



FY 2023

# *Managing Oregon's Waters and Wetlands*

*Annual Report of the Aquatic Resource Management Program*

**OREGON DEPARTMENT OF STATE LANDS**

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# REPORT

## AT-A-GLANCE

The Department of State Lands Aquatic Resource Management program protects waters and wetlands for their many contributions to Oregon – streams for swimming and fishing, wetlands to clean water and reduce flooding, and rivers where commerce thrives. The program also manages uses of Oregon-owned waterways, such as for docks, marinas, and utility crossings, which sends money to the Common School Fund and benefits our K-12 public schools.

This **Managing Oregon's Waters and Wetlands: Annual Report of the Aquatic Resource Management Program** for July 1, 2022, to June 30, 2023 (FY23) reviews our annual permitting and authorization activities, details specific management efforts and highlights recent and upcoming activities.

The goal of this report is to provide FY23 information about the Department's management of Oregon's waters and identify achievements, progress and changes needed. This report also fulfills reporting requirements required by the legislature (ORS 196).



## Key takeaways include:

**Development of a statewide Abandoned and Derelict Vessel Program.**

House Bill 2914, passed in the 2023 legislative session, established an Oregon Abandoned and Derelict Vessel Program within DSL and created the Oregon Abandoned and Derelict Vessel Fund in the State Treasury. These resources are critical in supporting the Department's participation in collaborative efforts to address hazardous boats, ships, and other vessels long-term.

**Path to financial self-sufficiency for the regulatory program.**

House Bill 2238 requires the Department Director to adopt rules establishing fees related to removal or fill permit applications, wetland delineation reports, and general authorizations. Passage of this bill will enable the wetland and waterway programs to attain financial self-sufficiency while ensuring that critical services continue to be provided.

**Funds awarded to remove hazardous boats, ships, and other vessels.**

Before House Bill 5029, the Common School Fund was paying for the removal of hazardous vessels from waterways. This bill awarded \$18,763,236 from the Polychlorinated Biphenyls Remediation and Restitution (Monsanto) Account to DSL for deposit into the Oregon Abandoned and Derelict Vessel Fund.

**Development of new training programs for natural resources professionals.**

DSL staff developed new training – the Oregon Rapid Wetland Assessment Protocol and the Stream Function Assessment Method – that provides helpful information for making removal-fill permit decisions. Staff held training courses for city and federal government agencies and forged a partnership with Clackamas Community College to offer training through their continuing education program.

**Recognizing a growing need for additional staff.**

DSL has a combined 11 staff who review and issue decisions on the presence and/or use of wetlands and waterways. The Department currently prioritizes certain work activities over others due to a lack of staff capacity. Furthermore, DSL anticipates a 66% increase in waterway authorization renewals in FY24, followed by a significant increase in other authorization use types through 2040. Weighing the permitting and authorization needs of the public with DSL's current staff capacity, additional staff are needed to ensure continued protection of Oregon's wetlands and waterways.



# ARM PROGRAM OVERVIEW

The Department's Aquatic Resource Management (ARM) program protects Oregon waters and wetlands by administering the state's removal-fill and wetlands conservation laws and protecting public use and enjoyment of Oregon-owned waterways. Some uses of Oregon-owned waterways benefit the Common School Fund and support local Oregon economies.

## Removal-Fill And Wetlands Conservation

Oregonians take wetland and waterway protection seriously because these areas maintain water quality, protect fish and wildlife habitat, and minimize flooding. Due to the large number of wetlands and waters that have been lost, and interest in conserving what remains, the legislature enacted various laws to regulate further development.

Specific to DSL, the Removal-Fill Law was first enacted in 1967 (removal) and then in 1971 (fill). This law applies to all landowners, whether private or public entities, and requires those who plan to remove or fill material in wetlands and waterways to obtain a permit from the Department. In 1989, legislation enlarged DSL's role in protecting and managing wetlands, requiring a statewide wetlands inventory, coordinated land use notices with local governments, and wetland conservation planning.

The Removal-Fill and Wetlands Conservation function of the ARM Program:

**Provides information about the presence of wetlands and waterways.** DSL maintains a [Statewide Wetlands Inventory](#) to help communities and the public screen for potential wetlands and waterways. City and county planners check the Statewide Wetlands Inventory when reviewing a land use application and, if a project area is near mapped wetlands, waters, or on certain soils, the planner sends DSL a Wetland Land Use Notice. Landowners may also request information about the likely presence of wetlands. DSL responses help local governments and landowners understand next steps if these resources are to be developed. This helps prevent unintentional violations of the Removal-Fill Law and is provided at no cost.

**Ensures wetlands and waterway boundaries are correctly identified.** DSL staff review reports from consultants hired by property owners looking to work in wetlands or waterways. These reports are reviewed by the Department for a fee, and they establish the boundaries of wetlands and waterways and provide other information needed for permitting.

**Supports local governments in wetland and waterway conservation planning.** An Aquatic Resource Planner provides technical assistance to local governments that are completing inventory and protection for wetlands and waterways under Oregon's land use planning goals. This includes review of Local Wetlands Inventories and local ordinances implementing wetlands and waterway protections. This position also supports local governments and communities with wetland conservation planning through Advance Aquatic Resource Plans. Local Wetlands Inventories are reviewed for a fee but there is no cost established in rule for review of local ordinances or Advance Aquatic Resource Plans.

**Ensures wetlands and waterways are responsibly managed for the benefits they provide.** Permitting removal and fill activities seeks to balance conservation of wetlands and waterways for the benefits they provide Oregonians with responsible, sustainable economic development and private property interests. Permitting seeks to authorize the minimum amount of impact to wetlands and waterways possible while still meeting the project purpose and need.

**Supports replacement of wetlands and waterways that are developed.** Losses from development may need to be replaced through an action called compensatory mitigation, which involves activities to create, restore, enhance, or preserve other wetlands and waterways. DSL supports the development of third-party projects called mitigation banks that generate salable “credits” for purchase by developers, accepts payments that are consolidated within an area and funds compensatory mitigation projects, and provides plan review and monitoring when developers want to perform their own compensatory mitigation.

There are five DSL staff positions that provide information about the presence of wetlands or waterways and review reports from on-site investigations of their boundaries. Another ten staff review permit applications, monitor permit compliance, and handle enforcement. These staff are assigned to specific counties. Other positions include a liaison with Oregon Department of Transportation who works on transportation-related projects statewide, an Aquatic Resource Planner who assists local and regional governments in wetland conservation planning, and one staff who works on compliance. There are also four technical and policy specialists in the fields of jurisdiction, removal-fill, and mitigation that support the work of these staff, interpret relevant policies, and promote strategic improvements in their program areas.



DSL helps Oregonians determine if they have a wetland by sampling vegetation, soil, and hydrology. This service is free to proactively prevent violations of the Removal-Fill Law, however, with just five staff to perform these determinations throughout the state, there is an unmet backlog.

## Oregon-Owned Waterways

Upon becoming a state, Oregon assumed ownership of lands underlying waterways that were used for purposes of travel or trade. Since statehood, other water bodies have been determined to be Oregon-owned through legislative, judicial, or administrative proceedings. These waterbodies include rivers, lakes, and waters on Oregon's coast, including bays, estuaries, portions of waterways subject to the ebb and flow of tides, and the Pacific Ocean to three miles offshore (i.e., Oregon's territorial sea). For more information, including a current list of Oregon-owned waterways, please visit [Use of Oregon-Owned Waterways](#).

The State Land Board holds these waterways in trust for all Oregonians, and the Department is responsible for managing and authorizing uses of these Oregon-owned waterways through the proprietary program. The public has the right to use the beds and banks of Oregon-owned waterways for boating, fishing, swimming, and any other legal activity. For uses outside of light recreation, staff at the Department of State Lands works with Oregonians in getting the right authorization for the desired use.

The Oregon-Owned Waterways function of the ARM Program:

**Manages waterways to benefit current and future school kids.** Authorizations for use of Oregon-owned waterways seek to maximize revenue generation for the Common School Fund while protecting waterways for fishing, navigation, recreation, and commerce.

**Ensures waterways continue to thrive.** Projects that enhance, improve, or protect Oregon-owned waterways require a vision – and they require funding. DSL provides grants through the Submerged Lands Enhancement Fund to eligible organizations to take actions on Oregon-owned beds and banks such as removing structures like docks and boats in disrepair and undertaking projects that improve water quality and fish and wildlife habitat. The fund is financed on a biennial basis by up to 20 percent of the revenue generated by waterway authorizations.

**Develops management strategies that reduce risk.** Unauthorized uses of Oregon-owned lands -- including long-term camping that results in the accumulation of trash, debris, and human waste -- and removal of large and small boats that have either sunk or are at risk of sinking can release hazardous material and pose a danger to others. Even authorized uses may pose risks to the health of Oregon-owned waterways that need to be covered through appropriate risk-management tools. Broad management strategies are guided by DSL's Strategic Plan for 2022-2027, as well as legislation during the 2023 session.

**Collaborates with other agencies and organizations in managing Oregon's waterways.** DSL has extended agreements with Metro Regional Government, Multnomah County Sheriff's Office, the Oregon Parks and Recreation Department, and the City of Eugene to help manage Oregon-owned lands. We continue to coordinate with the Oregon State Marine Board (OSMB) and the Metro Abandoned and Derelict Vessel working group to address abandoned boats and boats in poor condition being used as shelter. The Department also continues to engage with public partners and other stakeholders on various aspects of the Portland Harbor Superfund Site on the Willamette River.



Portland Harbor Superfund Site



# WETLAND AND WATERWAY

## DEVELOPMENT PERMITTING

Wetland and waterway permitting involves early identification of wetlands and waterways on a project site, identifying the practicable alternative with the least impact to wetlands or waterways, and planning for compensatory mitigation to replace the functions and values that will be lost because of the removal-fill activity.

Identifying wetlands and waterways is primarily accomplished through the following processes.

**Wetland Land Use Notices:** All counties and cities are required to notify the Department of certain development activities proposed in wetlands or waters that are mapped on the Statewide Wetlands Inventory. Local governments provide information in an online submittal form and DSL is required by statute to review the notice and provide a written response within 30 days to the applicant and local government as to whether the proposed action is likely to require a removal-fill permit and/or a more precise wetland boundary location, known as wetland delineation. The objective of the notification process is to provide coordination between local city or county development approvals and state wetland regulations. Overall, the wetland land use notice process has proven to be an effective “early warning” mechanism for landowners and developers that a state permit may be required in addition to the local approval.



Wetland delineation conducted in Klamath County

**Determinations:** Determination reports identify if potentially jurisdictional wetlands or other waters such as streams and ponds are present. Department staff helps by conducting free wetland determinations for the public including property owners and other interested parties. The service is usually conducted offsite by staff at their desks using available information, but occasionally they may conduct an onsite visit as part of the process.

**Delineation Report Reviews:** If wetlands or waters are present, a delineation report by a wetland consultant may be needed. These reports create detailed mapping and document the size, location, and other qualities of the wetlands and waters. Staff review the delineation reports submitted to the Department within 120 days and require a fee for review, per statute. Landowners, developers, and local governments use the approved delineation report and maps to avoid or minimize impacts to wetlands and waters of the state, or to determine the impacts that will require a state permit.



Identifying the number of these three types of requests (wetland land use notices, determinations, and delineation report reviews) and average response times is important for DSL to understand workload. As Table 1 shows in outlining the processes completed in FY23, work on these three request types continues to be challenging for the six staff assigned to this work. Refer to *Appendix A* for a five-year trend on both response time to wetland land use notices and total count of jurisdictional report reviews.

Staff prioritize delineation report reviews, as these are often needed early in project planning and require payment, followed by wetland land use notices and determinations as time allows. Wetland land use notices and determinations do not have fees established in statute or rule. Staff let inquiring customers know about this prioritization and likely wait times; some customers decide to hire a consultant rather than wait.

Table 1

TYPE OF REVIEW	NUMBER REVIEWED, FY 2023	AVERAGE RESPONSE TIME
Wetland Land Use Notices	1,004	24 days
Determinations	242	N/A
Delineation Report Reviews	360	93 days

There are four types of permits available to conduct work in wetlands and waterways.

**Individual Permits (IP):** Permits that generally have more than minimal adverse effects to waterways or wetlands, are more complicated, often involve more than one removal-fill activity, or involve a substantial mitigation obligation. These projects do not qualify for General Permits or General Authorizations. Per statutory requirement, the processing timeline is up to 120 days.

**General Permits (GP):** A streamlined permit covering activities that are substantially similar in nature, recurring or ongoing, and have predictable effects and outcomes. The processing timeline is up to 40 days for most GPs. General permits may be by order or established through rulemaking. Notably, the U.S. Forest Service and Bureau of Land Management have a general permit by order for certain restoration activities on public lands and partnering private lands in Oregon. While this counts as only one permit, many projects occur under it.

**General Authorizations (GA):** A streamlined permit for nine specific types of removal-fill activities that have minimal adverse effects on wetlands and waterways. General Authorizations are preapproved but require a 30-day notice to the Department prior to the removal-fill activity.



This fish channel improvement at Oaks Bottom Wildlife Refuge in Portland utilized an Individual Permit (IP).

**Emergency Permits (EP):** Authorizations for emergencies that pose a direct threat to human health, safety or substantial property, and where prompt removal-fill action is required to address the threat. Approval is given as quickly as possible in emergency situations. Work must be limited to the minimum necessary to alleviate the threat.

**No State Permit:** Applications that are determined to be exempt from needing a DSL permit are provided an official “no state permit required” letter by the Department. Landowners may need this letter for various reasons. These decisions do not require an application fee but still require staff time to review and are an official decision.

Oregon provides greater protection for streams and associated wetlands that provide critical habitat for Chinook salmon, steelhead trout, and other sensitive, threatened, or endangered fish species. These areas, called Essential Salmonid Habitat (ESH), require special reporting under ORS 196.885. DSL creates a [map detailing all known ESH designations for Oregon’s waterways](#) using data provided by the Oregon Department of Fish and Wildlife. There are currently 23,021 miles of ESH designated streams statewide. This map is updated annually based on new information.



Sites like the Metolius River in the Deschutes National Forest are designated Essential Salmonid Habitat (ESH) using scientific data from the Oregon Department of Fish and Wildlife.

A permit is required to remove or place any amount of material into an ESH. Types of projects that we might be asked to permit include everything from building a dock to adding large rocks that prevent bank erosion.

Identifying the numbers of applications received—and DSL’s decision—demonstrates workload and identifies where there may need to be changes, such as if a high number of denials are issued. Table 2 shows permit applications received in FY23 as well as permit decisions made during FY23. Applications received during a fiscal year may not have a final decision from the Department in the same fiscal year, either because an application was incomplete and the Department is waiting on more information or because there the permit was received later in the fiscal year. No permits were denied during FY23; staff and applicants typically work throughout the permit process on any changes needed so that the Department can reach a favorable decision. Table 3 shows removal and fill volumes authorized, and [Appendix B](#) indicates the locations of authorized activity for FY23. Refer to [Appendix A](#) for a five-year trend on removal-fill authorizations by type.

Table 2

PERMIT TYPE	APPLICATIONS RECEIVED	APPLICATIONS APPROVED	APPLICATIONS DENIED	TOTAL DECISIONS	APPROVED IN ESH (OF TOTAL)
Individual Permit	185	416	0	416	175
General Authorizations	96	94	0	94	66
General Permit	47	98	0	98	34
Emergency Permit	18	14	0	14	7
No State Permit	64	64	0	64	25
<b>Totals</b>	<b>410</b>	<b>686</b>	<b>0</b>	<b>686</b>	<b>307</b>

*Applications received and agency decisions are not aligned. Some applications received were still under review as of June 30, and some agency decisions were for applications received later in FY22.*

Table 3

PERMIT TYPE	WETLAND ACRES GAINED	WETLAND ACRES LOST	NET WETLAND ACRES
Individual Permit	110.58	50.99	59.59
General Authorization	2.7	0.00	2.7
General Permit	0.00	1.97	-1.97
Emergency Permit	0.00	0.00	0.00
Mitigation Bank	87.57	0.00	87.57
<b>Totals</b>	<b>113.28</b>	<b>52.96</b>	<b>60.32</b>

Wetlands and waterways play a vital role in maintaining human and ecosystem health in Oregon such as providing clean water, and habitat for fish, birds, mammals, amphibians, reptiles, and insects. To make sure these vital functions are not lost, the Oregon legislature requires the offset of losses of functions and values when they are impacted (ORS 196.825) and seeks to maintain a stable resource base of wetlands through the adoption of mitigation standards used by federal agencies (196.672). Wetlands can be removed from the landscape entirely, whereas streams can be improved or degraded, but they generally are not removed from the landscape. DSL tracks and reports wetland area gains and losses but does not yet have a way to track function gains or losses, although improvements may be available in 2025 through DSL's work on a modern permitting and information system.

No net loss of wetland areas means that wetland acres gained through the creation or restoration of wetlands (but not enhancement or preservation of existing wetlands) should equal wetland acres lost through permitted impacts. Wetland creation involves developing wetlands at a location where there is no evidence a wetland existed historically, while wetland restoration is re-establishing a former wetland.

Table 4 shows the number of acres gained and lost in FY23 by permit type to see whether no net loss in wetland acreage goals was achieved. There was a net gain of 60.32 acres of wetlands from authorized activities. Wetland gains and losses are highly variable year to year. While wetland losses are compensated in each removal-fill authorization, this is often achieved through the purchase of credits from mitigation banks or payment to the Department through our in-lieu fee programs. Gains from mitigation banks and other Department-funded mitigation projects are recorded in the fiscal year that they are approved. In FY23, one new mitigation bank was approved for a gain of just over 87 wetland acres. This is a site that can compensate for future losses of wetlands. *See the [Compensatory Mitigation Opportunities](#) for more information on mitigation banking and in-lieu fee programs.*

Table 4

PERMIT TYPE	WETLAND ACRES GAINED	WETLAND ACRES LOST	NET WETLAND ACRES
Individual Permit	110.58	50.99	59.59
General Authorization	2.7	0.00	2.7
General Permit	0.00	1.97	-1.97
Emergency Permit	0.00	0.00	0.00
<b>Totals</b>	<b>113.28</b>	<b>52.96</b>	<b>60.32</b>

Increasing or preserving wetland functions somewhere else is also important. These methods of protection or increasing wetland functions are called wetland enhancement and preservation.

**Wetland enhancement** occurs when a wetland that has been altered by ditching or other drainage, berms or dikes, or additional water inputs is repaired through a mitigation project or voluntary habitat project.

**Wetland preservation** permanently protects high functioning wetlands under threat of development by restricting development through a conservation easement.

Enhancement and preservation projects do not result in acreage gains, so they are not included in Table 4. In FY23, the Department recorded 686 acres of wetland enhancement gains mostly from voluntary projects approved through general authorization notices. No wetland preservation projects occurred.

**Monitoring**

Once permits are issued, the Department monitors for compliance with the type of permit issued and conditions described in the permit. Compliance is important because it highlights potential issues with certain permit types that may require changes or additional guidance. Table 5 shows there was a 90% overall compliance rate for permits monitored in FY23; however, only 71% of individual permits were compliant. Some reasons for non-compliance include failure to provide required reports by the deadline, not providing an access easement to the Department, working outside of the in-water work window, and not meeting all performance standards for mitigation. DSL worked with permittees to resolve these issues.

Table 5

PERMIT TYPE	NUMBER MONITORED	COMPLIANT	NON-COMPLIANT
Individual Permits	14	10 (71%)	4 (29%)
General Authorizations	20	19 (95%)	1 (5%)
General Permits	35	34 (97%)	1 (3%)
Emergency Permits	14	12 (86%)	2 (14%)
<b>TOTAL</b>	<b>83</b>	<b>75 (90%)</b>	<b>8 (10%)</b>



Sand Island in the Willamette River

Staff also monitor permits that have a site restoration requirement (e.g., temporary impacts that will be restored, such as replanting vegetation) or have a compensatory mitigation site that will be monitored for success. Monitoring duration varies but is for a minimum of five years for compensatory mitigation. The Department is actively monitoring 577 projects (Table 6). The Department's goal is to keep pace by closing as many files as are opened; however, this varies from year to year. Reviewing monitoring reports is challenging for staff to accomplish because the priority for their time is issuing and renewing permits needed for development projects to move forward to construction.

Table 6

WATERWAY TYPE	NUMBER OF PERMITS WITH MONITORING REQUIREMENTS	OPENED FY23	CLOSED FY23
Wetland	273	24	31
Stream	304	49	36
<b>Totals</b>	<b>577</b>	<b>73</b>	<b>67</b>

## Enforcement

DSL uses enforcement to deter and correct unauthorized impacts to wetlands and waterways using fair, transparent, and consistent methods to achieve compliance and program integrity. Types of violations that may require enforcement are:

**Unauthorized removal-fill:** Removal-fill activity undertaken without a permit where a permit was required.

**Non-compliance with a removal-fill permit:** Failure to comply with one or more substantive conditions of a removal-fill permit. Typical examples include impacts to wetlands or waterways greater than authorized; failure to comply with other substantive condition(s) of the removal-fill permit; and failure to implement, maintain, or monitor required compensatory mitigation in part or whole. Such situations may be handled inside or outside of an enforcement process depending on the scope of the non-compliance and the cooperation of the permittee in addressing the point(s) of non-compliance.

**Failure to comply with a final order of the agency:** This includes, but is not limited to, failure to comply with a term or condition of a Cease and Desist Order, Notice of Violation, Final Consent Order, Final Restoration Order, or an order approving a General Permit, Wetland Conservation Plan or Advance Aquatic Resource Plan.

**Misrepresentation:** Obtaining a permit or reporting conditions of a permit by misrepresentation or by failure to disclose known material facts.

Compliance and enforcement are important because they allow staff to explain the purpose of the Removal-Fill Law and why a permit or permit condition is required, work with the landowner on changes needed for compliance, and, ideally, provide for compensation for any permanent impacts to wetlands and waterways. Investigating complaints and compliance issues can be time-consuming because they often require site visits, research, and ongoing conversations to reach resolution.

Table 7 shows compliance and enforcement activities in FY23. It is a testament to the relationship formed between staff and permittees during the permitting process that out of 1,067 active permits, only four enforcements were opened for projects due to non-compliance with a removal-fill permit. Only one of these enforcements involved removal or fill in ESH designated waterways. In contrast, there were 42 enforcements opened for unauthorized removal-fill and 23 of them occurred in ESH.

Compliance checks, enforcement, civil penalties, and final orders do not typically occur in the same year. For example, civil penalties may be collected for enforcements in prior years, and the amount of civil penalties initially assessed may be higher or lower than the amount collected.

Table 7

	NUMBER OF COMPLIANCE CHECKS	ENFORCEMENT FILES OPENED	ENFORCEMENT FILES CLOSED	CIVIL PENALTIES ASSESSED	CIVIL PENALTIES COLLECTED	FINAL ORDERS
Non-compliance with permit	95	3	8	\$8,000	\$8,000	3
Non-compliance with permit in ESH (of total)	41	1	0	\$5,000	\$5,000	1
Unauthorized removal-fill	134	42	70	\$127,015	\$136,457	18
Unauthorized removal-fill in ESH (of total)	63	23	29	\$47,957	\$26,907	9

*In FY 2023, staff conducted 11 on-site project compliance checks under the USFS/BLM General Permit.*

Most enforcements are resolved through voluntary compliance (Consent Agreements and other orders) or are closed by the Department if further investigation reveals no violation occurred or there was insufficient evidence to confirm a violation.

Enforcement orders, as well as permit decisions, may be contested (appealed) and go through administrative hearings and judicial enforcement proceedings to be resolved. When this occurs, staff can spend over 100 hours on each contested case, which means staff that would normally be working on permits or monitoring cannot do so. Contested cases must also involve Department of Justice attorneys, which increases overall costs.

There were two new contested cases requested in FY23 for removal-fill, one related to a permit decision and one related to unpermitted removal-fill. The contested case regarding a permit decision was withdrawn. The contested case for unpermitted removal-fill was requested in October 2022 and the administrative hearing has been delayed until September 2023 at the defendant’s request.

Of the contested case hearings requested in previous fiscal years, three progressed in FY23. Two now have draft Proposed Final Orders and a second has been closed.

# USE OF WATERWAYS

## PROPRIETARY AUTHORIZATIONS

The Department's waterway use program, referred to as the proprietary program, issues the following authorization types for uses of Oregon-owned waterways:

**Public Facility License:** Publicly owned structures and uses such as boat ramps, docks, fishing and swimming platforms, viewing structures, and navigation aids.

**Registration:** Non-commercial uses and smaller structures such as boat docks, or small boat houses (under 2,500 square feet), or floating recreational cabins (under 1,500 square feet), pilings, erosion control structures and voluntary habitat restorations.

**Lease:** All commercial uses and structures and any recreational structure larger than 2,500 square feet. Uses can be either water or non-water dependent and include, among other uses, commercial docks, work boat and other vessel moorage, sea water desalination and fish processing plants, marinas, restaurants, hotels, warehouses, or other over-water structures.

**Easements:** Required for long-term or permanent structures and uses on Oregon-owned land. Types of uses include bridges and utility line crossings, erosion control structures and dredge spoils.

**Sand and Gravel:** May either be a lease or license for removal or sand and gravel. Revenue is unique from other authorizations because it includes royalty payments based on the volume of material extracted.

**Short Term Access:** These authorizations have minimal and temporary impacts on the waterway or others' ability to use it. Uses include, but are not limited to, research and education, sediment sampling, right of entry, and geotechnical and land surveys. These authorizations are for non-business purposes and do not cover commercial enterprises. They are for limited duration uses, typically for less than one year, and do not require a fee unless they are related to an order for remediation or restoration issued by the Environmental Protection Agency or Oregon Department of Environmental Quality.

This lease renewal in Malheur County is for a rustic ferry that provides access and brings agricultural equipment to an island in the Snake River.





**Special Use:** May be a lease or license for a variety of uses not otherwise captured above for a person to use an area under specific terms and conditions for a specific length of time. Examples include agricultural activities, communication facilities, recreational cabins, motion picture filming and set construction, and sporting events.

Each authorization represents an entity or individual(s) that the Department conducts business and maintains a contractual relationship with and results in revenue to the Common School Fund. Table 8 shows the number of active authorizations within each type, as well as new and renewed authorizations during FY23 and resulting revenue. Refer to [Appendix A](#) for five-year trends on new and renewed waterway authorizations by type. New authorizations and renewals are below the five-year average, driven by decreases in registration of waterway structures. Revenue is 28% less than the five-year average due to lower waterway easement revenue (83% less compared to the five-year average). DSL did not issue any cable easements in the territorial sea in FY23, which has generated larger revenues in previous years. Many uses authorized as easements are exempt from compensation or compensation is limited in rule. DSL is identifying potential changes in fees for certain uses. See the [Future Projects and Priorities](#) section for more information about strategic initiatives.

Table 8

AUTHORIZATION TYPE	ACTIVE AUTHORIZATIONS	ISSUED IN FY 2023	RENEWED IN FY 2023	REVENUE IN FY 2023
Public Facility License	225	0	5	\$4,500
Waterway Easement	1,264	13	7	\$38,607
Registration of Waterway Structures	2,971	18	359	\$120,400
Waterway Lease	529	4	23	\$2,299,846
Sand & Gravel	24	2	2	\$394,544
Short Term Access Authorization*	107	29	0	\$3,000
Special Use License/Permit*	13	0	0	\$2,000
Special Use Lease*	15	0	0	\$25,162
<b>Totals</b>	<b>5,148</b>	<b>66</b>	<b>396</b>	<b>\$2,888,059</b>
<b>FY23 Compared to 5-Year Average</b>	—	<b>-41%</b>	<b>-32%</b>	<b>-28%</b>

## Staffing

For the entire state, DSL has six full-time equivalent staff that:

- Review and issue waterway use authorizations
- Conduct site visits and follow up on issues of compliance
- Invoice annually for rental and other payments
- Process applications for assignments, sublease agreements, and amendments
- Handle other contracting issues

Two additional staff support these roles. One position handles registrations of waterway structures statewide. A technical and policy specialist supports the work of these other staff, promotes consistent interpretation of policy, and focuses on strategic improvements.

DSL also has two limited duration staff who provide Portland Harbor Superfund Site coordination and support improvements in the Territorial Sea Plan in coordination with the Department of Land Conservation and Development, respectively. *See the section [Portland Harbor Superfund Site](#) or [Territorial Sea of Oregon](#) for more information on activities.*

Anticipating future renewing authorizations helps DSL anticipate staffing needs. Most authorizations have a specific term that determines when an authorization holder will apply for renewal, such as 30 years for easements, 15 years for leases and Public Facility Licenses, and 5 years for most registrations. Other authorizations issued by the Department—for example, Special Use Licenses and Sand and Gravel Authorizations—vary in term length depending on the authorized use and the length of term requested by the applicant.

We anticipate there will be 689 renewals in FY24, a 66% increase from FY23. Otherwise, the Department expects flat or reduced renewal authorizations until FY29, when the number of leases and public facility licenses requiring renewal increases markedly. Similarly, easement renewals will increase starting in 2030. These periodic peaks in renewals are linked to the Department's focus in the late 1990s to bring unauthorized uses of Oregon-owned waterways into compliance under the appropriate waterway use authorization. Additional staff will be needed to handle the increased workload, which, at the future time of hire, is not expected to lighten and return to current levels until FY49.



An interagency team visits a mitigation project site near the town of Linnton, adjacent to the Willamette River.

# HAZARDOUS VESSELS

## AND LONG-TERM CAMPING

### Abandoned And Derelict Vessels

There are hundreds of boats using Oregon's waterways, including commercial and recreational varieties of all sizes. Sometimes these boats are not maintained and fall into disrepair, being sold for cheap or becoming abandoned instead of properly disposed of. Larger boats may be purchased with dreams of restoring them for uses such as a floating restaurant, bed and breakfast, or museum, but the costs end up being higher than expected. These abandoned and derelict vessels (ADVs) are an ongoing threat to waterway health and safety with hundreds of ADVs statewide. Oregon's public waterways belong to us all, but ADVs seriously impact Oregonians' use and enjoyment of what should be safe and healthy places to boat, fish, and swim.

These vessels also impact public schools. For years, the Department has worked with state, federal, and local partners to clean up and remove commercial and recreational ADVs. While collaborative efforts have resulted in successfully removing multiple vessels from waterways, lack of a statewide ADV program with dedicated funding has led to the Common School Fund, and Oregon's schoolkids, footing the bill for vessel cleanups. Since 2017, the Common School Fund has expended more than \$18 million removing commercial and recreational vessels from public waterways.

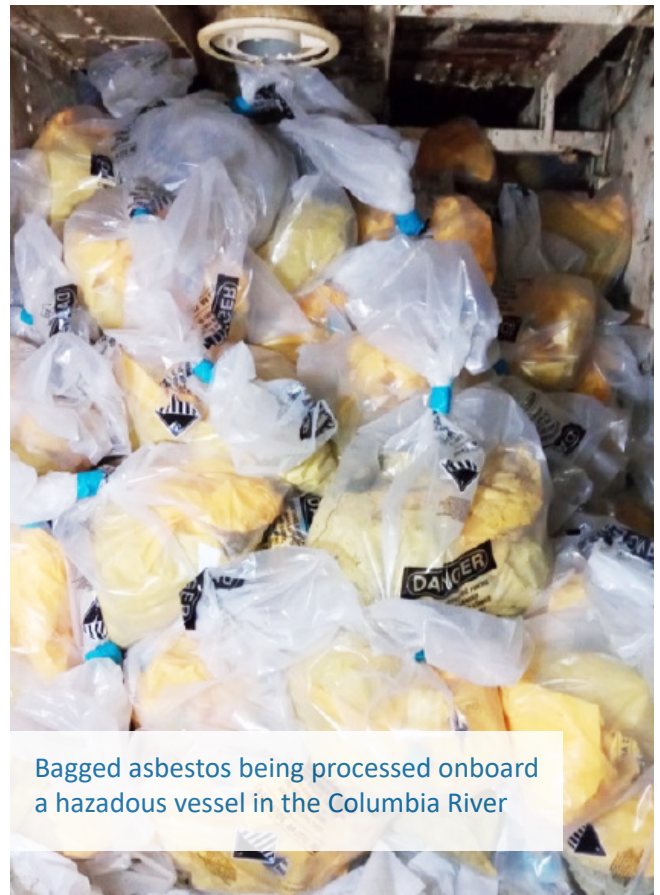
There are also logistical challenges to cleanups. In Oregon, there are no permanently authorized facilities that break down ships, which adds additional barriers and expenses. Extensive collaboration is also needed by state, federal, and local partners. Resources, capacity, and relative priorities need to align for successful removal.

In August 2022, the State Land Board directed DSL to request \$40 million in general funds during the state budget process to address the need to remove ADVs. DSL is thrilled that two bills were approved during the 2023 legislative process:

**HB 2914:** Established the Oregon Abandoned and Derelict Vessel Program at DSL to address abandoned and derelict vessels. Created the Oregon Abandoned and Derelict Vessel Fund at the Oregon Treasury.

**HB 5029:** Allocated \$18,763,236 from the Polychlorinated Biphenyls Remediation and Restitution Account (Monsanto Account) to DSL for deposit into the Oregon Abandoned and Derelict Vessel Fund.

For more information on next steps related to these two bills, see the section on *Future Projects and Priorities*.



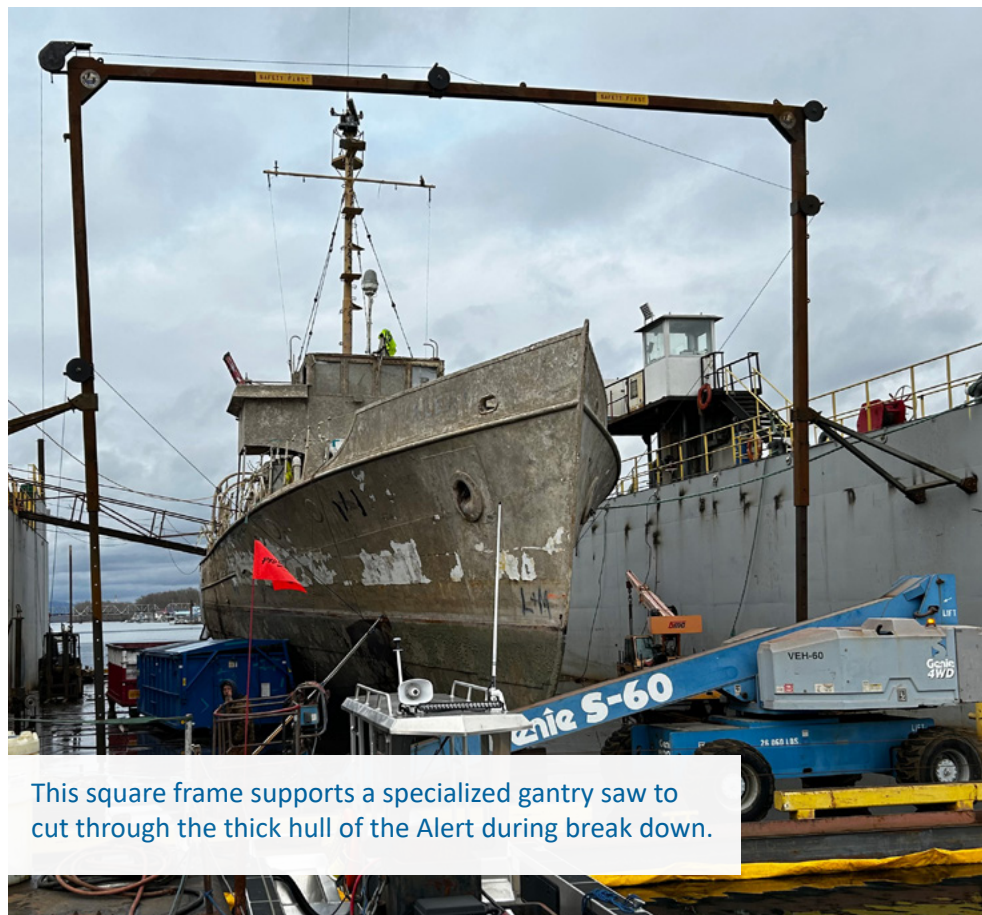
Bagged asbestos being processed onboard a hazardous vessel in the Columbia River

In the meantime, DSL continues to remove ADVs and identify ways to reduce the risks posed by ADVs. The Department has prioritized addressing larger ships such as tugboats, barges, and former military vessels because of the larger threat they pose to Oregon-owned waterways and the public's right to these waterways for recreation, navigation, and other legal activities. These ships are more likely to contain harmful quantities of oil, lubricant, and other toxic substances in the materials used to construct the vessel or in cargo on board. These chemicals can injure or kill marine mammals, waterfowl, and other aquatic life, and contaminate aquatic lands, nearby shorelines, and water bodies.

The Department coordinated the removal of three such vessels in FY23 with one in-progress:

**Tourist No. 2:** On July 28, 2022, a former river ferry built in the 1920s began sinking while moored near the downtown Astoria riverwalk. The vessel was visibly spilling fuel. The U.S. Coast Guard stepped in to contain and remove pollutants from the water as well as from the vessel itself. This vessel was an imminent threat to public health and safety. It had severe hull damage, extensive dry rot, a fragile shell, and was directly upstream from a fuel dock. It was also very close to the navigation channel. Not removing the vessel from the water was not an option, however, the vessel's poor condition made removal complex. The vessel was crushed in place, pulled from the water and set on a barge, with barriers in place to catch floating debris. The vessel was transported to land for safe disposal. Total cost to the Common School Fund was \$805,000.

**Alert and Sakarissa:** These two former military vessels were purchased years ago by an individual with aspirations to restore them in coordination with at least two nonprofits. The primary owner passed away and the nonprofits dissolved. The Alert and Sakarissa were abandoned off Hayden Island, just west of the I-5 interstate bridge. The vessels were monitored by DSL and partners and in 2020, the U.S. Coast Guard removed oil and hazardous materials from both vessels, mitigating their impacts. The Alert sank in October 2021 and the Sakarissa sank in March 2022. DSL worked with partners to raise and refloat the vessels in September 2022, then remove them from the water for salvage and deconstruction. Total cost was \$7 million, including \$2.6 million to the Common School Fund, \$2.3 million to the U.S. Coast Guard, and \$2 million from Metro. The Department anticipates receiving a lumpsum payment from one of the dissolved nonprofits to help offset the cost of disposing of the Sakarissa, though no funds have been received yet.



This square frame supports a specialized gantry saw to cut through the thick hull of the Alert during break down.

**F/V Tiffany:** Originally built in 1939, the F/V Tiffany was a buoy tender for the U.S. Coast Guard for nearly 30 years, then served as a fishing vessel for about another 50. The Tiffany is presently tethered to the bank of the Columbia River about five miles downstream of the city of Rainier. Despite efforts by DSL and the Department of Justice to contact the listed owner, the owner has not been located to claim responsibility for removing the vessel. In April 2021, the Tiffany sank, at which time the U.S. Coast Guard contracted a company to refloat it and remove oil and other hazardous materials onboard. The Tiffany currently remains floating; however, the Department has been advised that if left as-is, it will sink once more, causing environmental damage and increasing the cost of removal by as much as three or four times the current estimated price. DSL is contracting for the vessel to be towed by November 2023 to a site for deconstruction, hazard abatement, and disposal. Removal of the F/V Tiffany is anticipated to cost \$1.4 million, which the Department will fund via the Polychlorinated Biphenyls Remediation and Restitution (Monsanto) Account.



A cross section of the Alert being prepared for steel recycling.

Marinas are also an important part of the solution to ADVs. Marinas may require insurance and that a boat owner keep their OSMB boat registration current. ADVs are most often unregistered and keeping registration up to date is the first step in preventing ADVs. OSMB has been doing much of this important work with their Clean Marina program. DSL supports these efforts by requiring marinas to report annually (point in time summary) on boats at their marina. This requirement was added to new marina lease terms in 2021 and will be added to existing marina leases upon renewal. Reports go to OSMB, with DSL copied, and include the name and contact information of the boat owner, as well as the boat identification number, expiration date of the registration, and the boat's slip number in the marina.

## Long-Term Camping

Public land can feel like the last space available for people experiencing homelessness. These lands are not healthy living options as they are exposed to extreme weather conditions, lack access to basic needs like water and sanitation, and are isolated from outreach and emergency services. Besides being unsuitable for human habitation, lands and waterways used for long-term camping often experience severe, potentially irreversible, impacts to ecological health. Staff at DSL have encountered extensive littering and dumping, reckless burning, destruction of riparian vegetation, discharge of firearms, and other health and safety issues when visiting long-term camping sites.

The Department works closely with local community partners, such as the Multnomah County Sheriff's Office Homeless Outreach Programs Engagement (HOPE), taking a cooperative approach to identify effective solutions and strategies for addressing individual camps. During FY23, the Department conducted a significant camp cleanup at Lindbergh's Beach, in Portland. This three-day cleanup removed approximately 10 tons of debris and two boats from the riparian area. DSL was assisted by local and state governments, behavioral health professionals and law enforcement.

In some cases, the State Land Board and DSL try to resolve known issues through temporary restrictions on camping, campfires, and overnight use followed by DSL rulemaking to limit uses permanently. During FY23, DSL conducted rulemaking to restrict public use of approximately 500 yards of the bank of the Columbia River along the north side of Hayden Island, between river mile 106 and 107. The rule closes the area to all uses between 10 p.m. and 5 a.m. and prohibits the establishment of fires or campsites at all times. This rule ([OAR 141-088-0240](#)) became effective on November 1, 2022. Enforcing closures and other restrictions is challenging and requires a holistic, collaborative approach.

While it's understandable that people experiencing homelessness seek shelter on public land, long-term camping along waterways is not healthy for people or the environment.

This site on Hayden Island, between river mile 106 and 107, required rulemaking to limit use permanently. DSL relies on a network of community partners to ensure use limitations are effective.



# PORTLAND HARBOR

## SUPERFUND SITE

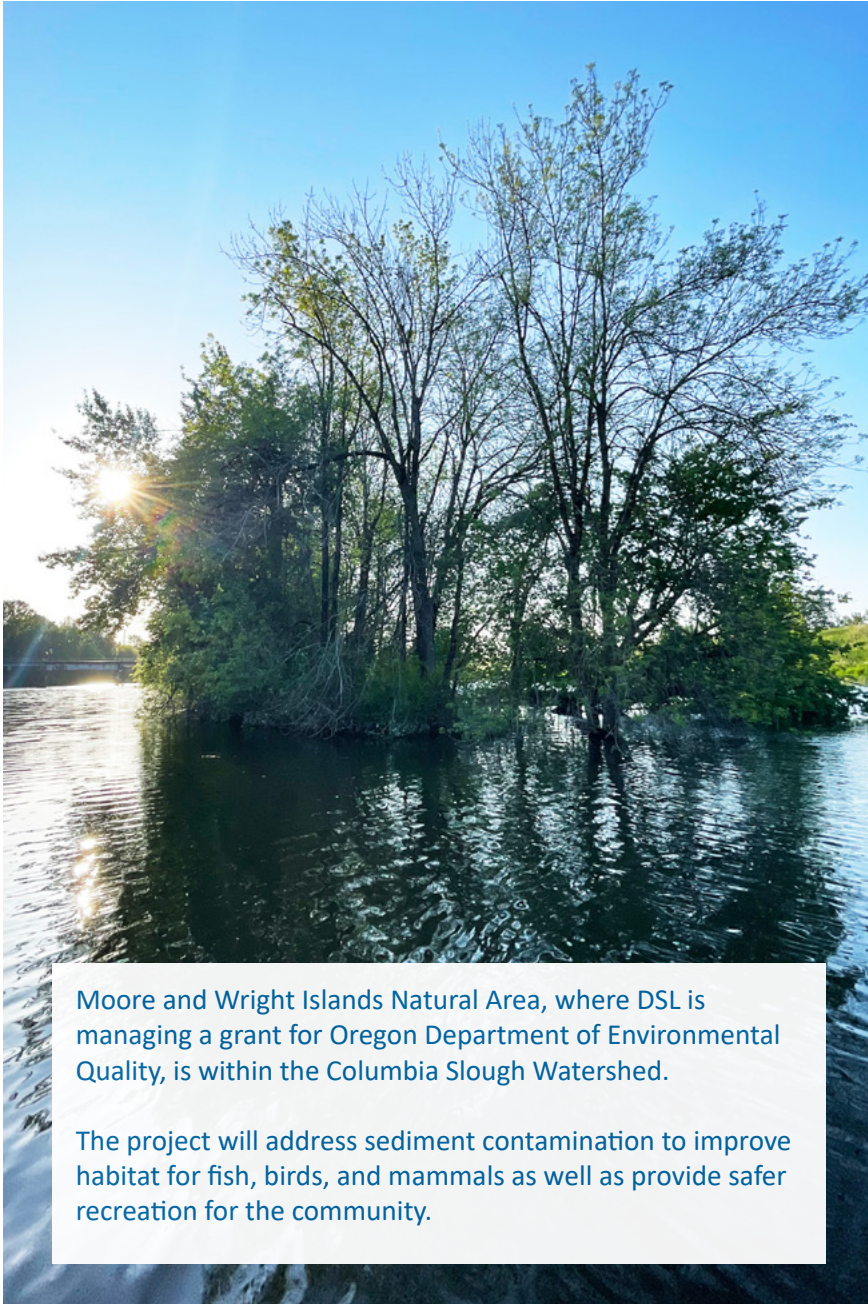
Portland Harbor is an area of the Lower Willamette River extending roughly from the Freemont Bridge to Sauvie Island in Portland, Oregon. This area was contaminated from decades of industrial use. In December 2020, the area was added to the Environmental Protection Agency's National Priorities List as a superfund site. Water and sediment are contaminated with many hazardous substances that have been found to be harmful to people and the environment. Health risks at the site are great enough for immediate and intense attention. It is one of the largest superfund sites in the United States. EPA provides quarterly updates on the status [here](#), including the [June 2023 Portland Harbor Superfund Site Updates](#).

The total cleanup costs for the Portland Harbor Superfund Site are estimated by the Environmental Protection Agency to exceed \$1.7 billion. Most of the riverbed and much of the riverbank in the 10-mile cleanup area along the Willamette River is land that was transferred to Oregon at statehood and therefore the State of Oregon is involved in Portland Harbor as a potentially responsible party for cleanup. DSL supports efforts to clarify ownership boundaries to limit the state's share of likely cleanup costs and natural resource damages. Defense costs have and will continue to be substantial. Since the area is an Oregon-owned waterway, DSL is also engaged through removal-fill permitting and authorization of proprietary use of the waterways where cleanups are likely to occur.

The State of Oregon has entered into multiple agreements with the United States Environmental Protection Agency to facilitate design work needed for cleanup of the Portland Harbor Superfund Site. Investigations and designs connected to specific cleanup areas, including environmental consulting costs and legal expenses, are ongoing.

Multnomah County, ODFW, and the Human Access Project advise the public about safe fish consumption at Duckworth Dock in Portland.





Moore and Wright Islands Natural Area, where DSL is managing a grant for Oregon Department of Environmental Quality, is within the Columbia Slough Watershed.

The project will address sediment contamination to improve habitat for fish, birds, and mammals as well as provide safer recreation for the community.

Dedicated DSL staff attention is required to participate in and be responsive to the Superfund process. DSL has one limited duration position for this work.

Key activities during FY23 included:

- DSL was awarded a \$1M Brownfields grant in May 2023 specific to the Moore and Wright Islands Natural Area in the Columbia Slough. We are developing an interagency agreement with Oregon Department of Environmental Quality to manage this project.
- Completion of a [Portland Harbor Information Management Plan](#) for the Portland Harbor Information Management System (IMS), which will provide information and data to agency personnel, other parties involved, and the public.
- Completion of the [Programmatic Informational Controls Implementation and Assurance Plan](#) for the development of the IMS. This document facilitates coordinated planning and terms for IMS implantation, maintenance, enforcement, modification, and termination.
- DSL oversaw in-water environmental sampling and biologic assessment of the Willamette Cove In-Water Project Area

- As a funding party for the Swan Island Basin Remedial Design, DSL reviewed technical reports and attended quarterly meetings related to sampling and investigation activities.

DSL’s FY23-25 budget includes two budget packages to continue Portland Harbor Superfund Site activities. The first (Policy Package 101) provides \$2,722,066 in Common School Fund limitation for continued assistance from legal and environmental experts, including Department of Justice legal expenses, related environmental consulting costs, and DSL support of this work through the continued staff person. The second (Policy Package 102) provides \$2,721,125 in Common School Fund limitation for investigations and remedial design for the future cleanup at Willamette Cove; provides some funding for investigations and design work to be performed by other potentially responsible parties; and potential development of an interim database for remedial design data.



# TERRITORIAL SEA

## OF OREGON

Oregon's territorial sea is a 3-mile-wide strip of ocean under state jurisdiction that reaches from the shoreline out to sea. Depending on jurisdiction, state agencies (e.g., Oregon Department of Land Conservation, Department of State Lands, Department of Parks and Recreation, and Department of Fish and Wildlife) manage this area and its resources in trust for the public.

Telecommunication and other cables coming from countries across the Pacific Ocean may be authorized to construct on the territorial sea floor and land on Oregon's shoreline. In 2020, Edge Cable was landing a telecommunications cable for Facebook on an undeveloped, residentially zoned lot in Tierra Del Mar. While drilling into the seabed, the drill became damaged and Edge Cable abandoned equipment buried 40 to 70 feet under the sea floor. Following extensive negotiations with and payments to the Department (and other agencies), cable construction was still completed. However, in response to the incident, Oregon passed [House Bill 2603](#) (2021) requiring owners or operators of undersea cables to obtain financial assurances for the installation and removal of cables placed in Oregon's territorial sea. Considering the fast pace of development in the telecommunication and renewable energy sectors (e.g., offshore wind and hydrogen), the bill also requires that the Department review and develop recommendations for amendments to [Part Four of the Territorial Sea Plan](#) that addresses the placement of telecommunication cables, pipelines, and other utilities in Oregon's territorial sea.

The Oregon Department of Land Conservation and Development, in consultation with the Oregon Ocean Policy Advisory Council (OPAC), established a working group for Part Four of the Territorial Sea Plan as a technical advisory committee. The working group is tasked with conducting the review and draft amendment recommendations in response to House Bill 2603. Oregon Department of Land Conservation and Development administered nine working group meetings between May 2022 and June 2023. DSL was also granted limited Common School Fund resources to hire a limited duration staff to participate in these meetings, provide information about DSL policies and processes, and relay the agency's input.

Compared to the original version, Part Four of the Territorial Sea Plan draft covers requirements not only for telecommunication cables but also for power cables, pipelines, and other utilities or fixtures.

Siletz Bay in Lincoln County



Additionally, Part Four includes:

- The state perspectives and vision in the use of the Oregon seafloor
- International, federal, state, and local policies and requirements
- Critical infrastructure consideration
- Implementation requirements regarding state agencies' review process, communication and cooperation on routing, landing, installation, maintenance, and decommissioning and recovery of undersea infrastructure.

Following OPAC and Land Conservation and Development Commission approval of the updated Part Four, anticipated by November 2023, the Department must amend the current undersea infrastructure policy, including the regulatory permitting process. Such changes are also needed to consider the fast development and research on smart cables and renewable energy (e.g., offshore wind energy), including wave-energy devices which may populate the ocean in upcoming years.

DSL is also considering legislation in 2025 to amend ORS 273.058 and ORS 758.010 to allow DSL to charge an appropriate administrative fee (currently set at \$5,000 per ORS 273.058) and financial compensation for the Common School Fund (currently "free of charge" per ORS 758.010), for cables and other uses of the territorial sea. There are many new process requirements for DSL to ensure an easement authorized in the territorial sea is consistent with Statewide Planning Goal 19 (Ocean Resources).



Cape Kiwanda in Tillamook County

# ASSISTANCE

## FOR COMMUNITIES

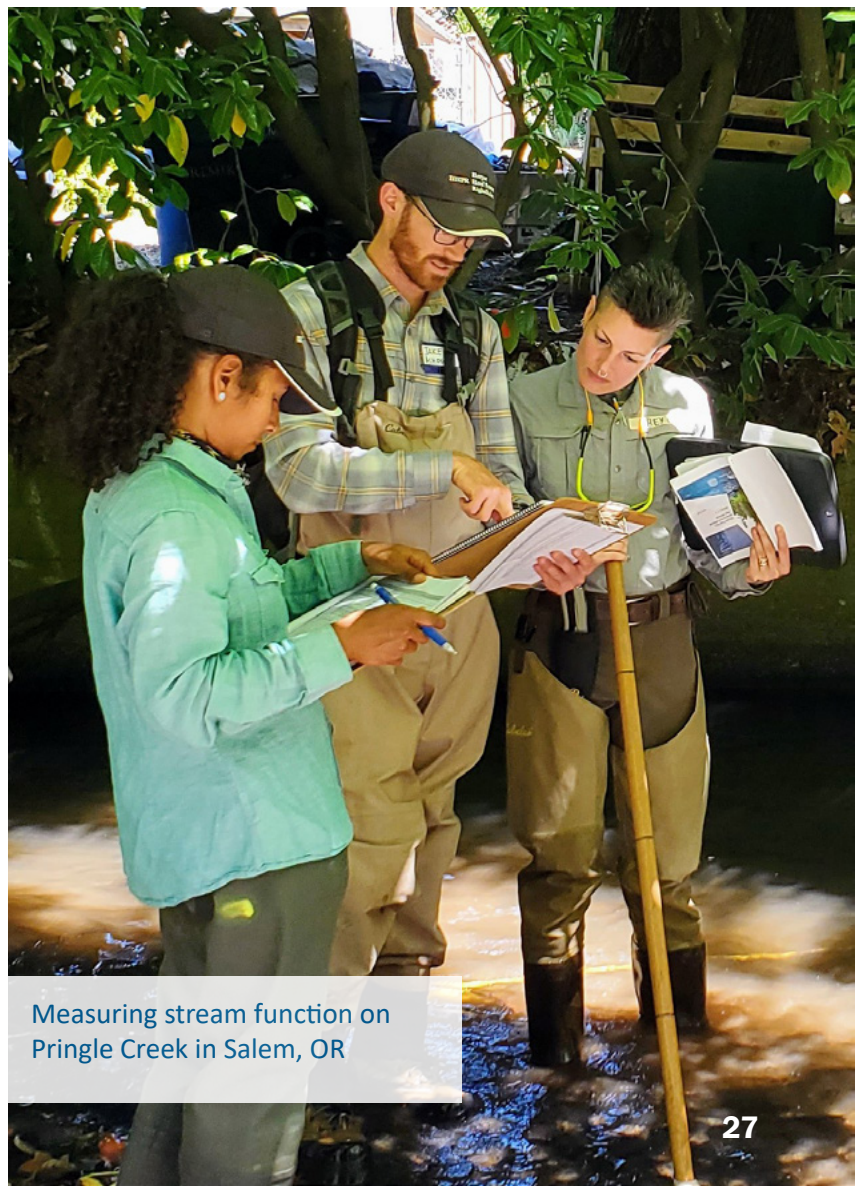
### Funding For Projects That Enhance Waterways

The Submerged Lands Enhancement Fund was established in 2017 to make grants available for community-led projects that enhance, improve, or protect Oregon-owned waterways. Projects that may qualify for funding include those that remove and dispose of marine debris or vessels and structures in disrepair, projects that enhance watersheds, fish and wildlife habitat, and those that improve water quality.

For the 2021-2023 biennium, the legislature approved \$200,000 for the fund and the Department solicited projects through a competitive proposal process during FY22. Recipients included the City of Umatilla for partial reimbursement for removal of a vessel and the North Clackamas Watershed Council for a waterway enhancement project at the confluence of Boardman Creek. Funds were also used to remove a vessel in the South Slough National Estuarine Research Reserve. The Department will award up to \$200,000 for additional projects during the 2023-2025 biennium.

### Training

Staff have focused training over the past year on our approved wetland and stream function assessments, the Oregon Rapid Wetland Assessment Protocol (ORWAP) and the more recent Stream Function Assessment Method (SFAM). These tools provide information necessary to make removal-fill permit decisions, including how lost aquatic resource functions will be replaced through compensatory mitigation. DSL is the educational resource on wetland and stream functions for several state partners and natural resource professionals working in Oregon. There had not been an ORWAP training since 2016 due to staff retirements and because efforts were focused on SFAM since it was new in 2018. DSL staff developed a new ORWAP training program and held the first test training for DSL staff in November 2022 using federal grant dollars, also drawing interest from the City of Salem, U.S. Fish and Wildlife, U.S. Army Corp of Engineers. A subsequent training was opened to other natural resource professionals in May 2023 for a fee. An SFAM training was also held in July 2022. Each training is led by DSL and Corps of Engineers staff over 2.5 days. The Department plans to continue these trainings in FY 2024.



Measuring stream function on Pringle Creek in Salem, OR

DSL was approached by Clackamas Community College's Environmental Learning Center to form a partnership to provide ORWAP and SFAM trainings through their professional education program. Natural resource professionals, such as wetland consultants who work with the Department, had indicated to the college administrators there was a need for more opportunities to receive ORWAP and SFAM training. However, the time and effort required for DSL to administer these trainings, including advertisement, registration, payment processing, and certificates, limits how often we can offer them. Through the agreement with the College, the Department provides the curriculum, materials, and instruction and the College provides advertising, registration, and continuing education units to attendees, in addition to a Certificate of Completion. A portion of the registration fees will reimburse DSL costs for staff providing instruction. This arrangement will provide trainees with a better experience and lessens the administrative burden on the Department.


### Statewide Wetlands Inventory

DSL is responsible for developing, maintaining, and distributing the Statewide Wetlands Inventory (SWI) as a tool to help communities and the public identify and protect wetlands. The SWI currently includes the National Wetlands Inventory developed by the U.S. Fish and Wildlife Service, local wetlands inventories that cover many urban and urbanizing areas in Oregon, and other mapping that indicates likely locations of wetlands and waterways. A primary purpose of the SWI, and the associated Wetland Land Use Notice process, is to alert local planners and landowners that coordination with DSL is needed to determine if removal-fill permit may be required for development.

DSL has one Aquatic Resource Planner that oversees the SWI and provides outreach and training. Outreach and training to planners and others is critical for the SWI to be successful. Communication and training began in 2018 with the release of the SWI. DSL has been very successful, recording an increase in WLUNs received each fiscal year, to the point where additional staff resources are needed.

During FY23, staff gave five virtual trainings for local governments, several more via email, and one in-person training for the Clatsop County Realtor Association. The realtor training described how realtors and the public can gain information from DSL as part of due diligence.

Planned improvements to the SWI include adding compensatory mitigation sites and DSL-approved wetland delineation and determination study areas as mapped wetland areas by early 2025. This information is currently only available through a public records request and exists primarily as paper records. Adding these known wetland areas to the SWI increases the usability and reliability of the SWI. This improvement is supported by two limited duration staff funded through federal grants from the Environmental Protection Agency. Work to map wetland delineations and determinations is in partnership with Lane Council of Governments.

A close-up photograph of a person's hand holding a dark, moist soil sample. The soil is crumbly and has a greyish-brown color. Numerous fine, orange-brown threads, which are rhizospheres, are visible extending from the soil. The background is a blurred green field of grass.

Orange oxidized rhizospheres threaded through this soil sample is one indication of the site being a wetland.

## Local Wetlands Inventories

The Department's Aquatic Resource Planner works with local governments on more detailed mapping of wetlands for their communities, called Local Wetlands Inventories (LWIs). The most common reason for a community to complete an LWI is to achieve statewide planning goals. These goals are managed by DLCD and express the state's policies on land use and related topics, like citizen involvement, housing, and natural resources. For wetlands, the LWI process identifies which wetlands provide a higher quality of function and are therefore more valuable to retain and protect from development through local code ordinances (i.e., significant wetlands) and can be removed from what land is considered "buildable."

Timely approval of LWIs is needed for communities to successfully complete land use planning, including in support of urban growth boundary establishment or expansion through DLCD. In FY23, the Department's Aquatic Resource Planner provided continued support and review for inventories proposed or in-progress for Beaverton, Central Point, Dunes City, Grants Pass, Halsey, Hillsboro, Springfield, and Yachats; and approved Tigard's urban growth expansion for the River Terrace area.

## Planning Assistance

DSL staff provided input to communities around wetland and waterway planning by:

- Assisting several cities and one county with local code language or reviewed analyses that would change or remove protections from certain wetlands or types of wetlands (an Economic, Social, Environmental and Energy analyses).
- Reviewing proposals for potential mitigation sites for a municipal mitigation bank.
- Participating on the Yaquina Bay Estuary Management Plan Update Advisory Committee to plan for compliance with statewide planning goals. This update was the first of several planned estuary management plans and benefited from DSL participation to help set a model for others to follow.
- Reviewing general notices of local land use actions that may intersect with wetlands or waterways; however, few of these notices were reviewed in FY23 due to lack of capacity. Notices are a good indicator of which county and city planners we can reach out to about the WLUN process. To help plan for resources for future reviews, staff simply tracked the number of notices received. In FY23, there were 750 general notices received from 26 counties and 34 cities. Another 33 notices were received from other federal, state, and non-governmental organizations. The numbers are down from previous years.
- Providing information about mitigation banking to the North Coast Regional Solutions Team.
- Presenting several times to the Cascades West Council of Governments on wetlands, mitigation banking, and wetland planning and permit streamlining. DSL present removal-fill permit alternatives analysis process and worked with the Corps to develop a comparison of various wetland planning tools and permitting types. Staff also provided written comment and a presentation of major issues on a Wetlands Mitigation Feasibility Study for Linn and Benton Counties, led by ECONorthwest.



Site visit in Baker County



# COMPENSATORY MITIGATION

## OPPORTUNITIES

Aquatic habitats such as wetlands, streams, lakes, rivers, estuaries, must be replaced when lost, damaged, or destroyed. Compensatory mitigation is the replacement of these resources. Requiring this replacement of lost aquatic habitats is how the Department can authorize impacts and still meet Oregon's goal of no net loss.

Applicants may choose from several mitigation options. They may conduct their own mitigation at the impact site or conduct mitigation nearby by either creating or restoring wetlands, enhancing degraded wetlands, or in certain limited cases, preserving high-value wetlands that are threatened. Some applicants have the option of purchasing wetland credits from a mitigation bank or an in-lieu fee project, or they may pay into the Department's Removal-Fill Mitigation Fund. The Department promotes mitigation banking because it is ecologically valuable to consolidate wetland restoration efforts and generally more efficient and cost effective to perform compensatory mitigation on a larger scale.

### Mitigation Banking

Mitigation banking represents an important efficiency for both the Department and for permit applicants. Mitigation banks can provide greater ecological benefits and are more efficient for Department staff to manage than smaller mitigation sites. The economy of scale with larger mitigation projects adds to the profit margin for the bank sponsor's business venture and allows lower per-credit pricing. The purchase of bank credits is generally the preferred option for permit applicants because the costs are known up front. Additionally, because the obligation for the mitigation requirement is transferred to the bank sponsor once credits are purchased, the credit purchaser has no further responsibilities to maintain, monitor, report, or remediate their own mitigation project.



At this compensatory mitigation site within the Portland Harbor Superfund site, native seeds of yarrow and lupine burst to life on the upland slope bordering a side channel habitat.

Department staff inspect each active mitigation bank annually to evaluate whether expectations have been met, to verify information in the monitoring reports, and to discuss and resolve emerging issues. Staff have also been working with bank sponsors and new potential long-term stewards to promote the establishment of long-term stewardship plans to ensure the ecological and societal benefits provided by the mitigation bank are sustained even after all the credits are sold.

In FY23, there were 26 approved mitigation banks where applicants purchased wetland credits. Table 9 shows the cumulative sales and balances of these mitigation banks as of June 30, 2023. During the fiscal year, 13 mitigation banks made 39 separate sales totaling 30.68 credits, with an average credit purchase size of 0.79 acre. Two mitigation bank sponsors are currently working on new mitigation bank agreements that have yet to be approved. Stream mitigation program development work is nearing completion, and we expect more stream mitigation banks to enter the mitigation market soon.

In addition to the wetland banks shown in Table 9, there are two mitigation banks that have non-wetland credit types. The City of Salem operates the Salem Stream Bank, which has stream credits solely for the use of the city. The bank has had 100% of its credits released and approved for sale, and 0.3 % have been sold, but no sales occurred in FY23. The Linnton Mill River Restoration Bank is located at river mile 5 on the Willamette River. The project provided credits for both the State removal-fill and Federal Clean Water Act 404 programs, in addition to Natural Resource Damage Assessment credits already approved by the Portland Harbor Natural Resource Trustee Council. The bank has had 20% of the expected credits released and 0.6% have been sold.



Deputy Director Bill Ryan and Interim Deputy Director Chris Castelli at a mitigation site

A third mitigation bank, Dairy Creek Bank, which was approved in FY23, also has non-wetland (stream) credits. Dairy Creek is in the town of Banks and services the Tualatin watershed. The bank has had 15% of its credits released and approved for sale, but no credits were sold in FY23. Construction of Phase 1 (of 2) of Dairy Creek bank is scheduled to begin summer of 2023.

Staff began working with the Cow Creek Band of the Umpqua Tribe of Indians on a mitigation bank proposal in unincorporated Douglas County, between Myrtle Creek and Riddle. The project was unable to come to fruition largely due to access agreements with DSL and the Corps of Engineers, and difficulty obtaining a long-term agreement with a downstream owner. The Tribe withdrew its proposal in January 2022. DSL has continued to collaborate with Tribes on barriers to Tribal sponsorship of mitigation banks or in-lieu fee programs in FY23.

Table 9

MITIGATION BANK	COUNTY	TOTAL POSSIBLE CREDITS	PERCENTAGE OF CREDIT RELEASED	PERCENTAGE SOLD TO DATE (OUT OF TOTAL POSSIBLE)	BALANCE OF CREDITS REMAINING (OUT OF TOTAL POSSIBLE)
Amazon Prairie	Lane	92.81	18	6	86.82
Butler	Washington	45.60	75	74	12.01
Claremont	Clatsop	11.62	59	58	4.84
Coyote Prairie North	Lane	77.58	100	100	0
Foster Creek	Clackamas	28.1	96	96	1.25
Dairy Creek	Washington	60.72	15	0	60.72
Garret Creek	Clackamas	15.49	86	77	3.53
Long Tom	Lane	61.14	100	85	9.45
Marion	Marion	34.09	100	94	1.9
Mary's River	Benton	71.41	60	26	52.82
Mid-Valley phase 2	Benton	4.73	90	90	0.47
Muddy Creek	Benton	60.33	88	88	7.36
Mud Slough phase 4	Polk	43.80	100	86	6.0
Oak Creek	Linn	38.98	58	58	16.40
ODOT Bobcat Marsh	Washington	5.26	100	85	0.78
ODOT Crooked River	Crook	5.32	90	42	3.08
ODOT Greenhill	Lane	8.11	60	14	6.96
ODOT Lost River	Klamath	13.41	80	32	9.1
ODOT Vernal Pool	Jackson	20.95	95	55	9.48
South Santiam	Linn	50.49	62	19	40.92
Tualatin Valley	Washington	31.13	100	79	6.45
Wilbur Estuary	Lane	44.12	75	7	41.15
Yoncalla Creek	Douglas	26.49	15	13	22.97
<b>Total Wetland Credits</b>	—	<b>876.38</b>	—	—	<b>410.55</b>



## In-Lieu Fee Programs

In-lieu fees are accepted into the Oregon Removal-Fill Mitigation Fund as a form of compensatory mitigation. The funds are used by the Department to construct mitigation sites and compensate for lost functions and values. There are two DSL in-lieu fee programs available:


- The Payment In-Lieu program allows payment for compensatory mitigation for impacts when other methods of providing compensatory wetland mitigation are not available or are inadequate. The Corps of Engineers does not accept Payment In-Lieu mitigation for their federal 404 permits.
- The In-Lieu Fee program was approved by the Corps of Engineers in 2009 and is a type of compensatory mitigation that can be used when mitigation is a requirement both for Oregon removal-fill permits and federal 404 permits. Under the In-Lieu Fee program, areas are approved to sell a maximum number of “advanced” credits, but a project must be approved and meet performance requirements before credits are released and the mitigation obligation is fulfilled.

The Department’s in-lieu programs provided 0.14 mitigation credits for 2 permit authorizations. Credits sales for Payment In-Lieu and In-Lieu Fee, and In-Lieu Fee credit sales and balances are shown in Table 10 and Table 11, respectively.

The Department has ongoing projects funded in previous years as shown in Table 11. Credits are released for sale over time, generally five to ten years, as the projects are constructed and evaluated to be successful. Three of the projects show a positive balance of credits remaining because those credits have been released but not yet sold. Three of the In-Lieu Fee program areas show a negative balance of credits remaining because advance credits have been sold but mitigation projects are still being constructed and monitored.

For the Umpqua Interior Foothills, the Department is providing payments from the Oregon Removal-Fill Mitigation Fund under a contract with North Douglas Betterment for development of mitigation credits at the Yoncalla Creek Mitigation Bank. In exchange, the Department receives credits to satisfy the Department’s mitigation obligation. The Yoncalla Creek Mitigation Bank was approved in FY22 and DSL received the first credit transfer to satisfy the Department’s In-Lieu Fee obligation at that time. Additional transfers will occur with each credit release until the contracted amount is fulfilled.

The Clear Lake project has been constructed in the Lower Columbia area, but the Department has not yet requested a credit release because the site must undergo a formal delineation to confirm project mitigation acreages. The Kilchis River Preserve has been constructed in the Wilson Trask Nestucca area, and the Department is currently seeking final project approval from the U.S. Army Corps of Engineers. Credit releases will be requested for both Clear Lake and Kilchis in FY24.



Native pickleweed growing at Tamara Quays mitigation project

Table 10

PAYMENT IN-LIEU (PIL) AND IN-LIEU FEE (ILF) CREDIT INFORMATION	
Number of Permits using the PIL Program	25
PIL \$ Totals	\$306,206.53
PIL Credits Sold	0.856
Number of Permits using the ILF Program	2
ILF \$ Totals	\$12,509.34
ILF Credits Sold	0.14
Mitigation Fund Deposits \$ Total	\$318,715.87
<b>Total Mitigation Credits Sold</b>	<b>0.996</b>

Table 11

SITE NAME	COUNTY	CREDITS RELEASED	CUMULATIVE CREDITS SOLD	BALANCE OF CREDITS REMAINING
Tamara Quays	Lincoln	2.16	1.81	0.34
Half Mile Lane	Washington	13.24	8.31	6.75
Pixieland	Lincoln	4.02	2.52	1.50
Lower Columbia	Clatsop	0	4.01	-4.01
Umpqua Interior Foothills	Douglas	3	7.52	-4.52
Wilson Trask Nestucca	Tillamook	0	2.43	-2.43



# FUTURE PROJECTS

## AND PRIORITIES

### Establish Wetlands And Waterways Program Costs In Rule

Cost containment is a key component of protecting the Common School Fund, as is making strategic investments to increase revenue or reduce costs. The Department continually seeks opportunities to increase revenue by examining program operations.

A preliminary analysis of the Department's ARM program fee structure was completed in 2019 as a critical first step in achieving sustainable program funding. The analysis found that current program revenue does not cover operating expenses and is subsidized by the Common School Fund. Getting the wetland and waterway programs to a place of financial self-sufficiency safeguards Oregon's Common School Fund and ensures that critical services continue to be provided.

In alignment with the Department's 2022-2027 Strategic Plan to maintain a sustainable financial structure for the Aquatic Resource Management program, [House Bill 2238](#) requires the Department Director to adopt rules establishing fees related to removal or fill permit applications, wetland delineation reports, and general authorizations. Fee amounts currently listed in statute will be removed when the Director adopts rules establishing appropriate program fees before January 1, 2026.

### Abandoned And Derelict Vessels

The Department is proud to separate the cost of vessel removals from the Common School Fund. [House Bill 5029](#) awarded \$18.7 million to DSL to remove ADVs accumulated in public waterways and [House Bill 2914](#) established an Oregon Abandoned and Derelict Vessel Program within DSL and created the Oregon Abandoned and Derelict Vessel Fund. These resources are critical in supporting the Department's participation in collaborative efforts to address ADVs long-term.

The Department is currently convening a workgroup that will help inform program development by:

- Creating a program framework to address prevention, response, enforcement, education, outreach, and long-term funding needs and sources; and to consider needs related to vessel removal, destruction, disposal, and recycling.
- Examining legal authorities and identify options for addressing legal barriers to removing ADVs.
- Exploring a vessel insurance requirement.
- Assessing operational needs such as an ADV database.

Workgroup efforts will result in the development of Department legislative concepts and policy option packages for the 2025 legislative session.

DSL will submit a report to the Legislature on its progress in implementing HB 2914 on or before February 15, 2024.

## Increased Services To Address Housing Production Needs

On January 1, 2023, Governor Kotek signed Executive Order 23-04 which set housing production goals at 36,000 homes per year across the state to address Oregon's current housing shortage and to keep pace with projected population growth. This represents an 80 percent increase over current construction trends.

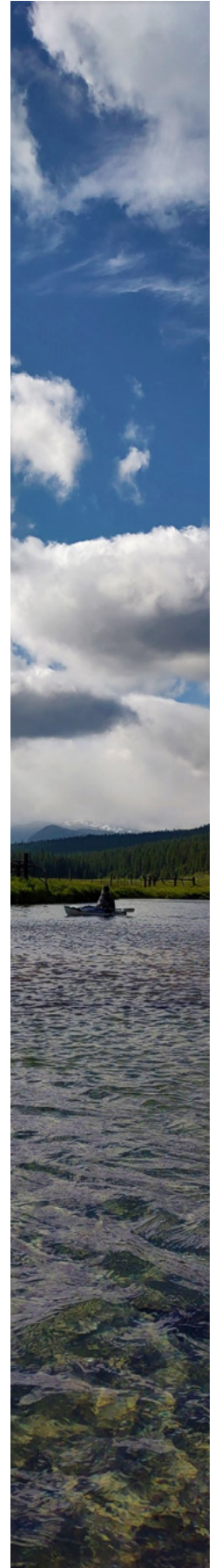
DSL anticipates this goal will increase demand for many DSL services. Primary areas of work that are likely to increase include:

- Local wetland inventories and reviews of local code ordinance or requests for changes in wetland protections. DSL currently has one Aquatic Resource Planner.
- Wetland land use notices, wetland determination requests, and wetland delineation reports reviews. DSL currently has five staff doing this work but is unable to meet existing demand. DSL is hiring an additional limited duration position in FY24.
- Removal-fill permit applications; specifically, individual permits.
- Additional compensatory mitigation options. DSL has been responsive to the Housing Production Advisory Council established under Executive Order 23-04 and has supported recommendations that will expand DSL's in-lieu fee programs in priority areas around the state. DSL anticipates needing additional mitigation staff and other resources to achieve this program expansion.

Additionally, in January 2023 the U.S. Supreme Court made a decision on *Sackett v. EPA* altering which waters are considered waters of the United States under the Clean Water Act. On September 8, 2023, the U.S. Environmental Protection Agency and the U.S. Department of the Army released the final rule conforming to the court's decision.

While this decision does not affect DSL regulations directly, it will result in additional questions from the public about federal versus state jurisdiction and how that affects their permit process. DSL staff are generally more accessible and responsive to the public than U.S. Army Corps of Engineers staff. We also anticipate an increase in mitigation payments to the Department's payment in-lieu program. As described in the [Compensatory Mitigation Opportunities](#) section, this program is not recognized by the U.S. Army Corps of Engineers. However, with an increased number of wetlands that will no longer require a U.S. Army Corps of Engineers permit, DSL anticipates greater use of payment in-lieu program.

Finally, DSL has a wetland and waterway planning mechanism in rule called Advance Aquatic Resource Plans. Planning partners can streamline removal-fill permitting by identifying wetlands and waters (similar to Local Wetlands Inventories), completing functional assessments, and even identifying compensatory mitigation opportunities. Past Advance Aquatic Resource Plans efforts have not been approved by the U.S. Army Corps of Engineers because they were unable to accept certain conclusions (e.g., consideration of alternatives to avoid or minimize impacts) outside of a specific project application. With changes in U.S. Army Corps of Engineers jurisdiction, Advance Aquatic Resource Plans may be more flexible and attractive for some communities and purposes.



## 2025 Legislation

Agencies do not typically propose legislative concepts for short sessions, so the Department is focused on the 2025 long session. Looking ahead, the Department will bring the following issues before the Land Board for discussion as potential legislative concepts:

**Historically Filled Lands:** The Department would amend or repeal parts of ORS 274.950 through ORS 274.956 to either: (a) remove the December 31, 2025, deadline for the Land Board to make a claim to historically filled lands and repeal or amend the determination and declaration language; or (b) retain the deadline and clarify in law the steps a landowner may take to clear title to historically filled lands when there is no state claim. The goal of the latter option would be to put into law the type of evidence a landowner could submit to DSL or a title company to show they should have clear title to possible historically filled lands. This would reduce time and expenses to DSL while accomplishing the legislative intent of SB 912 (2015).

**Navigability:** A legislative concept would amend ORS 274.406 to state: (a) the Land Board will treat any shoreline movement since statehood as accretion and therefore claiming ownership to the current submerged and submersible lands for an adopted waterway navigability study; and (b) establish Oregon law clarifying the Land Board is declaring ownership to the submerged and submersible lands as they exist today. This would help with future Land Board navigability declarations and may reduce legal fees from challenges, as well as agency expenditures on historical research and exchanging quit claims.

**Easements in the Territorial Sea:** The Department would amend ORS 273.058 and ORS 758.010 to allow DSL to charge an appropriate administrative fee (currently set at \$5,000 per ORS 273.058) and collect compensation for the Common School Fund (currently “free of charge” per ORS 758.010) for cables and other uses of the territorial sea subject to an easement and Part 4 of the Territorial Sea Plan, which was amended in FY 2023. There are many new process requirements for DSL to ensure an easement authorized in the territorial sea is consistent with Statewide Planning Goal 19 (Ocean Resources).



Columbia River near  
Rooster Rock State Park

## APPENDIX A: 5-Year Trend Data

New Waterway Authorizations by Type

AUTHORIZATION TYPE	FY19	FY20	FY21	FY22	FY23	5-YEAR TOTAL	5-YEAR AVERAGE
Public Facility License	3	1	1	0	0	5	1
Waterway Easement	20	19	16	15	13	83	16.6
Registration of Waterway Structures	82	44	15	14	18	173	34.6
Waterway Lease	6	3	2	4	4	19	3.8
Sand & Gravel	1	1	2	2	2	8	1.6
Short Term Access Authorization*	37	38	42	17	29	163	32.6
Special Use License/Permit*	17	19	13	0	0	49	9.8
Special Use Lease*	0	2	0	0	0	2	0.4
Temporary Use Permit	0	0	0	0	0	0	0
<b>Totals</b>	<b>166</b>	<b>127</b>	<b>91</b>	<b>52</b>	<b>66</b>	<b>502</b>	<b>100.4</b>

*\*Numbers are not comparable across all years. These types of authorizations are also used for Oregon-owned uplands, but these were not removed from the data prior to FY 2022.*

Renewed Waterway Authorizations by Type

AUTHORIZATION TYPE	FY19	FY20	FY21	FY22	FY23	5-YEAR TOTAL	5-YEAR AVERAGE
Public Facility License	11	2	2	3	5	23	4.6
Waterway Easement	8	3	2	1	7	21	4.2
Registration of Waterway Structures	557	776	412	478	359	2,582	516.4
Waterway Lease	25	15	20	10	23	93	18.6
Sand & Gravel	2	4	0	2	2	10	2
Short Term Access Authorization	0	0	0	2	0	2	0.4
Special Use License/Permit	1	3	2	0	0	6	1.2
Special Use Lease	0	2	0	0	0	2	0.4
Temporary Use Permit	0	0	0	0	0	0	0
<b>Totals</b>	<b>604</b>	<b>805</b>	<b>438</b>	<b>496</b>	<b>396</b>	<b>2,739</b>	<b>547.8</b>

Total Decisions of Removal-Fill Authorizations by Type

TYPE	FY19	FY20	FY21	FY22	FY23
Individual Permit	406	369	377	381	416
General Authorization	92	96	113	88	94
General Permit	87	70	87	76	98
Emergency Permit	29	35	38	21	14
<b>Totals</b>	<b>614</b>	<b>570</b>	<b>615</b>	<b>566</b>	<b>622</b>

Department Response Time for Wetland Land Use Notices

RESPONSE TIME	FY19	FY20	FY21	FY22	FY23
30 Days or Less	634	761	1098	1036	849
More than 30 Days	121	43	82	192	155
<b>Totals</b>	<b>755</b>	<b>804</b>	<b>1180</b>	<b>1228</b>	<b>1004</b>

Jurisdictional Determinations and Delineation Report Reviews

NUMBER OF REVIEWS	FY19	FY20	FY21	FY22	FY23
Determination	320	317	339	321	242
Delineation	319	296	318	344	360
<b>Totals</b>	<b>639</b>	<b>613</b>	<b>657</b>	<b>665</b>	<b>602</b>



# APPENDIX B

