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Oregon Coastal Planning Goals
Wetland and Riparian Areas



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Wetland Permitting



**Wetland Regulations
Permits
Planning Considerations
For More Information**

December 2003



WETLAND REGULATIONS

Activities that occur in waterways or wetlands have the potential to impact water quality, recreation, navigation and/or fish and wildlife habitat. To protect these uses, state and federal laws require permits for most work in or near waterways and wetlands. Wetland regulations recognize that different activities, by their nature, will have different impacts on aquatic resources.

State Removal-Fill Law

The Oregon Removal-Fill Law (ORS 196.795-990) was enacted to protect the functions and values of the waterways and wetlands in Oregon. The Division of State Lands (DSL) is responsible for implementing the Removal-Fill law.

The Removal-Fill Law requires people who plan to remove or fill material in waters of the state to obtain a permit from the DSL. The goals of the law are to: protect, conserve and make best use of water resources (fish, wildlife & aquatic habitats); protect public navigation, fishery and recreation; ensure that activities of one landowner don't adversely affect another; minimize flood impacts, maintain water quality; and, protect fish & wildlife habitat.

There are different **types of authorizations** available from the DSL.

General Authorization (GA) applies to categories of activities that will have minimal impact and no long-term harm to waters of the State.

GA's cover the following activities: fish habitat enhancement; streambank stabilization; certain transportation-related structures; wetland restoration & enhancement; recreational & small-scale placer mining in essential salmon habitat (ESH) streams; minimal disturbances (less than two cubic yards) in ESH streams; removing & disposing of sediment behind tidegates; and, piling placement or removal.

Individual Removal-Fill Permit applies to projects with potentially significant impacts to aquatic resources. The process is parallel to that of the Corps of Engineers who have the federal regulatory authority. The application form is shared, however, separate approvals are required. Standard and special conditions are applied. Fees apply.

Waters of the State:

natural waterways including bays and estuaries; constantly flowing streams; some intermittent streams; wetlands, lakes, and other bodies of water, including mitigation sites; the Pacific Ocean within 3 miles of shore; and, certain ditches, artificially created wetlands, ponds and channels.

WETLAND REGULATIONS

Federal Regulations

The U.S. Army Corps of Engineers authority to regulate activities in wetlands or waterways is found in two separate federal laws, the Rivers and Harbors Act and the Clean Water Act.

Rivers and Harbors Act (1899), Section 10 regulates activities in or over "navigable waters" of the United States. Approval is required prior to any work in or over navigable waters or which affects the course, location, condition or capacity of those waters. The regulatory limit for non-tidal waters is the "ordinary high water mark", for tidal waters it is the high tide line.

Clean Water Act (1972), Section 404 regulates the placement of fill and the discharges of dredged material into all waters of the United States (including all wetlands). The regulatory limit for non-tidal waters is the "ordinary high water mark", for tidal waters it is the "mean high water" mark.

Various types of permits are available from the Corps of Engineers.

General Permits are "pre-issued" nationwide or regional permits that have been issued by the Corps for categories of activities that will have no more than a minimal effect on the environment. Applicants may be required to obtain verification from the Corps that their project is authorized under a general permit.

Individual Permits are issued as either *Letter of Permission* or a *Standard Individual Permit*. A *Letter of Permission* is used to authorize very small projects that are completely within navigable waters of the United States. *Standard Individual Permits* are the most common permit sought from the Corps. These permits are issued following a full public interest review, coordination with federal, state and local resource agencies, and Tribes.

Permit applications are available for download at:

The Corps website: www.nwp.usace.army.mil/op/g/

The DSL website: www.oregonstatelands.us/appformlink.htm

If you are unsure of which type of authorization is required or have other permit related questions, contact the Portland District Corps of Engineers, Regulatory Branch and/or the Division of State Lands at the address or number provided in the *For More Information* section at the end of the brochure.

Individuals are encouraged to contact the Division of State Lands prior to submitting an application.

PERMITS

DSL - Removal/Fill Permit

Activity: removing, filling, or ground alteration

Location: wetland or waterway; state scenic waterway; essential salmon habitat (ESH)

Volume: 50 cubic yards or more, except for essential salmon habitat streams where any fill or removal requires a permit. Most streams in Clatsop County are ESH.

Corps of Engineers - Section 10 Rivers and Harbors Act Permit

Activity: in-water work (e.g. dredging, filling, excavating); construction (docks, piers, wharves, floats, marinas, jetties), intake/outtake pipes, pilings, bulkheads, ramps, etc.

Location: in or over navigable waters of the United States

Volume: any volume

Corps of Engineers - Clean Water Act Section 404 Permit

Activity: all filling activities, utility lines, outfall structures, road crossings, beach nourishment, riprap, jetties, excavation, dredging, dredged material disposal, etc.

Location: all waters of the United States (including all wetlands)

Volume: any volume

Local Jurisdiction

Check with your local jurisdiction for any additional permitting requirements.

Application Process

The Oregon Division of State Lands (DSL), and the US Army Corps of Engineers (Corps) administer the permit programs designed to protect the waters within Oregon. The form is a **Joint Permit Application Form** but is NOT a joint authorization. A copy of the application must be sent to each agency. A separate permit must be obtained from the Corps and the DSL.

Some permits require that projects receive a 401 water quality certification from the Department of Environmental Quality (DEQ) before the Corps can issue the permit. The Department of Land Conservation & Development (DLCD) will review federal permits for coastal zone management consistency. The Corps will consult with these agencies during the Corps permit review process.

The National Oceanic and Atmospheric Administration (NOAA) Fisheries and/or the U.S. Fish and Wildlife Service will provide consultation, at the request of the Corps, if the project has the potential to impact any federally listed endangered species. Endangered Species Act consultation can be either formal or informal depending on project scope.

State of Oregon requires an application fee for all projects, except those projects qualifying for a General Authorization. This fee is due up front and does not guarantee a permit approval. The Corps of Engineers requires a fee upon issuance of the permit.

PLANNING CONSIDERATIONS

In-Water Work Guidelines

Activities that occur in the water can have adverse effects on the water body's ecosystem. In-water work periods were established to minimize the impacts to important fish, wildlife and habitat resources. Specifically, the guidelines were established to avoid the vulnerable life stages of fish and wildlife, including migration, rearing and spawning. **Local in-water work periods** provide time frames during which in-water work can be completed and are as follows:

Columbia River

Columbia River Estuary (Mouth to Tongue Point)

Youngs River

Young's Bay Tributaries

Wallooskee River

Other Tributaries (mouth to Tongue Point)

Nov 1 – Feb 28
July 15 – Sept 30
July 1 – Sept 15
June 1 – Sept 30
July 1 – Sept 15

Necanicum River

Necanicum River and Tributaries

Necanicum and Neawanna Estuary (to head of tide)

July 1 – Sept 15
Nov 1 – Feb 15

Ecola Creek

Ecola Creek and Tributaries

July 1 – Sept 15

Other

Other North Coastal Tributaries (Columbia – Nehalem)

Coastal Lakes

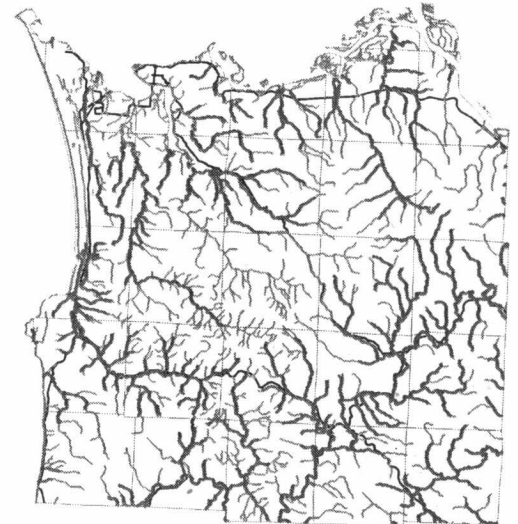
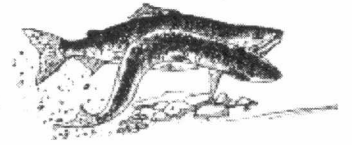
Coastal Lake Tributaries

July 1 – Sept 15
Oct 1 – Feb 15

July 1 –
Sept 15

Essential Salmon Habitat

Essential salmonid habitat (ESH) is the habitat necessary to prevent the depletion of native salmon species during spawning and rearing. The designation applies to species that have been listed as Sensitive, Threatened or Endangered by a state or federal authority. A majority of the streams in Clatsop County have been designated as ESH (see map).



PLANNING CONSIDERATIONS

When a project will impact a wetland the DSL and the Corps require that an applicant demonstrate that the proposed impact is the least necessary to allow the project. This can be done by avoiding the impact, minimizing the impact, rectifying temporary impacts, reducing the impact over time, or compensating (mitigating) for the impact.

Wetland Mitigation

When wetland impacts cannot be avoided or minimized, replacement of lost wetland functions is required. This is referred to as “compensatory mitigation”. Compensatory mitigation is required as a condition of any state and federal permit to place fill or to excavate in a wetland.

For projects impacting less than 0.2 acres of wetlands, “indirect” mitigation may be used. Indirect options include:

1. Mitigation Bank

A mitigation bank is a large wetland mitigation project that has been constructed to compensate for future wetland impacts. “Credits” can be purchased from a mitigation bank.

2. Payment-to-provide

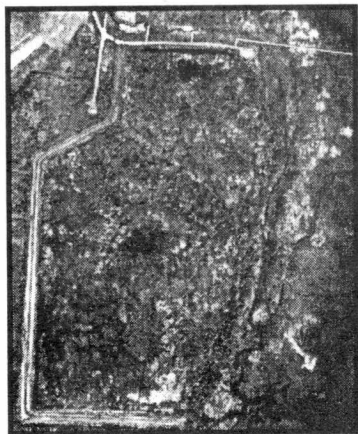
Applicant makes payment to DSL for future wetland project funding

3. Conservation-in-lieu

In very limited cases, the conservation of a rare wetland type can be used as mitigation.

For projects impacting 0.2 acres or more, “direct” mitigation must first be considered. Direct options, and their prescribed ratios, are:

1. Creation—1.5 acre mitigation : 1 acre impact
2. Restoration—1 acre mitigation : 1 acre impact
3. Enhancement—3 acres mitigation : 1 acre impact



Direct mitigation sites within one mile and within the same sub-basin as the impacted site are strongly preferred. Direct mitigation must demonstrate replacement of the wetland functions lost at the impacted site.

For permit applications requiring direct mitigation, a compensatory wetland mitigation plan and mitigation form must accompany permit applications that include the removal or fill of material in a wetland.

Aerial view of the Port of Astoria Airport Wetland Mitigation Bank in Youngs Bay. The mitigation bank was created in 1989 by breaching the east dike and building a new setback dike to restore estuarine wetland habitat.

FOR MORE INFORMATION

Sources of Information

Your local jurisdiction’s Planning Department (Clatsop County, Astoria, Cannon Beach, Gearhart, Seaside, Warrenton) is a good source of information.

Clean Water Act, 1972 www.epa.gov/r5water/cwa.htm

Oregon Department of Fish and Wildlife. June 2000. *Oregon Guidelines for Timing of In-water Work to Protect Fish and Wildlife Resources*.

Oregon Division of State Lands. *Planning to Work in wetlands or waterways?*

Oregon Division of State Lands. Essential Salmon Habitat.
<http://statelands.dsl.state.or.us/esshabitat.htm>

Oregon Division of State Lands. Wetland Mitigation form.
www.oregonstatelands.us/wetland_mit.htm

U.S. Army Corps of Engineers. Mitigation Banking Program.
www.nwp.usace.army.mil/op/g/regs/mit_bank.htm

U.S. Army Corps of Engineers. Portland District Regulatory Program.
www.nwp.usace.army.mil/op/g/

Contacts

Dept. of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
www.deq.state.or.us

Division of State Lands
775 Summer Street, NE, Suite 100
Salem, OR 97301
(503) 378-3805
www.oregonstatelands.us

Dept. of Land Conservation & Development
635 Capitol Street, NE
Suite 200
Salem, OR 97301
(503) 373-0050
www.lcd.state.or.us

NOAA Fisheries, Regional Office
7600 Sand Point Way, NE
Seattle, WA 98115-0070
(206) 526-6150
www.nwr.noaa.gov

U.S. Army Corps of Engineers
Portland District, Regulatory Branch
P.O. Box 2946
Portland, OR 97208-2946
(503) 808-4373
www.nwp.usace.army.mil