this area.

**Section F – Rationale (Continued)**

4. If this activity is proposed to occur in any special management zone (e.g., marine reserves, no-take areas, research areas, sanctuary preservation areas, NOAA regulated overflight zones, state preserves), explain why this is necessary and how it would further the understanding of the zone.

This project is being implemented in areas that specifically empowers Indigenous and other coastal communities in the Pacific Northwest. A sister project to the south is being conducted by the Quinault Nation as well. This project will collect critical real time wave information that can serve to increase awareness and understanding of changes in the ocean and climate within this region.

5. Describe how the proposed methods and procedures are appropriate to achieve the proposed activity's stated purpose and would avoid, minimize, or mitigate adverse effects on sanctuary resources and qualities as much as possible.

In addition to HF radar wave height buoys are the only way to collect wave height information.

6. Describe how the proposed duration, seasonality and frequency of the activity requested are appropriate for this activity and are no greater than necessary to achieve the activity's stated purpose.

Ideally we would like to deploy year round but we want to first learn from the success of a seasonal deployment from May through October.

7. Describe how the expected end value of the proposed activity furthers sanctuary goals and purposes and outweighs any potential adverse effects on sanctuary resources and qualities.

No adverse affects are anticipated.

8. Provide a statement explaining why the applicant and all personnel involved are professionally qualified to conduct and complete the proposed activity.

The project team includes many members that are experienced with the deployment of ocean sensors and working in the indigenous communities of the Washington coast:  
Jan Newton, Senior Principle Oceanographer University of Washington Applied Physics Laboratory (UW-APL)  
Joohn Mickett, Oceanographer UW-APL  
Roxanne Carini, Environmental Fluid Dynamics Group UW  
Jennifer Hagen, Marine Policy Advisor, Quileute Indian Tribe  
Duncan McIavish, SoFar Ocean Technologies  
Joe Schumacker, Marine Scientist Quinault Nation  
Sam Kaster, Western Washington University

9. Provide information to demonstrate that the applicant has adequate financial resources available to conduct and complete the proposed activity and meet the terms and conditions of the permit.

This project recieved funding from the National Science Foundation 4.8 Million for all regions, please see attached award verification.

10. Provide information relevant to any other sanctuary-specific permit review criteria, as applicable. Enter N/A if not applicable.

N/A

**Section G – Other Information**

Identify any other permits, authorizations, or approvals obtained or required to conduct the proposed activity including, in the case of applications for authorizations, a copy of the application for a valid lease, permit, license, approval or other authorization from any federal, state, or local authority of competent jurisdiction.

Check here if no other federal, state, or local permits are required.

Check the boxes as appropriate if other permits or authorizations are required. Identify the status of the application(s) as not yet submitted, in progress, or received. Provide permit number(s) and copies of any permit(s) already received.

Permit number if applicable

Marine Mammal Protection Act (MMPA) permit or authorization

Endangered Species Act (ESA) permit or authorization

U.S. Army Corps of Engineers permit

Pending

Other federal, state, or local permit(s) or authorization(s)

Check the boxes as appropriate, if consultations are required. Identify the status of the consultation(s) as not yet submitted, in progress, or completed. Provide copies of any final assessments or analyses.

Not yet submitted  Endangered Species Act (ESA) Section 7

N/A Coastal Zone Management Act (CZMA) Federal Consistency Determination or Negative Determination

N/A Magnuson-Stevens Fishery Conservation Act – Essential Fish Habitat (EFH)

Not yet submitted  National Historic Preservation Act (NHPA) Section 106

In progress  Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

N/A Other tribal, federal, state, or local consultation(s)

Check the boxes as appropriate, if to your knowledge, any of the following environmental analyses are required. Provide title of the analysis and any associated decision document. Provide the name of agency responsible for the analysis. Identify the status of the environmental review as not initiated, in progress, or completed.

Federal environmental impact statement, environmental assessment, or categorical exclusion memorandum prepared pursuant to the National Environmental Policy Act (NEPA). Include the associated Record of Decision or Finding of No Significant Impact, if the NEPA review has concluded.

State or local environmental impact statement, analysis, or review.

**Section H - Certification**

I certify that this application is accurate and complete. I understand that incomplete applications will not be acted upon until any required additional information is provided. I further understand that applications not received within the timelines outlined in the instructions may not be processed in time for my activity to begin as planned. I authorize the ONMS to seek peer reviews of my proposal, if deemed necessary.

Signature of applicant:



Date: 5/11/2023

Date:

Signature of co-applicant, if applicable:

(Options for authenticating this document: Provide digital signature; provide signed and scanned last page; or provide acknowledgement using the paragraph above by email.)

**Paperwork Reduction Act Statement:** Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Public reporting for this collection of information is estimated to average 1.5 hours per response for most activities, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing this application. See the instructions for details regarding this burden estimate.

**Privacy Information:** We will only use personally identifiable information submitted in this application for the purpose of considering the permit application. We do not collect or use information for commercial marketing. We may share the information you give us with another government agency if your inquiry relates to that agency. Please refer to the permit instructions for the Privacy Act Statement. To view the full privacy policy, please visit <https://www.osec.doc.gov/opog/privacy/NOAA-pias.html>

# PNW Shelf Backyard Buoys Site Planning

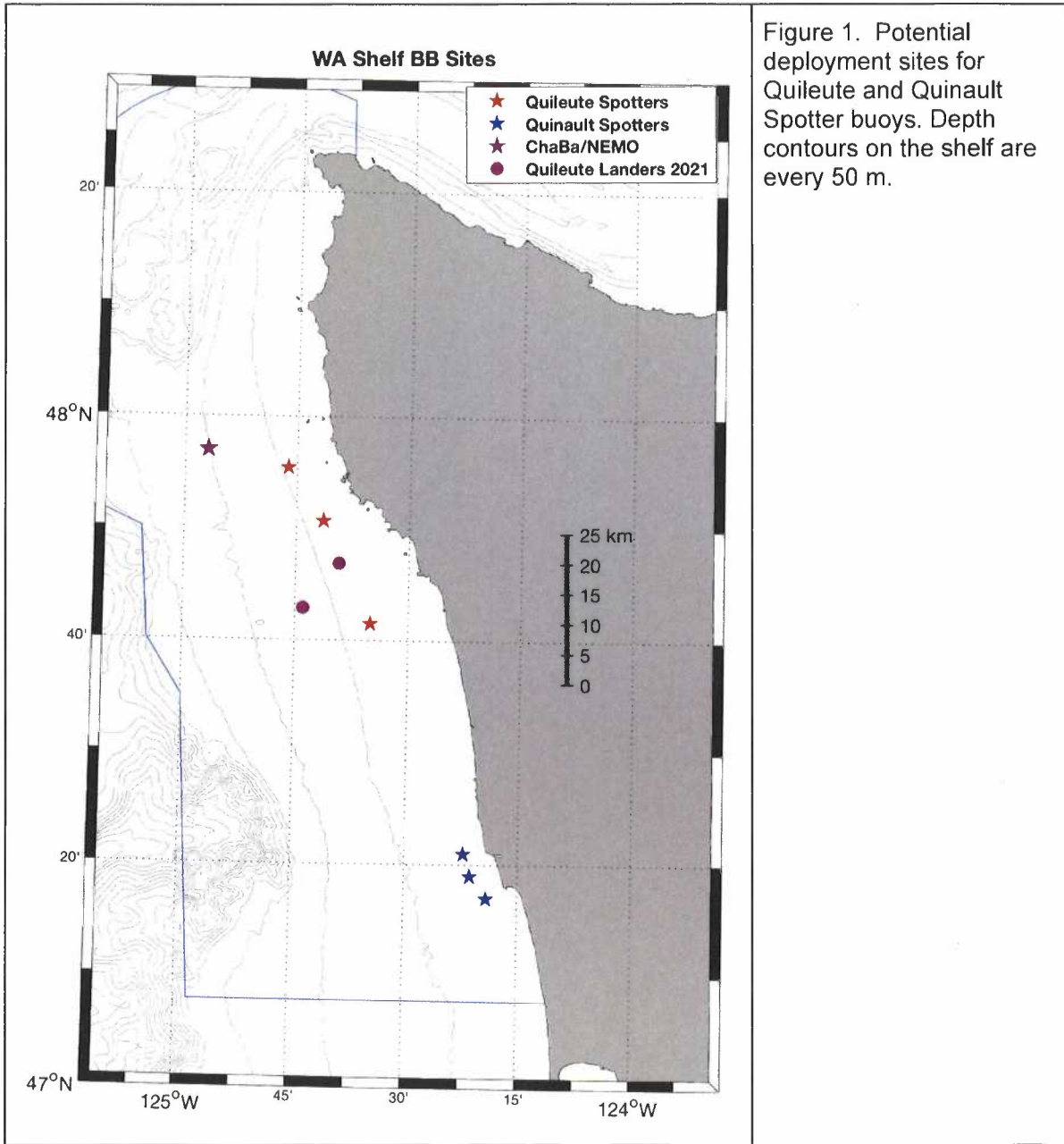
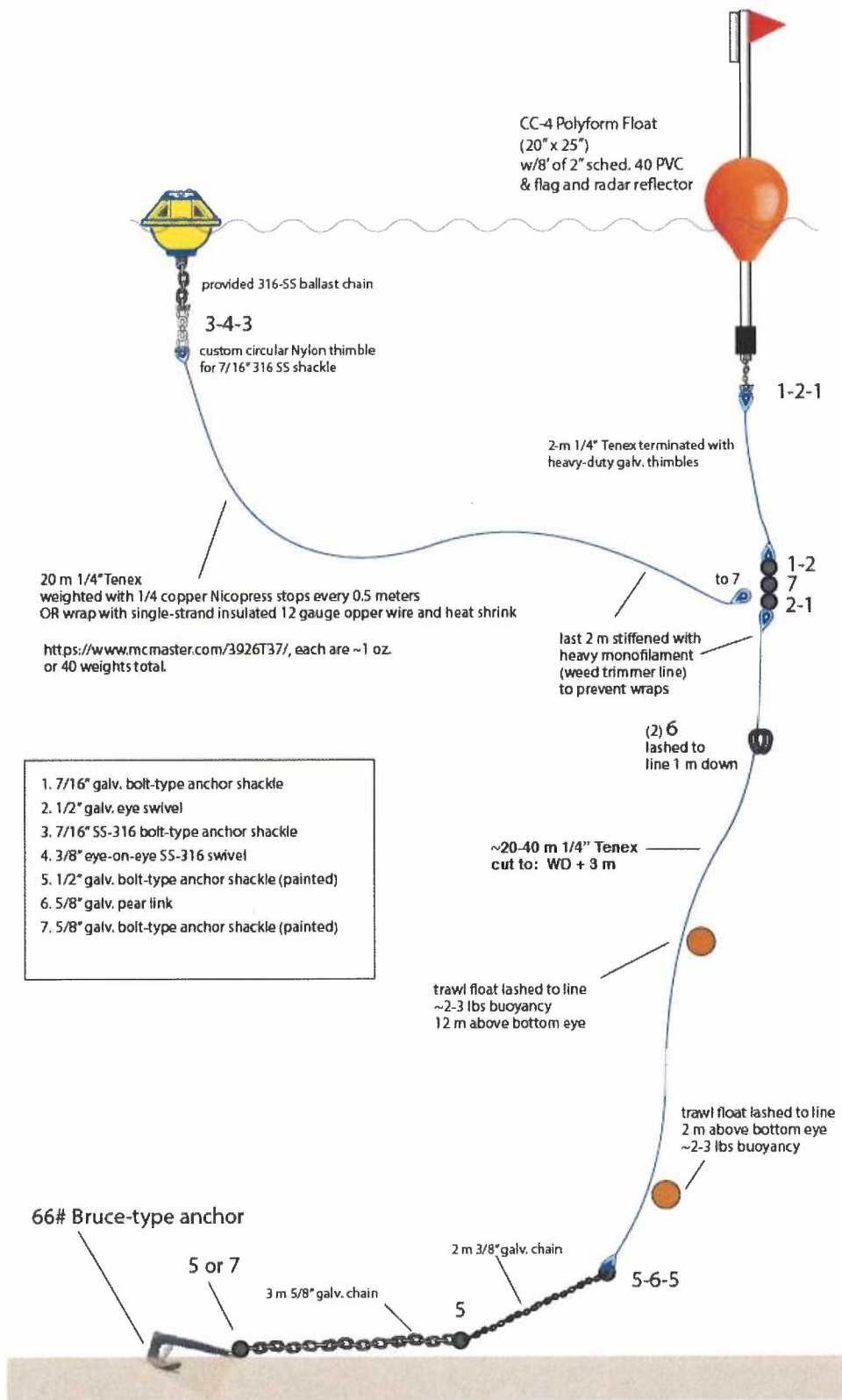


Figure 1. Potential deployment sites for Quileute and Quinault Spotter buoys. Depth contours on the shelf are every 50 m.





1. 7/16" galv. bolt-type anchor shackle
2. 1/2" galv. eye swivel
3. 7/16" SS-316 bolt-type anchor shackle
4. 3/8" eye-on-eye SS-316 swivel
5. 1/2" galv. bolt-type anchor shackle (painted)
6. 5/8" galv. pear link
7. 5/8" galv. bolt-type anchor shackle (painted)



# BACKYARD BUOYS

Equipping Underserved Communities with Ocean Intelligence Platforms



Convergence Accelerator

Backyard Buoys is a project of the National Science Foundation Convergence Accelerator

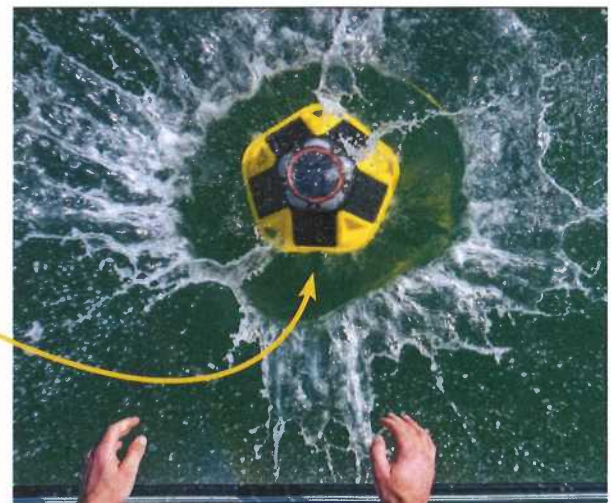
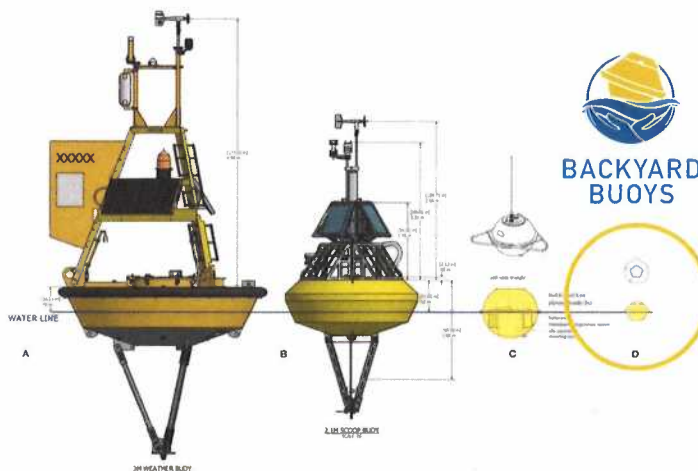
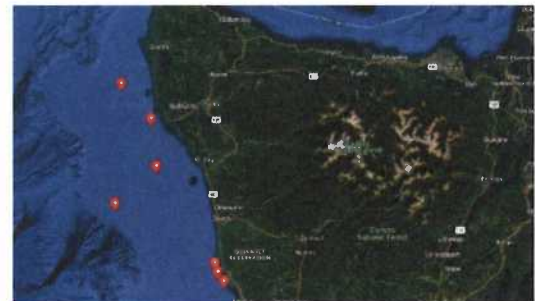
**Backyard Buoys partners with Indigenous coastal communities to collect and use ocean data to support their blue economy: maritime activities and safety, food security, and coastal hazard protection.**

## Summary

Backyard Buoys is an NSF-funded project that brings together three U.S. IOOS Regional Associations, Indigenous partners in each region, a proven ocean wave buoy developer, and educational partners. Backyard Buoys aims to improve safety at sea for Indigenous coastal communities by co-designing local wave observation programs that fill critical information gaps. This project is enabled by the existing lower cost and user-friendly Sofar Spotter buoy and Smart Mooring technology. However, the core of the project is the co-design method, which puts the Indigenous community partners in the driver's seat, to decide WHEN, WHERE, and HOW to implement their buoy program. Additionally, the partnership with NANOOS will provide customized data delivery tools to ensure access to the data when and how the communities need it. This project focuses on wave data, but the buoy platforms can be adapted for other ocean information needs in the future (e.g., weather sensors, current meters, water quality sensors).

## Wave Buoy Scoping

- **Tribal Ownership:** Buoys (and backup buoys) will be purchased by the grant and transferred to tribal ownership.
- **Locations:** You decide where to deploy the buoys. See map for initial ideas
- **Seasonality:** You decide when to deploy the buoys.
- **Scale of Operations:** You decide how to deploy/recover the buoys, able to do so from small vessels.



Schematic drawn to scale of common wave buoys from federal and academic networks (A-C). These buoys were designed for open ocean observations. For comparison, the Sofar wave buoy (D), which has a much smaller footprint and is more easily deployed with smaller boats. This buoy is ideal for hyper-local applications closer to the coast to serve the needs of Indigenous communities.



ALASKA



PACIFIC NW



PACIFIC ISLANDS

## Partnerships

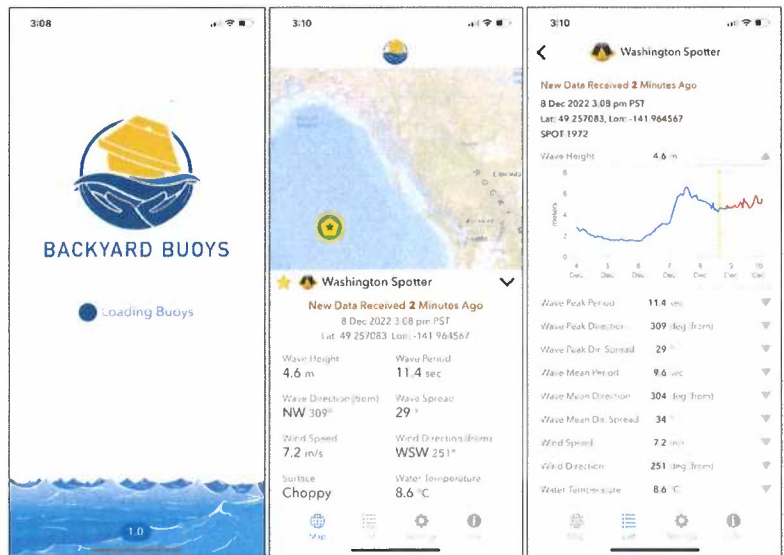
- Pacific Northwest: Northwest Association of Networked Ocean Observing Systems (NANOOS), Quileute Tribe, Quinault Indian Nation, Western Washington University
- Alaska: Alaska Ocean Observing System (AOOS), Alaska Eskimo Whaling Commission, University of Alaska Fairbanks, Alaska Dept of Natural Resources, Alaska Native Science & Engineering Program
- Pacific Islands: Pacific Islands Ocean Observing System (PacIOOS), Marshall Islands Conservation Society, National Park of American Samoa, Hawai'i Sea Grant, Conservation International Hawai'i
- Sofar Ocean Technologies (Sofar)

## Data Delivery Tools

- Parameters: wind, waves, sea surface temperature
- Text-a-buoy or buoy hotline for ultra-low-bandwidth access to latest data
- Smartphone app for low/medium-bandwidth access to time series and forecast data
- Integration into NANOOS Visualization System for high-bandwidth access to historical and near real-time data in context of other observing assets
- Prototypes of these tools are being built now. Data sharing agreements will determine where and how your data is displayed. Revisions to the tools will be made based on your feedback.

## Benefits

- Full agency over your wave buoys with assistance where/when desired from APL-UW buoy/mooring expert and Sofar Ocean Technologies
- Safety for Canoe Journeys, small vessel fishing in area, beach activities
- Education materials for schools to involve the next generation
- Should you choose to share your wave data, it could support better forecasts and improve our understanding of ocean conditions/climate change in the region



BACKYARD BUOYS

[CLICK TO VIEW OUR VIDEO]

## Want to learn more?

Check out our webpage at [www.backyardbuoys.org](http://www.backyardbuoys.org) to find more information, watch our video, and meet the project team.

## Korsmo (Aughe), Stacey

---

**From:** Brown, Eric K <Eric\_Brown@nps.gov>  
**Sent:** Tuesday, July 16, 2024 5:53 PM  
**To:** Korsmo (Aughe), Stacey  
**Subject:** [EXT]:Fw: Deployment of a wave buoy  
**Attachments:** DMWR Scientific Permit\_application\_NPSA\_PaOLOOS\_Buoy.docx

**\*\*\* External Message \*\*\* -- PROBE message before clicking links or opening attachments.**

Stacy,

This is the email I sent to the ASHPO director last July. I never received a response so after 30 days we concluded that it was "approved".

Eric

Eric K. Brown, Ph.D.  
Marine Ecologist  
National Park of American Samoa  
Interior Region 12  
MHJ Building, 2nd Floor  
Pago Pago, AS 96799  
Office (684)-633-7082, x41  
Cell (684)-272-7470

---

**From:** Brown, Eric K  
**Sent:** Tuesday, July 11, 2023 10:26  
**To:** tishpeau@gmail.com <tishpeau@gmail.com>  
**Subject:** Re: Deployment of a wave buoy

Tish,

The park service in consultation with local fishers and the Pacific Islands Ocean Observing System is planning to deploy a wave buoy near Faleasao harbor. Attached is the permit application that we are submitting to DMWR. There will also be permits submitted to the US Army Corps of Engineers and NOAA regarding navigational hazards and impacts to essential fish habitat.

Let us know if you have any questions from a cultural perspective about the buoy or the proposed deployment location. E.g., do you know of any sunken historical artifacts or significance to the area that we should be aware of?

Thanks,  
Eric

Eric K. Brown, Ph.D.  
Marine Ecologist  
National Park of American Samoa  
Interior Region 12  
MHJ Building, 2nd Floor  
Pago Pago, AS 96799  
Office (684)-633-7082, x41  
Cell (684)-272-7470

**CAUTION:** This email originated outside of the organization. **DO NOT CLICK** links or open attachments unless you recognize the sender and know the content is safe.

## **Appendix D**

### **Final Permit Examples**

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1. Quinalt Verification Letter for Coverage under NWP 5
2. Guam Coastal Management Program Verification Letter for Coverage under NWP 5
3. Quileute National Marine Sanctuaries Permit
4. Alaska Eskimo Whaling Commission Land Use Permit
5. Western Washington University Hydraulic Project Approval
6. Western Washington University Aquatic Lands Right of Entry
7. Western Washington University Shoreline Development Permit Exemption
8. Alaska Eskimo Whaling Commission Study Permit
9. National Park of American Samoa ESA Letter of Concurrence
10. National Park of American Samoa EFH Consultation Letter



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT  
4735 EAST MARGINAL WAY SOUTH, BLDG 1202  
SEATTLE, WA 98134-2388

Regulatory Branch

March 1, 2024

Joe Schumacker  
Quinault Indian Nation  
Post Office Box 189  
Taholah, Washington 98587

Reference: NWS-2023-912  
Sofar Spotter Buoys  
Pacific Ocean

Dear Mr. Joe Schumaker:

We have reviewed your application to install three Sofar Spotter wave buoys to collect wave data within the boundaries of the Olympic Coast National Marine Sanctuary in the Pacific Ocean approximately 5.5 nautical miles off the Washington coast near Taholah, Grays Harbor County, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 5, *Scientific Measuring Devices* (Federal Register December 27, 2021 Vol. 86, No. 245), authorizes your proposal as depicted on the enclosed drawings dated December 2023.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 5, Terms and Conditions* and the following special condition:

a. The buoys require approval from the United States Coast Guard prior to placement. Please coordinate with the United States Coast Guard to obtain approval at D13-SMB-D13-PATON@uscg.mil.

The National Oceanic and Atmospheric Administration completed no effect determinations for the National Historic Preservation Act, Section 7 of the Endangered Species Act (ESA), and Magnuson Stevens Act essential fish habitat (EFH) for its involvement in the proposed activity. For the purpose of this Department of the Army authorization, we have determined this project will comply with the requirements of these laws provided you comply with all of the permit general conditions. We have determined the permit action is sufficiently addressed in their ESA and EFH consultation documents. By this letter we are advising you and the Services, in accordance with 50 CFR 402.07 and 50 CFR 600.920(b), that this agency has served as the lead Federal

agency for the ESA and EFH consultation responsibilities for the activity described above.

Please note that National General Condition 21, *Discovery of Previously Unknown Remains and Artifacts*, found in the *Nationwide Permit Terms and Conditions* enclosure, details procedures that must be followed should an inadvertent discovery occur. You must ensure that you comply with this condition during the construction of your project.

The Washington State Department of Ecology determined your project does not trigger the need for a Water Quality Certification or a Coastal Zone Management consistency decision.

The Pacific Ocean is a water of the U.S. You may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

Our verification of this NWP authorization is valid until March 14, 2026, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work for the NWP authorization has not been completed by that date and you have commenced or are under contract to commence this activity before March 14, 2026, you will have until March 14, 2027, to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. All compliance reports should be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch electronically at [nws.compliance@usace.army.mil](mailto:nws.compliance@usace.army.mil). Thank you for your cooperation during the permitting process.



We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey. Referenced documents and information about our program are available on our website at [www.nws.usace.army.mil](http://www.nws.usace.army.mil), select "Regulatory Permit Information". A copy of this letter with enclosures will be furnished to [tacey.aughe@wetsonsolutions.com](mailto:tacey.aughe@wetsonsolutions.com). If you have any questions, please contact me at [brad.a.johnson2@usace.army.mil](mailto:brad.a.johnson2@usace.army.mil) or (503) 278-1845

Sincerely,

*Brad Johnson*

Brad Johnson, Project Manager  
Regulatory Branch

Enclosures

cc:

Ecology ([ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov))

United States Coast Guard ([D13-SMB-D13-PATON@uscg.mil](mailto:D13-SMB-D13-PATON@uscg.mil))



US Army Corps  
of Engineers ®  
Seattle District

## CERTIFICATE OF COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT



Permit Number: NWS- 2023-912

Name of Permittee: Quinault Indian Nation

Date of Issuance: March 1, 2024

Upon completion of the activity authorized by this permit, please check the applicable boxes below, date and sign this certification, and return it to the following email or mailing address:

NWS.Compliance@usace.army.mil                      OR                      Department of the Army  
U.S. Army Corps of Engineers Seattle  
District, Regulatory Branch  
4735 E. Marginal Way S, Bldg 1202  
Seattle, Washington 98134-2388

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of your authorization, your permit may be subject to suspension, modification, or revocation.

<input type="checkbox"/>	<p>The work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of this permit.</p> <p>Date work complete: _____</p> <p><input type="checkbox"/> Photographs and as-built drawings of the authorized work (OPTIONAL, unless required as a Special Condition of the permit).</p>
--------------------------	--

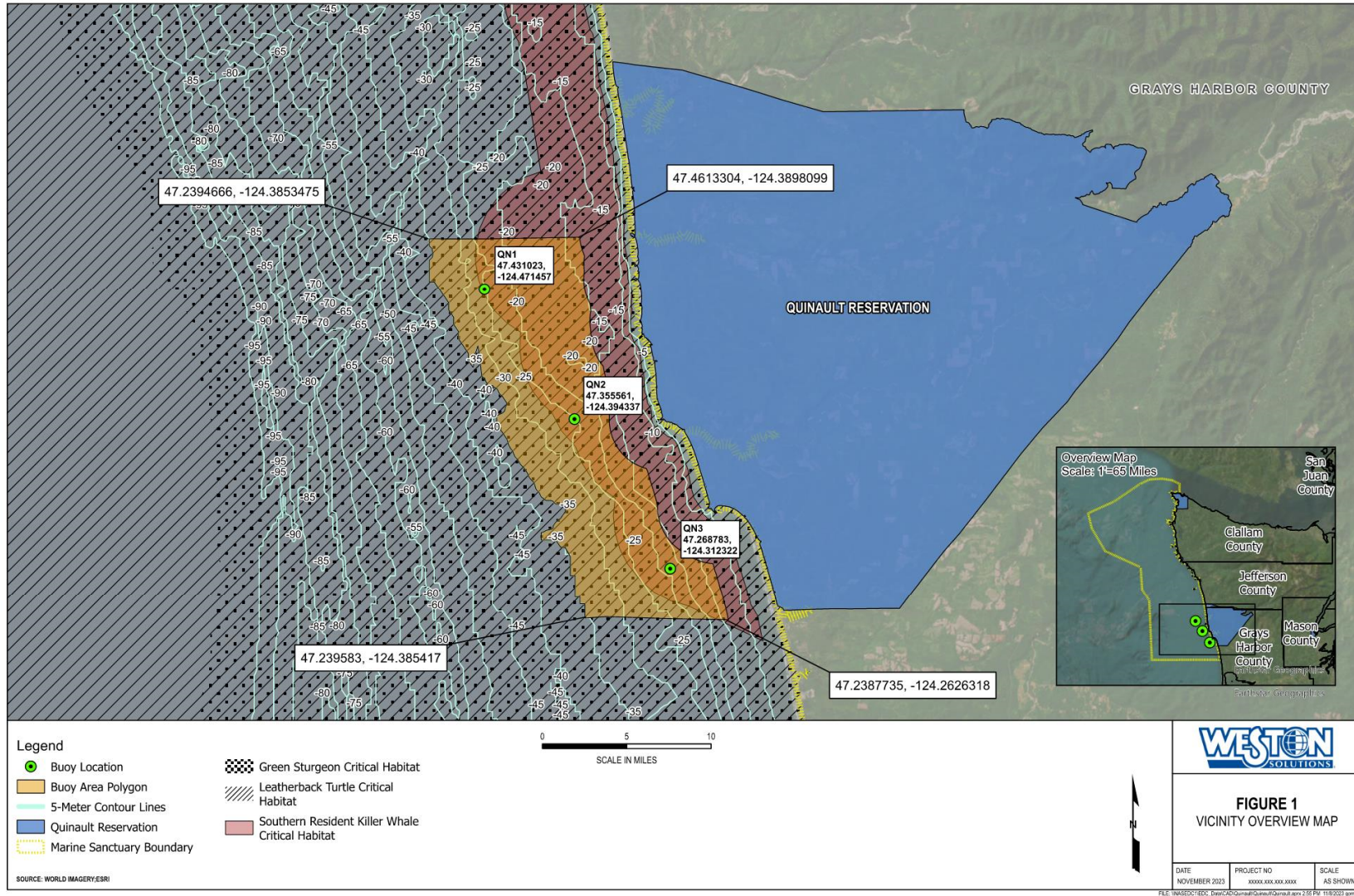
<input type="checkbox"/>	<p>If applicable, the mitigation required (e.g., construction and plantings) in the above-referenced permit has been completed in accordance with the terms and conditions of this permit (not including future monitoring).</p> <p>Date work complete: _____ <input type="checkbox"/> N/A</p> <p><input type="checkbox"/> Photographs and as-built drawings of the mitigation (OPTIONAL, unless required as a Special Condition of the permit).</p>
--------------------------	--

<input type="checkbox"/>	<p>Provide phone number/email for scheduling site visits (must have legal authority to grant property access).</p> <p>Printed Name: _____</p> <p>Phone Number: _____ Email: _____</p>
--------------------------	---

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**Figure 1. Proposed Initial Buoy Locations and Buoy Area Polygon offshore of the Quinault Indian Nation Reservation, Washington**



US Army Corps  
of Engineers ®  
Seattle District

# NATIONWIDE PERMIT 5

## Terms and Conditions



2021 NWP - Final 41; Effective Date: February 25, 2022

- 
- A. Description of Authorized Activities
  - B. U.S. Army Corps of Engineers (Corps) National General Conditions for All Final 41 NWPs
  - C. Seattle District Regional General Conditions
  - D. Seattle District Regional Specific Conditions for this Nationwide Permit (NWP)
  - E. 401 Water Quality Certification (401 WQC) for this NWP
  - F. Coastal Zone Management Consistency Response for this NWP
- 

In addition to any special condition that may be required on a case-by-case basis by the District Engineer, the following terms and conditions must be met, as applicable, for a Nationwide Permit (NWP) authorization to be valid in Washington State.

### A. DESCRIPTION OF AUTHORIZED ACTIVITIES

5. Scientific Measurement Devices. Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge of dredged or fill material is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. (Authorities: Sections 10 and 404)

### B. CORPS NATIONAL GENERAL CONDITIONS FOR ALL 2021 NWPs - FINAL 41

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened

species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity



authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection

(e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any

NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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(Transferee)

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(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) *Timing*. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification*: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river

is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity’s compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies’ concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

C. SEATTLE DISTRICT REGIONAL GENERAL CONDITIONS: The following conditions apply to the 2021 NWPs - Final 41 NWPs for the Seattle District in Washington State, as applicable.

### **RGC 1, Project Drawings**

Drawings must be submitted with pre-construction notification (PCN). Drawings must provide a clear understanding of the proposed project, and how waters of the United States will be affected. Drawings must be originals and not reduced copies of large-scale plans. Engineering drawings are not required. Existing and proposed site conditions (manmade and landscape features) must be drawn to scale.

### **RGC 2, Aquatic Resources Requiring Special Protection**

A PCN is required for activities resulting in a loss of waters of the United States in wetlands in dunal systems along the Washington coast, mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, and wetlands in coastal lagoons.

### **RGC 3, New Bank Stabilization in Tidal Waters of Puget Sound**

Activities involving new bank stabilization in tidal waters in Water Resource Inventory Areas (WRIAs) 8, 9, 10, 11 and 12 (within the areas identified on Figures 1a through 1e) cannot be authorized by NWP.

### **RGC 4, Commencement Bay**

No permanent losses of wetlands or mudflats within the Commencement Bay Study Area may be authorized by any NWP (see Figure 2).

### **RGC 5, Bank Stabilization**

All projects including new or maintenance bank stabilization activities in waters of the United States where salmonid species are present or could be present, requires PCN to the U.S. Army Corps of Engineers (Corps) (see NWP general condition 32).

For new bank stabilization projects only, the following must be submitted to the Corps:

- a. The cause of the erosion and the distance of any existing structures from the area(s) being stabilized.
- b. The type and length of existing bank stabilization within 300 feet of the proposed project.
- c. A description of current conditions and expected post-project conditions in the waterbody.
- d. A statement describing how the project incorporates elements avoiding and minimizing adverse environmental effects to the aquatic environment and nearshore riparian area, including vegetation impacts in the waterbody.

In addition to a. through d., the results from any relevant geotechnical investigations can be submitted with the PCN if it describes current or expected conditions in the waterbody.

### **RGC 6, Crossings of Waters of the United States**

Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the U.S. Army Corps of Engineers (see NWP general condition 32).

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, the project must apply the stream simulation design method from the Washington Department of Fish and Wildlife located in the *Water Crossing Design Guidelines* (2013), or a design method which provides passage at all life stages at all flows where the salmonid species would naturally seek passage. If the stream simulation design method is not applied for a culvert where salmonid species are present or could be present, the project proponent must provide a rationale in the PCN sufficient to establish one of the following:

- a. The existence of extraordinary site conditions.
- b. How the proposed design will provide equivalent or better fish passage and fisheries habitat benefits than the stream simulation design method.

Culverts installed under emergency authorization that do not meet the above design criteria will be required to meet the above design criteria to receive an after-the-fact nationwide permit verification.

### **RGC 7, Stream Loss**

A PCN is required for all activities that result in the loss of any linear feet of streams.

### **RGC 8, Construction Boundaries**



Permittees must clearly mark all construction area boundaries within waters of the United States before beginning work on projects that involve grading or placement of fill. Boundary markers and/or construction fencing must be maintained and clearly visible for the duration of construction. Permittees should avoid and minimize removal of native vegetation (including submerged aquatic vegetation) to the maximum extent possible.

### **RGC 9, ESA Reporting to NMFS**

For any nationwide permit that may affect threatened or endangered species; Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries, National Marine Fisheries Service (NMFS) under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide Permit verification shall be reported to NMFS, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by the NMFS to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

### **D. SEATTLE DISTRICT REGIONAL SPECIFIC CONDITIONS FOR THIS NWP:**

NWP 5 Specific Regional Conditions:

1. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) for the construction of weirs and flumes.

E. 401 WATER QUALITY CERTIFICATION: Depending on the geographic region of the work authorized by this verification, the appropriate 401 certifying authority has made the following determinations:

### **Washington Department of Ecology (Ecology) (Projects in all areas except as described for the other certifying agencies listed below): General and Specific WQC Conditions**

#### **A. State General Conditions for all Nationwide Permits**

In addition to all of the U.S. Army Corps of Engineers' (Corps) national and Seattle District's regional permit conditions, the following state general Water Quality Certification (WQC) conditions **apply to all NWPs whether granted or granted with conditions** in Washington where Ecology is the certifying authority.

Due to the lack of site specific information on the discharge types, quantities, and specific locations, as well as the condition of receiving waters and the quantity of waters (including wetlands) that may be lost, Ecology may need to review the project if one of the following state general conditions is triggered.

This case-by-case review may be required, and additional information regarding the project and associated discharges may be needed, to verify that the proposed project would comply with state water quality requirements and if an individual WQC is required or if the project meets this programmatic WQC.

1. **In-water construction activities.** Ecology WQC review is required for projects or activities authorized under NWPs where the project proponent has indicated on the Joint Aquatic Resource Permit Application (JARPA) question 9e that the project or activity will not meet State water quality standards, or has provided information indicating that the project or activity will cause, or may be likely to cause or contribute to an exceedance of a State water quality standard (Chapter 173-201A WAC) or sediment management standard (Chapter 173-204 WAC).

Note: In-water activities include any activity within a jurisdictional wetland and/or waters.

2. **Projects or Activities Discharging to Impaired Waters.** Ecology WQC review is required for projects or activities that will occur in a 303(d) listed segment of a waterbody or upstream of a listed segment and may result in further exceedances of the specific listed parameter to determine if the project meets this programmatic WQC or will require individual WQC.

To determine if your project or activity is in a 303(d) listed segment of a waterbody, visit Ecology's Water Quality Assessment webpage for maps and search tools.

3. **Aquatic resources requiring special protection.** Certain aquatic resources are unique and difficult-to-replace components of the aquatic environment in Washington. Activities that would affect these resources must be avoided to the greatest extent practicable. Compensating for adverse impacts to high value aquatic resources is typically difficult, prohibitively expensive, and may not be possible in some landscape settings.

Ecology WQC review is required for projects or activities in areas identified below to determine if the project meets this programmatic WQC or will require individual WQC.

- a. Activities in or affecting the following aquatic resources:
  - i. Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publications #14-06-029 and #14-06-030):
    - Estuarine wetlands.
    - Wetlands of High Conservation Value.
    - Bogs.
    - Old-growth forested wetlands and mature forested wetlands.
    - Wetlands in coastal lagoons.
    - Wetlands in dunal systems along the Washington coast.
    - Vernal pools.
    - Alkali wetlands.
  - ii. Fens, aspen-dominated wetlands, camas prairie wetlands.
  - iii. Category I wetlands.
  - iv. Category II wetlands with a habitat score  $\geq 8$  points.
- b. Activities in or resulting in a loss of eelgrass (*Zostera marina*) beds.

This state general condition does not apply to the following NWPs:

- NWP 20 – Response Operations for Oil and Hazardous Substances
- NWP 32 – Completed Enforcement Actions
- NWP 48 – Commercial Shellfish Mariculture Activities

4. **Loss of More than 300 Linear Feet of Streambed.** For any project that results in the loss of more than 300 linear feet of streambed Ecology WQC review is required to determine if the project meets this programmatic WQC or will require individual WQC.
5. **Temporary Fills.** For any project or activity with temporary fill in wetlands or other waters for more than six months Ecology WQC review is required to determine if the project meets this programmatic WQC or will require individual WQC.

**6. Mitigation.** Project proponents are required to show that they have followed the mitigation sequence and have first avoided and minimized impacts to aquatic resources wherever practicable. For projects requiring Ecology WQC review or an individual WQC with unavoidable impacts to aquatic resources, a mitigation plan must be provided.

- a. Wetland mitigation plans submitted for Ecology review and approval shall be based on the most current guidance provided in Wetland Mitigation in Washington State, Parts 1 and 2 (available on Ecology's website) and shall, at a minimum, include the following:
  - i. A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.
  - ii. The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded).
  - iii. The rationale for the mitigation site that was selected.
  - iv. The goals and objectives of the compensatory mitigation project.
  - v. How the mitigation project will be accomplished, including construction sequencing, best management practices to protect water quality, proposed performance standards for measuring success and the proposed buffer widths.
  - vi. How it will be maintained and monitored to assess progress toward goals and objectives. Monitoring will generally be required for a minimum of five years. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.
  - vii. How the compensatory mitigation site will be legally protected for the long term.

Refer to Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Ecology Publication #06-06-011b) and Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology Publications #09-06-032 (Western Washington) and #10-06-007 (Eastern Washington)) for guidance on selecting suitable mitigation sites and developing mitigation plans.

Ecology encourages the use of alternative mitigation approaches, including credit/debit methodology, advance mitigation, and other programmatic approaches such as mitigation banks and in-lieu fee programs. If you are interested in proposing use of an alternative mitigation approach, consult with the appropriate Ecology regional staff person. Information on alternative mitigation approaches is available on Ecology's website.

- b. Mitigation for other aquatic resource impacts will be determined on a case-by-case basis.

**7. Stormwater Pollution Prevention.** All projects involving land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters.

- a. For land disturbances during construction, the applicant must obtain and implement permits (e.g., Construction Stormwater General Permit) where required and follow Ecology's current stormwater manual.

- b. Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces shall be provided.

Ecology's Stormwater Management and Design Manuals and stormwater permit information are available on Ecology's website.

8. **Application.** For projects or activities that will require Ecology WQC review, or an individual WQC, project proponents must provide Ecology with a JARPA or the equivalent information, along with the documentation provided to the Corps, as described in national general condition 32, Pre-Construction Notification (PCN), including, where applicable:
  - a. A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project discharge(s) would cause, best management practices (BMPs), and proposed means to monitor the discharge(s).
  - b. List of all federal, state or local agency authorizations required to be used for any part of the proposed project or any related activity.
  - c. Drawings indicating the OHWM, delineation of special aquatic sites, and other waters of the state. Wetland delineations must be prepared in accordance with the current method required by the Corps and shall include Ecology's Wetland Rating form. Wetland Rating forms are subject to review and verification by Ecology staff.

Guidance for determining the OHWM is available on Ecology's website.

- d. A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted. See state general condition 5.
- e. Other applicable requirements of Corps NWP general condition 32, Corps regional conditions, or notification conditions of the applicable NWP.

Ecology **grants Water Quality Certification** for this NWP provided that individual WQC review is not required per the state general conditions (see above).

**Environmental Protection Agency (EPA) (on Tribal Lands where Tribes Do Not Have Treatment in a Similar Manner as a State and Lands with Exclusive Federal Jurisdiction in Washington): General and Specific 401 Conditions**

On behalf of the 28 tribes that do not have treatment in a similar manner as a state and for exclusive federal jurisdiction lands located within the state of Washington, EPA Region 10 has determined that CWA Section 401 WQC for the following proposed NWPs is granted with conditions. EPA Region 10 has determined that any discharge authorized under the following proposed NWPs will comply with water quality requirements, as defined at 40 C.F.R. § 121.1(n), subject to the following conditions pursuant to CWA Section 401(d).

General Conditions:

**EPA General Condition 1 – Aquatic Resources of Special Concern**

Activities resulting in a point source discharge in the following types of aquatic resources of special concern shall request an individual project-specific CWA Section 401 WQC: mature forested wetlands; bogs, fens and other peatlands; vernal pools; aspen-dominated wetlands; alkali wetlands; camas prairie wetlands; wetlands in dunal systems along the Oregon or Washington Coast; riffle-pool complexes of streams; marine or estuarine mud-flats; salt marshes; marine waters with native eelgrass or kelp beds; or marine nearshore forage fish habitat. To identify whether a project would occur in any

of these aquatic resources of special concern, project proponents shall use existing and available information to identify the location and type of resources, including using the U.S. Fish and Wildlife Service's online digital National Wetland Inventory maps, identifying project location on topographical maps, and/or providing on-site determinations as required by the Corps. When a project requires a Pre-Construction Notification (PCN) to the Corps, project proponents shall work with the Corps to identify whether the project is in any of these specific aquatic resources of special concern.

**EPA General Condition 2 – Soil Erosion and Sediment Controls**

Turbidity shall not exceed background turbidity by more than 50 Nephelometric Turbidity Units (NTU) above background instantaneously or more than 25 NTU above background for more than ten consecutive days.<sup>8</sup> Projects or activities that are expected to exceed these levels require an individual project-specific CWA Section 401 WQC.

The turbidity standard shall be met at the following distances from the discharge:

<b>Wetted Stream Width at Discharge Point</b>	<b>Approximate Downstream Point to Sample to Determine Compliance</b>
Up to 30 feet	50 feet
>30 to 100 feet	100 feet
>100 feet to 200 feet	200 feet
>200 feet	300 feet
Lake, Pond, Reservoir	Lesser of 100 feet or maximum surface distance

<b>For Marine Water</b>	<b>Point of Compliance for Temporary Area of Mixing</b>
Estuaries or Marine Waters	Radius of 150 feet from the activity causing the turbidity exceedance

Measures to prevent and/or reduce turbidity shall be implemented and monitored prior to, during, and after construction. Turbidity monitoring shall be done at the point of compliance within 24 hours of a precipitation event of 0.25 inches or greater. During monitoring and maintenance, if turbidity limits are exceeded or if measures are identified as ineffective, then additional measures shall be taken to come into compliance and EPA shall be notified within 48 hours of the exceedance or measure failure.

**EPA General Condition 3 - Compliance with Stormwater Pollution Prevention and the National Pollutant Discharge Elimination System Permit Provisions**

For land disturbances during construction that 1) disturb one or more acres of land, or 2) will disturb less than one acre of land but are part of a common plan of development or sale that will ultimately disturb one or more acres of land, the permittee shall obtain and implement Construction Stormwater General Permit requirements,<sup>9</sup> including:

1. The permittee shall develop a Stormwater Pollution Prevention Plan (SWPPP)<sup>10</sup> and submit it to EPA Region 10 and appropriate Corps District; and
2. Following construction, prevention or treatment of ongoing stormwater runoff from impervious surfaces that includes soil infiltration shall be implemented.

#### EPA General Condition 4 – Projects or Activities Discharging to Impaired Waters

Projects or activities are not authorized under the NWP's if the project will involve point source discharges into an active channel (e.g., flowing or open waters) of a water of the U.S. listed as impaired under CWA Section 303(d) and/or if the waterbody has an approved Total Maximum Daily Load (TMDL) and the discharge may result in further exceedance of a specific parameter (e.g., total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed or has an approved TMDL. The current lists of impaired waters of the U.S. under CWA Section 303(d) and waters of the U.S. for which a TMDL has been approved are available on EPA Region 10's web site at: <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-10>.

#### EPA General Condition 5 – Notice to EPA

All project proponents shall provide notice to EPA Region 10 prior to commencing construction activities authorized by a NWP. This will provide EPA Region 10 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this CWA Section 401 WQC. Where the Corps requires a PCN for an applicable NWP, the project proponent shall also provide the PCN to EPA Region 10. EPA Region 10 will provide written notification to the project proponent if the proposed project will violate the water quality certification of the NWP.

#### EPA General Condition 6 – Unsuitable Materials

The project proponent shall not use wood products treated with leachable chemical components (e.g., copper, arsenic, zinc, creosote, chromium, chloride, fluoride, pentachlorophenol), which result in a discharge to waters of the U.S., unless the wood products meet the following criteria:

1. Wood preservatives and their application shall be in compliance with EPA label requirements and criteria of approved EPA Registration Documents under the Federal Insecticide, Fungicide, and Rodenticide Act;
2. Use of chemically treated wood products shall follow the Western Wood Preservatives Institute (WWPI) guidelines and BMPs to minimize the preservative migrating from treated wood into the aquatic environment;
3. For new or replacement wood structures, the wood shall be sealed with non-toxic products such as water-based silica or soy-based water repellants or sealers to prevent or limit leaching. Acceptable alternatives to chemically treated wood include untreated wood, steel (painted, unpainted or coated with epoxy petroleum compound or plastic), concrete and plastic lumber; and
4. All removal of chemically treated wood products (including pilings) shall follow the most recent "EPA Region 10 Best Management Practices for Piling Removal and Placement in Washington State."

#### **Specific Tribes with Certifying Authority (Projects in Specific Tribal Areas):**

WQC was issued by the Swinomish Indian Tribal Community. WQC was waived by the Confederated Tribes of the Chehalis Reservation and Colville Indian Reservation, Kalispel Tribe of Indians, Port Gamble S'Klallam Tribe, Quinault Indian Nation, and the Spokane Tribe of Indians. WQC was denied by the Lummi Nation, Makah Tribe, Puyallup Tribe of Indians, and the Tulalip Tribes; therefore, individual WQC is required from these tribes.

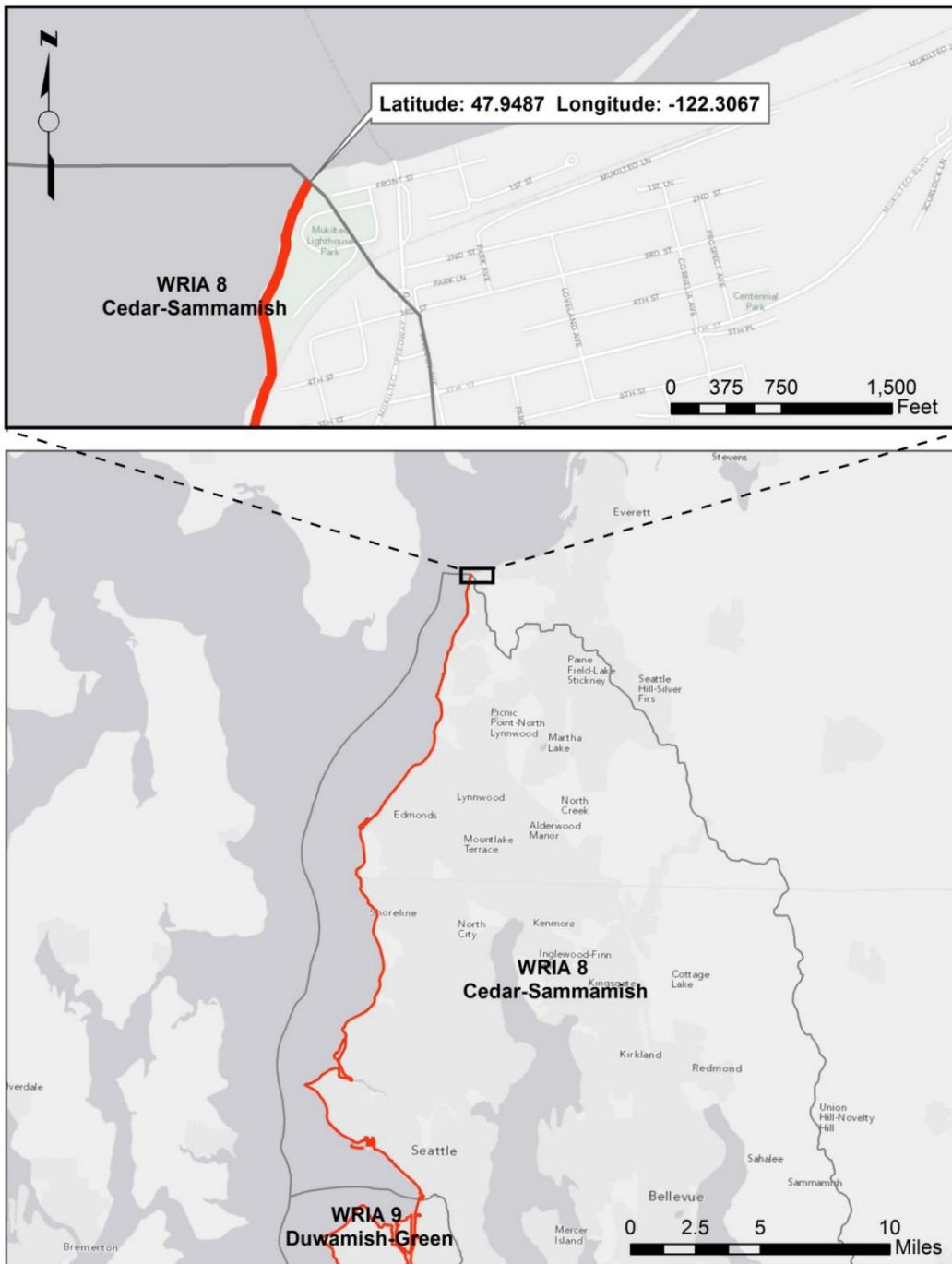
#### F. COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY RESPONSE FOR THIS NWP:

Ecology's determination is that they concur that this NWP is consistent with CZMA.

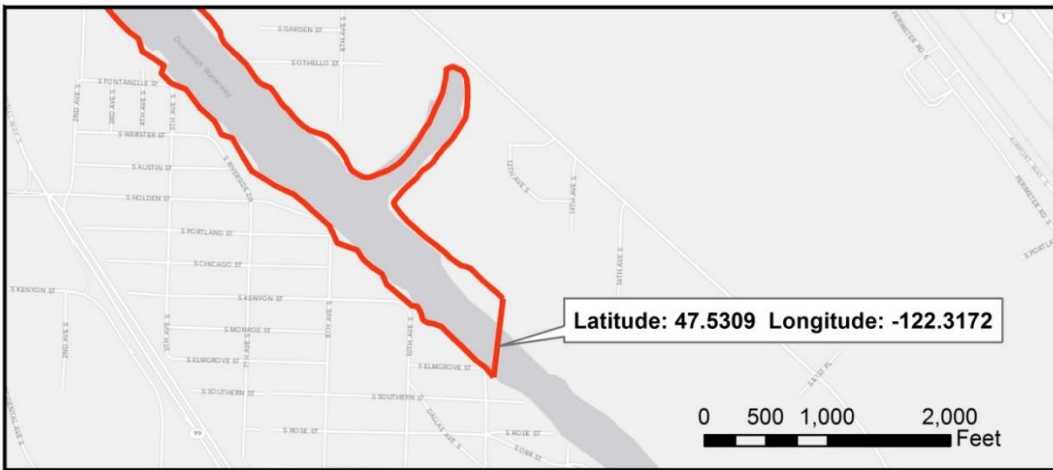
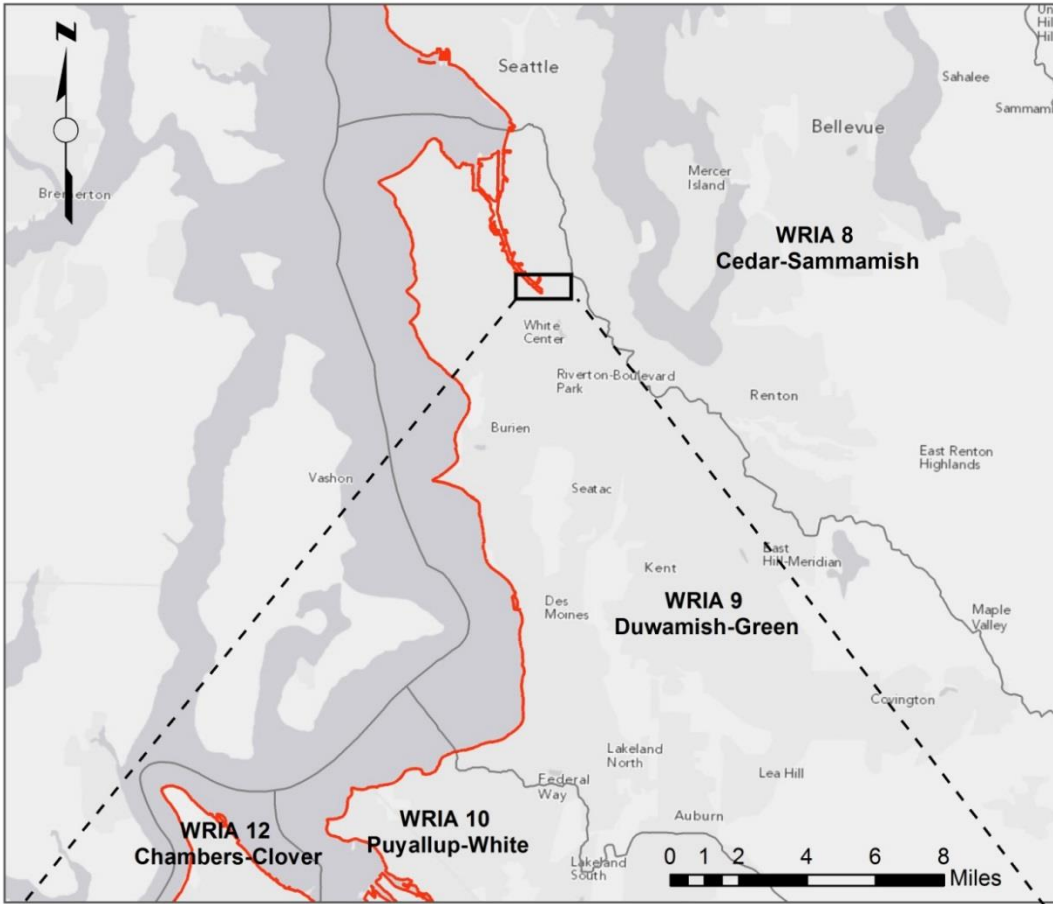
Seattle District Regional General Conditions - Figures

Figure 1: RGC 3 - WRIAs 8, 9, 10, 11, and 12

a. WRIA 8

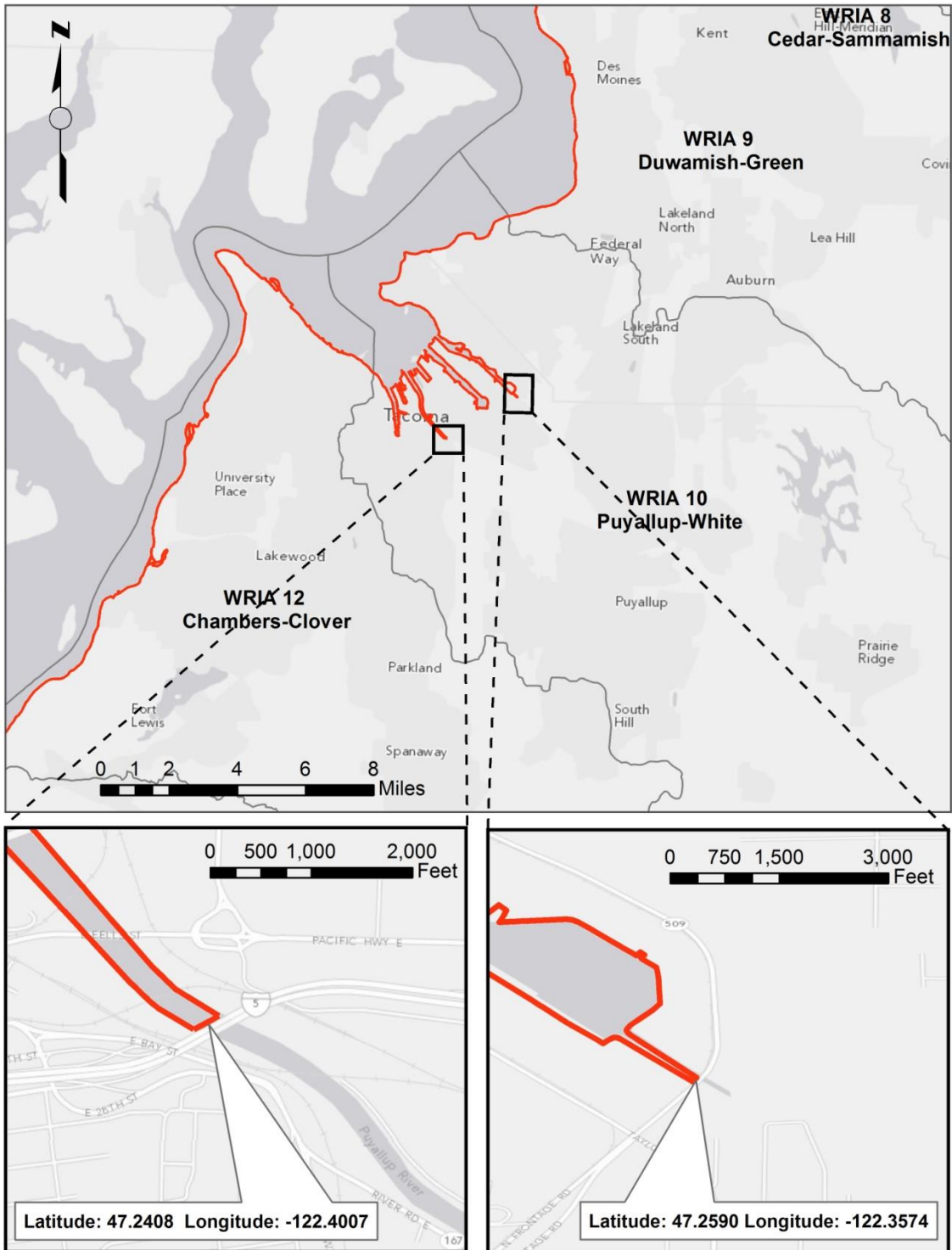


b. WRIA 9

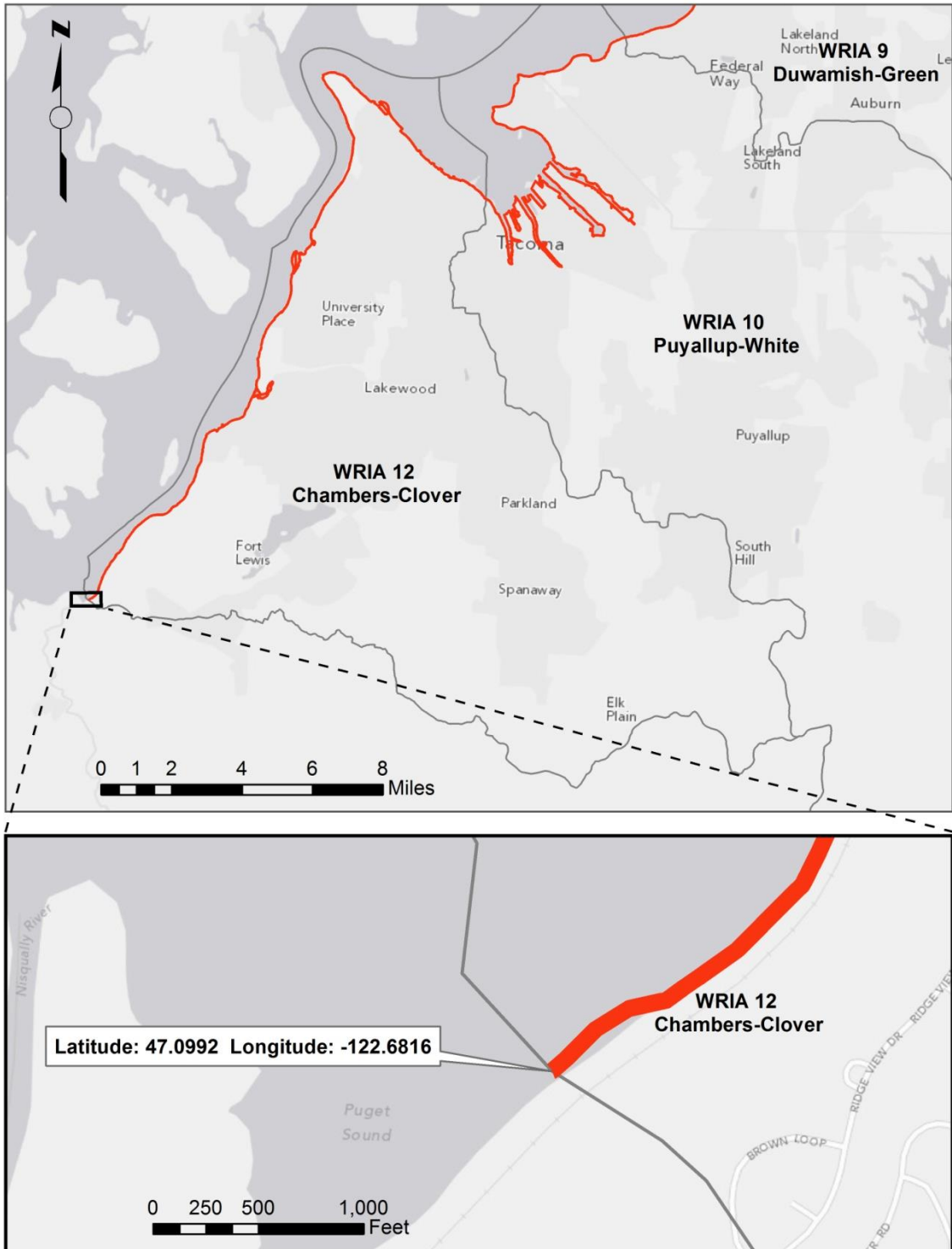




c. WRIA 10



d. WRIA 12



e. WRIA 11

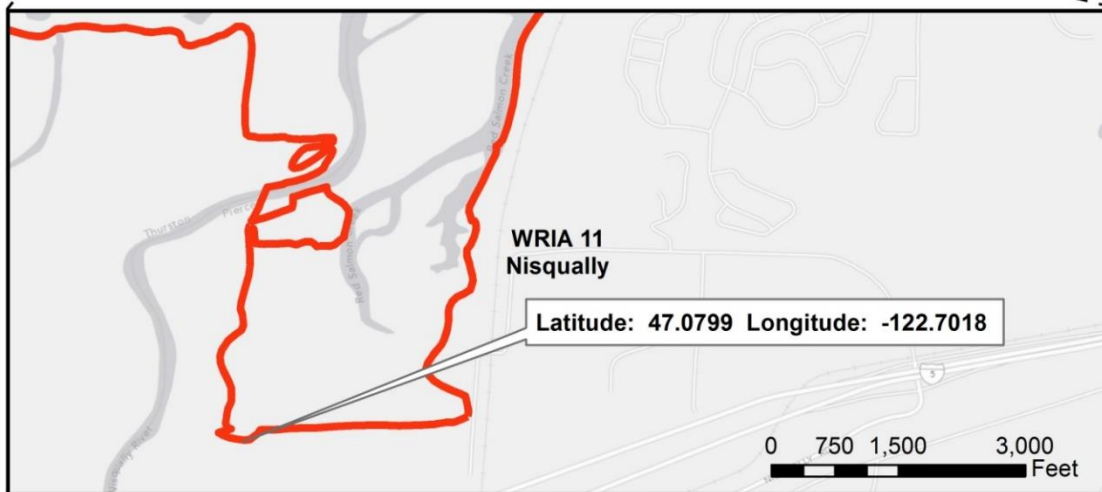
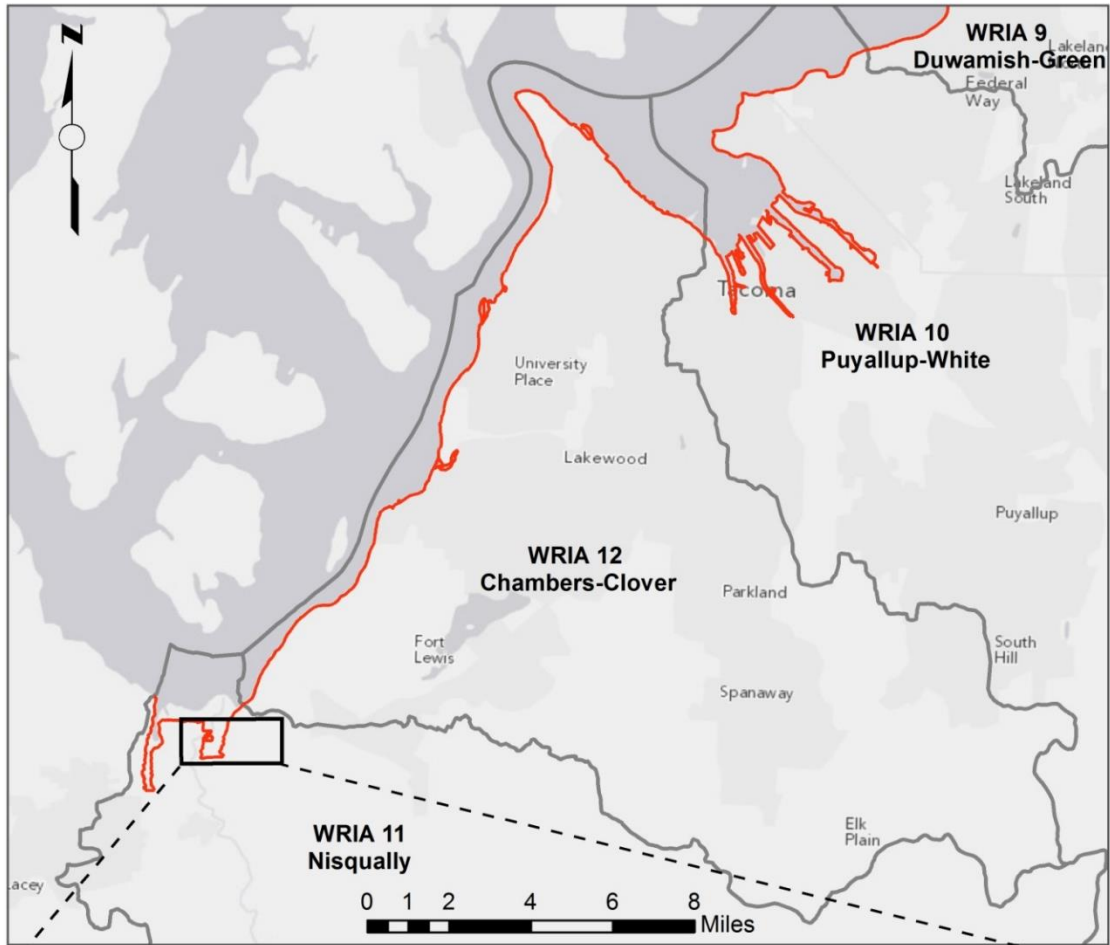
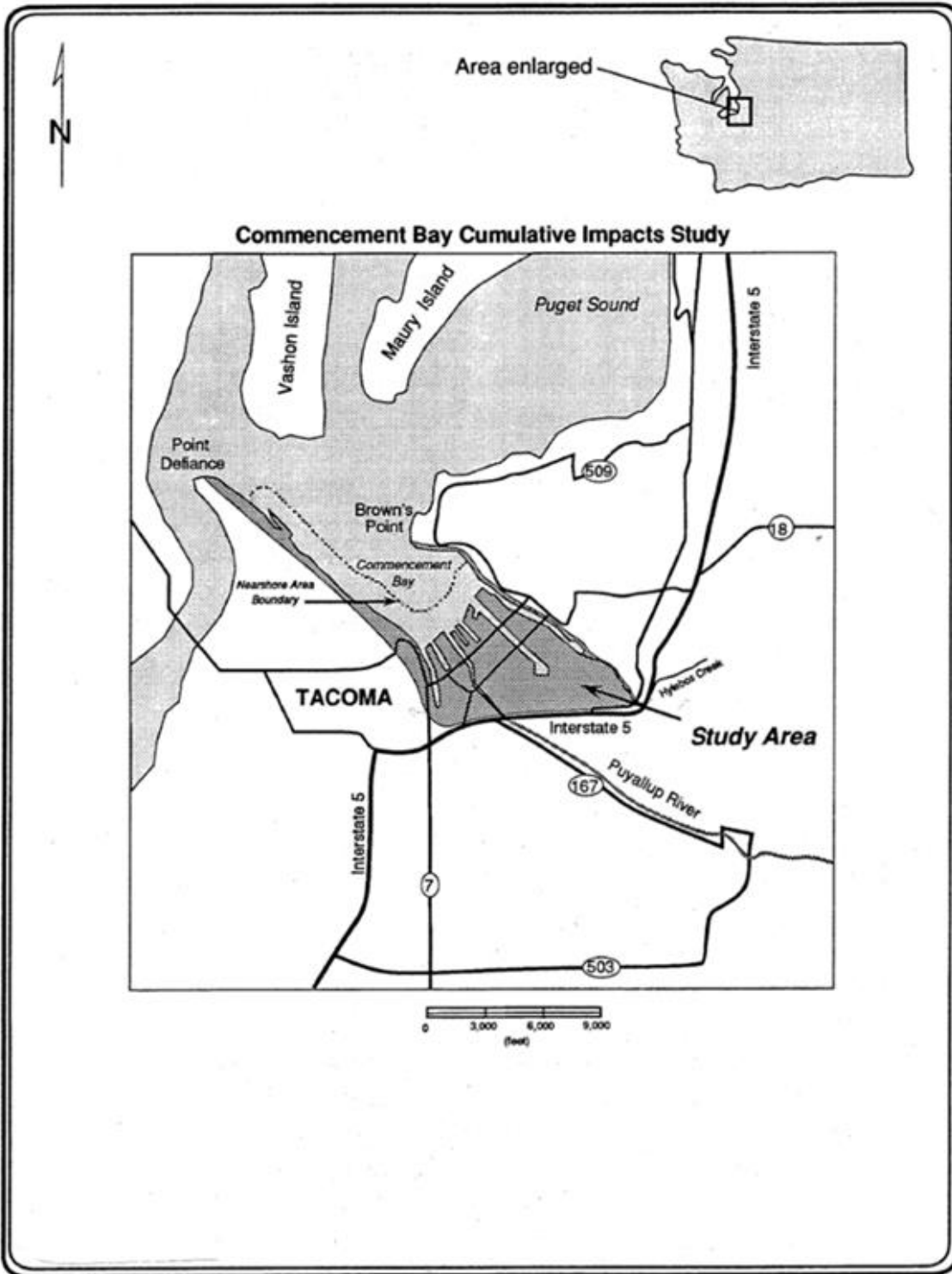


Figure 2. RGC 4 - Commencement Bay Study Area





**DEPARTMENT OF THE ARMY**  
HONOLULU DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
FORT SHAFTER, HAWAII 96858-5440

June 3, 2024

SUBJECT: Nationwide Permit Verification for GCMP Merizo Spotter Buoy, Philippine Sea, Guam, Department of the Army File No. POH-2024-00038

Edwin Reyes  
Guam Coastal Management Program  
P.O. Box 2950  
Hagåtña, Guam 96932

Dear Mr. Reyes:

The Honolulu District, U.S. Army Corps of Engineers (Corps), Regulatory Branch has completed review of your Pre-Construction Notification dated May 17, 2024, requesting authorization for the proposed installation of a SOFAR spotter buoy in marine waters 0.39 miles west of Merizo Pier Park, Guam (13.27138°, 144.65861°). Please reference Department of the Army (DA) file number POH-2024-00038 in any future correspondence related to this permit.

This letter verifies your activity complies with the terms and conditions of Nationwide Permit (NWP) 5, (Scientific Measurement Devices) issued on February 25, 2022 (86 FR 73522, December 27, 2021). This NWP verification letter is being issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 for work or structures in or affecting navigable waters of the U.S. You are authorized to conduct the following work as described below and as depicted on the enclosed drawings (Enclosure 1):

- Use a small vessel to transport and install a 42 cm x 31 cm, 7.45 kg, surface spotter buoy in marine waters at least -11 meters MLLW deep. The spotter buoy will be tethered to a surface float by a 10 meter catenary loop and the surface float will be connected to an existing mooring on the seafloor. If the existing mooring is unsuitable, scuba divers will install a new 46 cm x 46 cm x 76 cm, 136 kg, mooring anchor on barren substrate. Buoy will remain in place indefinitely, maintained quarterly, and removed when no longer needed.

You must ensure that the work is performed in accordance with the Nationwide Permit General Conditions and the Honolulu District Regional Conditions available at: [www.poh.usace.army.mil/Missions/Regulatory/Permits/Nationwide-Permits](http://www.poh.usace.army.mil/Missions/Regulatory/Permits/Nationwide-Permits). You must also follow these project-specific Special Conditions:

1. Implement and abide by the general and activity specific minimization measures in the Standard Local Operating Procedures for Endangered Species in the Central and Western Pacific Region (Pac-SLOPES) and the Essential Fish

Habitat Programmatic agreement between the Corps and National Marine Fisheries Service (Enclosure 2).

Verification of the authorized activity under this NWP is valid until March 14, 2026, unless this NWP is modified, reissued, or revoked prior to that date. It is incumbent upon you to remain informed of changes to the NWPs. If the Corps modifies, reissues, or revokes any NWP at an earlier date, we will issue a public notice announcing the changes. This authorization does not relieve you of the responsibility to obtain any other federal, state, and/or local authorizations required by law.

General Condition 30 requires you to submit a signed certification to this office upon completion of work. Please sign, date, and return the attached Compliance Certification forms within 30 days of completion of work at each site to the email address or the mailing address on the Compliance Certification form.

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions related to this authorization, please contact me at 808-835-4056 or 671-339-2108 or via e-mail at [jason.d.brewer@usace.army.mil](mailto:jason.d.brewer@usace.army.mil). You are encouraged to provide comments on your experience with the Honolulu District Regulatory Office by accessing our web-based customer survey form at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=136:4:0](http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0).

Sincerely,

A handwritten signature in blue ink that reads "Jason Brewer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jason Brewer  
Regulatory Project Manager

Enclosures

cc:

USCG

Guam Environmental Protection Agency (GEPA)

Guam Bureau of Statistics and Plans, Coastal Management Program (GBSP-CMP)



US Army Corps of Engineers  
Honolulu District  
BUILDING STRONG®

## DEPARTMENT OF THE ARMY PERMIT COMPLIANCE CERTIFICATION

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**File Number:** POH-2024-00038

**Project Title:** Merizo Spotter Buoy, Philippine Sea, Guam

**PERMIT TYPE:** Nationwide Permit 5, (Scientific Measurement Devices)

**NAME OF PERMITTEE:** Guam Coastal Management Program; Edwin Reyes

**DATE OF ISSUANCE:** June 3, 2024

**DATE OF EXPIRATION:** March 14, 2026

The permittee must, upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address or via email within thirty (30) days of completion of work:

U.S. Army Corps of Engineers, Honolulu District  
Guam Regulatory Field Office  
PSC 455, Box 188  
FPO AP 96540-1088  
Email: CEPOH-RO@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of this permit, you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

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Signature of Permittee

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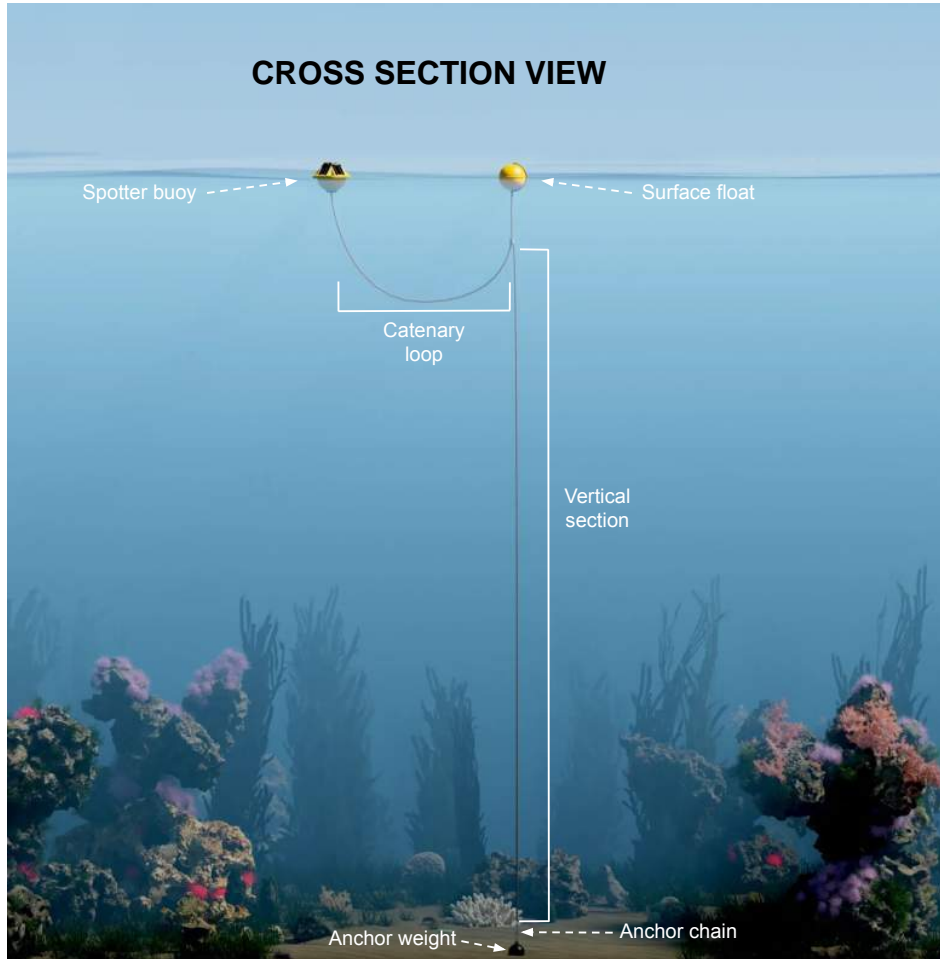
Date

POH-2024-00038 GCMP Merizo Spotter Buoy  
Lat: 13.27138°, Long: 144.65861°  
Sheet 1 of 2 May 31, 2024

**VICINITY AND SITE MAP**







Depth of water: approx. 11 m

Swing radius: approx. 10 m

Length of tether/set-up:

- Vertical section: 1.2-1.5 x (depth)
- Catenary loop (section between SSB and float): 10 m
- Line between 'vertical section' and float: 1 m
- Anchor chain: 1-3 m
- Anchor weight: 200-300 lbs

POH-2024-00038 GCMP Merizo Spotter Buoy  
Lat: 13.27138°, Long: 144.65861°  
Sheet 2 of 2    May 31, 2024

## PacSLOPES (ESA) Best Management Practices

1. For in-water work where ESA corals may occur, structures and substrate that could be affected by the proposed activity must be surveyed by personnel qualified to identify ESA-listed corals. Where divers are to be used, before entering the water, all divers shall be made aware of ESA-listed corals, and the requirement to avoid contact with the corals while performing their duties. This shall include taking measures to avoid kicking corals with fins prevent equipment from being dragged across the substrate.
2. A responsible party (i.e., permittee/site manager/project supervisor) shall designate an appropriate number of competent trained observers to survey the areas adjacent to the authorized work area for ESA-listed marine species. The competent observer will not be simultaneously engaged in any other activity.
3. All work shall be postponed or halted when ESA-listed marine species are within 50 meters of the proposed work, and will only begin/resume after the animals have voluntarily departed the area.
  - a. If ESA-listed marine species are noticed within 50 meters after work has already begun, that work may continue only if, in the best judgement of a biologist, the activity will not adversely affect (i.e., disturb or harm) the animal(s).
4. Project-related personnel shall NOT conduct activities resulting in a take of an ESA-listed species, a species proposed for listing, or listed or proposed critical habitat. "Take" as defined under the ESA means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct".
5. Sensitive resource areas, such as corals, coral reefs and seagrass beds known to occur within a project area must be identified on project figures. Project staff must avoid sensitive resource areas to the greatest extent practicable, including avoiding anchoring in these areas, flagging the areas if appropriate, and securing all in-water equipment to prevent equipment being dragged across the substrate.
6. If an ESA-listed species is adversely affected as a result of the project, all work must stop until coordination with the Corps and NMFS has been completed.
7. All objects lowered to the bottom shall be lowered in a controlled manner. This can be achieved by the use of buoyancy controls such as lift bags, cranes, winches, etc.
8. Temporary in-water tethers, as well as mooring lines for vessels and marker buoys shall be kept taut to the minimum length necessary, and shall remain deployed only as long as needed to properly accomplish the required task.
9. Mooring systems shall employ the minimum line length necessary to account for expected fluctuations in water depth due to tides and waves.
10. Mooring systems shall be designed to keep the line as tight as possible, with the intent to eliminate the potential for loops to form.
11. Mooring lines shall consist of a single line connected to the buoy float. No additional lines or material capable of entangling marine life may be attached to the mooring line or to any other part of the deployed system.

12. Mooring systems shall be designed to keep the gear off the bottom, by use of a mid-line float when appropriate.
13. Mooring systems, including those used for temporary markers, scientific sensor buoys, or vessel moorings, shall be completely removed from the marine environment immediately at the completion of the authorized work or the end of the mooring's service life. The only exceptions to this rule shall be mooring anchors such as eyebolts that are epoxied into the substrate and which pose little or no risk to marine life.
14. When piloting vessels, vessel operators shall alter course to remain at least 100 meters from whales, and at least 50 meters from other ESA-listed marine animals.
15. Reduce vessel speed to 10 knots or less when piloting vessels in proximity of ESA-listed marine mammals, sharks, and rays.
16. Reduce vessel speed to 5 knots or less when piloting vessels in areas of known or suspected sea turtle activity.
17. If despite efforts to maintain the distances and speeds described above, a marine mammal or turtle approaches the vessel, the vessel operator will put the engine in neutral until the animal is at least 15 meters away, and then slowly move away to the prescribed distance.
18. Marine mammals, sea turtles and other ESA-listed motile species shall not be encircled or trapped between multiple vessels or between vessels and the shore.
19. The Corps and NMFS contacts in Table 1 will be notified within 48 hours of a vessel grounding or abandonment during the proposed action.
20. Anchoring locations and moorings must be designed to avoid, to the greatest extent practicable, impacts to live corals, sea grass, and other benthic organisms.

Table 1. Summary of agency contact information.

Reason for Contact	Contact Information
Consultation Questions	ESA email inbox ( <a href="mailto:efhesaconsult@noaa.gov">efhesaconsult@noaa.gov</a> ), and Consultation Biologist: @noaa.gov
Reports & Data Submittal (please include ECO tracking number in subject line)	<a href="mailto:efhesaconsult@noaa.gov">efhesaconsult@noaa.gov</a> , and <a href="mailto:CEPOH-RO@usace.army.mil">CEPOH-RO@usace.army.mil</a>
NOAA Fisheries Hawai'i Statewide Marine Stranding, Entanglement, and Reporting Hotline ( <i>not related to project activities</i> )	Stranding Hotline (24/7 coverage): 888-256-9840
Oil Spill & Hazardous Materials Response	U.S. Coast Guard National Response Center: 800-424-8802
Illegal Activities ( <i>not related to project activities; e.g., feeding, unauthorized harassment, or disturbance to marine mammals</i> )	NMFS Office of Law Enforcement: 800-853-1964
NMFS Pacific Islands Regional Office	808-725-5000
Corps Honolulu District Regulatory Office	<a href="mailto:CEPOH-RO@usace.army.mil">CEPOH-RO@usace.army.mil</a> 808-835-4303

## EFH Conservation Recommendations

1. Equipment, anchors, structures, or fill shall not be deployed in project areas containing live corals, seagrass beds, or visible benthic organisms. Perform pre-deployment reconnaissance (e.g., divers, drop cameras, etc.) to ensure these resources are avoided.
2. Minimize direct impact (direct or indirect contact causing damage) by divers and construction related tools, equipment, and materials with benthic organisms, regardless of size, especially corals and seagrass.
3. All objects lowered to the bottom shall be lowered in a controlled manner. Note: This can be achieved by the use of buoyancy controls such as lift bags, or the use of cranes, winches, or other equipment that affect positive control over the rate of descent. This often requires skilled in-water observation.
4. Mooring systems (e.g., buoys, chains, ropes) must:
  - a. be kept taut to the minimum length necessary.
  - b. use minimum line length necessary for fluctuations in depth due to tides/waves.
  - c. use a mid-line floats or other buoyancy devices to prevent contacting ocean floor.
  - d. be properly maintained.
5. Avoid in-water work during mass-coral spawning times or peak coral spawning seasons. Permittees shall coordinate with local NMFS Habitat Conservation Division representatives for coral spawning events for the given year at the project site.
6. Inspect all equipment prior to beginning work each day to ensure the equipment is in good working condition, and there are no contaminant (e.g., oil, fuel) leaks. Work must be stopped until leaks are repaired and equipment is cleaned.
7. Fueling of project-related vehicles and equipment shall take place at least 50 feet, or the maximum distance possible, from the water and within a containment area, preferably over an impervious surface.
8. Prior to in-water work, sanitize equipment or dive gear that has been previously used in an area known to contain invasive species.
  - a. In-water tool and dive gear (e.g., wetsuit, mask, fins, snorkel, BC, regulator, weight belt, booties) shall be disinfected by one of the following ways: a 1:52 dilution of commercial bleach in freshwater, a 3% free chlorine solution, or a manufacturer's recommended disinfectant-strength dilution of a quaternary ammonium compound in "soft" freshwater.
  - b. Small boats that have been deployed in the field will be cleaned and inspected daily for organic material, including any algal fragments or other organisms. Organic material, if found, will be physically removed and disposed of according to the ship's solid-waste disposal protocol or in approved secure holding systems.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**

**Olympic Coast National Marine Sanctuary**  
115 E. Railroad Ave , Suite 301  
Port Angeles, Washington 98362

July 6, 2023

Ms. Jennifer Hagen  
Quileute Tribe  
P.O. Box 187  
La Push, WA 98350

Dear Ms. Hagen:

The National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries (ONMS) has approved the issuance of permit number OCNMS-2023-004 to conduct activities within Olympic Coast National Marine Sanctuary (sanctuary) for research purposes. Activities are to be conducted in accordance with the permit application and all supporting materials submitted to the sanctuary, and the terms and conditions of permit number OCNMS-2023-004 (enclosed).

This permit is not valid until signed and returned to the ONMS. Retain one signed copy and carry it with you while conducting the permitted activities. Additional copies must be signed and returned, by either mail or email, to the following individual within 30 days of issuance and before commencing any activity authorized by this permit:

Katie Wrubel  
Permit Coordinator  
Olympic Coast National Marine Sanctuary  
115 E. Railroad Ave, Suite 301  
Port Angeles, Washington 98362  
[katie.wrubel@noaa.gov](mailto:katie.wrubel@noaa.gov)

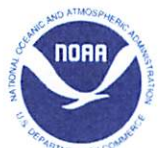
Your permit contains specific terms, conditions and reporting requirements. Review them closely and fully comply with them while undertaking permitted activities.

If you have any questions, please contact Katie Wrubel at [katie.wrubel@noaa.gov](mailto:katie.wrubel@noaa.gov). Thank you for your continued cooperation with the ONMS.

Sincerely,

Kevin Grant  
Superintendent

Enclosure





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE

Olympic Coast National Marine Sanctuary  
115 E. Railroad Ave., Suite 301  
Port Angeles, Washington 98362

## OLYMPIC COAST NATIONAL MARINE SANCTUARY RESEARCH PERMIT

**Permittee:**  
Ms. Jennifer Hagen  
Quileute Tribe  
P.O. Box 187  
La Push, WA 98350

**Permit Number:** OCNMS-2023-004  
**Effective Date:** July 6, 2023  
**Expiration Date:** July 6, 2028

**Project Title:** Quileute Backyard Buoys

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This permit is issued for activities in accordance with the National Marine Sanctuaries Act (NMSA), 16 USC §§ 1431 *et seq.*, and regulations thereunder (15 CFR Part 922). All activities must be conducted in accordance with those regulations and law. No activity prohibited in 15 CFR Part 922 is allowed except as specified in the activity description below.

Subject to the terms and conditions of this permit, the National Oceanic and Atmospheric Administration (NOAA), Office of National Marine Sanctuaries (ONMS) hereby authorizes the permittee listed above to conduct research activities within Olympic Coast National Marine Sanctuary (OCNMS or sanctuary). All activities are to be conducted in accordance with this permit and the permit application received May 11, 2023. The permit application is incorporated into this permit and made a part hereof; provided, however, that if there are any conflicts between the permit application and the terms and conditions of this permit, the terms and conditions of this permit shall be controlling.

**Permitted Activity Description:**

The following activities are authorized by this permit:

Deployment of up to three buoys within OCNMS.

No further activities prohibited by sanctuary regulations are allowed.

**Permitted Activity Location:**

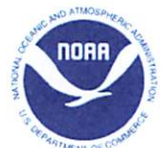
The permitted activity is allowed only in the following location(s):

Project sites are located within the Usual and Accustomed Treaty Fishing areas of the Hoh and Quileute Tribes at the following locations:

QE1: 47.9241 -124.7700

QE2: 47.8447 -124.6900

QE3: 47.6923 -124/5840



**Special Terms and Conditions:**

1. This permit is effective from either July 6, 2023 or the day it is signed by the permittee and delivered to the OCNMS Permit Coordinator (see General Terms and Condition #1), whichever is later. The executed permit will be valid through July 6, 2028. The permittee may request an amendment from the OCNMS Superintendent a minimum of 60 days in advance of this expiration date, to extend the effective date of this permit. Amendments to this permit cannot be made after expiration.
2. The permittee will notify the U.S. Coast Guard D13 Waterways Management Branch of deployment locations and determine whether it is necessary to place a notice in the "Local Notice to Mariners" indicating the location of the moorings. The OCNMS Permit Coordinator, will be informed when this communication has occurred and informed of the determination, and provided with a copy of the "Local Notice to Mariners," if one is issued.
3. The permit holder(s) will contact the U.S. Naval Air Station Whidbey Island Community Planning & Liaison Officer for the Northwest Training Range Complex (NWTRC) a minimum of 48 hours prior to the planned deployment of the moorings. The permit holder(s) is required to work with the U.S. Navy to avoid conflicts with naval operations. The current contact is Ms. Kimberly Peacher, who can be reached at (360) 930-4085 (work cell) or [kimberly.peacher@navy.mil](mailto:kimberly.peacher@navy.mil). The OCNMS Permit Coordinator should be informed of any communication and agreements between the U.S. Navy and the permit holder(s).
4. The permittee is required to recover all equipment including anchors. If equipment is not recovered a report describing the failed attempted recovery, detailed description of the abandoned equipment, its location, and plans for future recovery attempts shall be provided to the OCNMS Permit Coordinator within 2 weeks of the incident.
5. No activity authorized by this permit shall disturb or impact any historical or marine archaeological resources of the sanctuary. If historical or marine archaeological resources are encountered at any time, the permittee shall cease all further activities under this permit and immediately contact the OCNMS Permit Coordinator.
6. The permittee shall submit annual reports of all activities conducted under this permit to the OCNMS Permit Coordinator no later than December 31 of each year and a final report by December 31, 2028. The reports should include information regarding daily activities such as location (latitude and longitude) of the buoys, discovery or disturbance of historical artifacts, problems encountered, equipment lost, etc. The annual reports shall also include a schematic of the deployed instrumentation and a table that identifies the data collected at each buoy plus note any interesting anomalies in the data.

**General Terms and Conditions:**

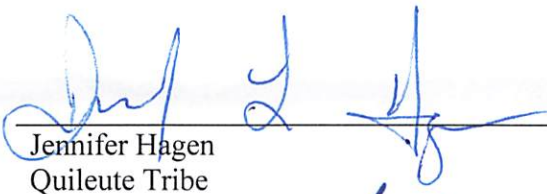
1. Within 30 (thirty) days of the date of issuance, the permittee must sign and date this permit for it to be considered valid. Once signed, the permittee must send copies, via mail or email, to the following individual:  
  
Katie Wrubel  
Permit Coordinator  
Olympic Coast National Marine Sanctuary  
115 E. Railroad Ave, Suite 301  
Port Angeles, Washington 98362  
[katie.wrubel@noaa.gov](mailto:katie.wrubel@noaa.gov)
2. It is a violation of this permit to conduct any activity authorized by this permit prior to the ONMS having received a copy signed by the permittee.
3. This permit may only be amended by the ONMS. The permittee may not change or amend any part of this permit at any time. The terms of the permit must be accepted in full, without revision; otherwise, the permittee must return the permit to the sanctuary office unsigned with a written explanation for its rejection. Amendments to this permit must be requested in the same manner the original request was made.
4. All persons participating in the permitted activity must be under the supervision of the permittee, and the permittee is responsible for any violation of this permit, the NMSA, and sanctuary regulations for activities conducted under, or in conjunction with, this permit. The permittee must assure that all persons performing activities under this permit are fully aware of the conditions herein.
5. This permit is non-transferable and must be carried by the permittee at all times while engaging in any activity authorized by this permit.
6. This permit may be suspended, revoked, or modified for violation of the terms and conditions of this permit, the regulations at 15 CFR Part 922, the NMSA, or for other good cause. Such action will be communicated in writing to the applicant or permittee, and will set forth the reason(s) for the action taken.
7. This permit may be suspended, revoked or modified if requirements from previous ONMS permits or authorizations issued to the permittee are not fulfilled by their due date.
8. Permit applications for any future activities in the sanctuary or any other sanctuary in the system by the permittee might not be considered until all requirements from this permit are fulfilled.
9. This permit does not authorize the conduct of any activity prohibited by 15 CFR Part 922, other than those specifically described in the "Permitted Activity Description" section of this permit. If the permittee or any person acting under the permittee's supervision



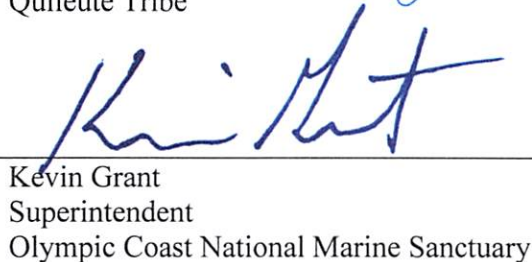
conducts, or causes to be conducted, any activity in the sanctuary not in accordance with the terms and conditions set forth in this permit, or who otherwise violates such terms and conditions, the permittee may be subject to civil penalties, forfeiture, costs, and all other remedies under the NMSA and its implementing regulations at 15 CFR Part 922.

10. Any publications and/or reports resulting from activities conducted under the authority of this permit must include the notation that the activity was conducted under National Marine Sanctuary Permit OCNMS-2023-004 and be sent to the ONMS official listed in general condition number 1.
11. This permit does not relieve the permittee of responsibility to comply with all other federal, state and local laws and regulations, and this permit is not valid until all other necessary permits, authorizations, and approvals are obtained. Particularly, this permit does not allow disturbance of marine mammals or seabirds protected under provisions of the Endangered Species Act, Marine Mammal Protection Act, or Migratory Bird Treaty Act. Authorization for incidental or direct harassment of species protected by these acts must be secured from the U.S. Fish and Wildlife Service and/or NOAA Fisheries, depending upon the species affected.
12. The permittee shall indemnify and hold harmless the Office of National Marine Sanctuaries, NOAA, the Department of Commerce and the United States for and against any claims arising from the conduct of any permitted activities.
13. Any question of interpretation of any term or condition of this permit will be resolved by NOAA.

Your signature below, as permittee, indicates that you accept and agree to comply with all terms and conditions of this permit. This permit becomes valid when you, the permittee, countersign and date below. Please note that the expiration date on this permit is already set and will not be extended by a delay in your signing.

  
Jennifer Hagen  
Quileute Tribe

7/10/2023  
Date

  
Kevin Grant  
Superintendent  
Olympic Coast National Marine Sanctuary

07/06/2023

Date

0 document(s) attached.



THE STATE  
of **ALASKA**

GOVERNOR MIKE DUNLEAVY

## Department of Natural Resources

DIVISION OF MINING, LAND & WATER  
Northern Regional Land Office

3700 Airport Way  
Fairbanks, Alaska 99709  
Main: (907) 451-2740  
TTY: 711 or 880.770.8973  
Fax: (907) 451-2751

### LAND USE PERMIT AS 38.05.850

**PERMIT # LAS 34581**

The Alaska Eskimo Whaling Commission, herein known as the Grantee, is issued this permit from the Department of Natural Resources, herein known as the Grantor, authorizing the use of state land within:

**Legal Description:** State Submerged Lands within;  
Section 31 of Township 10 North, Range 34 East, Umiat Meridian  
Section 19 of Township 24 North, Range 17 West, Umiat Meridian  
Section 27 of Township 22 North, Range 15 West, Umiat Meridian  
Section 33 of Township 21 North, Range 13 West, Umiat Meridian  
Section 29 of Township 15 North, Range 32 W, Umiat Meridian  
Section 25 of Township 34 North, Range 36 West, Kateel River Meridian  
Section 12 of Township 7 South, Range 61 West, Umiat Meridian  
Section 13 of Township 31 North, Range 32 West, Kateel River Meridian  
Section 29 of Township 4 North, Range 49 West, Kateel River Meridian  
Section 15 of Township 4 North, Range 49 West, Kateel River Meridian

**This permit is issued for the purpose of authorizing the following:**

The installation of up to 18 spotter buoys to be anchored seasonally to state submerged lands near the coastal communities of Kaktovik, Utqiagvik, Wainwright, Point Hope, and Little Diomede. The anchoring site will be in use from July 2023 through October 2023, and then seasonally from June through October, for the duration of the permit. The buoys will be spherical in shape, measuring 16.4in x 12.2in, each consisting of a waterproof hull, solar panel array, and an electronics package. The buoys will either be anchored by up to three 50-lb kettlebells connected with a chain to a mooring line, or by a single 50-lb kettlebell attached by chain to a small boat anchor. The approximate area of impact for each buoy measures around 5sqft. The buoys and anchoring systems will be removed at the end of each season, and may move up to 10 times per season, within the permitted area. Records must be maintained documenting the relocation of any of the buoys within the permitted area and must be provided in the form of an annual report to the Grantor at the end of each season. Any request to relocate the buoys outside of the permitted area must be submitted in writing and be approved by the Grantor prior to relocation. Further requirements for the annual report are detailed in the subsequent permit stipulations.

This permit is for the term beginning **July 21, 2023**, and ending **July 20, 2028**, unless sooner terminated at the state's discretion, effective the date of signature by the Authorized State Representative. This permit does not convey an interest in state land and as such is revocable, with or without cause. The Grantor will give 30 days' notice before revoking a permit at will. A revocation for cause is effective immediately. No preference right for use or conveyance of the land is granted or implied by this authorization.

This permit is issued subject to the following:

- Payment of the annual use fee in the amount of **\$240/year** due on or before the annual anniversary date.
- Signed copy of permit.

The non-receipt of a courtesy billing notice does not relieve the Grantee from the responsibility of paying fees on or before the due date.

All activities shall be conducted in accordance with the following stipulations:

1. **Authorized Officer:** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.
2. **Change of Contact Information:** The Grantee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
3. **Valid Existing Rights:** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
4. **Preference Right:** No preference right for subsequent authorizations is granted or implied by this authorization.
5. **Inspections:** The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the Grantee is found to be in noncompliance the authorized area may be subject to reinspection. The Grantee may be charged for actual expenses of any inspection.
6. **Public Access:** The construction, operation, use, and maintenance of the authorized area shall not interfere with public use of roads, trails, waters, landing areas, and public access easements. The ability to use or access state land or public waters may not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may allow the restriction of public access for a specific period of time. The Grantee is required to contact the AO in advance for approval. No restriction is allowed unless specifically authorized in writing by the AO.
7. **Public Trust Doctrine:** The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This authorization is subject to the principles of the

Public Trust Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.

8. **Alaska Historic Preservation Act:** The Alaska Historic Preservation Act, AS 41.35.200, prohibits the appropriation, excavation, removal, injury, or destruction of any state owned historic, prehistoric, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the Grantee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.
9. **Compliance with Government Requirements:** The Grantee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The Grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
10. **Incurred Expenses:** The Grantor shall in no way be held liable for expenses incurred by the Grantee connected with the activities directly or indirectly related to this authorization.
11. **Waiver of Forbearance:** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the Grantee, unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.
12. **Severability Clause:** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the Grantor and the Grantee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.
13. **Permit Extensions/Reissuance:** Any request for permit extension or reissuance should be submitted at least 90 days prior to the end of the authorized term. A written statement requesting a one-year extension confirming there will be no changes to the development/operations plan, including photographs clearly depicting the current condition of the site and any improvements, must be submitted to the AO with any required filing fee. A new Land Use Permit application and any required filing fee is required when requesting reissuance of up to five years or for modifications to the approved development/operations plan on file with DMLW.
14. **Assignment:** This permit may not be transferred or assigned.
15. **Reservation of Rights:**
  - a. The AO reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land under this authorization.

- b. Authorized concurrent users of state land, their agents, employees, contractors, subcontractors, and licensees, shall not interfere with the operation or maintenance activities of each user.
- c. The AO may require authorized concurrent users of state land to enter into an equitable operation or maintenance agreement.

**16. Violations:** A violation of this authorization is subject to any action available to the State for enforcement and remedies, including revocation of the permit, civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The State may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or AS 09.45.735 for violations involving injuring or removing trees or shrubs, gathering geotechnical data, or taking mineral resources.

**17. Directives:** Directives may be issued for corrective actions that are required to correct a deviation from design criteria, project specifications, stipulations, State statutes or regulations. Work at the area subject to the Directive may continue while implementing the corrective action. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by DNR.

**18. Stop Work Orders:** Stop Work Orders may be issued if there is a deviation from design criteria, project specifications, stipulations, State statutes or regulations and that deviation is causing or is likely to cause significant damage to state resources. Under a Stop Work Order, work at the area subject to the Stop Work Order may not resume until the deviation is cured and corrective action is taken. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by DNR.

**19. Notification of Discharge:** Notification of Discharge: The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge during normal business hours must be made to the nearest DEC Area Response Team: Anchorage (907) 269-3063, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-5245. To report a spill outside of normal business hours, call toll free 1-800-478-9300 or international 1-907-269-0667.

Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email [dnr.scro.spill@alaska.gov](mailto:dnr.scro.spill@alaska.gov), (907) 269-8528; Fairbanks email [dnr.nro.spill@alaska.gov](mailto:dnr.nro.spill@alaska.gov), (907) 451-2739; Juneau email [sero@alaska.gov](mailto:sero@alaska.gov), (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.

20. **Batteries:** Batteries which contain hazardous liquids should be completely sealed valve regulated, spill-proof, leak-proof and mounted in an appropriate container. Batteries lacking the preceding properties must have an appropriate drip pan designed to hold 110% of the total liquids held by the battery/batteries. Batteries, new or used, may not be stored or warehoused. Any battery/batteries that are not in use must be removed and disposed of in accordance with existing federal, state and local laws, regulations and ordinances. All hazardous material containers shall be marked with the Grantee's or contractor's name, dated, and transported in accordance with 49 CRF 172 (EPA Hazardous Material Regulations) and 18 AAC 62.
21. **Returned Check Penalty:** A returned check penalty of \$50.00 will be charged for any check on which the bank refuses payment. Late payment penalties shall continue to accrue.
22. **Late Payment Penalty Charges:** The Grantee shall pay a fee for any late payment. The amount is the greater of either \$50.00 or interest accrued daily at the rate of 10.5% per annum and will be assessed on each past-due payment until paid in full.
23. **Use Fees:** The Grantee shall pay to DMLW an annual use fee of **\$240**. The use fee is due on or before the annual anniversary of the effective date of this permit without the necessity of any billing by DMLW. The annual use fee is subject to adjustments in any relevant fee schedule.
24. **Request for Information:** The AO, at any time, may require the Grantee to provide any information directly or indirectly related to this authorization, in a manner prescribed by the AO.
25. **Annual Report:** An annual report shall be submitted within 30 days after the seasonally authorized term of the authorization. If the site was not used during the calendar year, the report should indicate such. The report shall include:
  - a. a series of before, during, and after use aerial view and/or ground-level view photographs confirming compliance with stipulations
  - b. a written report disclosing:
    - i. the date of the first use of the site during the calendar year;
    - ii. the date the temporary facility was dismantled and removed during the calendar year;
    - iii. the date and location of the installation of any temporary buoys
    - iv. the date and location of any relocation of any temporary buoys
    - v. a statement that the Grantee has removed all improvements and personal property from the authorized area; and,
    - vi. the dates of any hydrocarbon or hazardous substance spills, and the dates such spills were reported to DNR and DEC.

**26. Completion Report:** A completion report shall be submitted prior to relinquishment, or within 30 days after expiration or termination of the authorization. Failure to submit a satisfactory report subjects the site to a field inspection requirement for which the Grantee may be assessed an inspection fee, as outlined herein. The report shall contain the following information:

- a statement of restoration activities and methods of debris disposal;
- a statement that the Grantee has removed all improvements and personal property from the authorized area;
- and, photographs of the permitted site taken before, during and after the proposed activity to document permit compliance. Photographs must consist of a series of aerial view or ground-level view photographs that clearly depict compliance with site cleanup and restoration guidelines.

**27. Site Disturbance:** Site disturbance shall be kept to a minimum to protect local habitats. All activities at the site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems.

Attention must be paid to prevent pollution and siltation of streams, lakes, ponds, wetlands, and disturbances to fish and wildlife habitat.

**28. Site Restoration:** On or before permit expiration (if a reissuance application has not been submitted) or termination of this authorization by the Grantee, the Grantee shall remove all improvements, personal property, and other chattels, and return the permitted area to a clean and safe condition. In the event the Grantee fails to comply with this requirement, the Grantee shall be held liable for any and all costs incurred by the State to return the permitted area to a clean and safe condition.

**29. Indemnification:** The Grantee assumes all responsibility, risk and liability for its activities and those of its employees, agents, contractors, subcontractors, licensees, or invitees, directly or indirectly related to this permit, including environmental and hazardous substance risk and liability, whether accruing during or after the term of this permit. The Grantee shall defend, indemnify, and hold harmless the State, its agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by the Grantee, its employees, agents, contractors, subcontractors, licensees, or invitees, unless the proximate cause of the injury or damage is the sole negligence or willful misconduct of the State or a person acting on the State's behalf. Within 15 days, the Grantee shall accept any such cause, action or proceeding upon tender by the State. This indemnification shall survive the termination of the permit.

**30. Performance Guarantee and Insurance:** The AO, at this time, is not requiring the Grantee to provide a performance guarantee or proof of insurance. DMLW reserves the right to require a performance guarantee or proof of insurance in the future in the event the Grantee's compliance is less than satisfactory.

**31. Fuel and Hazardous Substances:** No fuel or hazardous substances may be stored on state land.

- 32. Waste Disposal:** On-site refuse disposal is prohibited, unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this authorization shall be removed and disposed of at an off-site DEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and discarded equipment.
- 33. Navigation and Public Access:** Anchoring methods, shoreties, buoys and running lines shall not preclude reasonable public access nor interfere with the ability to safely navigate within and adjacent to the permitted area.
- 34. Destruction of Markers:** The Grantee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against damage, destruction, or obliteration. The Grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Grantee's expense in accordance with accepted survey practices of the DMLW.
- 35. Site Maintenance:** The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein. Nothing may be stored that would be an attractive nuisance to wildlife or create a potentially hazardous situation.
- 36. Maintenance of Improvements:** The Grantor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the Grantor is to be construed as assumption of responsibility.
- 37. Amendment or Modification:** The Grantee may request an amendment or modification of this authorization; the Grantee's request must be in writing. Any amendment or modification must be approved by the AO in advance and may require additional fees and changes to the terms of this authorization.
- 38. Development Plan:** Development shall be limited to the authorized area and improvements specified in the approved development plan or subsequent modifications approved by the AO. The Grantee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
- 39. Proper Location:** This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, and municipal lands, or lands which are owned or solely managed by other offices and agencies of the State. The Grantee is responsible for proper location within the authorized area.
- 40. Improvements:** Any improvements/structures that may be authorized under this permit must be constructed in a manner that will allow for removal from the permitted site within 48 hours of receiving a notice to vacate. The establishment of permanent foundations and structures is prohibited under this permit. Authorized temporary improvements must be sited in a manner which impacts the least amount of ground consistent with the purpose of the facility. Any use of



these improvements for purposes other than those explicitly authorized by this permit are prohibited.

- 41. Fire Prevention, Protection and Liability:** The Grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the Grantee's personal property and is not responsible for forest fire protection of the Grantee's activity. To report a wildfire, call 911 or 1-800-237-3633.
- 42. Storage:** Storage of any equipment, materials, or supplies after the dates of authorized use is specifically prohibited.
- 43. Anchor Lines and Shoreties:** All lines must be secured and properly tensioned to avoid entanglement with marine mammals. The Grantee shall contact the NOAA Fisheries' 24/7 hotline at (877) 925-7773 if an injured, entangled, or dead marine mammal is seen in the authorized area.

The Authorized Officer reserves the right to modify these stipulations or use additional stipulations as deemed necessary. The Grantee will be advised before any such modifications or additions are finalized. DNR has the authority to implement and enforce these conditions under AS 38.05.850. Any correspondence on this authorization may be directed to the Department of Natural Resources, Division of Mining, Land and Water, Northern Regional Land Office, 3700 Airport Way, Fairbanks, AK 99709, (907) 451-2740.

I have read and understand all of the foregoing and attached stipulations. By signing this authorization, I agree to conduct the authorized activity in accordance with the terms and conditions of this authorization.

<i>Lesley Hopson</i>	<i>Executive Director</i>	<i>7-26-23</i>
Signature of Grantee or Authorized Representative	Title	Date
<i>1078 Klogak St.</i>	<i>Barrow</i>	<i>AK</i>
Grantee's Address	City	State
<i>Lesley Hopson</i>	<i>N/A</i>	<i>907-852-2392</i>
Contact Person	Home Phone	Work Phone
<i>Austin Michels</i>	<i>Natural Resource Manager</i>	<i>07/26/2023</i>
Signature of Authorized State Representative	Title	Date



**STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING, LAND AND WATER**

**Northern Regional Land Office**

**Memorandum of Decision**

**LAS 34581**

**Alaska Eskimo Whaling Commission**

Application for Land Use Permit

AS 38.05.850

**Requested Action**

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Northern Regional Land Office (NRO) has received a Land Use Permit (LUP) application from the Alaska Eskimo Whaling Commission for installation of up to 18 spotter buoys to be anchored seasonally to state submerged lands near the coastal communities of Kaktovik, Utqiagvik, Wainwright, Point Hope, and Little Diomedede. The anchoring sites would be in use beginning July 2023 through October 2023, and then seasonally from June through October, for the duration of the permit.

**Proposed Action**

The DNR DMLW Northern Regional Land Office (NRO) proposes to issue a 5-year permit for the seasonal placement of spotter buoys as described in the application.

**Scope of Decision**

The scope of this decision is limited to determining if it is appropriate for DNR to issue an authorization for the proposed land use activities.

**Statutory Authority**

This permit is being adjudicated pursuant to AS 38.05.850 (Permits) and 38.05.035(a) (Powers and Duties of the Director).

**Administrative Record**

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced here-in, the 2008 Northwest Area Plan, the 2021 North Slope Area Plan, and other classification references described herein, and the casefile for the application serialized by DNR as LAS 34581.

**Location Information**

**Geographic Location:** The spotter buoys would be located within state submerged lands off the coast of the communities of Kaktovik, Utqiagvik, Wainwright, Point Hope, and Little Diomedede. See attached Site Location Map.

**Legal Description:** State Submerged Lands within;  
Section 31 of Township 10 North, Range 34 East, Umiat Meridian

Section 19 of Township 24 North, Range 17 West, Umiat Meridian  
Section 27 of Township 22 North, Range 15 West, Umiat Meridian  
Section 33 of Township 21 North, Range 13 West, Umiat Meridian  
Section 29 of Township 15 North, Range 32 W, Umiat Meridian  
Section 25 of Township 34 North, Range 36 West, Kateel River Meridian  
Section 12 of Township 7 South, Range 61 West, Umiat Meridian  
Section 13 of Township 31 North, Range 32 West, Kateel River Meridian  
Section 29 of Township 4 North, Range 49 West, Kateel River Meridian  
Section 15 of Township 4 North, Range 49 West, Kateel River Meridian

### **Other Land Information**

Municipality: Northwest Arctic Borough and North Slope Borough  
Regional Corporations: Arctic Slope, NANA, and Bering Straits

### **Title**

Title to State Submerged Lands were received by the State on January 3, 1959, upon presidential proclamation (Proclamation No. 3269, 24 F.R. 81, 73 Stat. c16) admitting Alaska to the Union pursuant to Section 8(c) of the Alaska Statehood Act (Pub. L. No. 85-508, 72 Stat. 339), according to the Equal Footing Doctrine of the United States Constitution and the Submerged Lands Act of 1953 (43 U.S.C. §1301 et. seq.).

### **Planning & Classification**

The proposed locations are covered under the North Slope Area Plan (NSAP), adopted March 12, 2021, under units T-01, T-02, T-05, and T-13. T-01 is designated as habitat/harvest/oil and gas, and must be managed to protect tide and submerged land and associated upland resources, as well as maintain opportunities for subsistence and other beneficial uses. T-02 is designated as waterfront development, and is to be managed primarily to accommodate commercial, industrial, and related uses and/or structures associated with marine transportation and/or adjacent upland uses. T-05 is designated as habitat/oil and gas, and is to be managed to continue oil and gas development while minimizing the impact to fish and wildlife habitat values and harvest opportunities. T-13 is designated as habitat/harvest, and is to be primarily managed for wildlife habitat values and harvest opportunities, with an emphasis in retaining the natural character of the area. Additional proposed locations are covered under the Northwest Area Plan (NWAP), adopted October 31, 2008, under units LT-02 and LT-05. LT-02 is designated as habitat/harvest and must be managed for sensitive species and habitat protection and must consider the impacts of the proposed use on the resources that occur within this unit. LT-05 is designated as general use and is to be managed for multiple uses.

There are no restrictions to installing temporary spotter buoys under these designations, but consideration must be given to how the activity may affect wildlife and subsistence harvesting activities. The activity encompasses a very small area of land, with only small buoys on the water's surface and each anchoring system covering around 5sqft on the seafloor. The activity does not impede public uses of the area and is not a disposal of state interests in the area. Therefore, the proposed activity is consistent with the management intent of the area plans. USFWS and ADF&G were included in agency review.

### **Third Party Interests**

No other interests were identified.

### **Public Notice & Agency Review**

#### **Agency Review Summary**

Agency review was sent on June 21, 2023. The deadline for comment was July 5, 2023.

Agency Review was sent to:

- City of Kaktovik
- City of Utqiagvik
- City of Wainwright
- City of Point Hope
- North Slope Borough
- DNR, Division of Parks, Office of History and Archeology (OHA)
- Alaska Dept. of Fish and Game, Division of Habitat
- Alaska Dept. of Transportation and Public Facilities, Property Management Section
- US Army Corps of Engineers, Regulatory Division
- US Fish & Wildlife Service, Planning and Consultation
- US Fish & Wildlife, Conservation Planning Assistance
- NOAA, Office of Habitat Conservation, Alaska

#### **Agency Review Comment and Response**

ADF&G Comment: No objection to issuance and provided the following recommendations.

1. Consider requiring the buoys to have onboard GPS tracking devices and/or contact information to help recovery of lost equipment.
2. To avoid creating a boating hazard, ensure the kettle bells are heavy enough so they don't become submerged if pushed into deeper water by wave action.
3. Please note on page 17 of the project description "Critical Sites" is not defined and the following locations (which are excluded from Attachment A) are inland locations: Kaktovik 2 & 3.
4. We recommend project personnel undergo NOAA's free online 1-hour first responder training, considering the deployment of multiple buoys to address potential whale entanglement. The training prepares boaters to properly assess, document, and report critical entanglement information to the trained disentanglement experts prior to the launch of a response effort (it does not prepare or qualify attendees to perform or assist in the actual process of disentangling a whale). Details are found on the following webpage: [U.S. Whale Entanglement Response Level 1 - Alaska Region First Responder Training | NOAA Fisheries.](#)

DMLW Response: Replied that the applicant was provided with their recommendations. Also addressed line item 3 of their recommendation, stating that the sites listed as Kaktovik 2 & 3, mentioned in the "Project Description" were not within the 3-mile coastal boundary, and therefore were omitted from this authorization. A copy of the decision document will be provided once issued.

### **Public Notice Comment and Response**

Public Notice was posted via the State Online Public Notice system on June 21, 2023. The deadline for comment was July 5, 2023. No public comments were received.

### **Environmental Considerations**

There is minimal risk associated with this proposed land use permit; risks are mitigated by the stipulations of the permit.

Ocean vessels run the risk of contaminating water with hazardous materials such as fuel, solvents, and waste. To minimize this risk, the Alaska Eskimo Whaling Commission has a spill plan and methods for prevention and response. Permit stipulations also include spill response requirements.

### **Discussion**

The Alaska Eskimo Whaling Commission submitted a permit application for the installation of a of up to 18 spotter buoys to be anchored seasonally to state submerged lands near the coastal communities of Kaktovik, Utqiagvik, Wainwright, Point Hope, and Little Diomedede. The buoys are intended to collect real-time wave data for the Alaska Eskimo Whaling Commission. The buoys will be spherical in shape, measuring 16.4in x 12.2in, each consisting of a waterproof hull, solar panel array, and an electronics package. The buoys will either be anchored by up to three 50-lb kettlebells connected with a chain to a mooring line, or by a single 50-lb kettlebell attached by chain to a small boat anchor. The approximate area of impact for each buoy measures around 5sqft.

The buoys and anchoring systems will be removed at the end of each season, and may move up to 10 times per season, within the permitted area. Records must be maintained documenting the relocation of any of the buoys within the permitted area and must be provided in the form of an annual report to the DNR DMLW-NRO, at the end of each season. Any request to relocate the buoys outside the area within the authorized legal description, must be submitted in writing and be approved by DNR DMLW-NRO, prior to relocation. Initially, the anchoring site would be in use from July 2023 through October 2023, and then seasonally from June to October for the duration of the permit. The spotter buoys would be deployed and retrieved from the side of a whaling captain boat. The boats used for deployment will be typical open aluminum whaling captain boats with outboard motors (typically up to 250 HP), approximately 18-24 ft. in length. Up to 120 gallons of fuel will be stored on the whaling captain boat.

In adjudicating a LUP, DMLW seeks to facilitate development, conservation, and enhancement of state lands for present and future Alaskans while minimizing disturbance to vegetative, hydrologic, and topographic characteristics of the area that may impair water quality and soil stability. The proposed activity will not adversely affect the State of Alaska's goals of conserving and enhancing natural resources for use by present and future Alaskans.

The DMLW will issue a 5-year LUP for the activity as proposed. No alternatives were considered as the activity is low impact with few risks posed to state resources.

### **Performance Guaranty**

Performance guarantees are means to assure performance and to provide ways to pay for corrective action if the permittee fails to comply with the requirements set forth in the permit document. They are also used to protect state land from damage and to make certain that improvements are removed and that the land is returned in a usable condition upon termination of the permit.

Pursuant to 11 AAC 96.060 (Performance Guaranty), the requirements for a performance guaranty can be waived after considering the applicant's history of compliance and potential risks to the State. Compliance with all stipulations by the Alaska Eskimo Whaling Commission is a reasonable expectation; therefore, the performance guaranty is waived.

### **Insurance**

Insurance is a means to protect the state from liabilities incurred through the use of state property, or from damage to state property as a result of accidental or catastrophic events. This type of protection is necessary in the event of an accident or negligence that was consequentially connected to activities conducted on state land, and/or if the state is named in a lawsuit as a result of an accident or negligence.

Pursuant to 11 AAC 96.065 (Insurance), the requirement for insurance can be waived after considering the potential risks to the State. Due to the low risk to the State, the requirement for insurance is waived.

### **Fees**

Per 11 AAC 05.180 (d)(2)(J) and Director's Fee Order Number 3, the fee for a use that does not hinder other public use is **\$240, annually**.

### **Term**

5-year term

Effective Date: July 21, 2023

Expiration Date: July 20, 2028

### **Decision**

Based upon the information provided by the applicant, as well as review of relevant planning documents, statutes, and regulations related to this application, it is the decision of this office to issue this Land Use Permit on condition that all permit stipulations are followed as described in the attached permit. During the period of the permit an inspection may be conducted at the discretion of the DNR to ensure permit compliance.

This decision takes effect immediately. If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31st calendar day after issuance. This decision may be rescinded by written notification if, after 60 days from the effective date of this decision, the applicant has not completed all requirements outlined in this decision for issuance of the permit. Additional time may be allotted to complete these requirements at the applicant's request and concurrence of the Authorized Officer, however this will not extend the total term of the authorizations issued under this decision.

*Austin Michels*

Austin (AJ) Michels  
Natural Resource Manager

07/21/2023

Date

**Attachments**

- Site Location Map
- Land Use Permit

An eligible person affected by this decision may appeal to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to [dnr.appeals@alaska.gov](mailto:dnr.appeals@alaska.gov). Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.



# HYDRAULIC PROJECT APPROVAL

Washington Department of  
Fish & Wildlife  
PO Box 43234  
Olympia, WA 98504-3234  
(360) 902-2200

Issued Date: October 20, 2023  
Project End Date: October 18, 2024

Permit Number: 2023-4-596+01  
FPA/Public Notice Number: N/A  
Application ID: 32793

PERMITTEE	AUTHORIZED AGENT OR CONTRACTOR
Western Washington University ATTENTION: Sam Kastner 516 High St, MS 9181 Bellingham, WA 98225	Weston Solutions ATTENTION: Stacey Korsmo 101 W. Benston Blvd., Suite 312 Anchorage, AK 99503

**Project Name:** Kukutali Wave Buoy

**Project Description:** We will deploy a scientific wave measurement buoy offshore of Kiket Island as part of the National Science Foundation funded Backyard Buoys project. For more detail, see attached Project Description.

## PROVISIONS

1. **TIMING LIMITATION:** Work may begin at any time and must be completed by October 18, 2024.
2. **APPROVED PLANS:** Work must be accomplished per plans and specifications submitted with the application and approved by the Washington Department of Fish and Wildlife, entitled "20230828 Backyard Buoys Project Description\_WWU.pdf," pages 1-14 of 14, received August 28, 2023, except as modified by this Hydraulic Project Approval (HPA). You must have a copy of these plans and this HPA available on site during all phases of the project construction.
3. **NOTIFICATION:** You, your agent, or contractor must contact the Washington Department of Fish and Wildlife by e-mail at [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); mail to Post Office Box 43234, Olympia, Washington 98504-3234; or fax to (360) 902-2946 at least three business days before starting work. The notification must include the permittee's name, project location, starting date, and the hydraulic Project Approval permit number.
4. **FISH KILL/ WATER QUALITY PROBLEM NOTIFICATION:** If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the Washington Department of Fish and Wildlife of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington Military Department Emergency Management Division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until the Washington Department of Fish and Wildlife gives approval. The Washington Department of Fish and Wildlife may require additional measures to mitigate impacts.

### STAGING, JOB SITE ACCESS AND EQUIPMENT

5. Establish the staging area (used for activities such as equipment storage, vehicle storage, fueling, servicing, and hazardous material storage) in a location and manner that will prevent contaminants like petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.
6. Clearly mark boundaries to establish the limit of work associated with site access and construction.
7. Confine the use of equipment to specific access and work corridor shown in the approved plans.
8. Check equipment daily for leaks and complete any required repairs before using the equipment in or near the water.
9. Clearly mark the edge of the seagrass and/or kelp habitat adjacent to the project during construction activities. Remove markers upon project completion.





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10. Lubricants composed of biodegradable base oils such as vegetable oils, synthetic esters, and polyalkylene glycols are recommended for use in equipment operated in or near water.

11. Operate vessels with minimal propulsion power and in adequate water depth to prevent impacts from grounding and propeller wash to seagrass, kelp, and forage fish spawning beds.

12. Do not deploy anchors or spuds in seagrass or kelp.

### BUOY CONSTRUCTION

13. Design and locate the mooring buoy anchoring system to avoid damage to seagrass, kelp, and macroalgae.

14. Design the mooring buoy anchoring system to prevent the anchor from shifting or dragging along the bed.

15. Either an embedded anchor or a bruce-style boat anchor are authorized.

16. Design the buoy system with a mid-water float(s) so that anchor lines do not drag.

17. The line length between the anchor and surface float must not exceed the water depth as measured at extreme high tide plus a maximum of 20 percent additional line for scope.

18. Dispose of replaced lines, chains, mooring anchors and buoys in an upland disposal site.

19. NOTE: The mooring buoy should be marked with a Department of Natural Resources issued identification number, and a Washington Department of Fish and Wildlife identification number consisting of the Hydraulic Project Approval Application ID Number followed by WDFW. For example, if the Application ID Number is 6456, then the mooring buoy identification number is 6456WDFW.

### DEMOBILIZATION/CLEANUP

20. Remove all trash and unauthorized fill in the project area, including concrete blocks or pieces, bricks, asphalt, metal, treated wood, glass, floating debris, and paper, that is waterward of the ordinary high water line and deposit upland.

21. Remove all debris or deleterious material resulting from construction from the beach area or bed and prevent from entering waters of the state.

22. Do not burn wood, trash, waste, or other deleterious materials waterward of the ordinary high water line.

LOCATION #1:	Site Name: Kiket Bay/Skagit Bay N/A - Project located offshore of Kiket Island. See Project Description., , WA 98257					
WORK START:	October 20, 2023			WORK END:	October 18, 2024	
<u>WRIA</u>	<u>Waterbody:</u>			<u>Tributary to:</u>		
06 - Island	Other			Other		
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
	99	99	99	48.416961	-122.570932	Skagit
<u>Location #1 Driving Directions</u>						



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Directions provided below to the Kukutali preserve trailhead (from the Washington Trails Association). For a map, see the project description.

From Highway 20, turn south on Reservation Road for 1.5 mi. Turn right on Snee Oosh Road for 1.4 mi. The entrance to Kukutali Preserve is on the right and the trailhead is not easily seen from Snee Oosh Road. You are looking for a small, unmarked road, with a gate across it. A Discover Pass is required to park at the preserve.

## APPLY TO ALL HYDRAULIC PROJECT APPROVALS

This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW. Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in civil action against you, including, but not limited to, a stop work order or notice to comply, and/or a gross misdemeanor criminal charge, possibly punishable by fine and/or imprisonment.

All Hydraulic Project Approvals issued under RCW 77.55.021 are subject to additional restrictions, conditions, or revocation if the Department of Fish and Wildlife determines that changed conditions require such action. The person(s) to whom this Hydraulic Project Approval is issued has the right to appeal those decisions. Procedures for filing appeals are listed below.



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FPA/Public Notice Number: N/A  
Application ID: 32793

**MINOR MODIFICATIONS TO THIS HPA:** You may request approval of minor modifications to the required work timing or to the plans and specifications approved in this HPA unless this is a General HPA. If this is a General HPA you must use the Major Modification process described below. Any approved minor modification will require issuance of a letter documenting the approval. A minor modification to the required work timing means any change to the work start or end dates of the current work season to enable project or work phase completion. Minor modifications will be approved only if spawning or incubating fish are not present within the vicinity of the project. You may request subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of your project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a minor modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are seeking a minor modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234, or by email to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov). You should allow up to 45 days for the department to process your request.

**MAJOR MODIFICATIONS TO THIS HPA:** You may request approval of major modifications to any aspect of your HPA. Any approved change other than a minor modification to your HPA will require issuance of a new HPA. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a major modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are requesting a major modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send your written request by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234. You may email your request for a major modification to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov). You should allow up to 45 days for the department to process your request.

## APPEALS INFORMATION

If you wish to appeal the issuance, denial, conditioning, or modification of a Hydraulic Project Approval (HPA), Washington Department of Fish and Wildlife (WDFW) recommends that you first contact the department employee who issued or denied the HPA to discuss your concerns. Such a discussion may resolve your concerns without the need for further appeal action. If you proceed with an appeal, you may request an informal or formal appeal. WDFW encourages you to take advantage of the informal appeal process before initiating a formal appeal. The informal appeal process includes a review by department management of the HPA or denial and often resolves issues faster and with less legal complexity than the formal appeal process. If the informal appeal process does not resolve your concerns, you may advance your appeal to the formal process. You may contact the HPA Appeals Coordinator at (360) 902-2534 for more information.

**A. INFORMAL APPEALS:** WAC 220-660-460 is the rule describing how to request an informal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete informal appeal procedures. The following information summarizes that rule.



# HYDRAULIC PROJECT APPROVAL

Washington Department of  
Fish & Wildlife  
PO Box 43234  
Olympia, WA 98504-3234  
(360) 902-2200

Issued Date: October 20, 2023  
Project End Date: October 18, 2024

Permit Number: 2023-4-596+01  
FPA/Public Notice Number: N/A  
Application ID: 32793

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request an informal appeal of that action. You must send your request to WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. WDFW must receive your request within 30 days from the date you receive notice of the decision. If you agree, and you applied for the HPA, resolution of the appeal may be facilitated through an informal conference with the WDFW employee responsible for the decision and a supervisor. If a resolution is not reached through the informal conference, or you are not the person who applied for the HPA, the HPA Appeals Coordinator or designee may conduct an informal hearing or review and recommend a decision to the Director or designee. If you are not satisfied with the results of the informal appeal, you may file a request for a formal appeal.

B. FORMAL APPEALS: WAC 220-660-470 is the rule describing how to request a formal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete formal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request a formal appeal of that action. You must send your request for a formal appeal to the clerk of the Pollution Control Hearings Boards and serve a copy on WDFW within 30 days from the date you receive notice of the decision. You may serve WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, you may request a formal appeal within 30 days from the date you receive the Director's or designee's written decision in response to the informal appeal.

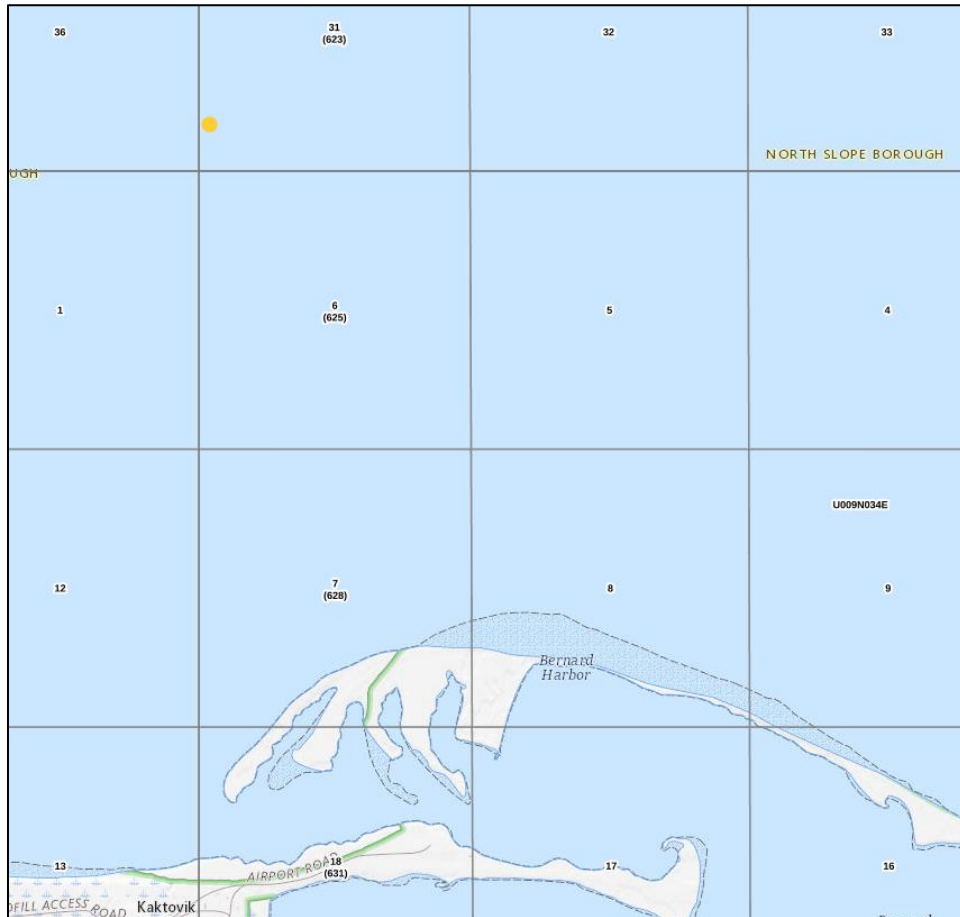
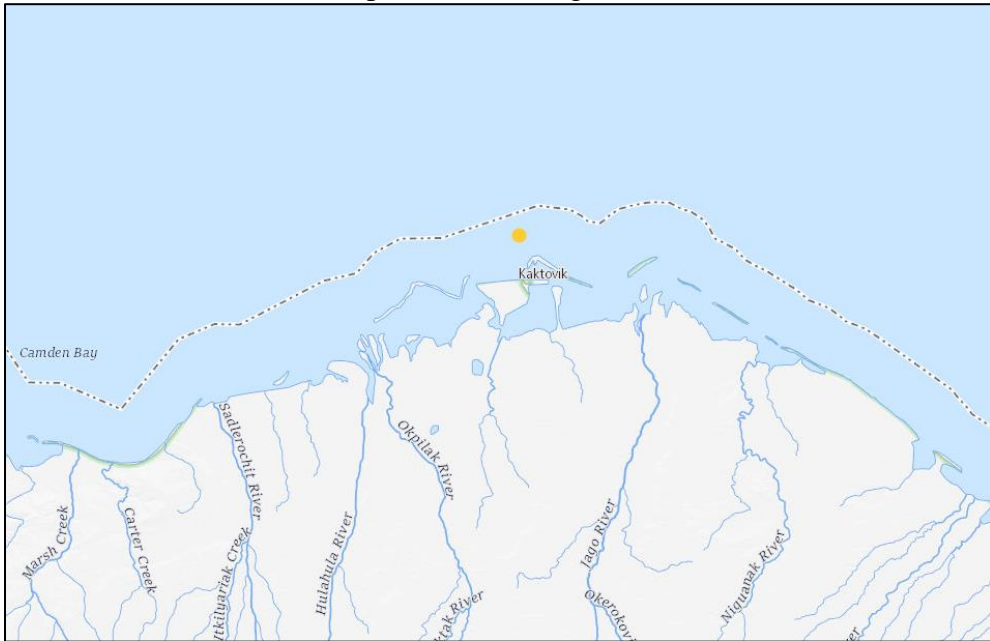
C. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS: If there is no timely request for an appeal, the WDFW action shall be final and unappealable.

Habitat Biologist      [elizabeth.tate@dfw.wa.gov](mailto:elizabeth.tate@dfw.wa.gov)  
Elizabeth Tate      360-826-2665

for Director  
WDFW

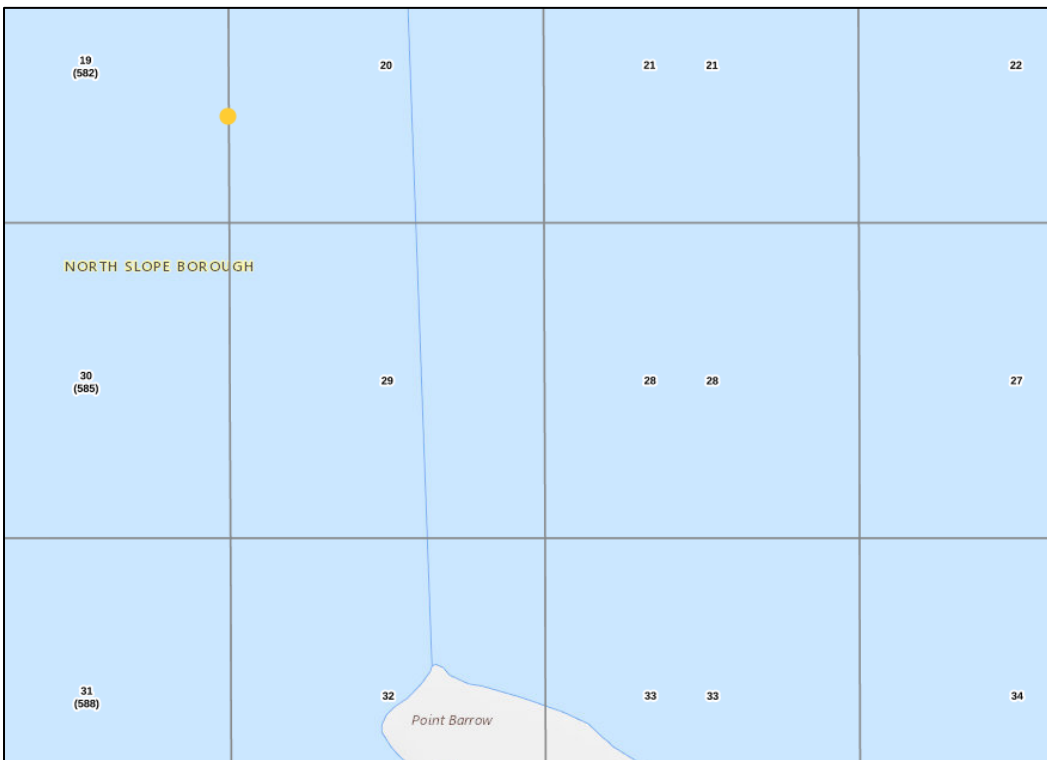
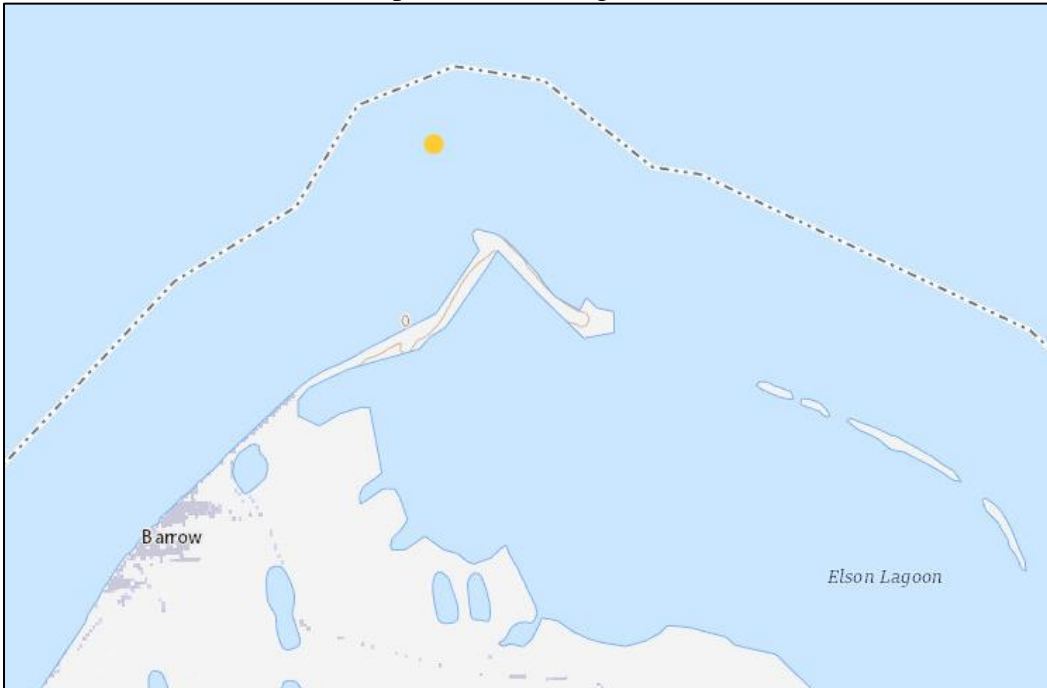
**Attachment A**  
LAS 34581, Alaska Eskimo Whaling Commission  
State of Alaska Submerged Lands

70.172798, -143.624575 (Kaktovik 1)  
Section 31 of Township 10 North, Range 34 East, Umiat Meridian



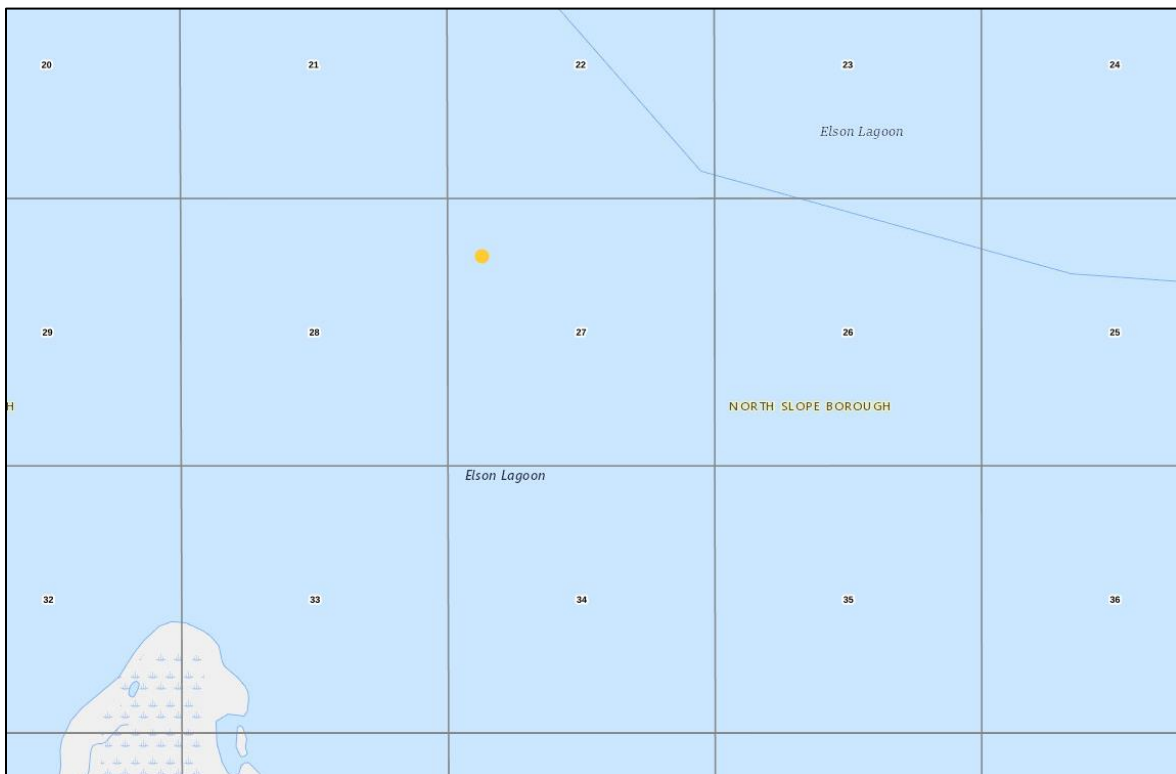
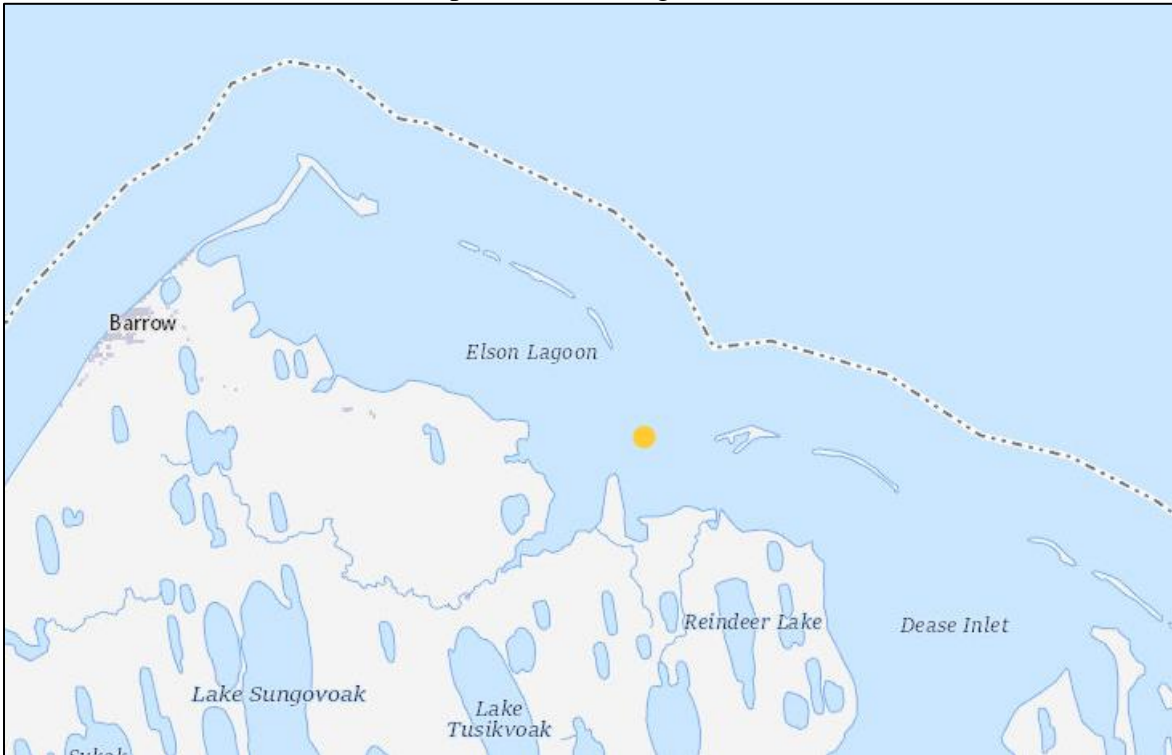
**Attachment A**  
LAS 34581, Alaska Eskimo Whaling Commission  
State of Alaska Submerged Lands

71.415426, -156.507496 (Utqiagvik 1)  
Section 19 of Township 24 North, Range 17 West, Umiat Meridian



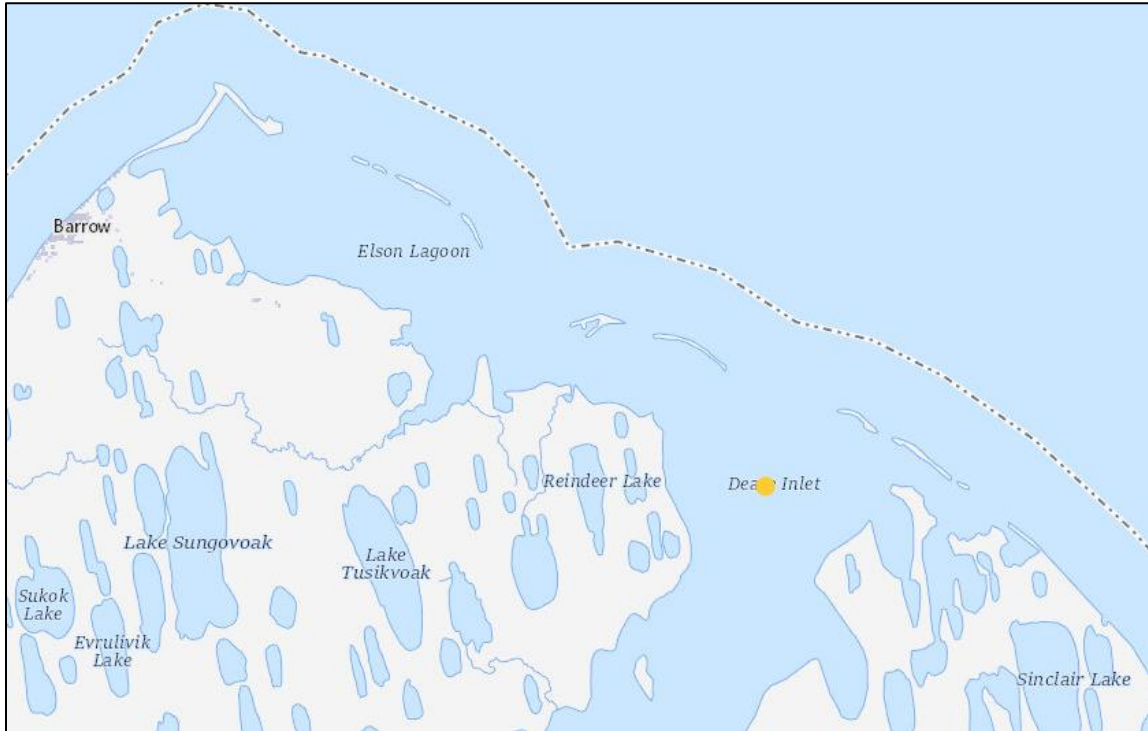
**Attachment A**  
LAS 34581, Alaska Eskimo Whaling Commission  
State of Alaska Submerged Lands

71.2344, -155.8754 (Utqiagvik 4)  
Section 27 of Township 22 North, Range 15 West, Umiat Meridian



**Attachment A**  
 LAS 34581, Alaska Eskimo Whaling Commission  
 State of Alaska Submerged Lands

71.128806, -155.361806 (Utqiagvik 7)  
 Section 33 of Township 21 North, Range 13 West, Umiat Meridian

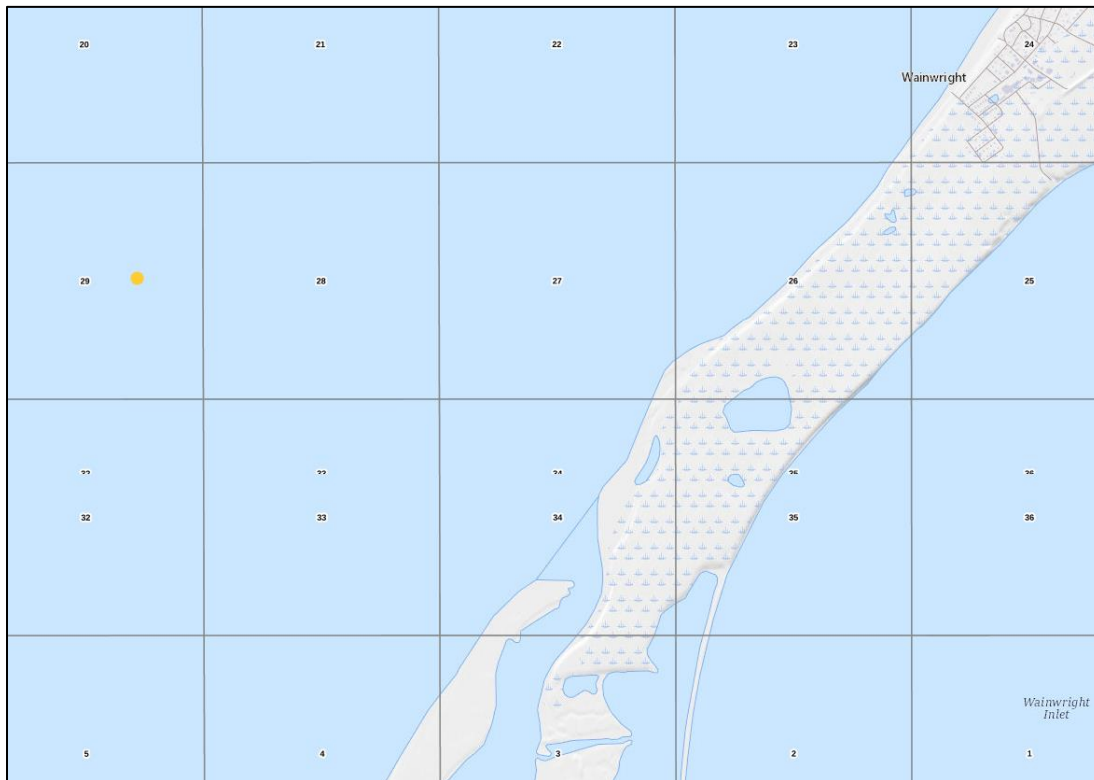
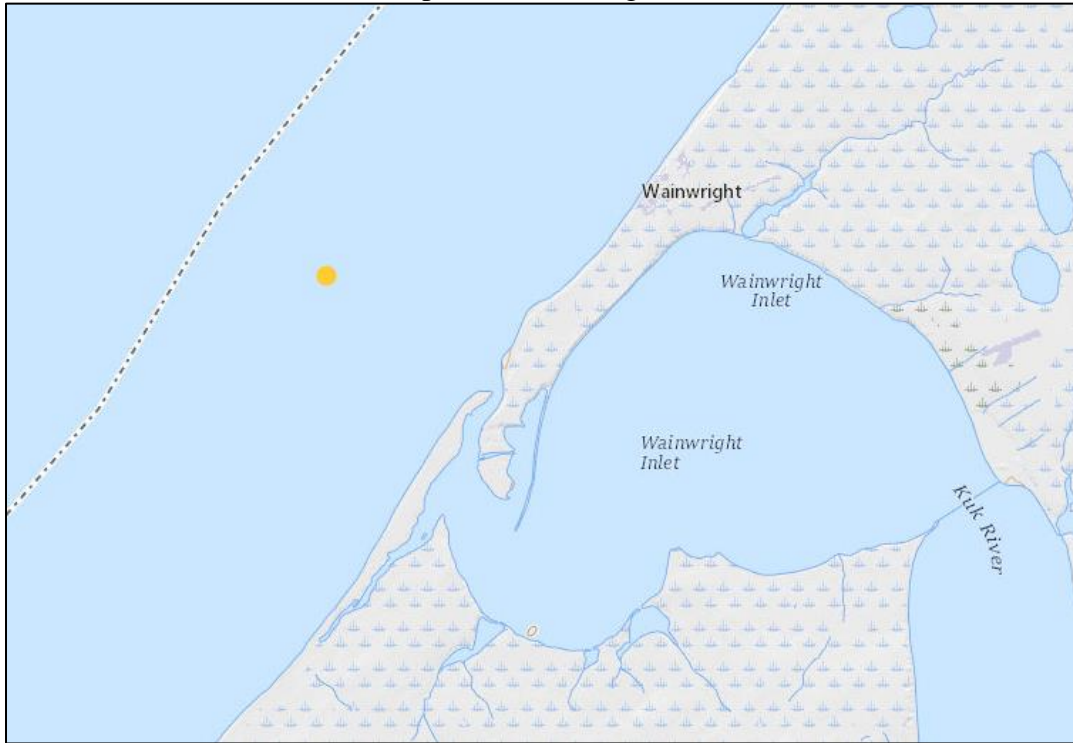


	Admiralty Bay				
	31 (639)	32	33 ●	34	
2	1	6 (575)	5	4	
11	12	7 (578)	8	9	



**Attachment A**  
LAS 34581, Alaska Eskimo Whaling Commission  
State of Alaska Submerged Lands

70.624523, -160.194253 (Wainwright 1)  
Section 29 of Township 15 North, Range 32 W, Umiat Meridian



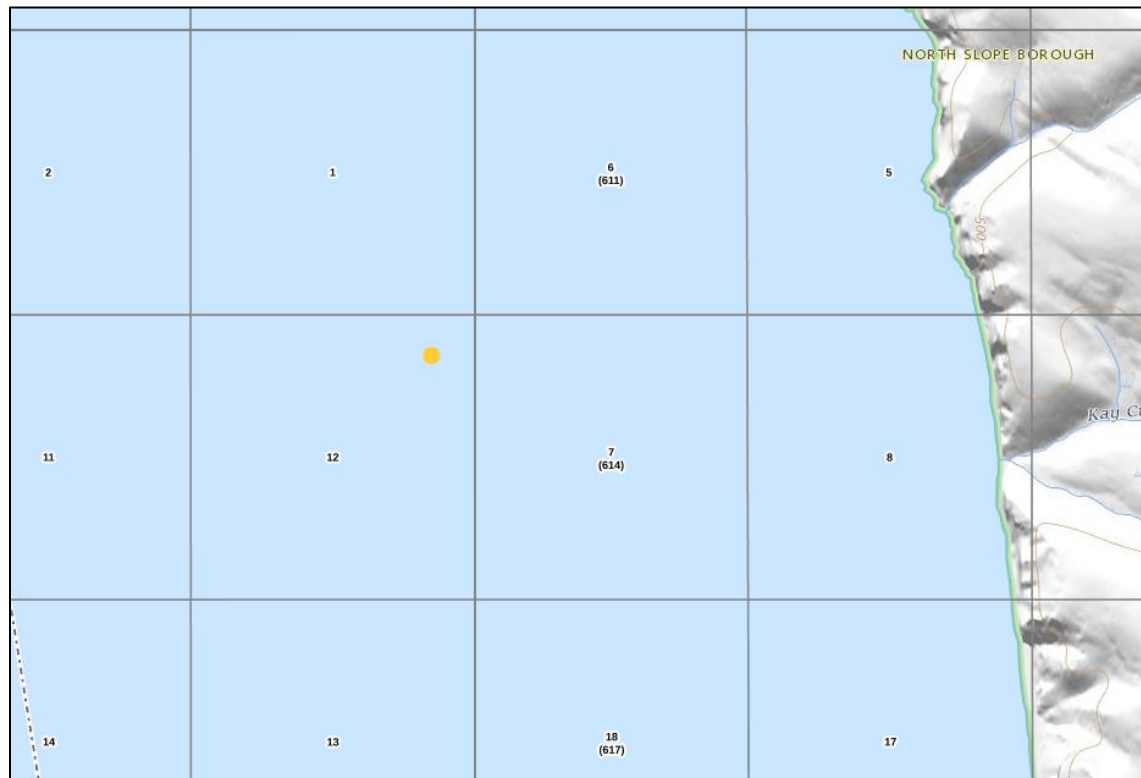
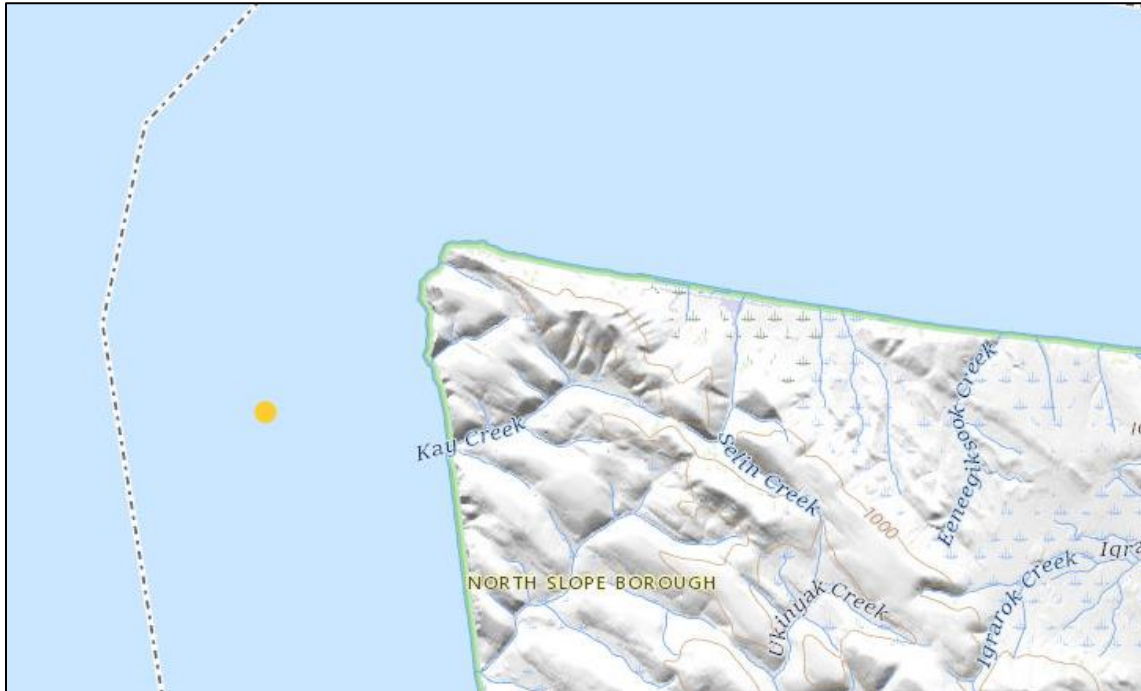
**Attachment A**  
LAS 34581, Alaska Eskimo Whaling Commission  
State of Alaska Submerged Lands

68.323163, -166.947517 (Point Hope 1)  
Section 25 of Township 34 North, Range 36 West, Kateel River Meridian



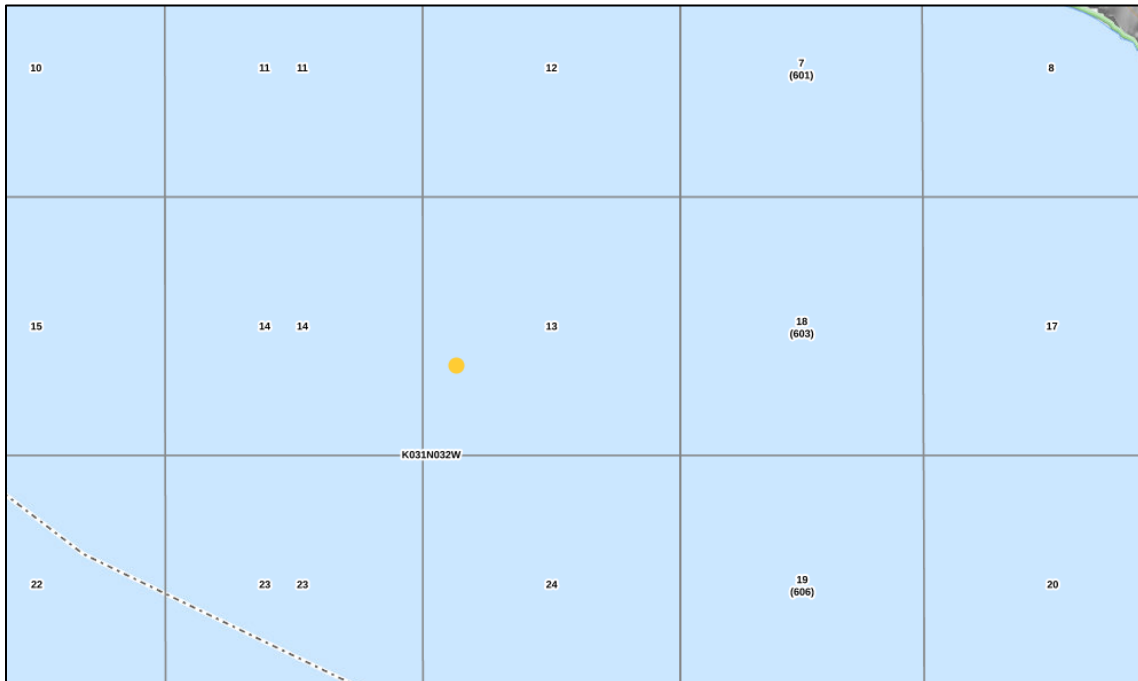
**Attachment A**  
LAS 34581, Alaska Eskimo Whaling Commission  
State of Alaska Submerged Lands

68.855014, -166.295156 (Point Hope 2)  
Section 12 of Township 7 South, Range 61 West, Umiat Meridian



**Attachment A**  
LAS 34581, Alaska Eskimo Whaling Commission  
State of Alaska Submerged Lands

68.082988, -165.910157 (Point Hope 3)  
Section 13 of Township 31 North, Range 32 West, Kateel River Meridian



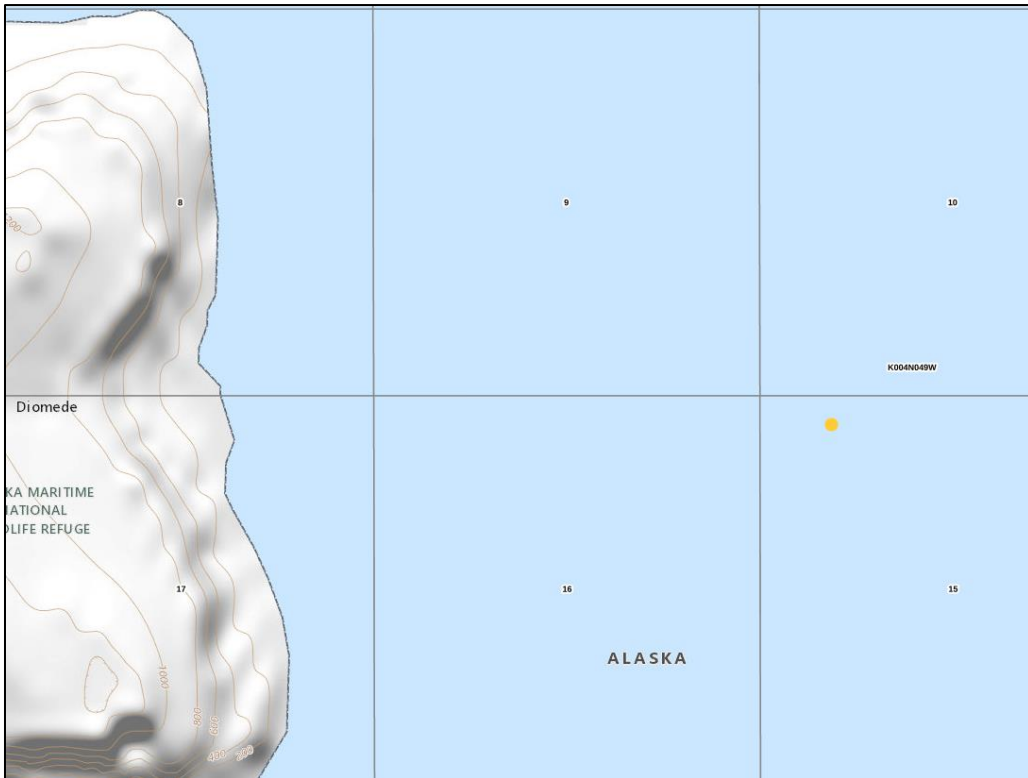
**Attachment A**  
LAS 34581, Alaska Eskimo Whaling Commission  
State of Alaska Submerged Lands

65.71911149, -168.9036589 (Little Diomede 1)  
Section 29 of Township 4 North, Range 49 West, Kateel River Meridian



**Attachment A**  
LAS 34581, Alaska Eskimo Whaling Commission  
State of Alaska Submerged Lands

65.75352594, -168.8485028 (Little Diomede 2)  
Section 15 of Township 4 North, Range 49 West, Kateel River Meridian





HILARY S. FRANZ  
COMMISSIONER OF PUBLIC LANDS

## AQUATIC LANDS RIGHT OF ENTRY

### Right of Entry No. 23-106381

THIS RIGHT OF ENTRY is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources (“State”), and Western Washington University, a public institution of higher education (“Licensee”).

THE Parties agree as follows:

### SECTION 1 GRANT OF PERMISSION

**1.1 Permission.** Subject to the terms and conditions set forth below, State grants Licensee a revocable, nonexclusive license to enter upon the real property described in Exhibit A (the “Property”). In this agreement, the term “Right of Entry” means this agreement and the rights granted. By issuance of this Right of Entry, State is conferring the privilege of use of the Property, and State expressly retains exclusive possession of the Property.

**1.2 Other Interests and Rights.** This Right of Entry is subject to all valid interests of third parties noted in the records of Skagit County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington. Licensee is responsible for obtaining approvals from other persons, if any, who have an interest in the Property. This Right of Entry is subject to the rights of the public under the Public Trust Doctrine or federal navigation servitude, and treaty rights of Indian Tribes.

**1.3 Condition of Property.** Licensee has inspected the Property and accepts it in its present condition. State has no obligation to make any repairs, additions, or improvements to the Property. State makes no representation regarding the condition of the Property or the suitability of the Property for Licensee’s intended use. State expressly disclaims any warranty that the Property is suitable for Licensee’s intended use.

## SECTION 2 USE

**2.1 Authorized Activities.** Licensee shall enter the Property only for the purpose of conducting the activities described in Exhibit B (the “Activities”) and for no other purpose. Exhibit B also includes details about the Property. Licensee shall not conduct any other activities on the Property without the prior written permission of State.

**2.2 Restrictions on Activities.** The following limitations and requirements apply to the Property and adjacent state-owned aquatic lands. Licensee’s compliance with the following does not limit Licensee’s liability under any other provision of this Right of Entry. Exhibit B also includes additional obligations and requirements on Licensee.

- (a) Licensee shall not cause or permit:
  - (1) Damage to land or natural resources, except to the extent expressly permitted in Exhibit B;
  - (2) Waste; or
  - (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) Nothing in this License shall be interpreted as an authorization to dredge the Property.
- (c) Licensee shall immediately notify State if Licensee breaches any of the requirements of Paragraph 2.2 or Exhibit B.
- (d) Licensee shall, at Licensee’s sole expense, be responsible for promptly remedying any damages caused by Licensee, the Activities, or Licensee’s failure to comply with the requirements of Paragraph 2.2 or Exhibit B, except to the extent expressly permitted in Exhibit B. Licensee shall remedy any damages in accordance with a plan approved by State. Nothing in this paragraph shall prevent State from taking steps to remedy any damages caused by Licensee, the Activities, or Licensee’s failure to comply with the requirements of Paragraph 2.2 or Exhibit B. If State takes such remedial actions, upon demand by State, Licensee shall pay all remedial costs, restoration costs, and natural resources damages.

**2.3 Conformance with Laws.** Licensee shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its Activities on the Property.

**2.4 Interference with Other Uses.**

- (a) Licensee shall conduct the Activities authorized in this Right of Entry in a manner that minimizes or avoids interference with the rights of State, the public, or others with valid right to use or occupy the Property or surrounding lands and water.
- (b) Licensee and its agents, contractors, and subcontractors shall provide State with at least two (2) weeks’ notice before commencing any Activities. Licensee shall promptly notify State of any modifications in the schedule.



**2.5 Licensee's Contractors.** Acts or omissions of Licensee's contractors operating under this Right of Entry shall be deemed an act of the Licensee. Restrictions and/or requirements placed on the Licensee herein shall apply equally to Licensee's contractors.

### SECTION 3 TERM

**3.1 Term Defined.** This Right of Entry commences on the 1st day of February, 2024 ("Commencement Date"), and terminates on the 31st day of January, 2025 ("Termination Date"), unless terminated sooner under the terms of this Right of Entry.

**3.2 End of Term.** Upon termination of this Right of Entry and except as otherwise provided in Exhibit B, Licensee shall restore the Property to a condition substantially like its natural state before Licensee's Activities. Licensee's restoration shall be in accordance with a plan approved by State.

**3.3 Disposition of Personal Property.**

- (a) "Personal Property" means items that can be removed from the Property without (1) injury to the Property, adjacent state-owned aquatic lands, or Improvements, or (2) diminishing the value or utility of the Property, adjacent state-owned aquatic lands, or Improvements.
- (b) Licensee retains ownership of Personal Property unless Licensee and State agree otherwise in writing.
- (c) Licensee shall remove Personal Property from the Property by the termination of this Right of Entry. Licensee is liable for damage to the Property and Improvements resulting from removal of Personal Property.
- (d) State may sell or dispose of all Personal Property left on the Property after the termination of this Right of Entry.
  - (1) If State conducts a sale of Personal Property, State shall first apply proceeds to State's costs of removing the Personal Property, State's costs in conducting the sale, and any other payment due from Licensee to State. State shall pay the remainder, if any, to the Licensee. Licensee shall be liable for any costs of removing the Personal Property and any costs of conducting the sale that exceed the proceeds received by State.
  - (2) If State disposes of Personal Property, Licensee shall pay for the cost of removal and disposal.

### SECTION 4 FEE

Licensee shall pay to State a fee in the amount of Five Hundred Dollars (\$500.00), which is due and payable on or before the Commencement Date.

## SECTION 5 ENVIRONMENTAL LIABILITY

### 5.1 Definitions.

- (a) “Hazardous Substance” means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup, including oil and petroleum products.
- (b) “Release or threatened release of Hazardous Substance” means a release or threatened release as defined under any law described in Paragraph 5.1(a).
- (c) “Utmost care” means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care applicable under the Washington State Model Toxics Control Act (“MTCA”), Chapter 70A.305 RCW.
- (d) “Licensee and affiliates” when used in this Section 5 means Licensee or Licensee’s contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Licensee’s permission.
- (e) “Liabilities” as used in this Section 5 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys’ fees and disbursements), penalties, or judgments.

### 5.2 General Conditions.

- (a) Licensee’s obligations under this Section 5 extend to the area in, on, under, or above:
  - (1) The Property; and
  - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
  - (1) Licensee shall exercise the utmost care with respect to Hazardous Substances.
  - (2) Licensee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

**5.3 Current Conditions and Duty to Investigate.** State makes no representation about the condition of the Property or adjacent state-owned aquatic lands. Hazardous Substances may exist in, on, under, or above the Property.

### 5.4 Use of Hazardous Substances.

- (a) Licensee and its affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Licensee shall not undertake, or allow others to undertake by Licensee’s permission, acquiescence, or failure to act, activities that:
  - (1) Result in a release or threatened release of Hazardous Substances; or

- (2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Licensee's activities on the Property.

**5.5 Management of Contamination, if any.**

- (a) Licensee and affiliates shall not undertake activities that:
  - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
  - (2) Result in human or environmental exposure to contaminated sediments, if any;
  - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.

**5.6 In the Event of a Release or Threatened Release.**

- (a) Licensee shall immediately notify State if the Licensee becomes aware of any release or threatened release of Hazardous Substance; any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances; or any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances. Licensee's duty to report under this Paragraph extends to lands described in Paragraph 5.2(a) and to any other property used by Licensee in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
- (b) If a Licensee's act or omission results in a release of Hazardous Substances, Licensee, at its sole expense, shall promptly take all actions necessary or advisable to clean up, contain, and remove the Hazardous Substances in accordance with applicable laws.
- (c) If Licensee submits any documents concerning environmental impacts or proposals relative to the Property to any federal, state, or local authorities, Licensee shall submit a copy of such documents to State. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits; U.S. Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality Certifications; Shoreline Substantial Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

**5.7 Indemnification.**

- (a) Licensee shall indemnify, defend, and hold harmless State from and against Liabilities that arise out of, or relate to:
  - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Licensee and affiliates occurring during the term of this Right of Entry or whenever Licensee uses or has used the Property;

- (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Licensee and affiliates occurring during the term of this Right of Entry or whenever Licensee uses or has used the Property.
- (b) Licensee shall fully indemnify, defend, and hold harmless State for Liabilities that arise out of or relate to Licensee's breach of obligations under Paragraph 5.4.
- (c) If Licensee fails to exercise care as described in Paragraph 5.2, to the extent permitted by law, Licensee shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

**5.8 Reservation of Rights.**

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 5.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 5 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 5 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

**SECTION 6 NO ASSIGNMENT**

Licensee shall not transfer or assign this Right of Entry.

**SECTION 7 INDEMNITY AND INSURANCE**

**7.1 Allocation of Responsibility.** Each Party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority. Section 5, Environmental Liability, exclusively shall govern Licensee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

## 7.2 Insurance Terms.

- (a) Insurance Required.
- (1) Licensee certifies that on the Commencement Date of this Right of Entry it is a member of a self-insured risk pool for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 7.2 and by Paragraph 7.3, Insurance Types and Limits. Licensee shall provide to State evidence of its status as a member of a self-insured risk pool. Upon request by State, Licensee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Licensee shall provide State with at least thirty (30) days' written notice prior to any material changes to Licensee's self-insured funding mechanism. If during the term of this Right of Entry Licensee's self-insurance plan fails to provide coverage equal to that required in Paragraph 7.2 and Paragraph 7.3 of this Right of Entry, Licensee shall procure additional commercial insurance coverage to meet the requirements of this Right of Entry. The requirements in Section 7.2(a)(3) only apply where the Licensee procures additional commercial insurance to meet the requirements of this Right of Entry.
  - (2) Unless State agrees to an exception, Licensee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Licensee may submit a request to the risk manager for the Department of Natural Resources to approve an exception, in writing, to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
  - (3) All insurance provided in compliance with this Right of Entry must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
- (1) Licensee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Right of Entry covers these damages.
  - (2) Except as prohibited by law, Licensee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Right of Entry.
- (c) Proof of Insurance.
- (1) Licensee shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Right of Entry; and, if requested, copies of policies to State.
  - (2) The certificate(s) of insurance must reference additional insureds and the Right of Entry number.

- (3) Receipt of such certificates, endorsements, or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Right of Entry, as follows:
  - (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
  - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
  - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
  - (2) Licensee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) General Terms.
  - (1) State does not represent that coverage and limits required under this Right of Entry are adequate to protect Licensee.
  - (2) Coverage and limits do not limit Licensee's liability for indemnification and reimbursements granted to State under this Right of Entry.
  - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Right of Entry, then to pay the cost of the reconstruction, then to pay State any sums in arrears, and then to Licensee.

### **7.3 Insurance Types and Limits.**

- (a) General Liability Insurance.
  - (1) Licensee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Licensee's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

- (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
- (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
  - (1) State of Washington Workers' Compensation.
    - (i) Licensee shall comply with all State of Washington workers' compensation statutes and regulations. Licensee shall provide workers' compensation coverage for all employees of Licensee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Licensee's use, occupation, and control of the Property.
    - (ii) If Licensee fails to comply with all State of Washington workers' compensation statutes and regulations, and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Licensee shall indemnify State. Indemnity shall include all fines; payment of benefits to Licensee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
  - (2) Longshore and Harbor Worker's Act. The Longshore and Harbor Worker's Compensation Act (33 U.S.C. Section 901 *et seq.*) may require Licensee to provide insurance coverage for longshore and harbor workers other than seaman. Licensee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. Licensee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
  - (3) Jones Act. The Jones Act (46 U.S.C. Section 688) may require Licensee to provide insurance coverage for seamen injured during employment resulting from negligence of the owner, master, or fellow crew members. Licensee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. Licensee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employer's Liability Insurance. Licensee shall procure employer's liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) per each accident for bodily injury by accident or One Million Dollars (\$1,000,000) per each employee for bodily injury by disease.

- (d) Protection and Indemnity Insurance (P&I). For each vessel owned, used, and/or operated on the Property by Licensee or Licensee's contractor(s), Licensee or Licensee's contractor(s) shall procure and maintain P&I insurance with limits of liability not less than Three Hundred Thousand Dollars (\$300,000.00). The P&I insurance must cover, at a minimum, all claims relating to injuries or damages to persons or property sustained in, on, or about the property; fuel spills; wreck removal; salvage; injuries to passengers and crew of the vessel; and damages to nets and fishing lines. If necessary, Licensee shall procure and maintain commercial umbrella liability insurance covering claims for these risks.
- (e) Hull Insurance. Licensee or Licensee's contractor(s) shall procure and maintain hull insurance for each vessel owned and/or operated by the Licensee or Licensee's contractor(s) on the Property. The coverage amount of each hull insurance policy must be equal to the value of the covered vessel.

## SECTION 8 TERMINATION

**8.1 Termination by Revocation.** State may terminate this Right of Entry at any time upon thirty (30) days' notice to the Licensee.

**8.2 Termination by Completion of Activities.** If Licensee completes Activities and restoration of the Property prior to the Termination Date, this Right of Entry terminates upon Licensee's completion of all Activities and the restoration of the Property under Paragraph 3.2.

**8.3 Termination Resulting from Breach.** If Licensee breaches any terms of this Right of Entry, State may terminate this Right of Entry immediately upon notice to Licensee.

## SECTION 9 NOTICE

Following are the locations for delivery of notice and the Contact Person. Any Party may change the location of notice and/or the Contact Person upon reasonable notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
Orca-Straits District  
919 N Township Street  
Sedro-Woolley, WA 98248

Licensee: WESTERN WASHINGTON UNIVERSITY  
Attn: Professor Sam Kastner, College of the Environment  
516 High Street, MS 9181  
Bellingham, WA 98225



## SECTION 10 MISCELLANEOUS

**10.1 Headings.** The headings used in this Right of Entry are for convenience only and in no way define, limit, or extend the scope of this Right of Entry or the intent of any provision.

**10.2 Invalidity.** The invalidity, voidness, or illegality of any provision of this Right of Entry does not affect, impair, or invalidate any other provision of this Right of Entry.

**10.3 Applicable Law and Venue.** This Right of Entry is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Right of Entry is in the Superior Court for Thurston County, Washington.

**10.4 Statutory Reference.** Any reference to a statute or rule means that statute or rule as presently enacted or hereafter amended or superseded.

**10.5 Modification.** No modification of this Right of Entry is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.

**10.6 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Right of Entry.

**10.7 Survival.** Any obligations of Licensee not fully performed upon termination of this Right of Entry do not cease, but continue as obligations of the Licensee until fully performed.

**10.8 Exhibits and Attachments.** All referenced exhibits and attachments are incorporated in this Right of Entry unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

Dated: 1/29/2024, 20      

WESTERN WASHINGTON UNIVERSITY

*David Patrick*

By: DAVID PATRICK  
Title: Dean of the Graduate School,  
Vice President of Research  
Address: 516 High Street, MS9037  
Bellingham, WA 98225  
Phone: (360) 650-2884

Dated: 1/29/2024, 20      

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL  
RESOURCES

*Thomas Gorman*

By: THOMAS GORMAN  
Title: Aquatic Resources Division  
Manager  
Address: 1111 Washington Street SE  
Olympia, WA 98504-7027

**EXHIBIT A  
PROPERTY DESCRIPTION**

**Agreement Number 23-106381**

1. PROPERTY DESCRIPTION:

The portion of bedlands in Kiket Bay in the SW 1/4 of Section 21, Township 34 North, Range 02 East, W.M., as depicted below.

2. COORDINATES OF THE RIGHT OF ENTRY:

Project area in bedlands of Kiket Bay, centered on 48.416961 N, -122.570932 W.

3. APPROXIMATE SQUARE FOOTAGE OF RIGHT OF ENTRY:

Total square feet      21.65

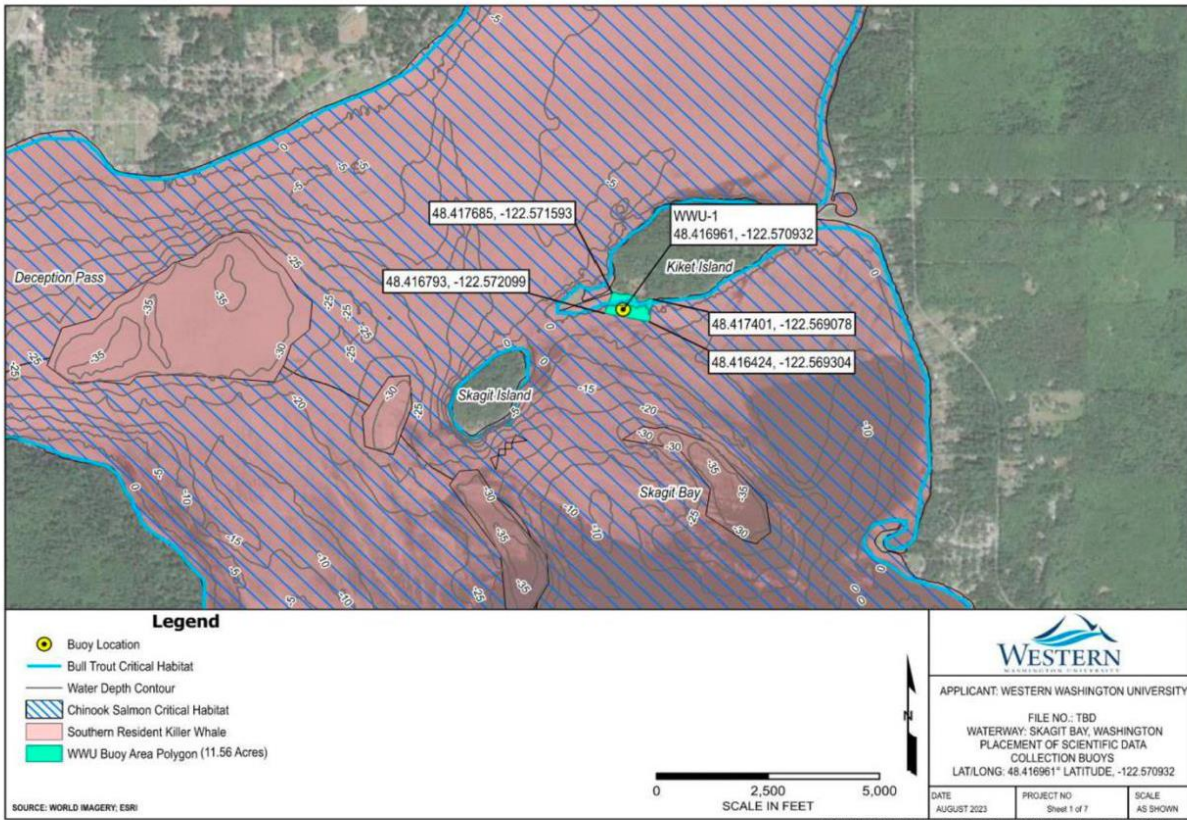
**DNR Right of Entry Use Authorization 23-106381**  
**Exhibit A**

Sam Kastner & Stacey Korsmo, 1/4/2024

This exhibit shows the intended deployment location of the Kukutali Wave Buoy as a yellow point, and the possible range of where the buoy may be deployed upon redeployment as a green shaded area. GPS coordinates were determined using software and not measured (the buoy has not been deployed yet); upon deployment, GPS will be recorded using WWU’s R/V Zoea’s ship’s navigation system.

The mooring deployed at the anchor buoy will consist of a 33 lb bruce type anchor, 13.1 ft of chain, 26.2 ft of lead-free sinking crab-pot line, and a Sofar Spotter wave buoy. A float will be included to keep the chain from dragging on the seabed.

At the seabed, the footprint will be only the area of the anchor, 2.5 sq ft, while at the surface, the area of the buoy is 1.9 sq ft. The mooring line and chain are 39.3 ft long in total.



## EXHIBIT B

### 1. DESCRIPTION OF ACTIVITIES

**A. Existing Conditions.** Kiket Bay is located in Skagit County encompassing the area between Hope Island, Kiket Island, and Skagit Island. The project location is located off the southern coast of Kiket Island on state-owned aquatic bedlands. DNR has not performed eelgrass surveys in this location of the Kukutali Island shoreline, however a large number of eelgrass beds have been mapped nearby. This region of the Puget Sound is home to multiple surf smelt and Pacific herring spawning areas, and vital eelgrass and kelp beds, among many other important aquatic species. Located on the uplands of Kiket Island is the Kukutali Preserve State Park Heritage Site, which is co-owned and jointly managed by Washington State Parks and the Swinomish Indian Tribal Community.

As of the date of the commencement date of this License, there is Right of Entry License No. 23-101977 located to the south on state-owned aquatic bedlands, and Washington State Parks Aquatic Lands Lease No. 20-011337 to the southwest.

**B. Activities.** Licensee proposes to deploy a Sofar© Spotter Wave buoy (Spotter buoy) on state-owned aquatic bedlands of Kiket Bay. The purpose of this project is to collect real-time wave data that will then be used and analyzed by the Swinomish Indian Tribal Community Fisheries Department and Western Washington University students, as part of a College of the Environment course. Deployment of the Spotter buoy will occur by vessel and at a water depth of up to 16.4 feet MLLW. The buoy will be anchored with one 33-lb bruce anchor connected to 13.1 feet of galvanized chain and an additional 26.2 feet of crab pot line. The buoy will encumber up to 4.33 square feet of bedlands at a time and will be moved up to five times during the term authorized. Maintenance and inspection will occur at least two times per year, upon movement of the buoy, and after all major storm events. Licensee will deploy the buoy and anchor system during the month of February, 2024, and during the month of June, 2024, for a total of two months on state-owned aquatic lands. Subject to the conditions in this Right of Entry, State grants its consent to these Activities.

**C. Permits.** Licensee has secured the following permits for the Activities: list permits with permitting agency, identification number, and date issued.

- Shoreline Substantial Development Permit Exemption No. PL23-0420, issued by Skagit County Planning and Development Services, dated September 29<sup>th</sup>, 2023
- Nationwide Permit 5 Reference No. NWS 2023-648, issued by United States Army Corps of Engineers, dated October 16<sup>th</sup>, 2023 to March 14<sup>th</sup>, 2026
- Hydraulic Project Approval No. 2023-4-596+01, issued by Washington State Department of Fish and Wildlife, dated October 20<sup>th</sup>, 2023 to October 18<sup>th</sup>, 2024

## 2. ADDITIONAL OBLIGATIONS AND REQUIREMENTS

- A. Licensee shall avoid scouring, shading, and damage to native submerged aquatic vegetation by anchoring or mooring scientific monitoring buoy in a location that is at least twenty-five (25) feet from native aquatic vegetation.
- B. Licensee shall not allow moorage or anchorage of vessels in water shallower than seven (7) feet at the extreme low tide, and shall not allow vessels to come in contact with underlying bedlands (commonly referred to as “grounding out”) at any time.
- C. If anchoring, Licensee shall use and shall require use of anchor lines with midline floats.
- D. Licensee shall only conduct in-water activities during time periods authorized for such activities under WAC 220-660-330, Authorized Work Times in Saltwater Areas, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).

Aquatic Lands Right of Entry  
Template approved as to form this  
14th day of July 2021  
Jennifer Clements, Assistant Attorney General



# Skagit County Planning & Development Services

## EXEMPTION FROM SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT

**TO:** Stacey Korsmo  
Weston Solutions  
101 West Benson Blvd, Suite 312  
Anchorage, AK 99503

PL23-0420

**Project Location:** 48.416961 N. lat., -122.570932 W. Long.

**The proposal to undertake the following development:**

Deploy a scientific wave measurement buoy offshore of Kiket Island as part of the National Science Foundation funded Backyard Buoys project. The anchor and line used for the wave buoy deployment will be assembled at the WWU Shannon Point Marine Center; no construction will occur onsite. A single anchor will be used and may be moved up to five times.

The buoy will be in place for approximately one year, from January 2024 through January 2025.

**Upon the following property:**

NE ¼ SW ¼ Section 21, Township 34 North, Range 2 East, W.M.

Within Similk Bay/Kiket Bay and/or its associated shorelands is exempt from the requirement of a Shoreline Substantial Development Permit because the proposal meets the exemption criteria as outlined in RCW 90.58.030, WAC 173-27-040(2), and Section 2.05 of the Skagit County Shoreline Management Master Program (SMMP) for scientific investigation.

Army Corps Public Notice Number, if available: n/a

**The development as proposed is consistent with the policies of the Shoreline Management Act and the Skagit County Shoreline Management Master Program.**

**Conditions of Approval:**

1. The proposal shall comply with all policies and regulations of the Skagit County Shoreline Management Master Program and the Shoreline Management Act RCW 90.58.
2. The applicant and/or contractor shall strictly adhere to the approved project information and site plan submitted for this proposal. If the applicant proposes any modification of the subject proposal, he/she shall request a permit revision prior to the start of construction.
3. The applicant shall adhere to the conditions and the permit requirements of other agencies.

This exemption from the requirement of a Shoreline Substantial Development Permit is approved, subject to the conditions above.



for

September 29, 2023

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Jack Moore, Planning Director  
Skagit County Planning and Development Services

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Date

**Please Note: Obtaining a county permit exemption does not exempt the project from other state and federal statutes and regulations that may apply.**

**For information regarding federal and state regulations, contact these agencies:**

U. S. Army Corps of Engineers (206) 764-3495

Washington State Department of Ecology (425) 649-7000

Washington State Department of Fish & Wildlife (425) 775-1311

Washington State Department of Natural Resources (360) 856-3500



# North Slope Borough

## PLANNING AND COMMUNITY SERVICES DEPARTMENT



P.O. Box 69  
Utqiagvik, AK 99723  
☎ (907) 852-0320  
Fax: (907) 852-0322  
Email: [chastity.olemaun@north-slope.org](mailto:chastity.olemaun@north-slope.org)

*Chastity Olemaun, Director*

June 21, 2023

Alaska Eskimo Whaling Commission (AEWC)  
C/O Lesley Hopson, Executive Director  
P.O. Box 570  
Utqiagvik, Alaska 99723  
EMAIL: [lhopson@awec.com](mailto:lhopson@awec.com)

RE: NSB 23-455, Administrative Approval, Backyard Buoys, Various Townships, Various Ranges and Various Sections, (Offshore) Umiat Meridian, Conservation District.

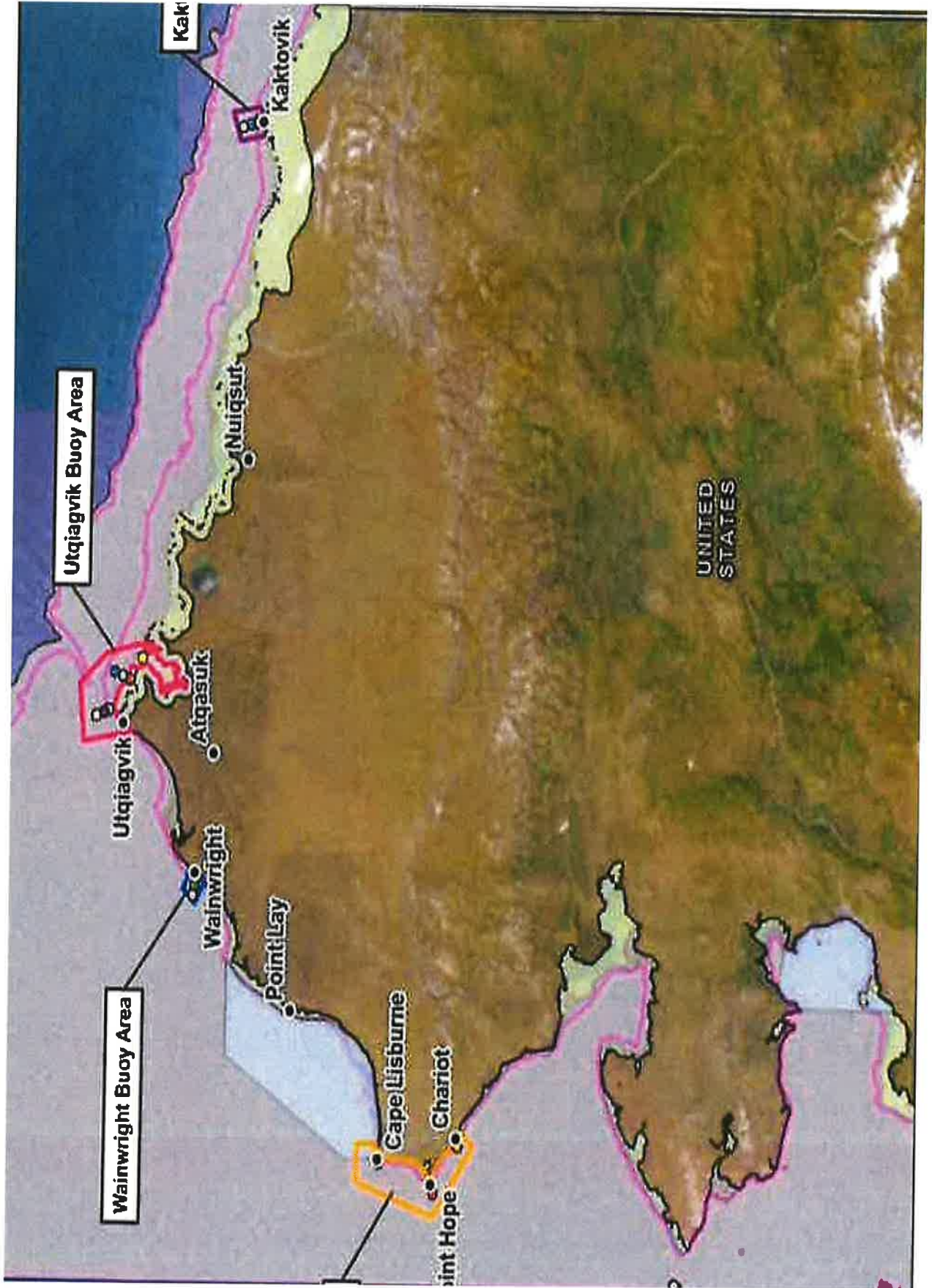
Dear Ms. Hopson:

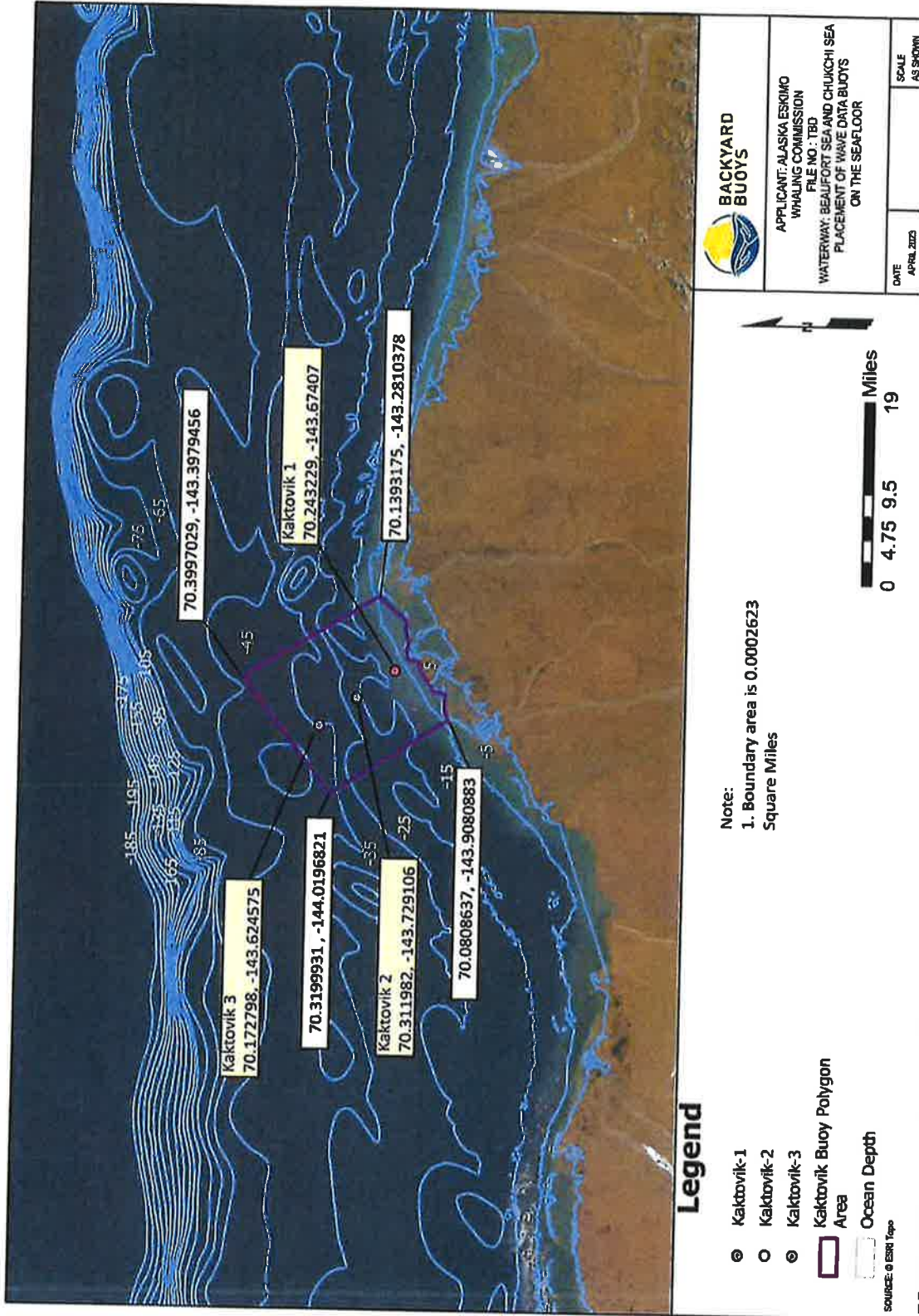
We have reviewed your application received June 9, 2023, in which you have requested authorization for backyard buoys in marine waters near the communities of Kaktovik, Utqiagvik, Wainwright, Point Hope, and Little Diomedede to collect real-time wave data (Figure 1) in year one (1) of the study.

### **Project Description**

Each buoy is housed with integrated solar power, satellite data connectivity, sea surface temperature, and a wave sensor to provide critical wave data for the communities of Kaktovik, Utqiagvik, Wainwright, Point Hope, and Little Diomedede, and to researchers and resource management agencies. Near real time data will be served on existing regional data visualization systems and customized applications developed during the Backyard Buoys Program based on user interviews and iterative feedback. With accessible data tools, these data will serve community needs for decisions on scales from daily (e.g., safety for maritime operations and coastal hazards) to longer planning horizons (e.g., resilience for climate change and ecosystem function).

AEWC plans to deploy 18 Sofar Spotter wave buoys (Spotters) in marine waters near the communities of Kaktovik, Utqiagvik, Wainwright, Point Hope, and Little Diomedede to collect real-time wave data (Figure 1) in Year I of the study. Additional communities may be included in Year 2 of the study. A village facilitator from each community will be hired by AEWC to deploy, maintain, and retrieve the Spotter buoy. AEWC worked with each community to identify initial buoy locations as presented in Table I. Figures 2 through 6 display the buoy areas for each community for Year I as well as the anticipated initial buoy locations.





**Figure 2. Kaktovik Buoy Area and Initial Buoy Locations**

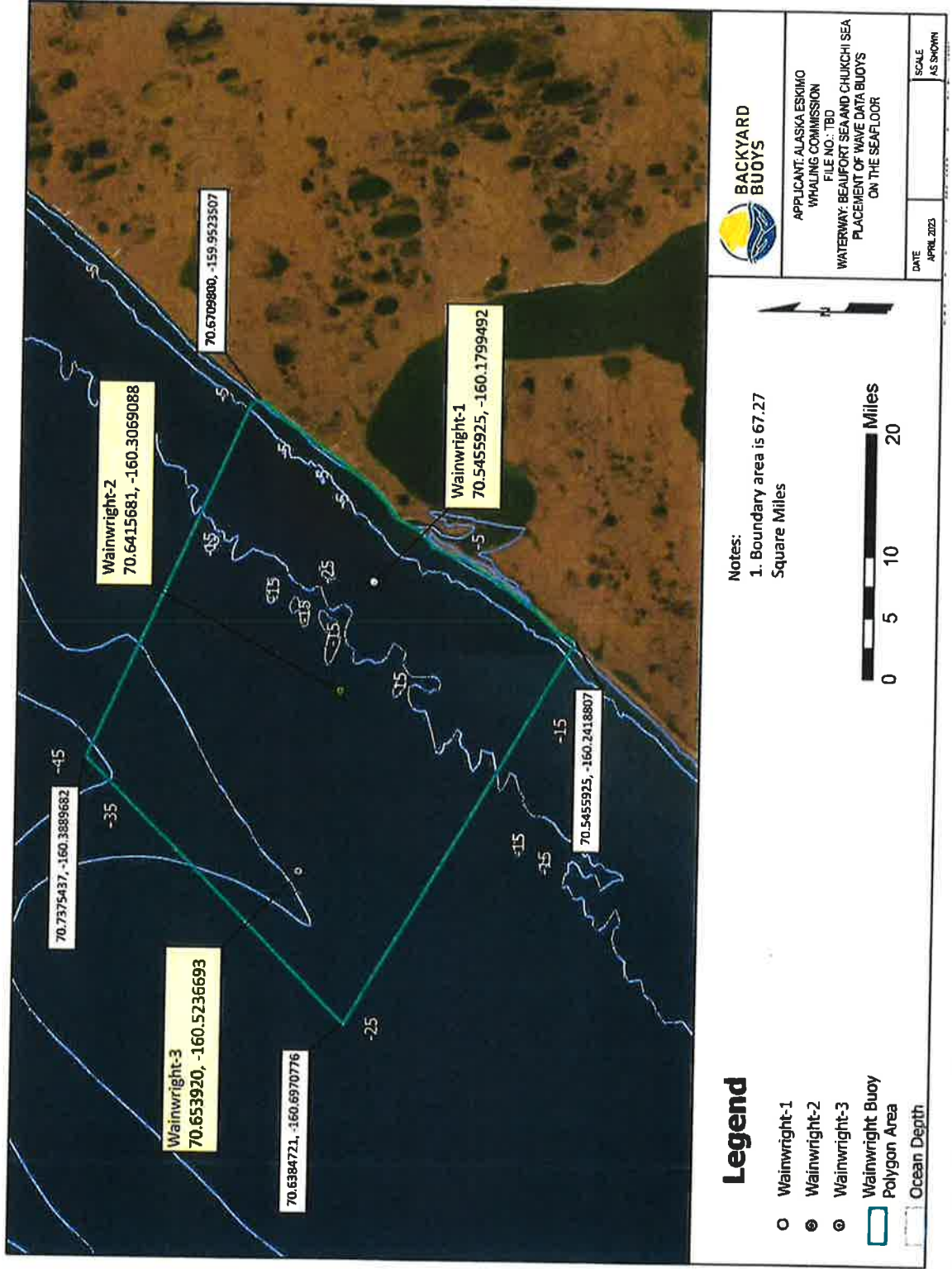


Figure 4. Wainwright Buoy Area and Initial Buoy Locations

Table 1. Initial AEWC Backyard Buoy Locations <sup>1</sup>

Buoy Number	Location Description	Latitude	Longitude
Kaktovik-1	2 mi. (3.2 km) off Barter Island	70.12352821	-143.523985
Kaktovik-2	7 mi. (11.3 km) off Barter Island	70.07374483	-143.346993
Kaktovik-3	12 mi. (19.3 km) off Barter Island	70.07374483	-143.346993
Utqiagvik-1	2 mi. (3.2 km) off Point Barrow	71.43983913	-156.1369545
Utqiagvik-2	5 mi. (8.0 km) off Point Barrow	71.43983913	-156.1369545
Utqiagvik-3	10 mi. (16.1 km) off Point Barrow	71.43983913	-156.1369545
Utqiagvik-4	Entrance of Elson Lagoon	71.60443767	-156.1588215
Utqiagvik-5	5 mi. (8.0 km) off Elson Lagoon	71.60443761	-156.1588215
Utqiagvik-6	10 mi. (16.1 km) off Elson Lagoon	71.60443761	-156.1588215
Utqiagvik-7	Entrance of Dease Inlet	71.128806	-155.361806
Wainwright-1	2 mi. (3.2 km) offshore near Wainwright	70.60637492	-160.2714887
Wainwright-2	5 mi. (8.0 km) offshore near Wainwright	70.62749557	-160.2932764
Wainwright-3	10 mi. (16.1 km) offshore near Wainwright	70.62677069	-160.2861494
Point Hope-1	3 mi. (4.8 km) offshore near Point Hope	68.323163	-166.947517
Point Hope-2	2 mi. (3.2 km) offshore of Cape Lisburne	68.855014	-166.295156
Point Hope-3	2 mi. (3.2 km) offshore of Chariot Area	68.082988	-165.910157
Little Diomede-1	1.5 mi. (2.4 km) south of Little Diomede	65.71911149	-168.9036589

Little Diomede-2	1.5 mi. (2.4 km) east of Little Diomede	65.75352594	-168.8485028
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Notes: ni.=mile(s); km=kilometer(s)

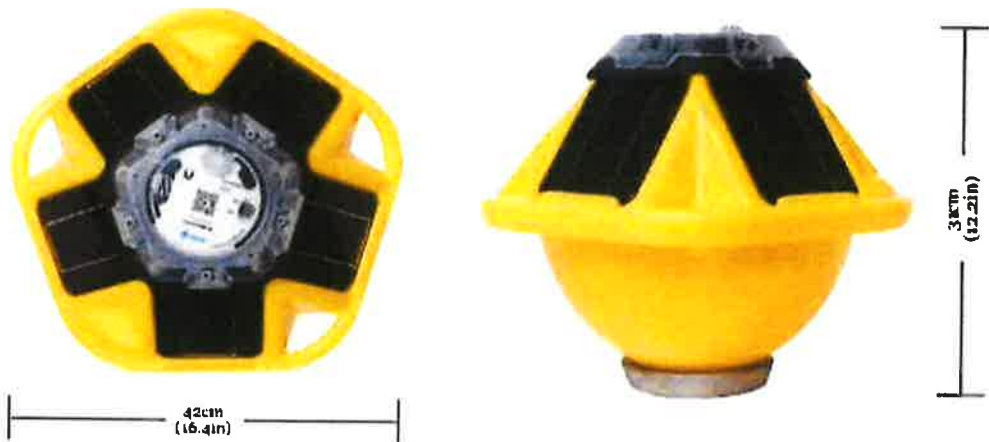
<sup>1</sup> Initial buoy locations highlighted in blue are within 3 mi. (4.83 km) of the coastline.

Spotters are compact and lightweight instruments consisting of a waterproof hull, solar panel array, and electronics package (Photos 1 and 2). Photo 3 shows dimensions of the Spotter. Each Spotter will be anchored on the seafloor using one of the following anchor options (to be decided by the Village Facilitators):

1. Up to three 50-1b (22.7 kg) kettlebells connected with a chain to the mooring line - Photo 4 shows dimensions of a typical 50-pound (1b) (22.7 kilogram [kg]) kettlebell similar to that which would be used for Spotter buoys. A conservative impacted seafloor surface area for each 3kettlebell anchor option, is 3.63 square feet (sq ft.) (0.00008 acres [ac]).
2. A single 50-1b kettlebell attached by a chain to a small boat anchor - Photo 4 shows dimensions of a typical boat anchor similar to that which would be used for Spotter buoys. A conservative impacted seafloor surface area for each kettlebell/boat anchor option is 5.079 sq ft. (0.0001 ac).



Phot 2. Spotter Buoy Photos

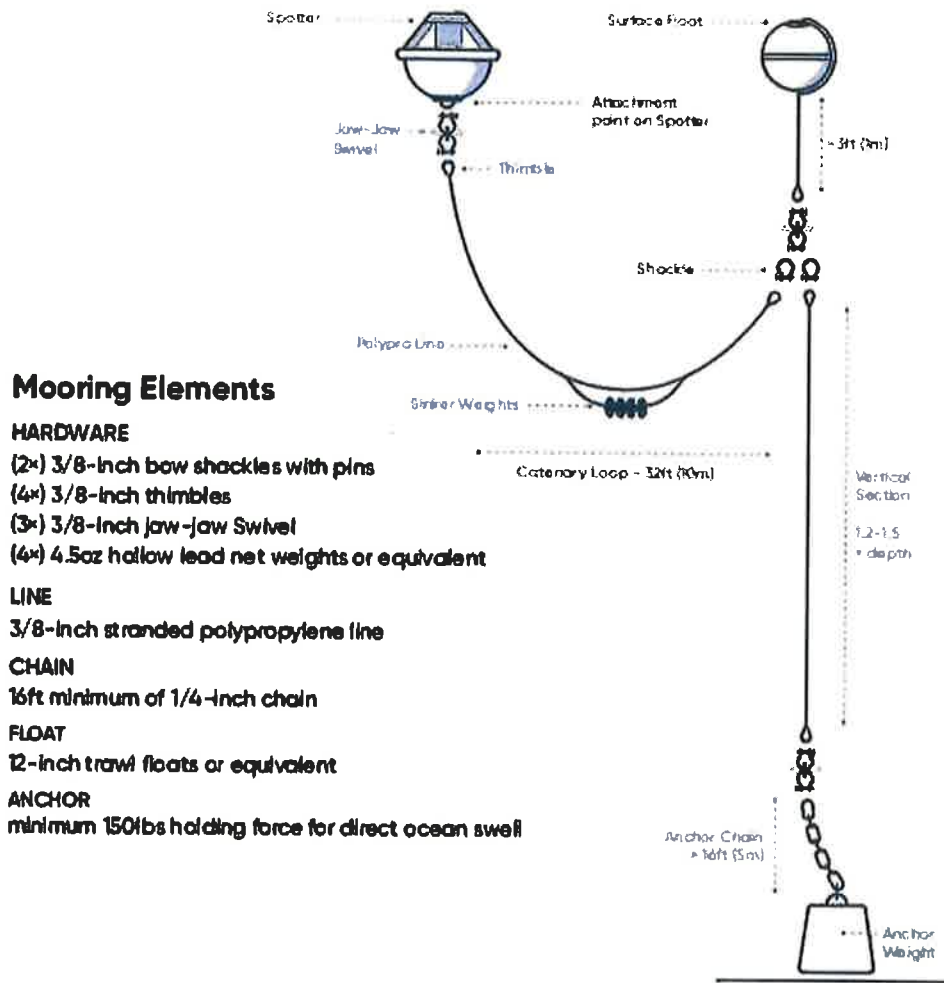


**Photo 3. Spotter Buoy Dimensions**



**Photo 4. Typical 50-lb Kettlebell and Boat Anchor Dimensions**

The Spotters will be anchored to the seafloor in water depths up to 164 feet (ft.) (50 meters [m]) using a mooring system (Figure 7). The mooring system is the underwater extension of the Spotter platform.



**Figure 7. Typical Mooring Element Schematic**

Personnel will deploy Spotters over the side of a single whaling captain boat within each buoy area polygon. Buoys will similarly be retrieved by pulling the buoy, mooring system, and anchor over the side of a single whaling captain boat. The boats used for deployment will be typical open aluminum whaling captain boats with outboard motors (typically up to 250 HP), approximately 18-24 ft. (5.5-7.3 m) in length. Up to 120 gallons of fuel will be stored on the whaling captain boat. Photo 5 shows typical whaling captain boats, similar to those which will be used for proposed buoy deployment and retrieval.





Photo 5. Typical Whaling Captain Boats

#### Mitigation Measures/Wildlife Interaction Procedures

- The following mitigation measures are proposed to be implemented, as appropriate, during implementation of the AEWC Backyard Buoys Project:
- Spotters will not be placed such that they block access of any species to an area (e.g. they will not prevent movement in or out of a river or channel).
- Spotters will be removed annually prior to ice advancing over the buoy area polygons at the end of the open water season.
- Spotters will be re-deployed once the ice has retreated from the buoy area polygons.
- Spotters, moorings, and anchor setups will be inspected and any required maintenance performed at least twice a year, when they are retrieved for relocation, and following storm events that may have moved or dislodged the Spotter to ensure that equipment and anchors are still in place and have not moved.
- All personnel associated with Spotter deployment will be instructed about the potential presence of species protected under the ESA and the MMPA.
- All on-site personnel will observe water-related activities for the presence of protected species. • Any collision with and/or injury to a protected species during Spotter deployment, maintenance, or retrieval operations will be reported immediately, or as soon as practical, to the following:
- NMFS' Office of Protected Resources at [atjolie.harrison@noaa.gov](mailto:atjolie.harrison@noaa.gov) (for whales, seals, or sea lions); o Alaska Regional Stranding Hotline at (877) 925-7773 (for whales, seals, or sea lions); USFWS' Marine Mammals Management at [fw7\\_ak\\_marine](mailto:fw7_ak_marine)

- mammals@fws.gov (800) 362-5148 during business hours or the Alaska Sealife Center at (888) 774-7325 after hours (for polar bears); and
- USFWS' Endangered Species Branch (Ted Swem) at (907) 456-0441 (for spectacled eiders or Stellers' eiders).
  - Any observed stranded, injured, or dead marine mammals (not resulting from proposed project activities) observed during Spotter deployment, maintenance, or retrieval operations shall be reported immediately to the Alaska Marine Mammal Stranding Hotline at (877) 925-7773.
  - All whaling captain boat operators shall watch for and avoid collision with protected species. Whaling captain boat operators must avoid potential interactions with protected species and operate in accordance with the following protective measures:
    - Operation of whaling captain boats shall cease immediately if a listed species is observed within a 50-ft. (15.24-m) radius of the whaling captain boat and shall not resume until the species has departed the area of its own volition.
    - If the detection of protected species is not possible during certain weather conditions (e.g., fog, rain, wind), then in-water operations will cease until weather conditions improve and detection is again feasible.
    - Whaling captain boats will avoid approaching within 328 ft. (100 m) of marine mammals.
      - o When these animals are sighted while the whaling captain boat is underway, the boat will attempt to remain parallel to the animal's course.
    - Whaling captain boats will avoid multiple or abrupt changes in direction or speed.
    - Whaling captain boats will maintain a general speed of 5 miles per hour (4 knots) or less when near protected species and when safe to do so.
    - In-water mooring setups will include as little line as possible in the water column in order to measure wave movement and collect quality data. To the extent practical in order to collect quality data, excess line in the water column will be kept to a minimum to minimize the risk for marine mammal entanglement.

### **Purpose of Study**

Each buoy is housed with integrated solar power, satellite data connectivity, sea surface temperature, and a wave sensor to provide critical wave data for the communities of Kaktovik, Utqiagvik, Wainwright, Point Hope, and Little Diomedé, and to researchers and resource management agencies.

This project is scheduled to commence upon approval of permit, with a completion date of May 31, 2024.

It is my determination that the above proposal is a Minor Alteration, as defined under NSBMC 19.20.020 and thus requires an administrative approval in the Conservation District.

We have no objections to the proposed activity and are recommending consistency with the North Slope Borough Municipal Code Title 19 and the NSB Comprehensive Plan by copy of this letter provided that you comply with the following conditions:

### **PROJECT SPECIFIC STIPULATION**

- AEWC shall provide an update to the NSB Planning Commission once project study is complete. (Call (907)-852-0320 for Lucy Benson, Commission Clerk).
- AEWC shall contact Little Diomedé for other permitting processes in their area, this permit is only for within the North Slope Borough communities (This permit does not permit outside the North Slope Boundaries and Little Diomedé is outside Borough boundaries).

### **GENERAL STIPULATIONS**

1. The permittee is reminded to conform to the provisions of NSBMC Chapters 9.08, 9.12 and 9.16 regarding solid and sanitary waste collection/disposal and potable water. The proper and lawful disposal of waste in an environmentally sound manner is a condition of this permit. If the permittee does not anticipate using facilities operated or approved by NSB, the Alaska Department of Environmental Conservation at (907) 269-7500 shall be contacted for an approved sanitary and solid waste disposal plan as well as a plan for potable water for temporary and permanent facilities described in this permit. A copy of the approved plans shall be submitted to the North Slope Borough Land Management Division to become a part of this permit file. NSBMC 19.70.050(I)(4)&(5)
2. Should any cultural, archeological or paleontological resource materials (including, but not limited to artifacts, house mounds, grave sites, ice cellars, and fossilized animal remains) be discovered in the course of activities conducted under this permit, the site shall not be disturbed and the North Slope Borough Inupiat History, Language and Culture Commission shall be promptly notified at (907) 852-0422. NSBMC 19.70.050(E) through (G)
3. All oil and other hazardous material spills over 55 gallons shall be reported immediately to the NSB by telephoning (907) 852-0440. The follow-up written report will be faxed to the NSB Land Management Division fax (907) 852-0321 or email to: [leroy.oenga@north-slope.org](mailto:leroy.oenga@north-slope.org), [ralph.kaleak@north-slope.org](mailto:ralph.kaleak@north-slope.org), [robert.akpikjr@north-slope.org](mailto:robert.akpikjr@north-slope.org), [herbert.ipalookjr@north-slope.org](mailto:herbert.ipalookjr@north-slope.org) and/or [gary.melchert@north-slope.org](mailto:gary.melchert@north-slope.org). A report of all spills shall be submitted to our office on a weekly basis. A sufficient amount of absorbent materials shall be on hand at all times in the event of any fuel, oil, or chemical spills. Spills shall be cleaned up as soon as possible. NSBMC 19.50.030(I)
4. The Land Management Administrator may require that his/her authorized representative be on-site during any operations conducted under this permit. NSBMC 19.30.100
5. Within the constraints of federal, state and local law, the permittee and its agents are encouraged, through a voluntary affirmative action program, to hire and train residents of the

North Slope Borough. In order to comply with this stipulation, the permittee and its agents shall contact the Mayor or City Manager and the village corporation of any village most affected by this permit. In this case contact the Native Village of Barrow at (907) 852-4411 and Ukpeagvik Inupiat Corporation at (907) 852-4460, also the Savaat Center (907) 852-0465, the village of Kaktovik at (907) 640-6313 and Kaktovik Inupiat Corporation at (907) 640-6120; the village of Nuiqsut at (907) 480-6727 and Kuukpik Corporation at (907) 480-6220; the village of Point Hope at (907) 368-2537 and Tikigaq Corporation at (907) 368-2235; the village of Point Lay at (907) 833-8868 and Cully Corporation at (907) 833-2705; the village of Wainwright at (907) 763-2815 and Olgoonik Corporation at (907) 763-2613 to determine if there are qualified people available or people who could be employed for on-the-job training. NSBMC 19.70.030

6. The permittee shall comply with all local, state and federal laws and permits applicable to this project. NSBMC 19.30.100
7. The permittee shall inform and ensure compliance with these stipulations by its agents and employees. This permit shall be posted in a conspicuous place for these individuals to see. NSBMC 19.30.100

This permit is valid for the duration of the existence of the development and the developer's compliance with the terms and conditions herein. This permit automatically expires within twelve months of approval if no actual development has commenced. Failure to comply with the conditions of this permit could result in immediate revocation of this permit. NSBMC 19.30.070

If you should have any questions please contact Roy Varner, Sr., Land Management Specialist at (907) 852-0320 ext. 5414 or by email at [entre.varner@north-slope.org](mailto:entre.varner@north-slope.org).

Sincerely,



Chastity Olemaun,  
Land Management Administrator

cc: NSB Planning Commission  
Harry Brower, Jr., NSB Mayor  
Kayla Scheimreis, NSB Wildlife (bowhead/fish)  
Brian Person, NSB Wildlife (caribou/fox/geese/vegetation)  
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Frederick Brower, BWCA President – [fbrower69@gmail.com](mailto:fbrower69@gmail.com)  
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George Kaleak, Kaktovik Village Deputy Assistant, NSB  
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Wayne Cary, Borough Attorney, NSB

Ian Stroud, Assistant Borough Attorney, NSB

Jonathan Aiken Jr., CPD/GIS, NSB

Matthew Rexford, Kaktovik Board Member, Inupiat Community of the Arctic Slope

Gwendolyn Pikok, Point Lay Village Liaison, Inupiat Community of the Arctic Slope

Files



**U.S. DEPARTMENT OF COMMERCE**  
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NATIONAL MARINE FISHERIES SERVICE  
Pacific Islands Regional Office  
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Honolulu, Hawaii 96818  
(808) 725-5000 • Fax: (808) 725-5215

January 12, 2024

Eric Brown, Ph.D.  
National Park of American Samoa  
Interior Region 12  
MHJ Building, 2nd Floor  
Pago Pago, AS 96799

RE: Request for Expedited Informal ESA Consultation on the Proposed Deployment of Spotter Wave Buoys in the Territory of American Samoa (PIRO-2023-03245; I-PI-23-2256-DG; INQ-2023-00359).

Dear Dr. Brown:

On December 12, 2023, NOAA's National Marine Fisheries Service (NMFS) received your written request for expedited informal consultation on the proposed deployment of two spotter wave buoys in the territory of American Samoa. On December 22, 2023, we had sufficient information to initiate consultation.

The proposed action consists of the National Park of American Samoa (NPSA) deploying 2 Spotter wave buoys near harbors on the island of Ta'ū, American Samoa. One buoy will be deployed outside of Faleasao Harbor, and one near Ta'ū Harbor. Each Spotter wave buoy will be anchored on the seafloor using a 300-400 pound (lb.; 136-181 kilogram) anchor made from a low-profile design of metal (iron or steel) pieces with one mooring line in waters up to 66 feet deep. Dive surveys will occur as part of this action to determine exact placement of the buoys along with diver assisted installation with lift bags to limit benthic disturbances from these deployments. Each buoy is housed with integrated solar power, satellite data connectivity, sea surface temperature, and a wave sensor to provide critical wave data for the communities on the island of Ta'ū, researchers, and resource management agencies. No acoustic emissions are expected from these devices. NPSA will be facilitating the deployment of these buoys and is considered the lead federal action agency. The NPSA project is in partnership with the Pacific Islands Ocean Observing System (PacIOOS) operating out of the University of Hawaii. The park has determined that the project activities described below constitute an "undertaking," funded in whole or in part by a federal agency as defined in 36 CFR 800.16(y).

We reviewed your consultation request document and related materials. Based on our knowledge, expertise, and the materials you provided, we concur with your conclusions that the proposed action may affect, but is not likely to adversely affect the following ESA-listed species: endangered sperm whale, endangered blue whale, endangered fin whale, endangered sei whale, and western North Pacific humpback whale; endangered Central South Pacific green sea turtle, endangered hawksbill sea turtle, endangered leatherback sea turtle, endangered South Pacific loggerhead sea turtle, threatened olive ridley sea turtle; threatened Indo-West Pacific scalloped hammerhead shark, threatened oceanic whitetip shark, threatened giant manta ray; threatened

chambered nautilus, and threatened corals: *Acropora globiceps*, *Acropora retusa*, *Acropora jacquelineae*, *Euphyllia paradivisa*, and *Isopora crateriformis*.

The NPSA also considered candidate clam species *Tridacna derasa*, *Tridacna squamosa*, *Tridacna gigas*, and *Hippopus hippopus*. However, NMFS notes conferencing is not required for candidate species at this time and are no longer considered in the analysis.

This concludes informal consultation under section 7 of the ESA for species under our jurisdiction. A complete record of this consultation is on file at the Pacific Island Regional Office, Honolulu, Hawaii. Reinitiation of consultation is required and shall be requested by the USFWS or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and if:

- a. Take occurs to an ESA-listed species;
- b. New information reveals effects of the action that may affect ESA-listed species or designated critical habitat in a manner or to an extent not previously considered;
- c. The identified action is subsequently modified in a manner that causes an effect to ESA-listed species or designated critical habitat that was not considered in this concurrence; or
- d. A new species is listed or critical habitat designated that may be affected by the identified action.

If you have further questions, please contact Joshua Rudolph at (808) 725-5147 or [joshua.rudolph@noaa.gov](mailto:joshua.rudolph@noaa.gov). Thank you for working with us to protect our nation's living marine resources.

Sincerely,

*Dawn Golden*

Dawn Golden  
Assistant Regional Administrator  
Protected Resources Division

[EXTERNAL] Re: NPS ESA/EFH consultation request

Alexandria Barkman - NOAA Federal <alexandria.barkman@noaa.gov>

Wed 12/20/2023 14:01

To: Brown, Eric K <Eric\_Brown@nps.gov>

Cc: Meghan Larson <Meghan.Larson@westonsolutions.com>; Sheyna Wisdom <wisdom@aoos.org>; Melissa Iwamoto <mmiwamot@hawaii.edu>; Jordan Watson <jwat@hawaii.edu>; Stacey Aughe <Stacey.Aughe@westonsolutions.com>; Joshua Rudolph - NOAA Federal <joshua.rudolph@noaa.gov>; David Delaney - NOAA Federal <david.delaney@noaa.gov>; malia.chow@noaa.gov <malia.chow@noaa.gov>; gerry.davis <gerry.davis@noaa.gov>

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Aloha Eric,

The National Marine Fisheries Service, Pacific Islands Regional Office (NMFS), received the National Park of American Samoa's (NPSA) request for an essential fish habitat (EFH) abbreviated consultation. The project being reviewed is for deployment of two Spotter wave buoys off the island of Ta'ū, American Samoa. After reviewing your EFHA, we have determined that there may be potential adverse effects from physical damage and sediment resuspension during mooring installation that can be further avoided and minimized. We are providing a conservation recommendation under the EFH provisions within Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Adherence to this conservation recommendation will help you ensure that adverse effects are avoided and minimized.

### **Project Description**

The NPSA, in partnership with the Pacific Islands Ocean Observing System (PacIOOS), will deploy two Sofar Spotter wave buoys (Spotters) off the island of Ta'ū, American Samoa. Spotters are compact and lightweight instruments consisting of a waterproof hull, solar panel array, and electronics package that measures wave movement and tidal fluctuations in real time. Each Spotter will be anchored on the seafloor at a depth of about 66 feet (ft) using a 300-400 pound anchor made from a low-profile design of metal (iron or steel) pieces. A conservative impacted seafloor surface area for each anchor is 9 ft<sup>2</sup>. Buoys will be deployed outside of Faleasao Harbor and Ta'ū Harbor. Initial site surveys by NPSA staff will examine the benthic structure and composition in 49 to 66 ft. of water to select an ideal area for the anchor to minimize impact on benthic assemblages or cultural resources at each site. The boats used for deployment will be typical monohull or catamaran boats with outboard motors (150-300 HP), approximately 18-33 ft. in length.

### **Essential Fish Habitat**

In American Samoa, EFH has been designated in the marine water column from the surface to a depth of 3,280 feet (ft) from the shoreline to the outer boundary of the Exclusive Economic Zone (200 nautical miles), and the seafloor from the shoreline out to a depth of 1,312 ft. These waters and



submerged lands are designated as EFH because they support various life stages for the management unit species (MUS) identified under the Western Pacific Fishery Management Council's Pelagic and the American Samoa Fishery Ecosystem Plan. The MUS and life stages found in these waters include eggs, larvae, juveniles, and adults of Bottomfish MUS and Pelagic MUS. Specific types of habitat considered as EFH include coral reefs, patch reefs, hard substrate, seagrass beds, soft substrate, artificial or man-made structures, lagoon, estuarine, surge zone, deep-slope terraces and pelagic/open ocean.

### *Baseline Condition*

The target areas outside of both harbors have 10 – 50% live coral cover according to PacIOOS Voyager (<https://www.pacioos.hawaii.edu/voyager>). NPSA will conduct a survey of the seafloor using divers to verify that deployment locations minimize impacts to significant natural resources and cultural resources.

### *Adverse Effects*

NMFS anticipates that proposed activities may adversely affect MUS, but will have no more than a minimal impact to EFH. Potential effects include physical damage, increased turbidity, increased risk of pollutants and chemicals in the water column and benthos, and increased risk of invasive species introductions to the project area.

**Physical Damage/Removal (physical stressor):** Anchor placement and diver activity may result in breakage or dislocation (i.e., mortality), or sub-lethal tissue abrasion of corals and benthic habitat components. Corals, which are primarily responsible for the structural complexity of coral reefs, are particularly vulnerable to physical damage because their slow-growing carbonate skeleton is relatively brittle and their polyps are easily damaged. In general, lobate, encrusting, and other massive colony morphologies tend to withstand breakage better than foliose, table, plating, and branching morphologies; more fragile forms tend to have higher growth rates (Rützler 2001). Reduction of topographic complexity in the habitats of the coral reef ecosystem reduces biodiversity and productivity (Alvarez-Filip et al. 2009). Literature reviews (Newell et al. 1998; ICES 2016) suggest that the successional marine community requires at least six to eight months to recover back to initial levels after removal, although broken coral will take many years to regrow if significant biomass is removed (Minton 2013).

**Sedimentation (pollution stressor):** Placement of anchors may cause temporary increases in turbidity. Coral reef organisms are easily smothered by sediment and can experience both physiological and lethal responses to concentrations below 10 milligrams (mg)/cm<sup>2</sup> /day and 10 mg/liter (L) (Tuttle and Donahue 2022). Increased turbidity can cause changes in fish behavior, including altered predator-prey relationships (Higham et al. 2015).

**Chemical Contamination (pollution stressor):** Chemical pollutants may enter the marine environment from dirty equipment or leaks from vessels. Contaminants can have a variety of lethal and sublethal effects on habitat-forming marine organisms, including alteration of growth, interference with reproduction, disruption of metabolic processes, and changes in behavior. These adverse effects can cascade through ecosystems, altering species composition and ecosystem functions and services. Some pollutants are environmentally persistent and can take years or even decades to biodegrade, and others can bioaccumulate or biomagnify through the food chain, eventually posing a direct threat to human health. Contaminant

concentrations in fishes are linked to locations with increased urbanization and military history (Nalley et al. 2021; 2023).

**Invasive Species (biological stressor):** Movement of vessels, divers, and equipment between sites has an increased risk of spreading invasive species, especially if equipment will be brought from outside of American Samoa. Introduced species are organisms that have been moved, intentionally or unintentionally, into areas where they do not naturally occur. Invasive species rapidly increase in abundance to the point that they come to dominate their new environment, creating adverse ecological effects to other species of the ecosystem and the functions and services it may provide (Goldberg and Wilkinson 2004). Invasive species can decrease species diversity, change trophic structure, and diminish physical structure, but adverse effects are highly variable and species-specific.

### **NPSA-proposed BMPs**

NPSA provided lists of BMPs and mitigation measures that, when implemented, will ensure most adverse effects are adequately mitigated.

### **NMFS Concerns**

The NPSA has determined that the proposed in-water action will have no effect on EFH. NMFS is concerned that the proposed action may result in short-term (e.g., sediment resuspension during installation) and long-term (e.g., physical damage if the mooring system breaks and becomes marine debris, chemical contamination, spread of invasive species) adverse effects to water column and habitat-forming EFH.

### **Conservation Recommendation**

NMFS provides the following EFH conservation recommendation pursuant to 50 CFR 600.920 that when implemented—along with the NPSA provided BMPs and mitigation measures—will ensure that potential adverse effects to EFH are avoided and minimized:

*Conservation Recommendation:* Minimize direct impact (direct or indirect contact causing damage) by divers, anchors, and materials with benthic organisms, regardless of size, especially for corals and seagrass. Perform pre-deployment reconnaissance (e.g., divers, drop cameras) to ensure that all anchors will be set on hard or sandy bottom devoid of corals and seagrass and that chosen anchor locations take into consideration damage that could occur from the anchor chain and mooring line if the buoys swing due to currents or tides.

### **Conclusion**

NMFS appreciates the coordination with the NPSA on this proposed mooring installation in Ta'ū, American Samoa. We have provided an EFH conservation recommendation that when implemented—along with the NPSA proposed mitigation measures—will ensure that these potential adverse effects to EFH are avoided and minimized.

Please be advised that regulations (Section 305(b)(4)(B)) to implement the EFH provisions of the Magnuson-Stevens Act require that federal activities agencies provide a written response to this letter within 30 days of its receipt and, a preliminary response is acceptable if more time is needed. The final response must include a description of measures to be required to avoid, mitigate, or offset the adverse effects of the proposed activities. If the response is inconsistent with our EFH conservation

recommendation, an explanation of the reason for not implementing the recommendation must be provided at least 10 days prior to final approval of the activities.

Please do not hesitate to contact me with any comments, questions or to request further technical assistance at [alexandria.barkman@noaa.gov](mailto:alexandria.barkman@noaa.gov) or 808-725-5150.

## References

Alvarez-Filip, L., Dulvy, N.K., Gill, J.A., Côté, I.M. and Watkinson, A.R. 2009. Flattening of Caribbean coral reefs: region-wide declines in architectural complexity. *Proceedings of the Royal Society B: Biological Sciences*, 276(1669), pp.3019-3025.

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On Wed, Dec 13, 2023 at 4:45 PM Alexandria Barkman - NOAA Federal

<[alexandria.barkman@noaa.gov](mailto:alexandria.barkman@noaa.gov)> wrote:

Talofa Eric,

The Habitat Conservation Division has received your request for an EFH consultation for the deployment of two Spotter buoys off the island of Ta'u, American Samoa. I will be your POC for this consultation. I will be in touch if I have questions while I review the project. The consultation has been initiated.

Regards,

Alex

On Tue, Dec 12, 2023 at 1:55 PM 'Brown, Eric K' via \_NMFS PIR ESHESA <[efhesaconsult@noaa.gov](mailto:efhesaconsult@noaa.gov)> wrote:

Talofa ESA/EFH team,

The National Park of American Samoa (NPSA) is planning to deploy 2 Spotter wave buoys off the island of Ta'u, American Samoa early next year. This project is in partnership with the Pacific Islands Ocean Observing System (PacIOOS) operating out of the University of Hawai'i. NPSA is requesting a consultation on the proposed project as the primary federal agency and the lead agency for the deployment of the buoys.

Attached is our consultation request letter and a detailed project description. Once the consultation is complete then the entire package with your ESA and EFH determinations will be submitted to the US Army Corps of Engineers for a nationwide permit application.

Thanks for your time on this matter,  
Eric

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National Park of American Samoa  
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**Alexandria Barkman, PhD.**

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