

Division 89

ADMINISTRATIVE RULES GOVERNING THE ISSUANCE AND ENFORCEMENT OF GENERAL AUTHORIZATIONS WITHIN WATERS OF THIS STATE

141-089-0620

General

- (1) Special Headings and Fonts. Where headings, special fonts or double-spacing are used, they are for the convenience of the user only and have no substantive effect.
- (2) Applicability of OAR 141-085. Unless otherwise specified under OAR 141-089, the provisions of OAR 141-085 apply to General Authorizations.
- (3) Previous [GAs-General Authorizations](#) Repealed. OAR 141-089-0095 through 141-089-0615 were repealed on March 1, 2011.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0625

General Authorizations (GA); Process for Establishing; Standards and Criteria

- (1) Waiver of Permit Requirements. An individual removal-fill permit, [general permit, or permit waiver](#) may not be necessary if a proposed activity meets the requirements of a General Authorization (GA). Any person proposing to conduct a removal-fill activity under a GA must first notify the Department in writing and pay any applicable fee to the Department.
- (2) Establishment. General Authorizations are adopted, amended and repealed as administrative rules in accordance with the Administrative Procedure Act (ORS 183.310 through 183.550). A General Authorization may be granted on a statewide or other geographic basis.
- (3) Criteria for Adoption. The Department may adopt a GA based upon a finding that the category of activities of removal-fill:
 - (a) Are substantially similar in nature;
 - (b) Would cause only minimal individual and cumulative environmental impacts; and
 - (c) Would not result in long-term harm to the water resources of this state.
- (4) Department Findings. These General Authorizations are made pursuant to ORS 196.850 and are based upon the determination that the authorized activities are similar in nature and when conducted in accordance with these rules, will cause no more than minimal individual and cumulative environmental effects, and will not result in long-term harm to water resources of the state.

(5) Amend or Rescind. The Department may amend or rescind any GA, through rulemaking, upon a determination that the removal-fill activity conducted under the General Authorization has resulted in or would result in more than minimal adverse effect or long-term harm to the water resources of this state. Any person may request the Department apply this provision. Such a request must include the specific General Authorization to be rescinded or amended and the reasons for the request.

(6) ~~Expiration Review~~ of General Authorizations. The Department will conduct a review of the GAs ~~every five years from the date of the last Division OAR 141-089 rule amendment adoption, on or before March 1, 2016.~~ The review will include public notice and opportunity for public hearing. At the completion of its review, the Department will decide whether to modify, reissue, or rescind the GAs.

Commented [JK*D1]: To align rule with statute.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0630

Project Applicability

(1) Applicability. This rule sets forth conditions under which a person may, without an individual removal-fill permit or general permit from the Department, place or remove material within waters of this state, as defined in OAR 141-085, for the purposes set forth in each GA. This rule does not apply to activities proposed within areas designated as:

(a) A State Scenic Waterway, as defined by OAR 141-100;

(b) Portland Harbor Superfund Site, defined for the purposes of this rule as the Willamette River between river miles 1.9 and 11.8, or

(c) An Aquatic Resource of Special Concern, unless the activity is for habitat ~~restoration-improvement~~ purposes. Aquatic Resources of Special Concern include alkali wetlands and lakes, bogs, cold water habitat, fens, hot springs, interdunal wetlands, kelp beds, mature forested wetlands, native eelgrass beds, off-channel habitats (alcoves and side channels), ultramafic soil wetlands, vernal pools, wet prairies, wooded tidal wetlands, and others, as determined by the Department.

Commented [JK*D2]: Recommendation from DOJ. Given DSL's risk position as owner of bed and banks at Portland Harbor superfund site, DOJ and USEPA do not want removal-fill activity within the superfund site without specific "hold harmless" agreement and with the expressed written approval of DSL (i.e., no automatic approvals if we do not respond to a GA Notice within 30 days).

(2) Department Determination of Eligibility. To be eligible for a GA, a project must comply with the general conditions described in OAR 141-089-0650 as well as individual GA purpose, eligibility, authorized activities, and activity-specific conditions. In the event a dispute arises concerning or about the applicability of a general authorization to any project notification, the Department will make the final determination.

(3) Thresholds and Best Management Practices (BMPs). BMPs necessary to comply with the general conditions are not included in the thresholds under each general authorization.

(4) Project with More Than Minimal Impacts. The Department may require an individual removal-fill permit or general permit for a project that would otherwise be authorized by a general authorization, if

the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an application for an individual removal-fill permit or general permit if requested to do so by the Oregon Department of Fish and Wildlife (ODFW), the Oregon Department of Environmental Quality (DEQ), or the affected local land use planning department.

(5) Combining Activities. ~~Any General Authorization may be combined with a Notification for Exempt Voluntary Habitat Restoration Activities as described and conditioned in OAR 141-085-0534.~~

~~The following~~Any General Authorizations may be combined to cover a single project when the combined activities result in no more than minimal impacts, excepting the Minimal Disturbance ~~Within ESH GA (OAR 141-089-0660, et seq.), which may only be combined with the Temporary Impacts to Wetland and Waterways for Certain Activities GA (OAR 141-089-0700, et seq.).~~

~~(a) Waterway Habitat Restoration;~~

~~(b) Wetland Ecosystem Restoration;~~

~~Waterway Bank Stabilization;~~

~~(d) Piling Placement and Removal;~~

~~(e) Certain Transportation Related Activities in ESH; and~~

~~(f) Temporary Impacts to Non-Tidal Wetlands and Waterways.~~

(6) Entire Project. Projects eligible for GAs must rely solely on GAs for their authorization. GAs may not be combined with any other form of removal-fill authorization, either Individual Permits or authorizations under General Permits.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 2-2019, amend filed 03/28/2019, effective 04/01/2019

DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0635

Fees; Disposition of Fees

(1) Fees. For removal-fill volumes that equal or exceed 50 cubic yards, a flat fee of \$250.00 will be assessed and must be submitted with the notification for the following GAs:

~~(a) Certain Transportation Related Activities in ESH;~~

~~(b) Temporary Impacts to Non-Tidal Wetlands and Waterways for Certain Activities; and,~~

~~(c) Piling Certain Over-Water Structures Placement or Removal in ESH; and~~

~~(d) Removing and Disposing of Sediment Behind Tidegates and Within Hydraulically Closed Perimeters.~~

Commented [JK*D3]: In Div. 85, there are a number of removal-fill exemptions for certain voluntary habitat restoration activities (e.g., removal of trash). This clause would allow combining a voluntary habitat restoration activity with a GA-eligible activity into one project/authorization.

Commented [JK*D4]: Current rule significantly restricts which GAs can be combined to authorize a single project. This revised language broadens the allowance to combine (or stack) multiple GAs to cover one project - as long as the combined effects remain "no more than minimal".

The only GA that we now propose cannot be stacked is the "minimal disturbance" GA since the whole point of that GA is to limit qualifying activities to very small (i.e., 4 cy) volumes.

Commented [JK*D5]: Proposing to delete since we are proposing to do away with the "Transportation" GA.

Commented [JK*D6]: Proposing to delete since we are proposing to do away with the "Sediment Behind Tidegates" GA.

(2) Fees for Project with Combined GAs. For a project which combines multiple GAs under OAR 141-089-0630 and for which a fee is required for more than one of the GAs according to [OAR 141-089-0635\(1\)](#), a flat fee of \$250.00 will be required for the project.

(3) Fees Deposited in the Common School Fund. The Department will credit any fee collected under this section to the Common School Fund for use by the Department in administration of ORS 196.600 through 196.905.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0640

Pre-Construction Notification

Except as provided in OAR 141-089-0820 to 141-089-0835:

(1) Project Notification Required. A complete project notification must be submitted to the Department at least 30 calendar days before starting the project. A complete notification is one that contains all the information required on the form provided by the Department and all required attachments. A complete notification additionally includes:

(a) A copy of fish passage plan authorization or no jurisdiction determination from ODFW, except for the following General Authorization activities:

(A) Minimal Disturbance ~~W~~within ESH: Investigative drilling; scientific measuring devices if not channel spanning; survey for historical resources.

(B) Certain Over-Water Structures Placement and Removal ~~W~~within ESH: Derelict piling removal.

(C) Temporary Impacts to Wetlands and Waterways for Certain Activities: Temporary impacts to wetlands that are above ordinary high water line or highest measured tide line; temporary placement of spud piles.

(D) Waterway Bank Stabilization Using Bio-~~E~~ngineering: Bank terracing, sloping, and re-shaping; placement of large wood that is not a channel-spanning sill.

(E) Waterway Habitat Improvement: Engineered log jams.

(F) Wetland Ecosystem Improvement: Vegetation management; microtopography establishment; macrotopography establishment above the 100-year floodplain; removal of materials above ordinary high water line or highest measured tide line; low earthen berms and spillways above the 100-year floodplain; placement of exclusion fencing; maintenance and reconstruction of wetland ecosystem improvement structures above the 100-year floodplain.

(b) Documentation of fish screen approval or other documentation from ODFW for proposed projects including installation, maintenance or replacement of fish screening structures under the Waterway

Commented [JK*D7]: Most projects qualifying for a GA will also need fish passage approval from ODFW. **Problem:** If a person gets their GA approval from DSL first then goes to ODFW for fish passage approval and the project requires changes to become fish passage compliant, the person must then come back to DSL and get a new GA review and authorization. To avoid that, we think it best for persons to get fish passage approval first then come to DSL for their GA.

DSL staff worked with ODFW fish passage staff to identify a list of GA activities (listed in rule here) that would not need fish passage review & approval and so could skip that step.

Habitat Improvement GA (OAR 141-089-0780, et seq.) and for maintenance and reconstruction of water intake structures under the Minimal Disturbance ~~W~~within ESH GA (OAR 141089-0660, et seq.).

(2) A Notification not including items in subsections (1)(a) or (1)(b) ~~above~~, when required, will be returned to the submitting party without further review by the Department ~~DSL~~.

(32) Review of the Notification. Within 30 calendar days of receipt, the Department will review the notification for completeness and eligibility, make one of the following determinations and notify the responsible party that:

(a) The notification is complete and the project is eligible under the GA;

(b) The notification is incomplete and the person must supply certain specified missing, inaccurate or insufficient information. The person may amend and resubmit the notification within 120 calendar days of the notice for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended notification starts a new 30-day review period; or

(c) The project is ineligible for certain specified reasons. The person may then either revise the project and submit for reconsideration within 120 days of the notification or apply for any other type of removal-fill authorization that for which the project may qualify for an individual permit under OAR 141-085. Submission of an amended notification commences a new 30-day review period.

(43) Timeframe for Resubmittal of Incomplete or Ineligible Notifications. If a revised notification or application is not resubmitted within 120 calendar days of an incompleteness or ineligible determination, the Department will presume that the responsible party does not intend to provide revisions to the notification and may administratively close the file. If the Department closes the file under these circumstances, the Department will retain the application fee. If the Department receives a subsequent notification or application for the same or similar project after a file has been closed, the responsible party must pay any applicable fees for the new notification at time of submission.

(54) Project Implementation. The person submitting the notification may begin the project assume removal-fill authorization:

(a) Immediately upon receipt of a determination by the Department under OAR 141-089-0640(23)(a) that the project is eligible; or

(b) Thirty (30) calendar days after Department received the ~~notification, unless~~ notification unless the Department issued a determination under OAR 141-089-0640(32)(b) or (c). This does not preclude authorization requirements from other local, state, or federal agencies for the proposed activity.

(65) Revisions to a Notification. A person with an unexpired, eligible notification may request, and the Department may approve, revisions to the notification. Upon submittal of a revised notification, the Department will review and make a new eligibility determination using the process described in OAR 141-089-0640(3). Revisions may be subject to additional fish passage review by ODFW.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14

Commented [JK*D8]: Fish screens approval from ODFW is always a requirement. We are just making it explicit here and following the same logic used for fish passage approval (i.e., get it BEFORE applying to DSL) so that you don't get caught in a "do" loop.

Commented [JK*D9]: Just to emphasize the importance of getting your fish passage or fish screen review done BEFORE applying to DSL.

Commented [JK*D10]: Since DSL only governs removal-fill authorizations, that's all we can say here. We don't have authority to tell applicant that they can start their project.

Commented [JK*D11]: Just to be clear that DSL may not be your only permitting need.

Commented [JK*D12]: This simply allows DSL to keep the same record # for the project and not have multiple records for the same activity.

DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0645

Expiration of Project Eligibility

Except as provided in OAR 141-089-0820 to 141-089-0835:

- (1) A notification confirmed as eligible under a GA will be valid for three years or until the project is complete, whichever occurs first; and
- (2) Requests for renewals or extensions will not be granted.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0650

General Conditions

The following conditions apply to all ~~G~~eneral ~~A~~uthorizations, unless otherwise specified in a specific GA or an authorization issued under a GA:

- (1) Responsible Party. The person listed on the notification as the responsible party is responsible for the activities of all contractors or other operators involved in project work covered by the GA.
- (2) Copy of Approved Notification Available for Inspection. A copy of the notification approved by the Department must be available at the work site whenever noticed activities are being conducted.

~~(3) Local Government Approval Required Before Beginning Work. Prior to the start of work, the responsible party must obtain local government land use approval, where applicable.~~

~~(4) Lower Willamette River Management Plan (LWRMP or Plan; OAR 141-080) Consistency. For proposed projects within the purview of the LWRMP, the project must comply with the LWRMP without the need for a minor exception (unless pre-approved by the Director) or major exception as described in the Plan.~~

~~(5) Site Access Required. Employees of the Department and all authorized representatives must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under a notification.~~

~~(4) Archeological Resources. If any archeological sites, resources or artifacts are discovered during construction, work must immediately cease and the State Historic Preservation Office must be contacted.~~

Commented [JK*D13]: DSL includes this condition in every other form of permit we issue so adding it here for consistency. It also keeps DSL compliant with our State Agency Coordination Plan.

Commented [JK*D14]: Any form of DSL authorization within the lower Willamette River must be compliant with the "LWRMP". This language makes that clear/transparent.

Commented [JK*D15]: Relocated and expanded upon as paragraph (11).

~~(5) ODFW Fish Passage Requirement. The activity must meet Oregon Department of Fish and Wildlife requirements for fish passage before the project is started (ORS 509.580 through 509.901 and OAR 635-412-0005 through 635-412-0040).~~

Commented [JK*D16]: Relocated as paragraph (16).

(6) Hazards to Recreation, Navigation, and Fishing. The activity must be timed so as not to interfere with or create a hazard to recreational and commercial navigation and fishing.

(7) Work Period in Jurisdictional Areas. Fill or removal activities below the ~~o~~Ordinary ~~h~~High ~~w~~Water line ~~Line or highest measured tide line~~ must be conducted ~~when recommended by ODFW~~ consistent with ~~“Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources, Oregon Department of Fish and Wildlife, April 2023”, and as may be revised,~~ unless otherwise coordinated with ~~ODFW Oregon Department of Fish and Wildlife~~ and approved in writing by ~~the Department~~DSL. Work is prohibited when fish eggs are present within the reach where activities are being conducted.

Commented [RAC217]: Revisiting: using terms "ordinary high water line" and "highest measured tide line."

Edit made throughout document.

Commented [JK*D18]: This is DSL's jurisdictional limit in tidal waters.

Commented [JK*D19]: No substantive change, just adding correct citation for the Guidelines.

(8) Pre-~~C~~onstruction Resource Area Fencing or Flagging. Prior to any site grading, the boundaries of any avoided wetlands, waterways, and riparian areas adjacent to the project site must be surrounded by noticeable construction fencing or flagging. There must be no vegetation removal or heavy equipment within marked areas. The marked areas must be maintained during construction of the project and be removed immediately upon project completion.

(9) Erosion Control Methods. The following erosion control measures must be installed at the construction site prior to construction and maintained during and after construction to prevent erosion and minimize movement of soil into waters of this state:

(a) All exposed soils must be stabilized during and after construction in order to prevent erosion and sedimentation;

(b) Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures must be used to prevent movement of soil into waterways and wetlands;

(c) To prevent erosion, use of compost berms, impervious materials, or other equally effective methods, must be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours;

(d) Unless part of the permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by ~~the Department~~DSL. At project completion, disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control if native vegetation is unavailable. If soils are to remain exposed for more than seven days after completion of the permitted work, they must be covered with erosion control pads, mats, or similar erosion control devices until vegetative stabilization is installed;

(e) Where vegetation is used for erosion control on slopes steeper than 2:1, tackified seed mulch must be used so the seed does not wash away before germination and rooting;

(f) Dredged or other excavated material must be placed on upland areas having stable slopes and must be prevented from eroding back into waterways and wetlands;

(g) Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized; and

(h) All erosion control structures must be removed when the project is complete and soils ~~are~~ stabilized and vegetated. If necessary, removal of erosion control structures may be performed after expiration of the GA eligibility verification.

(10) Hazardous, Toxic, and Waste Material Handling. Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, wood treated with leachable preservatives or other deleterious waste materials must not be allowed to enter waters of this state. Machinery refueling is to occur at least 150 feet from waters of this state and confined in a designated area to prevent spillage into waters of this state. Barges must have a containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.

(11) Archaeological Resources. If any archaeological resources, artifacts or human remains are encountered during construction, all construction activity must immediately cease, and the State Historic Preservation Office must be contacted. Authorization holders may be contacted by a Tribal representative if it is determined by an affected Tribe that the project could affect Tribal cultural or archeological resources.

(12) Construction Corridor. There must be no removal of vegetation or heavy equipment operating or traversing outside the designated construction corridor or footprint.

~~(13)~~ Raising or Redirecting Water. The project must not cause water to rise or be redirected and result in damage to structures or property.

~~(14)~~ Waste Disposal. Old piling, spoil material, and other waste material discarded by the project must be disposed of in an appropriate disposal facility. There must be no temporary storage of piling, spoils, or other waste material below top of bank, in any wetland, Federal Emergency Management Administration designated floodway, or an area historically subject to landslides. For the purposes of this general condition, "spoil material" means any material displaced by construction (e.g., soil, sand, gravel, etc.) and is not intended to be re-incorporated into the project.

~~(13) DSL May Halt or Modify. DSL retains the authority to temporarily halt or modify the project in case of unforeseen damage to natural resources.~~

(15) Operation of Equipment in the Water. Heavy equipment may be positioned on or traverse the area below ordinary high water line or highest measured tide line only when the area is free of flowing or standing water or if the area is isolated from the waterway and aquatic organism salvage is completed. For the purposes of this general condition, "aquatic organism" means all fish species (including lamprey), freshwater mussels, clams and crayfish; and any other species as may be identified in a Rescue/Salvage Permit.

All machinery operated below ordinary high water line (OHW) or highest measured tide (HMT) line must use vegetable-based hydraulic fluids, be steam cleaned and inspected for leaks prior to each use, and be diapered to prevent leakage of fuels, oils, or other fluids below ordinary high water line OHW or highest

Commented [JK*D20]: Staff recommendation as a result of our annual monitoring program. Not uncommon for a GA to expire before a person has a chance to remove the erosion control structures (e.g, silt fences). Technically, if the authorization is expired then they cannot do that "removal". This fixes that.

Commented [JK*D21]: Language updated to make consistent with the condition as it appears in every other form of removal-fill authorization.

Commented [JK*D22]: This condition is in every other form of removal-fill authorization. Adding here to make consistent.

Commented [JK*D23]: Moved to paragraph (18).

measured tide HMT line. Any equipment found to be leaking fluids must be immediately removed from and kept out of OHW or HMT above the ordinary high water line or highest measured tide elevation line until repaired.

Commented [JK*D24]: This condition is in every other form of removal-fill authorization. Adding here to make consistent.

(14) Work Area Isolation. The work area must be isolated from the water during construction. All structures and materials used to isolate the work area must be removed immediately following construction and water flow returned to pre-construction conditions. Fish must be salvaged from the isolation area. Permits from NOAA Fisheries and Oregon Department of Fish and Wildlife, Fish Research are required to salvage fish.

Commented [JK*D25]: This condition was moved to the "Temporary Impacts" GA since work area isolation (e.g., coffer dam) is a temporary impact and thus can only be done with a Temporary Impact GA.

All fish must be salvaged from the isolated area in accordance with Oregon Department of Fish and Wildlife requirements.

(16) Fish Passage Required. The project must meet ODFW requirements for fish passage, as required in ORS 509.585.

Commented [JK*D26]: Relocated from paragraph (5)

(15) Spoil Disposal. Spoil materials, not used in the project, must be placed in an upland location. Spoil materials used in the project must be included in the cumulative removal fill calculation for the activity.

Commented [JK*D27]: Incorporated into paragraph (14)

(15) Trenching in Wetlands. If trenching or excavation in wetlands are proposed, the top layer of soil must be separated from the rest of the excavated material and put back on top when the trench or pit is back filled. If the native underlying soils are not used as bedding material and a coarser, non-native soil or other material is used, preventative measures such as clay or concrete plugs must be used so that underground hydraulic piping does not dewater the site and adjacent wetlands.

Commented [JK*D28]: Trenching in wetlands is a temporary impact, therefore, this condition was moved to the "Temporary Impact" GA.

(17) Temporary Ground Disturbances. All temporarily disturbed areas must be returned to original ground contours, seeded, and planted upon project completion or before expiration of the eligibility verification, whichever comes first. Unless otherwise approved by the Department, all temporarily disturbed areas must be returned to original ground contours and seeded upon completion of ground disturbing actions, and planted with woody vegetation, as appropriate, by February/March of the year following construction.

Commented [JK*D29]: This condition is in every other form of removal-fill authorization. Adding here to make consistent.

(1318) DSL May Halt or Modify. DSL retains the authority to temporarily halt or modify the project in case of unforeseen damage to natural resources.

Commented [JK*D30]: Moved from paragraph (13)

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0655 Enforcement

Failure to adhere to the terms of any [eG](#)General [aA](#)Authorization when performing activities authorized under this division, is a violation of the Removal-Fill Law and may be subject to appropriate enforcement in accordance with OAR 141-085.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0656
Authorization Decision Appeals

A person whose project is determined by the Department to be ineligible for a ~~g~~General ~~a~~Authorization may appeal the Department's decision according to OAR 141-085-0575(1), (5) through (10) and 141-085-0580.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0660
Minimal Disturbance ~~W~~within ESH -- Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit, ~~general permit, or permit waiver~~ from the Department, fill, remove or move small quantities of material for certain activities within waters of this state designated Essential Indigenous Anadromous Salmonid Habitat (ESH). ~~Temporary impacts to wetlands or waterways associated with these activities may be authorized by combining this General Authorization with the Temporary Impacts to Wetlands and Waterways for Certain Activities GA (OAR 141-089-700, et seq.).~~

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 1-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

Commented [JK*D31]: New provision - not in current rule. If you need to temporarily impact a wetland to get to your minimal disturbance site, then you can "stack" or combine the Minimal Disturbance GA with a Temporary Impact GA to get "complete" authorization.

141-089-0665
Minimal Disturbance ~~W~~within ESH - Eligibility Requirements

Activities are limited to ~~four cubic yards of removal and fill at any individual site and, cumulatively, not more than 10 cubic yards of removal and fill~~ the five authorized activities described in [OAR 141-089-0670](#) within ~~a~~ designated ESH waterstream for the entire project.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:

Commented [JK*D32]: Deleted because different activities are now proposed to have different allowed volumes. See below.

DSL 2-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0670

Minimal Disturbance ~~W~~within ESH - Authorized Activities

~~Eligible projects~~ Authorized activities are limited to the following:

(1) Investigative Drilling and Sampling. ~~Not more than ten cubic yards of r~~Removal and fill (combined) for investigative drilling and sampling to gather necessary technical data for designing structures or characterizing sediments.

(2) Scientific Measurement. ~~Not more than four cubic yards of removal and fill (combined) at any individual site and, cumulatively, not more than 10 cubic yards of removal plus fill for the i~~Installation, removal, construction, and maintenance of scientific measurement devices, such as staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar structures, whose purpose is to measure and record scientific data.

(3) Surveys. ~~Not more than four cubic yards of removal and fill (combined) at any individual site and, cumulatively, not more than 10 cubic yards of removal plus fill~~ Removal and fill for surveys conducted for historical resources.

~~(4) Maintenance of Water Intake and Outfall Structures. Removal and fill activity necessary to maintain serviceability of existing water intake and outfall structures.~~ (4) Maintenance and Reconstruction of In-Water Structures. Not more than ten cubic yards of removal and fill (combined) necessary to maintain or reconstruct the serviceability of existing man-made structures below ordinary high water line or highest measured tide line and not otherwise exempted by OAR 141-085-0530.

~~(5) Beaver Pond Levelers and Exclusion Devices. Unless otherwise approved by the Department, n~~Not more than ~~four~~two cubic yards of removal and fill (combined) at any individual site and, cumulatively, not more than ~~10~~five cubic yards of removal plus fill, ~~for fence and pipe devices to control beaver pond water elevation or exclude beaver damming activity in or adjacent to culverts.~~

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 3-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0675

Minimal Disturbance ~~W~~within ESH - Activity-Specific Conditions

~~(1) General Conditions Apply. Projects eligible for this General Authorization must adhere to the General Conditions listed under OAR 141-089-0650.~~

Commented [JK*D33]: Current rule allows 4 cy per site and 10 cy cumulatively. Increase recommended by DSL staff and Hatfield Fellow considering: 1) the distinction between a "site" and "cumulatively" is often vague; and 2) the very small footprint and ephemeral nature of drilling activity.

Commented [JK*D34]: No change from current rule per DSL staff recommendation. DSL does not typically see scientific measurement devices that exceed the current limitation.

Commented [JK*D35]: No change from current rule per DSL staff recommendation. Historical resource surveys are typically very small volume activities. Larger sites/digs would warrant additional review and conditioning than what is possible thru a GA.

Commented [JK*D36]: Proposed expansion of this activity to include not just intake and outfall structures, but any man-made structure below high water line. Recommended by DSL staff since the limitation to just intakes/outfalls is not justifiable from an effects perspective. Volume was recommended by staff if additionally conditioned (see below).

Commented [RAC 337]: Rec from ODFW to reduce cubic yards.

CG - reduced amount may not be sufficient.

LP and BC - limiting may reduce # of landowners that use this.

**Might need to revisit in Mtg 4.

Commented [JK*D38]: This activity is proposed to be added to incentivize a means to manage beaver dam building (and pond water levels) without tearing out active dams and without need for Individual Permit. Discussions with practitioners indicates only a very small fill volume would be required for pipe, small anchor, fencing.

Projects eligible for this GA must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Maintenance and reconstruction activities are conditioned as follows:

(a) "Maintenance" has the same meaning described in OAR 141-085-0510 (57);

(b) "Reconstruction" has the same meaning described in OAR 141-085-0510 (87);

(c) The structure was serviceable within the last five years; and,

(d) The maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(2) Scientific Measurement. All scientific measurement devices, including all associated structures and fills including anchoring devices, buoys, and cables, must be removed within 30 days after the research is completed. Where necessary, removal of devices may occur after expiration of a notification pursuant to OAR 141-089-0640 without further authorization requirement.

(3) Surveys. The responsible party must isolate a. All in-stream exploratory trenching/excavation must be isolated from the active channel.

(4) Maintenance of Water Intakes. The responsible party must implement measures necessary to prevent streambed gradient alterations and streambank erosion.

(5) Investigative Drilling and Sampling. The responsible party must use existing roads, paths and drilling pads must be used where available. Temporary placement of mats is allowed to provide site access. Temporary mats must be removed upon completion of the authorized work. Drill holes must be re-filled in accordance with Oregon Water Resources Department requirements.

(6) Maintenance and Reconstruction of In-Water Structures. Notwithstanding the definition of "reconstruction" in OAR 141-085-0510, reconstruction does not need to be in-kind if the existing structure contains deleterious materials (e.g., concrete, metals, plastics, angular rock) that will be removed and reconstructed with environmentally preferable materials (e.g., untreated wood, gravel, boulders).

(7) Beaver Pond Levelers and Exclusion Devices. At such time that device(s) are no longer required due to beaver abandonment or removal, or the adverse effects of damming activity have otherwise been resolved, the device(s) must be removed from the waterway with no further authorization required by the Department. Activities may include placement of water level and flow control devices, wire fences, grates, guards, stakes, pipes, anchors to control beaver pond water elevation or exclude dam building activity in or adjacent to culverts.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 4-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12

DSL 2-2011, f. & cert. ef. 3-1-11

Commented [JK*D39]: Format and clarity improvement.

Commented [JK*D40]: These are the same conditions as for the exemption for maintaining "water control devices" in Div. 85 (141-085-0530(4)) and would be made applicable to any maintenance of a man-made in-water structure.

Commented [JK*D41]: Addresses the problem when device data are still needed at/after GA expiration and thus having to get a new authorization to simply remove the device later.

Commented [JK*D42]: Improved grammar.

Commented [JK*D43]: Deleted since activity is proposed to be expanded beyond just water intakes and is conditioned under (1) above.

Commented [JK*D44]: Just to make the connection to OWRD requirements, when applicable.

Commented [JK*D45]: "Reconstruction" by Div. 85 definition means "in-kind". But here, we don't want to insist on in-kind if the materials are "deleterious" and the applicant wants to use more "habitat-friendly" materials.

Commented [RAC 346]: ODFW - Both trigger fish passage. Pond levelers should be short-term solutions. Rec. adding word temporary, and remove example materials. (or language similar to (2))

LP - recent legislation (3464) will require ODFW to revisit coexistence of beavers and structures. Possibility to connect back to ODFW? Keep open to allow for ODFW rule changes.

BC/TS/AK - Concern about use of the word temporary. More understanding needed about the duration.

CG - Separate levelers and exclusion devices.

**Come back during Meeting 4.

Commented [JK*D47]: Simply identifies the allowable "fill" materials associated with these devices.

141-089-0680

~~Piling Certain Over-Water Structures Placement a~~ ~~And Removal W~~ ~~within ESH~~ - Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit, general permit, or permit waiver from the Department, place or remove piling certain over-water structures in waters of this state designated as Essential Indigenous Anadromous Salmonid Habitat (ESH) as described in OAR 141-102. Temporary impacts to wetlands or waterways associated with these activities may be authorized by combining this General Authorization with the Temporary Impacts to Wetlands and Waterways for Certain Activities GA (OAR 141-089-700, et seq.).

Statutory/Other Authority: ORS 196.600 – 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 5-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

Commented [JK48]: This focus of this GA was re-oriented from piling to the things attached to pilings as an acknowledgement that the long term effects of these structures comes from the over-water part.

Commented [JK*D49]: Deleted "within ESH". In most cases the limitations on these activities would keep them under 50 cy and thus not require a permit in non-ESH waters. If however, the activity did go over 50 cubic yards in non-ESH waters (e.g., up to 50 derelict piling removal in non-ESH waters like the Columbia), we still want people to have access to this GA.

Commented [JK50]: Added to the start of each GA as a reminder to users.

141-089-0685

~~Piling Certain Over-w~~ ~~Water Structures Placement A~~ ~~and Removal W~~ ~~within ESH~~ - Eligibility Requirements

To be eligible, a project must adhere to the following:

(1) Purpose. Placement and removal of certain over-water structures as further defined in OAR 141-089-0690 and including associated individual piling and piling piling or anchors, placed for over-water structure support or stabilization (e.g., piling associated with docks, piers, boardwalks), mooring and turning dolphins, and navigational aids (e.g., channel markers, mooring and turning piles or dolphins) without footings or other support structure as approved by the Department.

~~(2) Piling Material. Round steel piling 24 inches in diameter or smaller, steel H piling designated as HP24 (depth of section 24 inches or less) or smaller, or untreated wood, pre-cast concrete or plastic piling.~~

(3) Limited Placement. Piling Over-water structures and associated piling or anchors must be placed:

- (a) So as not to form headwalls or other bank treatment structures;
- (b) So as not to impede normal water flow into or within wetlands or deflect water in a manner that causes erosion;
- (c) So as not to create new uplands; and,
- (d) In non-wetland waters;

~~(e) In non-tidal waters; and~~

~~(f) By vibratory hammer or impact hammer, subject to the activity specific conditions set forth in OAR 141-089-0695. Hydraulic jetting is not allowed.~~

Commented [JK51]: The intent is that this new GA would cover all the things that the old "piling GA" covered and add in allowances for certain forms of over-water structures.

Commented [JK52]: By deleting this, we would be allowing use of this GA in tidally influenced waterways.

~~(4) Removal. Piling must be removed by means of vibratory method only according to the activity-specific conditions set forth in OAR 141-089-0695.~~

Commented [JK53]: Conditions for placement and removal of piling were moved to Section -0695

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 6-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0690

~~Piling Certain Over-Water Structures~~ Placement ~~a~~And Removal ~~W~~within ESH- Authorized Activities

~~Eligible projects are limited to the following. For (1), (2) and (3), docks and structures may be affixed or anchored below or above the ordinary high water line or highest measured tide line:~~

Commented [JK54]: DSL is increasingly seeing proposed residential docks that float on the water and are anchored or tied off above the high water line.

~~(1) Placement, modification, and removal of residential docks and associated piling or anchors.~~

Commented [JK55]: This is by far the most common activity authorized by DSL using Div. 89.

~~(2) Piling or anchor replacement for existing non-residential docks and other over-water structures.~~

Commented [JK56]: Current GA allows this.

~~(3) Seasonal placement and removal of public recreation structures. For the purposes of this section, "public recreation structures" mean non-commercial swimming, viewing and fishing platforms, water slides, water ski ramps or similar structures, and including floating restrooms, deployed for the benefit of the general public. It does not include structures used as boat docks.~~

Commented [JK57]: Newly added. This is typically in the form of public swimming platforms (e.g., @ lower Willamette River, some coastal lakes). Currently they can only be authorized by individual permit.

~~(4) Placement and removal of navigational aids (e.g., channel markers, mooring, and turning piles or dolphins).~~

Formatted: Highlight

~~(5) Derelict and abandoned piling removal.~~

Commented [JK58]: Current GA allows this.

Commented [JK59]: Current GA allows this.

Formatted: Highlight

~~(1) Number of Piling Installed is Limited. Placement of no more than five pilings or one dolphin consisting of three to five pilings; and~~

~~(2) Number of Piling Removed is Limited. Removal of no more than five pilings or one dolphin consisting of three to five pilings.~~

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 7-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0695

~~Piling Certain Over-Water Structures~~ Placement ~~A~~And Removal ~~W~~within ESH- Activity-Specific Conditions

Projects eligible for this GA must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Placement, Modification, and Removal of Residential Docks and Associated Piling or Anchors. The activity is conditioned as follows:

(a) The placed or modified dock must be consistent with ODFW Residential Dock Guidelines, February 2016, or as may be revised.

(b) No permanent impact to wetlands is authorized.

(c) For the purposes of this section "modified" or "modification" means a proposed change in the number or configuration of piling or anchors or increase in the dock's over-water footprint.

(2) Piling or Anchor Replacement for Existing Non-residential Docks and Other Over-Water Structures. The activity is conditioned as follows:

(a) The project must not include any expansion of the existing structure's over-water footprint;

(b) No more than 10 piling or anchors may be replaced for a project; and;

(c) No permanent impact to wetlands is authorized.

(3) Seasonal Placement and Removal of Public Recreation Structures. The activity is conditioned as follows:

(a) No placement of new piling is authorized;

(b) Up to 4 cubic yards total anchor volume is allowed to be placed. Anchors must be inert material and not include solid waste;

(c) Recreational structure must be seasonally removed within 30 days after the end of the seasonal use (anchors do not need to be removed); and;

(d) No permanent impact to wetlands is authorized. ~~piling~~

(4) Placement and Removal of Navigational Aids. The activity is conditioned as follows:

(a) Placement of up to 10 piling and removal of up to 10 piling per project is authorized; and;

(b) No permanent impact to wetlands is authorized.

(5) Derelict and Abandoned Piling Removal. The activity is conditioned as follows:

(a) Removal of up to ~~50~~ 10 piling per project is authorized;

(b) Authorization includes the backfilling of native sand or other native material into holes left by piling removal; and;

(c) No permanent impact to wetlands is authorized.

(6) Conditions for Piling or Anchor Replacement and Removal. Authorized activities involving the placement or removal of piling or anchors are conditioned as follows:

(a2) Piling Material. Piling is limited to ~~R~~round steel piling 24 inches in diameter or smaller, steel H-piling designated as HP24 (depth of section 24 inches or less) or smaller, or untreated wood, pre-cast concrete, or plastic piling.

Commented [JK60]: This condition would implement what DSL already implements as a staff guidance memo since 2016. The guidance memo targets 30 coastal ESH lakes. This proposed language would apply this requirement to any ESH waterway. In short, the ODFW guidelines limit residential dock size to 144 sq. ft with additional limitations to material types. No limitation on # of piling is included since the dock size limitation would limit the # of piling needed. To be discussed further at RAC #4 meeting.

Commented [JK61]: So, a person can modify their residential dock using this GA but it must remain compliant with the ODFW guidelines (e.g., no more than 144 sq. ft.)

Commented [JK62]: Needed revision since docks affixed to piling above OHW/HMT are not "fill" and thus not jurisdictional.

Commented [JK63]: That is, it's only for piling, not for expanding a commercial/industrial dock footprint. Current GA allows up to 5 piling placed and up to five piling removed. Proposed change would allow replacement of up to ten.

Commented [RAC 464]: IP: Make more specific (e.g., to swim platforms)? (There are floating restrooms.)

In some instances floating docks are used as recreation structures.

Commented [JK65]: Intent is that these be only seasonally-placed (summertime), be removed when not in use, and be for publicly accessible structures, not private.

Commented [JK66]: Navigational aids are things like mooring and turning dolphins, channel markers and the like. Current GA allows 5 piling, this would allow 10.

Commented [JK67]: Current "piling GA" allows 5. This would allow 10 to make it more useful for this beneficial activity.

Commented [RAC 468]: "Unless otherwise...?"

Commented [JK69]: Except where otherwise noted, these are all the same conditions in the current "piling GA" for pile driving and removal.

(b) Anchor Material. Anchor material is limited to non-leachable, inert material and cannot include solid waste.

Commented [JK70]: New (the current piling GA never discusses anchors).

(c1) Minimum Necessary. Number of pilings or anchors must be the minimum necessary to fulfill the essential purpose.

(d2) Sound Attenuation for Pile Driving. A vibratory hammer must be used whenever feasible. If an impact hammer must be used to drive or proof steel piles, sound attenuation measures including cushion blocks (wood blocks between pile and hammer) and bubble curtains operated to distribute air bubbles around 100 percent of the piling for the full depth of the water column must be used:

(Aia) If water velocity is 1.7 miles per hour or less, an unconfined bubble curtain may be used; or

(Bib) If water velocity is greater than 1.7 miles per hour, a confined bubble curtain (e.g., bubble ring surrounded by fabric or metal sleeve) must be used.

(e3) Method for Removal of Piling. Removal of piling must be conducted using a vibratory method:

(Aia) Piling must not intentionally be broken by twisting or bending;

(Bib) Upon removal, piling must be handled to effectively contain all adhering sediment. All return flows must meet state water quality standards; and

(Cii) Piling and containment materials must be disposed in an approved upland disposal site.

(f4) Piling Removal Problems in Uncontaminated Sediment. If wood piling breaks above or below the bed surface within an area of uncontaminated sediment, piling must be cut at least three feet below the bed surface or otherwise pushed into that depth, then covered with a cap of clean substrate.

(g5) Piling Removal Problems in Contaminated Sediment. If wood piling breaks above the bed surface within an area of known contaminated sediment, piling must be cut at the bed surface or otherwise pushed to that depth. If piling breaks in contaminated sediment below the bed surface, no further attempt at removal may be made and the hole must be covered with a cap of clean substrate.

(h6) Prevent Perching. Piling extending above dock or railing level must be fitted with devices to effectively prevent perching by fish-eating bird species.

(i7) Barge or Top of Bank Position. Piling must be placed or removed from a barge-mounted or above top-of-bank position. If barge-mounted, barge must not at any time be grounded in the bed or banks.

(j) Backfilling. Placement of native sand or other naturally occurring materials is required in holes left by the removal of piling.

(k) Where needed, temporary placement of containment booms is allowed.

Commented [JK71]: New.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 8-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0700

Temporary Impacts to ~~Non-Tidal~~ Wetlands and Waterways for Certain Activities - Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit, general permit, or permit waiver from the Department, temporarily place or remove material in ~~non-tidal~~ wetlands and waterways.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 9-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12
DSL 2-2011, f. & cert. ef. 3-1-11

Commented [JK*D72]: DSL Manager recommendation to include tidal wetlands since activities would be limited and conditioned in the same way as temporary impact to non-tidal wetlands.
Commented [JK*D73]: DSL staff recommendation to allow certain, very limited, temporary impacts to waterways.

141-089-0705

Temporary Impacts to ~~Non-Tidal~~ Wetlands and Waterways for Certain Activities - Eligibility Requirements

To be eligible, a project must adhere to the following:

(1) Wetland Conversion. Activities must not convert forested or shrub wetlands to a different Cowardin class nor may it convert any wetland class to open water. Activities must not permanently convert wetland to upland.

~~Activities must not permanently convert wetland to upland.~~

~~(2) Woody Vegetation. The project must not convert forested or shrub wetlands to a different Cowardin class.~~

(3) Wetland Delineation and Concurrence. For proposed temporary impacts to wetlands, a copy of a valid, Department-approved wetland delineation map and concurrence letter must be provided with the notification, unless otherwise directed by the Department.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 10-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

Commented [JK*D74]: Language re-organized for clarity. New language added dis-allowing converting wetlands to open water (e.g., pond)
Commented [JK*D75]: Just clarifying that a wetland delineation is not required for proposed temporary impacts to waterway.

141-089-0710

Temporary Impacts to ~~Non-Tidal~~ Wetlands and Waterways for Certain Activities - Authorized Activities

(1) Temporary impact of 0.50 acres or less of non-tidal wetlands;

(2) Temporary impact of 0.20 acres or less of tidal wetlands;

Commented [JK*D76]: Current rule allows 0.2 acres. DSL staff and Hatfield fellow recommendation to increase to 0.5 acres for non-tidal wetlands. Feedback from regulated public, and, DSL monitoring has demonstrated high level of compliance with site restoration requirements.
Commented [JK*D77]: Lower limit for temporary tidal wetland impact is recommended by staff owing to more sensitive and more dynamic nature of tidal wetlands.

(3) Placement and removal of structures necessary to isolate a work area from the waterway and conduct fish and wildlife salvage not to exceed 100 linear feet measured at the longest length of isolated work area below the ordinary high water line elevation; and;

(4) The temporary placement of spud piles (i.e., piles driven into the bed of a waterway to provide stability to hold a barge) in place during construction activity.

~~The project is limited to temporary impacts of 0.2 acres or less of non-tidal wetlands. This threshold applies to all activities associated with the project (e.g., placement of the utility lines, material stockpiling, equipment storage, staging and vehicle access).~~

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 11-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0715

Temporary Impacts to ~~Non-Tidal~~ Wetlands and Waterways for Certain Activities - Activity-Specific Conditions

Projects eligible for this GA must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Temporary waterway structures for work area isolation must be placed to:

(a) Maintain near-normal downstream flow for the duration of placement and return flow to pre-construction conditions at completion.

(b) Not be channel-spanning, unless otherwise approved by the Department.

(c) Not be eroded by expected high flows for the duration of placement.

(d) Not dewater any wetlands, unless otherwise approved by the Department as an eligible temporary impact.

(e) Provide for temporary water management and fish and wildlife salvage, rescue, and relocation prior to commencement of any in-water work.

(f) Salvage fish from the isolation area. Permits from NOAA Fisheries and Oregon Department of Fish and Wildlife, Fish Research are required to salvage fish.

(f) An Oregon Rescue/Salvage Permit from ODFW is required to conduct fish and wildlife salvage (OAR 635-412-0035) and additional authorization may be required from the National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service (USFWS) if federal Endangered Species Act (ESA)-listed species will be affected.

(2) Temporary placement of spud piles for construction barge anchoring may only occur where the barge will not be grounded on the bed or banks of the waterway at any time.

Commented [JK*D78]: New allowance for temporary impact to waterways would only be for these two activities - the most common forms of temp waterway impact that DSL sees. 100 linear feet arrived at by reviewing historic permits for smaller scale de-watering activities.

Commented [JK*D79]: "Borrowed" language from US Army Corps of Engineers nationwide permit that allows for temporary waterway impacts.

Commented [JK*D80]: Replaced by (f) below using more precise terminology.

Commented [JK*D81]: Identical to condition used by DSL for Individual Permits.

(234) Protection of Wetland Ground Surface. Before placing temporary fill in wetlands, fabric must be placed to allow complete removal of all temporary materials from the wetlands. If necessary to assist with removal of the fill, chain link fence or similar material may be placed under the fill. All fabric, fencing, and other materials must be completely removed at project completion.

(43) Trenching in Wetlands. If trenching or excavation in wetlands are proposed, the top layer of soil must be separated from the rest of the excavated material and put back on top when the trench or pit is back-filled. If the native underlying soils are not used as bedding material and a coarser, non-native soil or other material is used, preventative measures such as clay or concrete plugs must be used so that underground hydraulic piping does not dewater the site and adjacent wetlands.

(541) Temporary Impact Rectification. Rectification of temporary impacts includes re-establishment of pre-existing contours and pre-existing vegetation.

(652) Timing of Temporary Wetland Impact Rectification. Notwithstanding the definition of "Temporary Impacts" in OAR 141-085-0510, the re-establishment of pre-construction contours and planting to re-vegetate temporarily disturbed areas must be completed within 24-12 months of the initial impacts or before or expiration of the eligibility verification, whichever comes first, unless otherwise approved by the Department. However, if the temporary impact requires only one construction season, site rectification must be completed within the same construction season as the temporary impact. Planting must include species of sufficient number, spacing, and diversity to replace affected aquatic functions.

(76) Timing of Temporary Waterway Impact Rectification. Re-establishment of pre-construction contours and planting to re-vegetate temporarily disturbed areas must be completed immediately upon construction completion or before or expiration of the eligibility verification, whichever comes first, unless otherwise approved by the Department. Planting must include species of sufficient number, spacing, and diversity to replace affected aquatic functions.

(387) Post-Construction Report/Rectification Monitoring Report Required. Unless otherwise directed by the Department, a rectification report demonstrating restoration of pre-disturbance grades and re-vegetation must be provided to the Department/DSL within 90 days of temporary impacts rectification. The rectification report must include:

(a) Cover sheet including authorization number, authorization holder's name, monitoring date, and report submittal date.

(ba) A description of any deviation in the temporary impact size or locations as described in the authorizing notification. Any deviations must be accompanied by a scaled drawing or map that illustrates the deviation area(s).

(c) A description of any deviation to the restoration of pre-construction grades or vegetation.

(d) For temporary wetland impacts: data plots, according to OAR 141-090, to confirm that the wetland area temporarily impacted by the project meets wetland criteria.

(e) Representative photographs (with photo point locations ~~illustrated~~ identified) clearly showing/illustrating conditions within the rectification area(s).

Within two years of planting, a report must be submitted to the Department. The report must include:

Commented [JK*D82]: Relocated language from General Conditions in 141-089-0650.

Commented [JK*D83]: Div. 85 defines a "temporary impact" as up to 24 months. Problem: the life cycle of many wetland species is less than two years, thus, allowing two years of filled wetland can result in local extirpation of those species. Knowing that GAs must have no more than minimal impact, then this issue has to be addressed.

Commented [JK*D84]: For temporary waterway impacts, we want natural stream flow restored as soon as the dewatering is no longer needed.

Commented [JK*D85]: DSL staff and manager recommendation. Current rule only requires a data plot to show that wetland conditions were restored and photos. The additional info being required here will allow staff to perform better desk top reviews and better target the on-site compliance checks that may need to be made.

(a) Data plots, according to OAR 141-090, to confirm that the wetland area impacted by the project meets wetland criteria; and

(b) Photos taken at the previously established photo points.

~~(4) Protection of Ground Surface. Before placing temporary fill in wetlands, fabric must be placed to allow complete removal of all temporary materials from the wetlands. If necessary to assist with removal of the fill, chain link fence or similar material may be placed under the fill. All fabric, fencing and other materials must be completely removed at project completion.~~

~~(5) Stockpile Topsoil. When trenching, the upper 12 inches of topsoil must be removed and stockpiled separately from subsurface soils and used as the final layer in backfilling.~~

~~(6) Prevent Hydraulic Piping. The project must be constructed to prevent underground hydraulic piping to dewater the site or adjacent wetlands. If the native underlying soils are not used as bedding material, and a coarser, non-native soil or other material is used, preventive measures must be used such as restoration of the restrictive layer and placement of clay or other impermeable plugs. Such plugs must be placed at each wetland boundary.~~

Commented [JK*D86]: Already included as (3) above.

Commented [JK*D87]: Duplicative of the "Trenching in Wetlands" condition.

Commented [JK*D88]: Duplicative of the "Trenching in Wetlands" condition.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 12-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0720

Waterway Bank Stabilization Using Bio-Engineering - Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit, general permit, or permit waiver from the Department, place or remove material in non-tidal waterways for the purpose of stabilizing the actively eroding banks of non-tidal waterways using bio-engineering methods. Temporary impacts to wetlands or waterways associated with these activities may be authorized by combining this General Authorization with the Temporary Impacts to Wetlands and Waterways for Certain Activities GA (OAR 141-089-700, et seq.).

Commented [JK89]: The current GA, as well as the activities proposed to be added here, are all forms of bio-engineering, so we simply added the term to the title.

Commented [JK90]: Current GA limits use to non-tidal waterways. Proposal to expand to include tidal waterways. DSL staff and Hatfield Fellow recommendation. Activity would be evaluated and conditioned the same way whether in tidal or non-tidal environment.

Commented [JK91]: Text added the beginning of each GA to remind users of the ability to "stack" the Temporary Impact GA with this GA.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 13-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0725

Waterway Bank Stabilization Using Bio-Engineering - Eligibility

To be eligible, a project must be for the purpose of bank stabilization in ~~non-tidal~~ waterways and meet the project criteria for the authorized activities listed in OAR 141-089-0730.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 14-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0730

Waterway Bank ~~S~~tabilization Using Bio-Engineering - Authorized Activities

~~(1) Bio-Engineering. This activity includes placement of woody vegetation, vegetated geogrids, biodegradable logs, straw bales or straw logs used for bank protection, bank reshaping, terracing and erosion control.~~

~~(12) Bank Terracing, Sloping, and Re-Shaping. This activity includes bank terracing and sloping, and associated placement of biodegradable erosion control, to facilitate establishment of woody vegetation.~~

The project must meet the following criteria:

~~(a) The slope must not be steeper than 3:1 (H/V) ratio unless otherwise approved by the Department when natural slopes within the waterway reach are steeper than 3:1;~~

~~(b) The entire Bbank treatment areas must be replanted with native woody vegetation appropriate to the area and at a density consistent with natural stream bank densities in the area, unless otherwise approved by the Department; and~~

~~(c) Planting of native vegetation must be completed by March of the year following before the next growing season after establishment of the new contours unless otherwise approved by the Department. Where power and irrigation water can be made available, irrigation must be provided as necessary until vegetation is established. Irrigation structures must be removed when no longer needed. Invasive weed control must additionally be provided until vegetation is established.~~

~~(e) If fabric is necessary, no petroleum based fabric is allowed.~~

~~(23) Placement of Large Wood. Trees or root wads may be used. The project must meet the following criteria:~~

~~(a) At a minimum, root wad diameter, trunk diameter and tree length, or their cumulative effect, must be of a size sufficient to withstand the rate of flow that caused the bank erosion. Trees must have a trunk diameter greater than or equal to 12 inches the following minimum dimensions, unless otherwise approved by DSL;:~~

~~(A) Root wad diameter equal to waterway depth at ordinary high water line;~~

~~(B) Trunk diameter equal to one half of the waterway depth at ordinary high water line; and,~~

~~(C) Tree length equal to one quarter of the waterway width at ordinary high water line.~~

Commented [JK92]: Woody vegetation planting is already an exempt activity. Other activities are incorporated in the activities below.

Commented [RAC 493]: Recommendation for the slope to match existing bank slope.

"unless native slope in project area is of a steeper slope"

Commented [JK94]: Attempting to avoid over-prescription while still trying to communicate expectations for a "natural" look.

Commented [RAC 495]: Recommendation for a specific month (Feb or Mar) followed by "unless otherwise..."

Some areas the ground is frozen through March.

Recommendation to include control of nonnative weeds/plants. (May be difficult to achieve-- existing/temporary erosion control may be nonnative.)

Commented [JK96]: Alternatively, we could specify a date (e.g., Feb.) though start of growing season varies widely around the state.

Commented [JK97]: It is allowed as temporary erosion control per the General Condition on erosion control.

Commented [RAC 498]: May not be universal dimensions (e.g., use of juniper in eastern OR).

Recommendation to change (A)/(B); reduce to one-quarter.

Recommendation to change ordinary high water line. (OHWL can extend past active channel.)

(b) The ~~basal root wads or basal~~ ends must be oriented upstream unless otherwise approved by the Department;

(c) Large wood must be of a species native to the riparian zone within the project area or a reference area unless otherwise approved by the Department; intact conifer unless otherwise approved by the Department DSE;

~~(d) If fastening is necessary, only smooth, single string wire, degradable rope or pinning may be used. Braided wire cable is not allowed; and~~

~~(e) If anchoring is necessary, only rock ballast, untreated wood posts, stabilizing wood, or key pieces of wood may be used as anchors.~~

~~(4) Engineered Log Jams. Log jams may be placed in order to stabilize the bank for woody vegetation establishment. The project must meet the following criteria:~~

~~(a) The length of key pieces of wood with trimmed rootwads must be one and one-half times the bankfull width or a minimum of 25 feet in length when bankfull width exceeds 15 feet. The length of key pieces of wood with trimmed rootwads must be the twice the bankfull width or a minimum of 30 feet in length when bankfull width exceeds 15 feet;~~

~~(b) Large wood must be intact, hard and undecayed to partially decayed hardwoods or conifers;~~

~~(c) The log jam must not occupy more than 20 percent of the bankfull width;~~

~~(d) If fastening is necessary, only smooth, single string wire, pinning or degradable rope may be used. Braided wire cable is not allowed; and~~

~~(e) If anchoring is necessary, only rock ballast, untreated posts, stabilizing wood or key pieces of wood may be used as anchors.~~

~~(345) Log Toe Placement. The project must meet the following criteria:~~

~~(a) Log toes must not extend more than one foot above the elevation of the water at base flow (i.e., the flow sourced from the ground and not from runoff); and~~

~~(b) Logs must be large enough to withstand the hydraulic energy in the stream and be anchored securely to the bank by burial; and,~~

~~(c) Logs must be of a species native to the riparian zone within the project area or a reference area intact conifer unless otherwise approved by the Department DSE.~~

~~(6) Porous Weir. This activity includes the construction of a self sustaining, low profile, structure including but not limited to cross vanes and artificial riffles. A porous weir delays but does not store water. It is used to redirect flow toward the center of the channel, provide energy dissipation and promote increased sedimentation along banks while allowing fish passage through a porous design. The project must meet the following criteria:~~

~~(a) Porous weirs must be placed so scour pools occur in areas where pools would naturally form in a pool and riffle complex;~~

Commented [RAC 499]: Some projects use on-site trees which are not always conifer.

Commented [JK100]: Preferred for durability but Department may allow alternatives where appropriate.

Commented [JK101]: Field monitoring and literature review shows that wire can create snagging, entrapment lacerations and other hazards to aquatic life.

Commented [JK102]: Engineered log jams are moved to the Waterway Habitat Improvement GA.

Commented [JK103]: Just clarifying what "base flow" is.

Commented [JK104]: Again, preferred for durability.

- ~~(b) Porous weirs must not result in culvert inlet or outlet scour;~~
- ~~(c) Porous weirs must be sized appropriately for the system so as not to require annual maintenance;~~
- ~~(d) Porous weirs must be constructed of materials that mimic natural substrate found within the system;~~
- ~~(e) The structure must not exceed 100 cubic yards and 40% of the channel cross-section width; and~~
- ~~(f) The activity is limited to 100 cubic yards for every one-half mile of waterway, unless otherwise approved by the Department.~~

Commented [JK105]: Activity already included in the Waterway Habitat Improvement GA.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
 Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
 History:
 DSL 15-2018, minor correction filed 01/03/2018, effective 01/03/2018
 DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0735
Waterway Bank Stabilization Using Bio-Engineering - Activity-Specific Conditions

Proposed projects eligible for this General Authorization must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

- (1) Anchoring. Anchoring materials must:
 - (a) Not restrict or redirect flows; and
 - (b) Be set below grade to minimize the appearance.
- (2) Ballast. Use of rock and gravel for ballast ~~and porous weirs~~ is limited as follows:
 - (a) ~~Only the minimal amount necessary may be used to achieve project objectives, and cannot function to armor the bank;~~
 - ~~(b) Rip-rap and rock toe placement is not allowed;~~
 - ~~(b) Rock must be placed in a manner that does not increase the upland surface area;~~
 - (c) Rock must be placed in a way as to minimize adverse impacts to the active channel and downstream banks; and
 - (d) All rock must be placed, not dumped, from above the bank line, from a de-watered position or from a barge-mounted position; ~~and~~
 - ~~(e) Only erosion resistant rock from an upland source may be used. No broken concrete or asphalt is allowed.~~
- (3) ~~Natural~~ Native Materials. Material used must be similar to materials currently or historically found naturally in the stream reach except as follows:

Commented [JK106]: Conditions for porous weirs are in the Waterway Habitat Improvement GA.

Commented [JK107]: Field monitoring has shown in some cases that ballast rock was over-used to the point that it worked more like bank armoring.

Commented [JK108]: Just making explicit what was always implied by the rule.

Commented [JK109]: New condition (4) added below to address this.

Commented [RAC 4110]: Recommendation to add "and downstream stream bank."

Commented [RAC 4111]: Does not account for dewatered areas and being placed from below; or floating position.

Commented [JK112]: Already addressed in condition (3) below.

(a) Use of straw bales, straw or coir logs, jute fabric, or other bio-degradable material may be used where necessary for temporary erosion control;

(b) Other temporary use of non-nativenatural materials as necessary for compliance with OAR 141-089-0650 (General Conditions);

(c) Rebar for pinning large wood placements; and;

(d) Erosion-resistant ballast rock may be sourced from an upland location but cannot include broken concrete, asphalt, or other waste materials.

(4) Uplands. Activity cannot create new uplands nor re-establish lost uplands resulting from the bank erosion event(s), other than incidental creation necessary to achieve the bio-engineered bank stabilization.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 16-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

Commented [JK113]: Reclaiming land can interfere with natural channel-forming processes of the waterway. Such proposals require more detailed examination and public review thru the individual permit process to ensure that such proposals don't adversely affect adjacent lands.

~~141-089-0740~~

~~Transportation-Related Activities—Purpose~~

~~These rules set forth the conditions under which a person may, without an individual removal-fill permit from the Department, fill or remove material in waters of this state for certain transportation-related activities.~~

~~Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 17-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11~~

~~141-089-0745~~

~~Transportation-Related Activities—Eligibility Requirements~~

~~(1) In order to be eligible, a project must be for one of the authorized activities listed in OAR 141-089-0750.~~

~~(2) When replacing an existing culvert for fish passage under OAR 141-089-0750(4), notification must be accompanied by an ODFW signed Fish Passage Plan for a Road Stream Crossing.~~

~~Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:~~

~~DSL 18-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11~~

~~**141-089-0750**~~

~~**Transportation-Related Activities—Authorized Activities**~~

~~A project must adhere to the following:~~

~~(1) Removal of Garbage. Removal of garbage, trash and rubble (e.g., broken concrete, broken asphalt, and metal waste) from in and around transportation structures is allowed in all waters of this state when:~~

~~(a) The removal does not adversely affect woody vegetation, wetlands or waters;~~

~~(b) The trash, garbage and rubble removed under this GA are disposed at a facility licensed to accept trash and garbage; and~~

~~(c) There is no stockpiling of removed garbage, trash and rubble within waters of this state.~~

~~(2) Large Wood Relocation. Large wood located in and around transportation structures may be relocated below the Ordinary High Water Line, below the highest measured tide, and in wetlands.~~

~~(3) Investigative Drilling. Drilling of test holes and borings is allowed for the purposes of planning and designing a transportation structure.~~

~~(4) Replacement of Existing Culverts for Fish Passage. Culvert replacement for fish passage is allowed when the new footprint of the structure exceeds the exempt maintenance allowance.~~

~~Statutory/Other Authority: ORS 196.600—196.692 & 196.795—196.990~~

~~Statutes/Other Implemented: ORS 196.600—196.692 & 196.795—196.990~~

~~History:~~

~~DSL 19-2018, minor correction filed 01/03/2018, effective 01/03/2018~~

~~DSL 2-2011, f. & cert. ef. 3-1-11~~

~~**141-089-0755**~~

~~**Transportation-Related Activities—Activity-Specific Conditions**~~

~~Proposed projects eligible for this GA must adhere to the general conditions listed in OAR 141-089-0650.~~

~~Statutory/Other Authority: ORS 196.600—196.692 & 196.795—196.990~~

~~Statutes/Other Implemented: ORS 196.600—196.692 & 196.795—196.990~~

~~History:~~

~~DSL 20-2018, minor correction filed 01/03/2018, effective 01/03/2018~~

~~DSL 2-2011, f. & cert. ef. 3-1-11~~

141-089-0760

Removing Sediment Behind Tidegates—Purpose

(1) These rules set forth conditions under which a project proponent may, without an individual removal fill permit from the Department, dispose (fill), and place (fill), remove (removal), or alter material in waters of this state for the purposes of removing and disposing of sediment while maintaining or cleaning natural or artificially created drainage ditches upstream from tidegates and within hydraulically closed perimeters. For the purposes of this General Authorization, “hydraulically closed perimeters” means, all water flow and hydraulic connectivity to the surrounding watershed is controlled by pumps.

(2) This general authorization is exclusive to:

(a) The disposal of sediments within waters of this state, such as wetlands, removed as a result of ditch maintenance and cleaning in drainage ditches upstream of tidegates; and

(b) The removal of material from drainage ditches (cleaning) upstream of tidegates that does not meet the requirements described in OAR 141-089-0760(4) below.

(3) Drainage ditches that have a free and open connection to other natural waterways and are presumed to contain food and game fish are waters of this state.

(4) The regular maintenance of ditches as defined in OAR 141-085-0510(28) is exempt from regulation under the Removal-Fill Law and this General Authorization as set forth in 141-085-0535(7).

(5) The placement of sediment removed from drainage ditches on wetlands may be an activity subject to the Removal-Fill Law, OAR 141-085 and this General Authorization.

(6) A notification must be sent to the Department before any person starts an activity authorized by this General Authorization. The term and conditions of issuance shall be stated in the approved notification. The term shall not exceed the expiration date on the approved notification.

(7) This General Authorization is made pursuant to ORS 196.850 and is based on the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(8) This General Authorization does not apply to activities or waters exempt from the Removal-Fill Law as described in OAR 141-085.

(9) Other structures, uses and activities included in the notification for this General Authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this General Authorization. An application encompassing multiple activities must be processed as an individual removal fill permit under OAR 141-085.

(10) Unless otherwise specified, the terms used in this General Authorization are defined in OAR 141-085.

(11) In the event a dispute arises about the applicability of this General Authorization to any project notification, the Department shall make the final determination. The Department shall rely on the responsible party's notification and supporting documentation for its decision.

Statutory/Other Authority: ~~ORS 196.600 – 196.692 & 196.795 – 196.990~~

Statutes/Other Implemented: ~~ORS 196.600 – 196.692 & 196.795 – 196.990~~

History:

DSL 21-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0765

Removing Sediment Behind Tidegates – Eligibility Requirements Ineligible Projects

(1) This rule sets forth conditions under which a person may, without an individual removal fill permit from the Department, place or remove material within waters of this state, excluding State Scenic Waterways, as defined in OAR 141-085 for the purposes set forth in this GA. The activity must:

(a) Be conducted for the specific purpose of disposal of sediments within waters of this state (e.g. wetlands) as a result of maintenance/cleaning of drainage ditches upstream of tidegates and within hydraulically closed perimeters; or

(b) Be conducted for the specific purpose of the removal of material (cleaning) from drainage ditches upstream of tidegates and within hydraulically closed perimeters that does not meet the requirements described in OAR 141-089-0760(4) above; and

(c) Remove, fill or alter 50 or more cubic yards in waters of this state.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements; or

(b) The project notification includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under 141-085.

Statutory/Other Authority: ~~ORS 196.600 – 196.692 & 196.795 – 196.990~~

Statutes/Other Implemented: ~~ORS 196.600 – 196.692 & 196.795 – 196.990~~

History:

DSL 22-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0770

Removing Sediment Behind Tidegates – Mandatory Requirements

The Department will review each notification to ensure that a project complies with the following mandatory requirements:

~~(1) The removal of sediments from drainage ditches must be kept to the minimum amount necessary to remove recently deposited materials. Additional channel widening or deepening beyond that amount is not allowed under this General Authorization.~~

~~(2) The sediments removed from drainage ditches may be spread in a thin layer (three inches or less) on farmed wetland or wet pasture provided the effects are temporary and there is no permanent conversion from wetland to upland. Freshwater wetland (other than farmed wetland or wet pasture mentioned above), salt marsh, tidal flats or permanent or semi permanent open water areas must not be used for sediment disposal.~~

~~Statutory/Other Authority: ORS 196.600 – 196.692 & 196.795 – 196.990~~

~~Statutes/Other Implemented: ORS 196.600 – 196.692 & 196.795 – 196.990~~

~~History:~~

~~DSL 23 2018, minor correction filed 01/03/2018, effective 01/03/2018~~

~~DSL 2 2011, f. & cert. ef. 3-1-11~~

141-089-0775

Removing Sediment Behind Tidegates – Conditions of Issuance of General Authorization

~~Responsible parties must adhere to the conditions of the general authorization.~~

~~(1) The responsible party must conduct all work in compliance with the comprehensive plan, zoning requirements and other local, state and federal regulations pertaining to the project. Local land use planning department approval must be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits must be obtained before starting the authorized project. All necessary approvals and permits must be obtained before starting the project under this General Authorization.~~

~~(2) The responsible party must obtain all necessary access permits or rights of way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.~~

~~(3) The responsible party must conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period. Work is prohibited when fish eggs are present within the reach where activities are being conducted.~~

~~(4) The responsible party must ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.~~

~~(5) When listed species are present, the responsible party must comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the responsible party must contact the Department as soon as possible.~~

~~(6) The responsible party must not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of~~

archeological sites are discovered during construction, the responsible party must immediately stop work at the discovery site and contact the Department.

(7) The responsible party must ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The responsible party must ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access.

(9) The responsible party must ensure that areas disturbed in the course of completing the authorized work are stabilized with the appropriate erosion control best management practices and re-vegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department. Grass seed mixes of exotic and certified free of noxious weeds that will hold the soil and not persist, are permitted.

(10) The responsible party must ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The responsible party must adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal fill activity. In this event, a copy of the 401 Water Quality Certification must be retained on site.

(12) For drainage ditch cleaning activities, the responsible party must comply with the following:

(a) Removal of existing woody vegetation, other than that growing within the maintained channel bed is prohibited;

(b) Only sand and silt sediments may be removed. This General Authorization is not for the removal of gravel;

(c) Erosion of disturbed areas (e.g., drainage ditch banks and work areas) must be minimized through re-vegetation with grass and/or planting of trees and shrubs;

(d) Removal must be conducted with land-based equipment from one side of the drainage ditch unless specifically authorized by the Department;

(e) At any time excavated material is placed on adjacent dikes it must be stabilized to eliminate erosion back into the drainage ditch; and

(f) If excavated material is to be thinly spread over adjacent wetland, wet pasture or farmed wetland, it is to be spread before the onset of winter rains, and controlled from eroding back into the drainage ditch.

(13) The responsible party must not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(14) The responsible party must keep a copy of the approved notification available at the work site whenever the authorized activity is being conducted.

~~(15) Employees of the Department and all duly authorized representatives must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this General Authorization.~~

~~(16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.~~

~~(17) The State of Oregon, and its officers, agents and employees must be held harmless from any claim, suit or action for property damage or personal injury or death arising out of the design, material, construction or maintenance of the authorized improvements.~~

~~(18) The Department may add other project specific conditions to the approved notification as necessary to meet the requirements of this General Authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long term harm to water resources of the state.~~

~~(19) The Department may, at any time, by notice to affected responsible parties, revoke or modify any approved notification of a project granted under this General Authorization if it determines the conditions of the General Authorization are insufficient to minimize individual or cumulative environmental effects.~~

~~(20) The responsible party is responsible for the activities of all contractors or other operators involved in project work covered by the notification.~~

~~Statutory/Other Authority: ORS 196.600 – 196.692 & 196.795 – 196.990~~

~~Statutes/Other Implemented: ORS 196.600 – 196.692 & 196.795 – 196.990~~

~~History:~~

~~DSL 24-2018, minor correction filed 01/03/2018, effective 01/03/2018~~

~~DSL 2-2011, f. & cert. ef. 3-1-11~~

141-089-0780

Waterway Habitat ImprovementRestoration - Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit, general permit, or permit waiver from the Department, place or remove material in waterways of this state for the purpose-effect of improving functions and values of aquatic habitat and facilitating species recovery in waterways. Temporary impacts to wetlands or waterways associated with these activities may be authorized by combining this General Authorization with the Temporary Impacts to Wetlands and Waterways for Certain Activities GA (OAR 141-089-700, et seq.).

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

Commented [JK114]: "Restoration" is defined in Div. 85 as "to reestablish a former water of this state". The point of this GA is not to reestablish a waterway but to improve functions and values of waterway habitat.

Commented [JK115]: As currently written, the GA may not allow a project that results in ecological improvements if the purpose of the project was not ecological improvement. Example: A road dept. needs to add capacity to a roadway. That project will include replacing a non-fish passable culvert with a fish-passable one. It is unclear if the project would qualify for the GA as currently written. Changing "purpose" to "effect" would bring clarity that it does.

DSL 25-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0785

Waterway Habitat ~~Restoration-Improvement~~ - Eligibility Requirements

~~Projects eligible for this General Authorization must be for the purpose effect of waterway habitat restorationimprovement. For the purposes of this sectionthese rules, "improvement" means an activity that improves a waterway's naturalness or ecological integrity, but that may not return an area to a close approximation of ecological condition prior to disturbance. Activities are limited to the nine authorized activities described in OAR 141-089-0790 within a waterway for the entire project.~~

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 26-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0790

Waterway Habitat ~~Restoration-Improvement~~ - Authorized Activities

The following activities may be combined for a single project and the volume thresholds for each activity may be calculated separately:

(1) Barrier Removal. Barriers may be removed to reconnect or improve waterway corridors, reconnect existing side channel or alcove habitat, reestablish or improve wetlands, restore or improve natural channel and flow conditions, and assist fish and wildlife movement. The project must meet the following criteria:

(a) Removal is limited to artificially created barriers including, but not limited to culverts, dams, earthen embankments, bridge abutments, spillway systems, tidegates, outfalls, and pipes; ~~and~~

(b) Side channels or alcoves being reconnected must be naturally formed and not require alteration or reconstruction, and the reconnection cannot result in the re-direction or capture of dewatering mainstem flow; and,

~~(c)~~ Cumulative removal-fill volume for this activity must not exceed 200 cubic yards.

(2) Grade Control. This activity includes construction of grade control structures to stabilize channel grade, reduce erosion, reconnect a waterway to the floodplain or reduce channel incision. The project must meet the following criteria:

(a) Grade control structures must be constructed of materials that mimic natural substrate found within the system;

(b) Grade control structures must be placed diagonally across the channel or in upstream pointing "V" or "U" configurations;

Commented [JK116]: Added "improve" to make consistent with the GA title.

Commented [JK117]: This activity was merged with activity (6) Side Channel and Alcove Habitat since both activities are about reconnections.

Commented [JK118]: A common form of barrier removal

Commented [RAC Mtg 5119]: Request for clarification.

Commented [JK120]: This condition was moved up from the current (6) Side Channel and Alcove Habitat and amended to make clear that we do not want reconnections to result in loss of the mainstem's flow.

Commented [JK121]: This is a standard design for waterway grade control structures.

~~(c)~~ Grade control structures must be sized appropriately for the system to prevent creating a fish passage barrier or require ~~annual~~ maintenance; and

~~(d)~~ The activity is limited to 100 cubic yards for every one-half mile of waterway, unless otherwise approved by the Department.

(3) Fish and Wildlife Passage. This activity includes installation or replacement of fish passage structures including, but not limited to, vertical slot fishways, nature-like fishways and lamprey ramps to aid fish and/or wildlife passage. ~~This activity additionally includes replacing, improving, or relocating water diversion structures for the primary purpose of restoring or improving fish passage.~~ The project must meet the following criteria:

~~(a) The activity is not otherwise exempt pursuant to OAR 141-085-0530(7);~~

~~Oregon Department of Fish and Wildlife (ODFW) must be notified;~~

~~(c) Passage structures must be designed to consider the velocity, depth, pool length and jump height preferences of native species;~~

~~(b)~~ Passage structures must be sized appropriately for the system yet be stable; and

~~(d)~~ The activity is limited to 100 cubic yards for every one-half mile of waterway, unless otherwise approved by the Department.

(4) Installation, Maintenance, or Replacement of Fish Screening Structures. The project must meet the following criteria:

~~(a) The activity is not otherwise exempt pursuant to OAR 141-085-0530 (7);~~

~~(b) Oregon Department of Fish and Wildlife (ODFW) must be notified; ODFW fish screen approval must be included in the pre-construction notification described in OAR 141-089-0640; and~~

~~(b) Screens must meet ODFW fish screen criteria; and~~

~~(c)~~ Cumulative removal-fill for this activity, ~~(including return pipe volumes for fish screens,)~~ must not exceed 100 cubic yards in waters of this state.

(5) Porous Weir. This activity includes the construction of a self-sustaining, low-profile, structure. A porous weir delays but does not store water. It is used to redirect flow toward the center of the channel, provide energy dissipation, and promote increased sedimentation along banks while allowing fish passage through a porous design. This activity includes, but is not limited to, cross vanes and artificial riffles. The project must meet the following criteria:

(a) Porous weirs must be placed so scour pools occur in areas where pools would naturally form in a pool and riffle complex;

(b) Porous weirs must not result in culvert inlet or outlet scour;

(c) Porous weirs must be sized appropriately for the system so as not to require ~~annual~~ maintenance;

(d) Porous weirs must be constructed of materials that mimic natural substrate found within the system;

Commented [JK122]: Current rule is unclear if we can use a GA for replacing/relocating a water diversion structure to achieve fish passage. This makes it clear.

Commented [JK123]: 141-085-0530(7) exempts fish passage structures in ESH that are less than 50 c.y.

Commented [JK124]: Notifications for this GA require fish passage review by ODFW prior to submittal to DSL per edits to 141-089-0640. Those parameters are already part of the fish passage review process.

Commented [JK125]: Exempts fish passage structures in ESH that are less than 50 c.y.

Commented [JK126]: Reminding users that fish screen projects require pre-review by ODFW before submitting GA notification to DSL.

Commented [JK127]: Just clarifying a question we sometimes get regarding fish screens.

(e) The structure must not exceed 100 cubic yards and 40 percent of the channel cross-section width unless otherwise approved by the Department; and

(f) The activity is limited to 100 cubic yards for every one-half mile of waterway, unless otherwise approved by the Department.

~~(6) Side Channel and Alcove Habitat. This activity is limited to reconnecting existing side channel or alcove habitat, as follows:~~

~~(a) Cumulative removal-fill volume may not exceed 200 cubic yards unless otherwise approved by the Department;~~

~~(b) Reconnection consists only of the removal of artificial barriers; and~~

~~(c) The side channel or alcove being reconnected must be naturally formed and does not require alteration or reconstruction.~~

~~(6.7) Remove, Modify, Repair or Replace Existing Culverts and Tide Gates for Fish Passage. Tide gate and culvert removal, modification, repair or replacement for that will create or improve fish passage through the installation of a larger culvert or for replacing the culvert with a bridge is allowed when:~~

~~(a) The new culvert or tidegate activity is not otherwise exempt pursuant to OAR 141-085-0530 ;~~

~~(b) The activity may include the incorporation of simulated streambed material and shadow boulders inside and beyond the culvert, as necessary; and;~~

~~(c) Any placement of new rock to stabilize culvert inlet and outlet must include including planting of native woody vegetation appropriate to the area and at a density consistent with natural stream bank densities in the area, unless otherwise approved by the Department.~~

~~(b) The project is consistent with ODFW Fish Passage Statutes, as evidenced in writing by an ODFW fisheries biologist.~~

~~(7) Habitat Logs, Beaver Dam Analogs, and Post-Assisted Log Structures. This activity includes construction of low-profile structures within a waterway in a manner designed to mimic the hydrological, geomorphological, and ecological functions of natural beaver dams or otherwise mimic natural wood accumulations. The project must meet the following criteria:~~

~~(a) Cumulative removal-fill volume may not exceed 100 cubic yards for every one-half mile of waterway unless otherwise approved by the Department;~~

~~(b) No cabling, wiring, or mortaring of materials or use of steel or treated posts is allowed;~~

~~(c) Wood posts must be untreated and, to the extent possible, must be driven to a depth of at least 1.5 times the expected scour depth of the waterway and with a minimum at least one foot of clear space between posts;~~

~~(d) Log placements must be done consistent with "Guide to Large Wood and Boulder Placements", (ODFW, 2011), except that non-random placement of logs is permissible.~~

Commented [JK128]: Merged with activity (1) Barrier Removal.

Commented [JK129]: Attempting to be more comprehensive in terms of activities that might be associated with culvert work.

Commented [JK130]: Reminding users that some culvert maintenance and reconstruction is already exempt from permit needs per 141-085-0530.

Commented [JK131]: Current language is unclear whether adding simulated materials in the culvert is allowed. We want to allow it.

Commented [JK132]: We want shading where possible to offset the warming effect of rock in/adjacent to the waterway.

Commented [JK133]: Required pre-review of the GA notification by ODFW already ensures this.

Commented [JK134]: New proposed activity. In the last five years DSL has seen a large growth in applications for this type of habitat work. Currently, most of these project must go thru the IP process yet their risk of adverse effect, as conditioned, is very low whereas their ecological benefits can be very high. The provided conditions came from a 2016 rulemaking effort that was never concluded and uses BMPs developed by USFWS, NMFS and other research efforts.

Commented [RAC Mtg 5135]: Proposed: 100 cubic yards per 1/2 mile. (consistent with other activities)

(e) Beaver dam analogs and post-assisted log structures must be done consistent with “Beaver Restoration Guidebook” (USFWS, et al., June 30, 2017, and as may be revised) and “Low Tech Process-Based Restoration of Riverscapes: Design Manual” (USU Restoration Consortium, June 2019, and as may be revised);

(f) Weaves must be sufficiently loose to allow fish passage through the structures while maintaining fish rearing habitat in the delayed water area upstream of the structure;

(g) Only river-run gravels or cobbles may be used where rock is necessary to prevent under-scour;

(h) Native woody vegetation must be preserved to the maximum extent practicable. When not practicable, woody vegetation must be knocked down to allow re-sprouting rather than removed; and,

(i) No water may be diverted from the waterway for a beneficial use within the area in which flow is delayed or slowed by the project without the appropriate water-use authorization from Oregon Water Resources Department.

(8) Engineered Log Jams. The project must meet the following criteria:

(a) The length of key pieces of wood with trimmed root wads must be one and one-half times the bankfull width or a minimum of 25 feet in length when bankfull width exceeds 15 feet. The length of key pieces of wood with trimmed root wads must be two times the bankfull width or a minimum of 30 feet in length when bankfull width exceeds 15 feet. At a minimum, wood pieces, or their cumulative effect, must be of a size sufficient to withstand bankfull rates of flow;

(b) Large wood must be intact conifers of a species native to the riparian zone within the project area or a reference area unless otherwise approved by the Department;

(c) The engineered log jam must not occupy more than 20 percent of the bankfull width;

(d) If fastening is necessary, only pinning may be used; and

(e) If anchoring is necessary, only rock ballast, untreated posts, stabilizing wood, or key pieces of wood may be used as anchors.

(9) Maintenance and Reconstruction of In-Stream Habitat Structures. Removal and fill necessary to maintain or reconstruct the serviceability of existing, man-made in-stream habitat structures not otherwise exempted by OAR 141-085-0534. The terms “maintenance” and “reconstruction” have the same meanings defined as in OAR 141-085-0510.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 27-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0795

Waterway Habitat ~~Restoration-Improvement~~ - Activity-Specific Conditions

Commented [RAC Mtg 5136]: Update language for consistency

Commented [RAC Mtg 5137]: Update for consistency.

Commented [JK138]: This activity was moved in whole from the Waterway Bank Stabilization GA to this Waterway Habitat Improvement GA.

Commented [JK139]: Just to make clear that non-exempt maintenance can be handled thru this GA.

Commented [JK140]: 141-085-0534 exempts several specific voluntary habitat restoration projects from needing a permit.

Proposed projects eligible for this General Authorization must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Anchoring. Anchoring materials must not restrict or redirect flows, be set below grade to minimize the appearance, and be placed in areas naturally containing such material.

(2) Rock and Gravel Placement. Rock and gravel placement are subject to the following conditions:

(a) Only the minimal amount necessary may be used to achieve project objectives;

(b) Rock must be placed in a manner that does not increase the upland surface area;

(c) Rock must be placed to minimize adverse impacts to the active channel;

(d) All rock must be placed, not dumped, from above the bank line; and

(e) ~~Except for beaver dam analogs,~~ only erosion-resistant rock from an upland source may be used. No broken concrete or asphalt is allowed for any activity.

Commented [JK141]: Because beaver dam analogs specifically use river-run gravels to prevent under-scour.

(3) ~~Natural-Native~~ Materials. Material used must be similar to materials currently or historically found naturally in the stream reach. except as follows:

Commented [JK142]: There are several circumstances where non-native or non-natural materials need to be allowed.

(a) Use of straw bales, straw or coir logs, jute fabric or other bio-degradable material may be used where necessary for temporary erosion control;

(b) Other temporary use of non-natural materials as necessary for compliance with 141-089-0650 (General Conditions);

(c) Rebar pins and ballast rock for placement of engineered log jams pursuant to 141-089-0790(9); and

(d) Rock for culvert inlet and outlet stabilization pursuant to 141-089-0790(6).

(4) Self Sustaining. Activities, ~~other than installation or replacement of passage structures, or fish screens, beaver dam analogs, and post-assisted log structures,~~ must be self-sustaining and not require annual maintenance or manipulation.

Commented [JK143]: These structures are not intended to be self-sustaining - that is, they are intended to deform and breach over time much like a natural beaver dam would.

(5) Post-Project Reporting. Upon completion of the project, the project must be reported to the Oregon Watershed Enhancement Board at <http://www.oregon.gov/OWEB> by completing the Oregon Watershed Restoration Inventory (OWRI) form. The DSL General Authorization number must be included on the reporting form.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 28-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0800

Wetland Ecosystem ~~Restoration-Improvement~~ - Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit, ~~general permit, or permit waiver~~ from the Department, carry out ~~restoration~~ activities for the purpose of wetland ecosystem ~~improvement~~~~restoration~~. Under this General Authorization (GA), wetland ecosystem ~~improvement~~~~restoration~~ means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historical functions to a disturbed or altered wetland. ~~Temporary impacts to wetlands or waterways associated with these activities may be authorized by combining this General Authorization with the Temporary Impacts to Wetlands and Waterways for Certain Activities GA (OAR 141-089-700, et seq.).~~

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 29-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0805

Wetland Ecosystem ~~Restoration-Improvement~~ - Eligibility Requirements

(1) Project Purpose. The project purpose is to improve the existing condition of a site to repair (rehabilitate) or return (re-establish) natural or historical functions to a disturbed or former wetland. The project may not be for the purpose of altering a site to produce conditions that did not previously exist ~~in order to~~ augment specific functions.

(2) Compatible with Management Plans. The project must not be detrimental to existing functions and values that address problems identified in a watershed management plan or water quality management plan.

(3) Evidence Required. Current site conditions must exhibit alterations in topography, soils, native vegetation or hydrology that have resulted in wetland loss or wetland disturbance that is potentially reversible.

(4) Conversion. The project will not result in conversion of wetlands to uplands and will not include the conversion of existing, functional wetland ecosystems to another aquatic use.

~~(5) Minimal Adverse Impacts. The project will not cause more than minimal adverse impacts to undisturbed wetland communities on site or adjacent to the site.~~

~~(5) Non-native Species. The project will not involve the introduction of non-native plants other than for temporary soil stabilization. Native seed mixes are preferred. When native seed mix is not available, non-native seed mix that will hold the soil and not persist may be used if certified free of noxious weeds.~~

~~(6) Hydrology. Hydrologic manipulation must result in the hydrology of the restored site approximating the conditions that existed before the disturbance or alteration, to the extent practicable. Hydrology conditions include timing of inflow and outflow, duration, frequency, and hydroperiod.~~

Commented [JK144]: "Restoration" is defined in Div. 85 as "to reestablish a former water of this state". The point of this GA is not to reestablish wetlands but to improve functions and values of degraded wetlands.

Commented [JK145]: This is already a requirement per 141-089-0625.

~~(78)~~ Consistent with Wetland Conservation Plan. If the project is in an area for which there is a Department-approved Wetland Conservation Plan, the activities must be in conformance with that plan.

Commented [RAC Mtg 5146]: ODFW: "and any habitat incentive agreements with ODFW"

~~(8)~~ Consistent with Habitat Incentive Agreements. If the project is under a Habitat Incentive Agreement with ODFW, the activities must be in conformance with that Agreement.

~~(89)~~ Compensatory Mitigation. Projects cannot be for the purpose of constructing compensatory wetland mitigation ~~required by an individual removal-fill permit or general permit~~.

Commented [JK147]: Just to clarify - these are the two permit types that can establish a mitigation obligation and associated conditions.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 30-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0810

Wetland Ecosystem ~~Restoration-Improvement~~ - Authorized Activities

The following activities are allowed under this ~~g~~General ~~a~~Authorization:

- (1) Vegetation Management. Ground-altering activities needed to re-establish and maintain native vegetation, such as mechanized land clearing to remove non-native vegetation and disking for seedbed preparation and planting of native wetland species ~~is allowed~~.
- (2) Floodplain Contouring. Floodplain contouring of wetland terraces to reconnect a waterway to an adjacent wetland or expand the area of seasonal inundation ~~is allowed~~. This activity does not include modification of a stream channel.
- (3) Microtopography Establishment. Grading and contouring to re-establish microtopography (~~e.g.~~, hummocks, minor ridges, very shallow depressions) in areas that have been previously leveled, scalped, or otherwise disturbed to eliminate pre-existing microtopography ~~is allowed~~. ~~The -A~~activity is limited to six-inch maximum elevation rise or drop.
- (4) Macrotopography Establishment. Shallow excavation to create scrapes, basins, meanders, and swales that do not exceed two feet in depth from existing or original ground surface and have minimum side slopes of 6:1 or gentler ~~is allowed~~. If shallow excavation is combined with berm construction described in ~~S~~section (6) of this rule, the maximum depth of inundation must not exceed two feet.
- (5) Removal of Materials. Removal of soil or other materials that have been placed in a wetland for the purpose of restoring ~~or improving~~ the natural and/or historical topography ~~is allowed~~.
- (6) Low Earthen Berms and Spillways. Construction of low earthen berms and vegetated spillways that impede, contain, or direct surface water may be used to extend the area or duration of shallow inundation. The design height of the berms must be no more than 18 inches from the existing ground level and have a maximum top width of four feet, variable slopes at a minimum of 6:1 or gentler on the water side, and maximum slopes of 6:1 on the land side, unless gentler slopes do not result in the conversion of wetland to upland. These structures may be installed to manipulate seasonal water depth, duration and degree of fluctuation that would be characteristic of natural or historical hydrologic

conditions and to manage invasive species. When berms are combined with shallow excavation described in Section (4) of this rule, the maximum depth of inundation must not exceed two feet.

(7) Removal of Structures. Removal of diversion structures, water control structures, ~~small (three feet high or less)~~ berms, and tidegates, as long as the removal does not cause water to rise or be redirected in such a manner to result in damage to structures or substantial property is allowed.

(8) Placement of Temporary Exclusion Fencing in Wetlands. Where necessary to protect plantings from herbivores, temporary exclusion fencing may be placed in wetlands.

(9) Maintenance and Reconstruction of Wetland Ecosystem Improvement Structures. Removal and fill necessary to maintain or reconstruct the serviceability of existing, man-made wetland ecosystem improvement structures not otherwise exempted by OAR 141-085-0534 is allowed. The terms "maintenance" and "reconstruction" have the same meanings defined as in OAR 141-085-0510.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 31-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0815

Wetland Ecosystem ~~Restoration-Improvement~~ - Activity-Specific Conditions

Proposed projects eligible for this General Authorization must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Invasive Species. Persons must control invasive species and comply with Oregon's weed laws (ORS Chapters 452, 561, and 570); and

(2) Post-Project Reporting. Upon completion of the project, the project must be reported to the Oregon Watershed Enhancement Board at <http://www.oregon.gov/OWEB> by completing the Oregon Watershed Restoration Inventory (OWRI) form. The DSL General Authorization number is required to be included on the reporting form.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 32-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0820

Non-motorized In-Stream Placer Mining within ESH – Purpose

These rules set forth conditions under which a person may, without an individual removal-fill permit from the Department, fill, remove, and move material in waters of this state for the purpose of in-

Commented [JK148]: DSL staff recommendation. Limitation on berm height not necessary.

Commented [RAC Mtg 5149]: Suggested to add "temporary"

Commented [JK150]: DSL staff recommendation. Currently unclear if such fencing can be used as part of this GA.

Commented [JK151]: Added as a parallel to the same provision in the Waterway Habitat Improvement GA.

stream placer mining using only non-motorized methods or activities, including gravity dredge or siphon dredge, within areas designated as Essential Indigenous Anadromous Salmonid Habitat (ESH) that is not designated as State Scenic Waterway (SSW).

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 77-2018, amend filed 05/07/2018, effective 05/07/2018

DSL 33-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 3-2016, f. & cert. ef. 6-15-16

DSL 4-2015(Temp), f. 12-28-15, cert. ef. 1-2-16 thru 6-29-16

DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0823

Non-motorized In-Stream Placer Mining within ESH - Definitions

For the purposes of OAR 141-089-0820 through 141-089-0835, the following definitions are used in addition to those found in ORS 196.600 to 196.990 and OAR 141-085-0510.

(1) "Completion of the activity" means the responsible party will not return or has not returned to the activity location to resume the activity within 24 hours.

(2) "Gravity Dredge" means a device with a suction nozzle and hose for conveyance of streambed material for which suction is created by gravity. A gravity dredge does not have an auxiliary power source.

(3) "Motorized Equipment" means equipment or devices powered by internal combustion, hydraulics, pneumatics, electricity, or mechanical means.

(4) "In-stream" means below the ordinary high water line of a stream and within the wet perimeter and any adjacent non-vegetated dry gravel bar.

(5) "Placer Mining" means to search or explore for samples of gold, silver, or other precious metals by removing, filling, or moving material from or within the bed of a stream.

(6) "Siphon Dredge" means a device with a suction nozzle and hose for conveyance of streambed material for which suction is created by siphon action. A siphon dredge does not have an auxiliary power source.

Statutory/Other Authority: ORS 196.600-196.692 & 196.795-196.990

Statutes/Other Implemented: ORS 196.600-196.692, 196.795-196.990 & SB 3

History:

DSL 77-2018, adopt filed 05/07/2018, effective 05/07/2018

141-089-0825

Non-motorized In-sStream Placer Mining within ESH - Eligibility Requirements

To be eligible, a project must adhere to the following:

- (1) Purpose. The activity is for the specific purpose of non-motorized in-stream placer mining within ESH.
- (2) Not within a State Scenic Waterway. The activity may not occur within SSW.
- (3) Preceding Year Activity Report. If the person listed on the notification was authorized under this GA or the GA for Recreational Placer Mining in ESH during the preceding calendar year, a completed In-sStream Placer Mining Report for that preceding calendar year must have been submitted to the Department by the last business day in February of the current calendar year.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 77-2018, amend filed 05/07/2018, effective 05/07/2018

DSL 34-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 3-2016, f. & cert. ef. 6-15-16

DSL 4-2015(Temp), f. 12-28-15, cert. ef. 1-2-16 thru 6-29-16

DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14

DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12

DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0827

Non-motorized In-sStream Placer Mining within ESH - Expiration and No Transfer

- (1) Expiration of In-sStream Placer Mining Authorizations. Authorizations issued under this GA expire on December 31 of each calendar year.
- (2) No Transfer of Authorization. An authorization cannot be transferred to another person.

Statutory/Other Authority: ORS 196.600-196.692 & 196.795-196.990

Statutes/Other Implemented: ORS 196.600-196.692 & 196.795-196.990

History:

DSL 79-2018, adopt filed 06/29/2018, effective 07/01/2018

DSL 78-2018, temporary adopt filed 05/07/2018, effective 05/07/2018 through 11/02/2018

141-089-0830

Non-motorized In-sStream Placer Mining in ESH - Authorized Activities

Non-motorized in-stream placer mining within ESH that fills, removes, or moves cumulatively less than ~~twenty five~~ (25) cubic yards of material annually. Material filled, removed, or moved includes the construction and removal of temporary dams.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990
History:
DSL 77-2018, amend filed 05/07/2018, effective 05/07/2018
DSL 35-2018, minor correction filed 01/03/2018, effective 01/03/2018
DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14
DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0835

Non-motorized In-Stream Placer Mining within ESH - Activity-Specific Conditions

~~(1)~~ General Conditions Apply. Activities eligible for this General Authorization must adhere to the general conditions in OAR 141-089-0650 except for subsections ~~(8) and (9)~~, and ~~(14)~~. The following activity-specific conditions also apply:

Projects eligible for this GA must adhere to the general conditions in OAR 141-089-0650 except for sections ~~(8) and (9)~~ and adhere to the following activity-specific conditions:

~~(12)~~ Prevent Fish Stranding. Upon completion of the activity at any given location, the responsible party must fill all furrows, potholes and other depressions created by the activity.

~~(23)~~ Level All Piles. Upon completion of the activity at any given location, the responsible party must level all piles created by the activity.

~~(34)~~ Wet Perimeter. The activity must be confined to the wet perimeter.

~~(45)~~ Disturbance of the Bank and Riparian Vegetation. The activity must not disturb the bank. The activity may not undercut or erode banks or remove or disturb boulders, rooted vegetation, embedded woody material, or other habitat structure on the bank. The activity may not disturb or destroy woody vegetation on the bank for the creation of new access routes.

~~(56)~~ Fish Passage. The activity shall not divert a waterway or obstruct fish passage.

~~(67)~~ Minimization of Impounded Water. The activity may impound only the minimal area of water necessary to operate the dredge under the following conditions:

(a) Any temporary dam shall not extend across more than 75 percent% of the width of the surface water at the time the activity occurs;

(b) Any temporary dam shall be consistent with ODFW requirements set forth in ORS 509.580 through 509.901 and OAR 635-412-0005 through 635-412-0040; and

(c) Any temporary dam shall be removed immediately upon completion of the activity.

~~(78)~~ No Disturbance of Stream Structure. The activity shall not move boulders, logs, stumps, or other woody material from the bed, except for movement by hand and non-motorized equipment. All boulders, logs, stumps, and other woody material moved must be returned to its original position upon completion of the activity.

(89) Dredge Intake Nozzle and Hose Limited. Any gravity or siphon dredge used during the activity shall not have an intake nozzle or hose that has an inside diameter exceeding four inches.

(910) Annual Report Required. The responsible party must maintain a monitoring log and record the date, location, nozzle diameter, hose diameter, and amount of material disturbed for each day of operation. By February 28 of each year, the responsible party must submit to the Department an annual report, on a form provided by the Department, which states the estimated amount of material that was filled, removed, or moved and the mining locations, by latitude and longitude, in each specific waterway during the preceding calendar year. If no jurisdictional activity was conducted, the report must be submitted reporting zero cubic yards for the year.

(101) Responsible Party Must be Present. Alternate persons may operate equipment, provided the responsible party listed on the authorization is present at all times during the activity.

(112) Limited to One Suction Device. Only one gravity or siphon dredge, one hose, and one nozzle may be operated at any given time under this authorization.

(123) Motorized Equipment ~~Not~~ Allowed. Operation of any motorized equipment is prohibited below the ordinary high water line.

(134) Operation Limited to Locations Listed. The activity may be conducted at the locations listed on the authorization only. Written requests to modify locations for this authorization will be reviewed within 14 days of the request, upon which time the Department may issue a revised authorization.

(145) Obstructions to Navigation and Recreation Prohibited. In no circumstance shall anchoring or operation of suction dredges interfere with navigation or cause a safety hazard to public recreation.

(156) Avoid Mussels. Mining equipment, including suction dredges and ~~in-water non-motorized~~ in-water mining equipment must not be used where live freshwater mussels are present. Operations must be relocated if live mussels are encountered during excavation.

(167) Avoid Lamprey. Mining equipment, including suction dredges and ~~in-water non-motorized~~ in-water mining equipment must not be used where Pacific Lamprey adults or larvae are present. Operations must be relocated if lamprey are encountered during excavation. If lamprey larvae are found, the operator must salvage the larvae by sifting through tailings and returning salvaged larvae to the stream away from mining activity. The operator may not resume mining operations in a location where larvae have been found, even after salvaging larvae.

Statutory/Other Authority: ORS 196.600 - 196.692 & 196.795 - 196.990

Statutes/Other Implemented: ORS 196.600 - 196.692 & 196.795 - 196.990

History:

DSL 77-2018, amend filed 05/07/2018, effective 05/07/2018

DSL 36-2018, minor correction filed 01/03/2018, effective 01/03/2018

DSL 3-2016, f. & cert. ef. 6-15-16

DSL 4-2015(Temp), f. 12-28-15, cert. ef. 1-2-16 thru 6-29-16

DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14

DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12

DSL 2-2011, f. & cert. ef. 3-1-11