

**OREGON'S
REMOVAL-FILL PROGRAM
REPORT
2004 – 2006**



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Executive Summary

This Removal-Fill Report for fiscal years 2004-2005 and 2005-2006 has been prepared by the Oregon Department of State Lands (DSL) in response to the annual report requirement in the Removal-Fill Law. The following is a summary of the more notable items included in this report.

Permitting and Compliance Monitoring

DSL has continued to record a net gain of wetlands through the removal-fill permitting and compensatory wetland mitigation processes. During the past two fiscal years, the Compliance Monitoring Program has suffered from staff turnover, workload issues, and inadequate tracking. To address these issues, DSL has added a full-time position dedicated to compliance monitoring and salmon recovery planning.

State Programmatic General Permit

On January 3, 2006, DSL launched the State Programmatic General Permit (SPGP), a Corps permit administered by DSL for eight categories of activities with minimal adverse effects. Effective October 1, 2006, the SPGP was suspended in response to customer feedback and implementation challenges. DSL has hired a full-time SPGP Implementation Coordinator and a Support Specialist who will be dedicated to developing SPGP II in order to simplify the application requirements and enhance customer service and satisfaction.

Wetlands Conservation Program Highlights

The Wetlands Conservation Program approved eight Local Wetland Inventories (LWIs) in the past two fiscal years, and nine more LWIs are in progress throughout the state. DSL's wetland land use notification process, designed to provide coordination between local development approvals and state wetland regulations, has been very successful over the past two fiscal years. In FY 2005-2006, 98% of notices received a response within the designated 30-day timeframe.

DSL wetlands staff worked with the Corps of Engineers and the Environmental Protection Agency to develop a joint guidance document entitled *Wetland Delineation Report Guidance* and provided a training workshop for private consultants in February of 2005. In collaboration with the Coos Watershed Association, EPA, OWEB and other agencies, DSL developed a hydrogeomorphic assessment guidebook for tidal wetland functions and values.

A full-time Natural Resource Policy Fellow funded by Oregon Sea Grant conducted an assessment of DSL's estuarine wetland mitigation. The recommendations of that assessment will be used by DSL in a future rulemaking. DSL has hired two full-time wetland restoration specialists to assist landowners and other agencies with permitting for voluntary wetland restoration and enhancement projects, and to improve project implementation and tracking.

During the past two fiscal years, \$52,000 was disbursed from the Wetland Mitigation Bank Revolving Fund (WMBRF) for two wetland restoration projects. DSL staff are working to improve the WMBRF system and to ensure that a greater number of projects are able to benefit from the fund.

Economic Revitalization Efforts

DSL's efforts to expedite development of industrial lands were continued in FY 2004-2005 and 2005-2006 and resulted in projects that were responsible for the creation of over a thousand jobs in nine counties throughout Oregon.

Public Outreach and Education

DSL conducted several public outreach activities during the past two fiscal years, including SPGP workshops, Technical Advisory Committee (TAC) meetings, wetland function workshops, and wetland planning training.

Introduction

Scope

The purpose of this document is to summarize the activities of the Removal-Fill Program for the fiscal years of 2004-2005 and 2005-2006. This document has been prepared by the Oregon Department of State Lands (DSL) in response to the annual report requirement in the Removal-Fill Law (ORS 196.885). DSL has been documenting the results of its compliance monitoring, enforcement and permitting programs in summary reports published in 1997, 1999, 2000, 2003, and 2004. This report and the previous reports present summary statistics for all aspects of the Removal-Fill Program for the past 14 fiscal years (July 1, 1993 to June 30, 2006), including the following topics:

- Authorizations
- State Scenic Waterways Program
- Essential Indigenous Anadromous Salmonid Habitat Program
- Compliance Monitoring
- Enforcement Activities
- Contested Case Hearings
- Removal-Fill Rulemaking
- Removal-Fill Permit Streamlining
- Public Information and Outreach
- Wetlands Conservation and Planning Program
- Industrial Site and Wetland Planning Assistance
- Compensatory Wetland Mitigation

Permit, compliance monitoring and enforcement data collected for this report were drawn from DSL's Land Administration System (LAS) unless specified otherwise. Authorizations were categorized by issue date and activity. LAS data was checked for quality and errors; it was then sorted and analyzed using Microsoft Excel and Access software programs. Civil penalties received and Payment to Provide (PTP) amounts are derived from DSL's Cash Receipts System unless stated otherwise. Additional information and supporting data is available upon request from DSL.

Oregon's Removal-Fill Program

Oregon's Removal-Fill Law (ORS 196.795-990), enacted in 1967, requires people who plan to remove or fill material in waters of the state to obtain a permit from the Department of State Lands.

The purpose of the law is to protect public navigation, fishery and recreational uses of the waters. "Waters of the state" are defined as "natural waterways including all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean that is in the boundaries of this state." The law applies to all landowners, whether private individuals or public agencies.

Removal-Fill



Program Activities

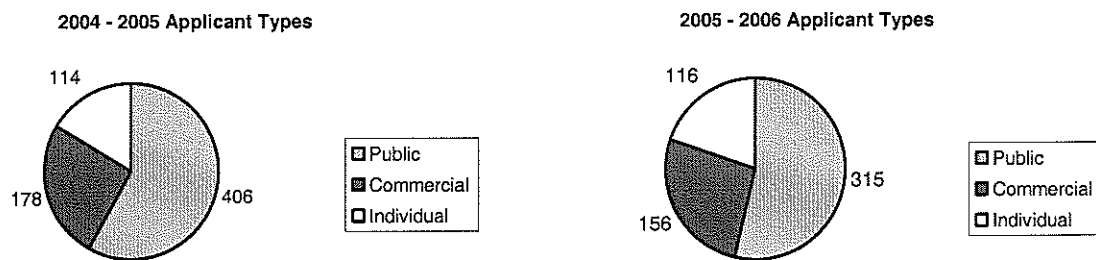
DSL issued 2,190 permits and authorizations over the last two fiscal years (FY 2004-2005 and FY 2005-2006). Table 1 shows, by category and fiscal year, the total number of each type of permit or authorization issued. One project was denied in each of the two fiscal years.

Table 1 Authorizations	2004-2005	2005-2006
Individual Permits		
Boat Ramp	8	13
Channel Relocation	3	2
Dam Related	7	12
Dock	12	17
Erosion Control	21	10
Fish Habitat	4	5
Commercial Gravel Removal	5	5
Maintenance Dredging	6	4
Marina/Moorage	2	2
Pilings	2	4
Pipeline/Cable/Utility	29	28
Ponds	2	1
Roads/Bridges	30	37
Sediment Removal Behind Tidegates	0	4
Wetland Enhancement	8	4
Wetland Fill	90	71
Other In-Water Work	52	57
Sub Total	281	276
General Authorizations		
Fish Habitat Enhancement	152	79
Wetland Enhancement/Restoration	25	12
Fish & Wetland Enhancement and Restoration (combined)	11	14
Streambank Stabilization	28	28
Transportation-Related	135	104
Recreational Placer Mining	414	482
Sediment Removal Behind Tidegates	3	0
Minimal Disturbance (<2.0 CY)	28	31
Minor Impacts (< 0.1 acre)	4	2
Piling Placement	20	11
Sub Total	820	763
Emergency Authorizations		
Erosion	2	24
Roads/Bridges	2	5
Sediment Removal Behind Tidegates	2	0
Pilings	2	0
Dam-related	1	0
Channel relocation	1	1
Pipeline/Cable/Utility	0	2
Other In-Water Work (multiple objectives)	1	7
Sub Total	11	39
Grand Total	1112	1078

Type of Applicant

DSL is able to categorize three principal applicant types: public (e.g., cities, counties, state and federal agencies); commercial (e.g., residential developers, retailers and manufacturers); and individual (individual home owners, farmers and ranchers). The pie charts in Figure 1 show the relative proportion of the three categories of applicants receiving authorizations from DSL in fiscal years 2004-2005, and 2005-2006. Note that since recreational placer mining applicants are so numerous (see Table 1), those applicants were not included in Figure 1. Recreational placer miners are considered to be "individual" applicants. When placer miners are removed from the totals, a more representative statewide distribution of applicant types can be seen. Public applicants are the most numerous, followed by commercial and individual.

Figure 1



National Wild and Scenic Rivers and State Scenic Waterways

Congress established the National Wild and Scenic Rivers (WSR) System in 1968 to preserve the nation's "outstandingly remarkable, free-flowing rivers." More than 40 of Oregon's rivers hold National Wild and Scenic River status. Oregon's State Scenic Waterways (SSW) Program was initiated in 1970. DSL keeps track of the WSR and SSW designations through the LAS database. Table 2 provides a summary of authorizations issued on WSRs and SSWs for fiscal years 2004-2005 and 2005-2006. The state tracks the projects in SSWs separately because the 50 cubic yard exemption does not apply in SSWs (ORS 390.805 to 390.925).

Table 2 National Wild and Scenic Rivers, and State Scenic Waterways Summary

Fiscal Year	Projects Authorized on State Scenic Waterways	Projects Authorized on Wild and Scenic Rivers
2004-2005	425	425
2005-2006	493	494

Essential Indigenous Anadromous Salmonid Habitat (ESH)

State agencies in Oregon operate under the Oregon Plan for Salmon and Watersheds ("The Oregon Plan"). As reaffirmed by Executive Order No. EO 99-01, the purpose of the Oregon Plan is to restore Oregon's wild salmon and trout populations and fisheries to sustainable and productive levels that will provide substantial environmental, cultural, and economic benefits and improve water quality.


DSL's Essential Indigenous Anadromous Salmonid Habitat (ESH) identification program pre-dated the Oregon Plan. It was established by the 1993 Legislature and was fully implemented in 1996. The program requires review of projects smaller than the normal 50-cubic-yard fill-removal threshold for activities occurring within stream reaches used for spawning or rearing of state and federally listed anadromous fish species. Permits or authorizations are required for any amount of fill or removal, unless otherwise exempted.

Under the ESH program, the Department issued a total of 758 authorizations in FY 04-05, and 762 authorizations in FY 05-06. Most of the authorizations issued were General Authorizations (GAs) for small-scale recreational placer mining. The GAs contain best management practices for avoiding or minimizing adverse effects on riparian and aquatic habitat areas. The Department has also pursued an active educational outreach and monitoring program for placer miners. With the full cooperation and assistance of the Oregon Independent Miners, this program has assisted the recreational mining community in understanding how to operate small dredges and conduct other mining practices in an ecologically sound manner. Table 3 was derived from data obtained through annual reports submitted by placer miners. The number of miners who submitted reports was low for calendar years 2005 and 2006 because the Department failed to send out the annual reminder. In the future, annual notices will be sent to remind placer mining GA permittees to submit their reports.

Table 3 Recreational Placer Mining Activity

Calendar Year	Miners who submitted reports	Active	Inactive	Waterways	Duration (days)	Volumes (cubic yards)
2004	892	409	483	46	4343	2469
2005	185	103	82	38	940	559
2006	257	121	136	37	826	699

Compliance Monitoring

 DSL conducts compliance monitoring and enforcement of its Removal-Fill Program and documents the results. DSL's compliance monitoring program is designed to measure whether permitted projects are carried out in compliance with permit conditions. DSL's enforcement program (discussed below) enjoins unauthorized projects from proceeding. DSL may require remediation of any damage to jurisdictional resources and/or may impose civil penalties against violators.

Each permit or authorization issued by DSL contains standard and site-specific operating conditions intended to protect the state's water resources, navigation, fishing, and public recreation uses. DSL's compliance monitoring program measures the rate of compliance with certain conditions. Wetland fill sites are also monitored for compliance with wetland compensatory mitigation requirements. These permits are usually for commercial and residential development within a delineated wetland area. Non-wetland fill sites (river, stream, etc.) include all other authorizations issued by DSL, including streambank stabilization and fish habitat enhancement.

If during any given site visit, DSL staff finds a permit condition is not fulfilled, then the project is considered to be out of compliance (see Table 4). Note that some wetland mitigation projects require a monitoring period of five or more years to achieve full compliance. If full compliance is not achieved within that standard timeframe, the agency may extend the monitoring period until full compliance is achieved.

Table 4 On-Site Compliance Monitoring by DSL Staff

Fiscal Year	Authorizations Issued*	Projects Monitored for Compliance*	Percent of Authorized Projects Monitored*	Overall Compliance Rate*
98-99	799	269	34%	64%
99-00	881	191	22%	65%
00-01	771	181	23%	61%
01-02	534	109	20%	59%
02-03	690	127	18%	71%
03-04	612	70	11%	70%
04-05	698	76	11%	58%
05-06	596	28	5%	52%
8-year averages	620	117	16%	63%

**NOTE: Recreational Placer Mining activities were not surveyed and therefore Placer Mining GAs are not included in these calculations.*

The percent of authorized projects monitored by DSL staff and the overall compliance rate have fallen below the average during the last two fiscal years. These declines may be due in part to staff turnover and workload issues. Another reason for the decline may be that the emphasis DSL has placed on issuing permits on prescribed time lines has been the main focus of staff resources. DSL, with U.S. Environmental Protection Agency (EPA) and Oregon Watershed Enhancement Board (OWEB) grant assistance,

has recently added a full-time position dedicated to compliance monitoring and salmon recovery planning. As a result, in the future a greater number of projects will be monitored for compliance.

In addition to its own compliance monitoring efforts, DSL receives and reviews wetland compensatory mitigation monitoring reports submitted by applicants and/or their consultants. DSL received 285 monitoring reports in FY 2004-2005 and 262 monitoring reports in FY 2005-2006. During this reporting period, DSL's policy was to review 100% of the compliance monitoring reports submitted. Unfortunately, tracking of compliance monitoring report reviews has not been consistent over the last two fiscal years. The new compliance monitoring staff person will be reviewing and updating the tracking system so that data for upcoming fiscal years will be more consistent and meaningful. If an out-of-compliance project is detected, the Department works with the applicant to bring the project into compliance. Only when voluntary efforts prove to be ineffective, does DSL seek to compel compliance through formal administrative and legal procedures.

Enforcement Activities



DSL investigates complaints and makes inspections to determine whether violations of the Removal-Fill Law have occurred. Alleged or suspected violations are reported to DSL by telephone or in writing.

Removal-fill work that is actively occurring within waters of the state and that is likely to have adverse environmental effects is assigned a high priority for investigation. In such cases, the alleged violation is usually investigated within a day or two of receipt of the complaint either by DSL, the Oregon State Police (OSP), or both. Activities that are completed and/or are ongoing, but are determined to have a low risk of having adverse environmental effects, are assigned a lower priority for response. For routine complaints, after DSL fills out a compliant/violation form and opens a file, a written notice is sent out to the landowner advising them that the Removal-Fill Law may apply to the activity and site in question. Complaints may take several months to resolve. DSL keeps records on the outcome of all of its enforcement cases in the LAS database.

Table 5 summarizes enforcement activities for the past two fiscal years. Once a complaint is opened, it must be investigated to determine whether a violation exists. Only if a violation is confirmed, is an enforcement file opened. The lower portion of Table 5, entitled "Status of Violation Cases," shows the status of those cases that were confirmed as violations and how they were handled. Cases that are not resolved during any given fiscal year are carried over into the next fiscal year. Some cases are adjudicated either through contested case hearings or court actions.

Table 6 lists the civil penalties that were assessed, paid and uncollected during FY 04-05 and FY 05-06. Table 7 shows the status of contested cases during these fiscal years.

Table 5 Status of Enforcement Activities by Fiscal Year (FY)

	FY 2004-2005	FY 2005-2006
Status of Complaints		
New Complaints Opened	252	177
Confirmed Violations	89	47
Status of Violation Cases		
Closed - Mitigation performed by violator	5	2
Closed - Payment-to-Provide accepted	6	1
Closed - Other Reason	32	38
Closed - Site restored by violator	27	14
Closed - Permit granted	6	0
Closed - Activity exempt or under 50 Cubic Yard (CY) threshold	12	7
Closed - Non-jurisdictional water	3	1
Closed - Inconclusive facts or excessive backlog due to staff shortage	2	4
Violation Cases Closed	93	67

Table 6 Civil Penalties Assessed and Collected Fiscal Year 2004-2005

Case Violation #	County	Assessed	Paid	Uncollected
6089	Linn	\$600.00	\$600.00	0
6095	Clackamas	\$7,200	\$7,200	0
6088	Jackson	\$600.00	\$600.00	0
6069	Baker	\$1,200.00	\$1,200.00	0
6062	Multnomah	\$600.00	\$600.00	0
5793	Clackamas	\$1,650.00	\$1,650.00	0
6050	Multnomah	\$600.00	\$600.00	0
5987	Douglas	\$600.00	\$600.00	0
6068	Baker	\$1,200.00	\$1,200.00	0
5344	Curry	\$1,350.00	\$1,350.00	0
5984	Yamhill	\$600.00	\$600.00	0
5429	Lincoln	\$1,200.00	\$1,200.00	0
4756	Clatsop	\$1,800.00	\$1,800.00	0
5380	Clatsop	\$1,800.00	\$1,425.00	\$375.00
5957	Tillamook	\$1,000.00	\$1,000.00	0
5380	Clatsop	\$1,800.00	\$375.00	0
Totals		\$24,551.200	\$22,600.00	\$1125.00

Fiscal Year 2005-2006

Violation #	County	Assessed	Paid	Uncollected
6394	Clackamas	\$1,800.00	\$1,800.00	0
6360	Douglas	\$1,200.00	\$1,200.00	0
5107	Clatsop	\$1,800.00	\$1,800.00	0
Totals		\$4,800.00	\$4,800.00	0

The agency strives to increase the public's awareness of program requirements through the statewide wetlands inventory, education and training programs for wetland consultants and other stakeholders. In general, these activities may increase compliance by making the public more aware of program requirements, answering questions and clearing up areas of confusion.

Contested Case Hearings

At this writing, there are five contested case hearings pending. Of the 27 contested cases closed or pending during FYs 2004-2005 and 2005-2006, 23 are enforcement cases and four are challenges to issued permits (see Table 7).

Table 7 Contested Cases Closed or Pending (FY 04-05 and 05-06)

	DSL Action Upheld	Case Settled	Case Dropped by Challenger	Case Pending
Permit Challenges	2	1	1	0
Enforcement Cases	2	15	1	5

Only a few enforcement cases reach the hearing stage. In order to reach this stage, all other administrative remedies have failed. DSL resolves most cases with voluntary compliance because most landowners are cooperative.

Removal-Fill Rule Revisions

Rulemaking by the Department during the study period was generally "housekeeping" in nature. No major new initiatives were launched by rule, but there were some relatively minor updates. Topics covered included the following:

- Amendments to clarify rule language and to repeal provisions that allow recreational placer mining in scenic waterways as per Section 3 and 4, Chapter Law 499, Oregon Laws 2001, found in ORS 390.835.
- Rule amendment to clarify, revise and update language explaining new procedures to implement a new state-federal consolidated permitting process called a State Programmatic General Permit or SPGP (OAR 141-085).
- Some housekeeping and minor changes to procedures were needed as a result of lessons learned during implementation of the rules.
- The most up-to-date water quality standards and conditions in OAR 141-085, especially those concerning turbidity, were revised to be consistent with new DEQ standards.

- A new General Authorization proposed to streamline permitting for utility construction repair was proposed, but not adopted.

Removal-Fill Permit Streamlining

State Programmatic General Permit (SPGP)

On January 3, 2006, DSL officially launched the State Programmatic General Permit (SPGP). However, in response to customer feedback and implementation challenges, the Department of State Lands requested that the U.S. Army Corps of Engineers suspend the SPGP for one year, effective October 1, 2006.

The SPGP is a Corps permit administered by DSL, which authorizes work in waters of the United States for activities in eight categories. Activities covered by the SPGP are considered to cause no more than minimal adverse environmental effects. The purpose of the SPGP was to reduce regulatory duplication while enhancing natural resource protection throughout the State.

Prior to the suspension (between January 3, and October 1, 2006), DSL authorized 97 projects under the SPGP. This number amounted to approximately 17% of all applications received during that same time period. Of the permits issued under SPGP, 77% were in the form of General Authorizations, while the remainder were issued as Individual Permits. Out of the 97 SPGP applications, 15 included activities in more than one of the SPGP categories. A breakdown of the SPGP categories under which the 95 eligible projects were authorized is provided in Table 8.

Table 8 SPGP Authorization Categories

SPGP Categories	Number of Authorizations
Stream and Wetland Restoration	45
Streambank Stabilization	18
Water Control	0
Road Construction	33
Site Preparation	11
Minor Fill and Removal	1
Piling	1
Utility Lines	5

Under an Environmental Protection Agency (EPA) grant, DSL hired a full-time SPGP Implementation Coordinator and a Support Specialist in June of 2006. These staff will be dedicated to the future administration of the SPGP. During the one-year suspension period (October 1, 2006 to October 1, 2007), DSL will be actively working with federal and state agency partners and applicants to prepare SPGP II. DSL is considering narrowing the scope of SPGP II to allow DSL and the Corps to simplify the application

requirements, enhance customer service and satisfaction, more easily administer the permit and deliver the intended benefits, both in the permit process and on the ground. A simplified SPGP will also lead to higher quality, more easily measured results in the field through an enhanced compliance-monitoring program.

Water Related Permit Process Improvement Team (WRPPIT)

DSL has been a key player on the Water Related Permit Process Improvement Team (WRPPIT or WRPPITS). WRPPIT is an initiative to consolidate and streamline the multiple approvals currently required from state agencies on water related projects. The WRPPITS team has been meeting several times a month to move the process forward with the following streamlining goals in mind:

- One process with a lead agency—DSL—working with partner agencies
- One predictable and concurrent timeline with a definitive end
- One stop and specialized assistance
- One set of consistent requirements clearly communicated upfront

The team is currently developing and prioritizing options to streamline the current application process. The team will soon design and test sample applications and take them through the redesigned process.

Public Information/Outreach

In January and February 2006, over 500 people attended twelve Department-led workshops on the State Programmatic General Permit (SPGP). These workshops were held in Wilsonville, Astoria, Bend, La Grande, North Bend, Medford, Portland, Pendleton, Baker City, Roseburg, Klamath Falls and Eugene. In addition to these specialized training sessions, the Department continues to periodically hold outreach meetings with professional environmental and wetland consultants who frequently interact with the removal-fill and wetland programs. The most recent meeting between the Department and consultants was held in October 2006.

The Department continues to convene its Removal-Fill Technical Advisory Committee (TAC). TAC membership is voluntary and anyone may attend. Regular attendees include representatives from both the public and private sector and public interest groups. During the study period the TAC met about twelve times. In 2007, the TAC will meet quarterly.

It is currently our practice to compile meeting notes from all the TAC meetings and send the notes out to everyone on our TAC group e-mail list. There are over 70 people on that list. Many members have told us that although they are not able to attend the meetings, they do read and appreciate receiving the notes and other information we provide electronically.

Another example of DSL outreach is the State Land Board Awards Program with awards provided in three categories, two of which relate to the Removal-Fill Permit

Program: 1) Stream Project Award; and 2) Wetland Project Award. Winners for 2004 were announced at the April 2005 Land Board meeting. The 2004 Stream Project Award was presented to Alta Cunha Ranches and Moss Creek Ranches for a streambank stabilization and fish habitat improvement project at Longley Meadows near LaGrande. The 2004 Wetland Project Award was awarded to the Port of Portland for their Vanport Wetland Mitigation Site. Winners for 2005 were announced at the April 2006 Land Board meeting. The 2005 Stream Project Award was presented to the McDaniel Habitat Restoration Project on the Wallowa River near Lostine, Oregon.

Wetlands Conservation Program

The Wetlands Conservation Program was established by the legislature in 1989. The law articulated several state wetland policy directives, including a no-net-loss of wetlands goal, and established key program elements aimed at implementing those policies. Activities are summarized below under the key wetland program elements.

Statewide Wetlands Inventory

DSL is responsible for developing, maintaining, and distributing the statewide wetlands inventory (SWI). The SWI is based upon the National Wetlands Inventory (NWI) developed by the U.S. Fish and Wildlife Service and includes Local Wetlands Inventories (LWI) covering many urban areas. NWI paper maps are available for the entire state, and digitized maps are available for portions of the state. DSL is the state distributor of NWI and LWI maps, which are sold at cost. Table 9 shows NWI map sales for October 1, 2004 through September 30, 2006. (The data in Table 9 is reported based on federal fiscal year dates because the Department's State Distribution Center Memorandum of Agreement with NWI requires reporting in this format.)

The NWI is superseded in approximately 60 cities by LWIs that are developed according to standards established in rule by DSL. LWIs provide much more detailed and accurate wetland inventory information than the NWI. DSL approves all LWIs before they become part of the SWI. LWIs are used by cities and counties for planning purposes; they also provide good wetland location information for landowners and developers. DSL assists cities and their consultants with LWI development. A list of LWIs approved by DSL from 2004-2006 is provided in Table 10. A list of all LWIs is provided on DSL's web site, along with links to many of the maps.

Table 9 NWI Map Distribution/Sales Breakdown by Sector Fiscal Year Oct 1, 2004 through September 30, 2006

Fiscal Year	2004-2005	2005-2006
Total Map Sales	309	470
Local Government	69	10
State Government	12	129
Federal Government	8	2
Private	220	329

Table 10 LWIs Approved and in Progress

LWIs approved between July 1, 2004 and June 30, 2006		
Bandon	Corvallis	Klamath Falls
Bend	Eugene	West Linn
Cascade Locks	Gresham	
Technical & planning assistance for LWIs in progress:		
Ashland	Cornelius	Gearhart
Astoria	Depoe Bay	Lakeview
Bandon	Dunes City (update)	White City

Wetland Conservation Plans

Wetland Conservation Plans (WCPs) are an optional wetland planning mechanism that provide an alternative means of wetland protection to the standard Goal 5 (Natural Resources) or Goal 17 (Coastal Shorelands) requirements of the statewide land use planning program. A WCP provides more certainty for developers and the city by designating certain wetlands or portions of wetlands for development and some wetlands for protection. When DSL approves the plan, which includes a compensatory mitigation plan for the plan area, state Removal-Fill permits are issued according to designations in the plan. One WCP has been approved by DSL—the West Eugene Wetlands Plan (WEWP), which was approved in 1994. Two or three Willamette Valley cities have expressed interest in a WCP during this reporting period, but none were initiated.

Wetland Land Use Notification

The wetland land use notification process was initiated in 1989 as part of the wetlands program legislation. All counties and cities are required to notify DSL of certain development activities proposed in wetlands that are mapped on the National Wetlands Inventory (NWI) or, if completed, the Local Wetlands Inventory (LWI). DSL reviews the notice and provides a written response within 30 days to the applicant and local government as to whether or not the proposed action requires a Removal-Fill permit and/or a more precise wetland boundary location (delineation). DSL has been largely successful in responding within 30 days.

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.

Table 11 Response Time for Wetland Land Use Notices by Fiscal Year

	2005-2006	2004-2005	2003-2004	2002-2003	2001-2002	2000-2001
30 Days or Less	507	353	422	412	537	530
31-59 Days	6	42	55	45	35	111
60+ Days	6	26	19	1	0	2
Total Notices	519	421	496	458	572	643

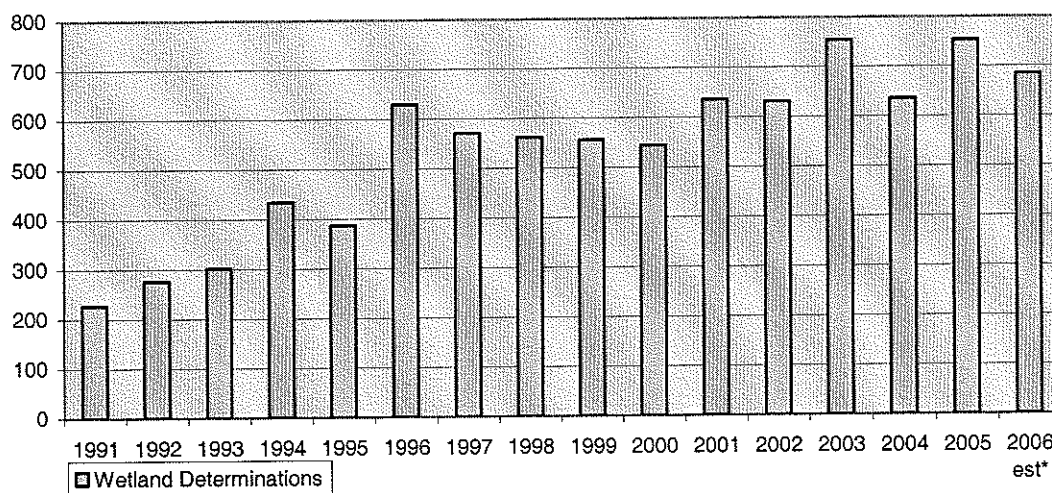
Most responses > 30 days are due to periods when the position was vacant

Wetland Determinations and Wetland Delineation Report Reviews

Upon request, wetlands program staff and some resource coordinators conduct “offsite” wetland determinations using maps and other available information and do field investigations, as time allows, to determine if a parcel contains wetlands or other waters

of the state subject to state permit requirements. A wetland determination identifies whether or not wetlands or other waters of the state are present on a site. If wetlands are present and their boundaries cannot be quickly flagged in the field by DSL wetland specialists, a wetland boundary delineation and report by a wetland consultant may be needed to accurately locate and map the wetlands (a wetland delineation report). Wetlands Program staff review all wetland delineation reports submitted to DSL prior to or along with a Removal-Fill permit application. Landowners, developers and local governments use the approved delineation report and maps to avoid or minimize wetland impacts, or to determine the impacts that will require a state permit. Figure 2 shows the number of wetland determinations and delineation report reviews conducted by calendar year. The total for 2006 was estimated based on projections.

Figure 2 Wetland Determinations & Delineation Report Reviews for Calendar Years 1991-2006



The number of delineation reports submitted to DSL for approval has grown substantially over the years without a corresponding increase in staffing. As required by statute, DSL must give first priority to reports associated with a permit application. The result is that reports submitted to DSL for verification of state jurisdiction for purposes of avoiding wetland impacts or for advance planning rarely receive timely review. In the 2005 legislative session, DSL attempted to receive authority to charge a report review fee to support additional positions to provide this service to the public, but was not successful. Improving the accuracy of reports submitted to DSL also helps speed agency review and approval. To help advance that goal, DSL wetlands staff worked with the Portland District Army Corps of Engineers and the Environmental Protection Agency (Region 10) to develop a joint guidance document—*Wetland Delineation Report Guidance*—and provided a training workshop for private consultants (February, 2005).

Wetland Conservation and Information

Another important Wetlands Program responsibility is to identify wetland conservation and information needs and work with other agencies and organizations to meet those

needs. Since 1991, DSL has successfully competed for State Wetland Program Development grants from the Environmental Protection Agency (EPA) to help with many of these efforts. Examples of projects initiated or conducted during this reporting period include:

Wetland Status and Trends Studies

Oregon has a no-net-loss of freshwater wetlands and net-gain of tidal wetlands goal, but there is no comprehensive state program for tracking wetland change. To help fill the data need, DSL initiated wetland change studies in two target regions. The coastal region study—scheduled for completion in 2007—will map freshwater and tidal wetland changes in the coastal lowlands between 1982 and 2001. EPA and the Oregon Watershed Enhancement Board (OWEB) funded this study. Products will include wetland change data, the land uses associated with wetland loss (e.g., agriculture, rural development), and updated, digitized maps of coastal lowland wetlands.

The second study is an update of the previously completed study: *Wetland and Land Use Change in the Willamette Valley, Oregon: 1982 to 1994*. This sample-based study showed an average net loss of 546 wetland acres per year in the valley. DSL was awarded an EPA grant to update the original study to 2005. When completed in early 2007, the combined Willamette Valley studies will provide statistically valid wetland trend data for a 23-year period.

The results of the coastal and Willamette Valley wetland change studies will provide information (to supplement permit data) for evaluating the state's progress in meeting the Oregon Benchmark on maintaining or increasing wetlands (Oregon Progress Board Benchmark 77). The coastal lowlands information will also be very useful for assessing the importance of and opportunity for coastal wetland restoration for salmon recovery.

Hydrogeomorphic (HGM) Assessment Guidebook for Tidal Wetlands

DSL, in collaboration with the Coos Watershed Association, EPA, OWEB and other agencies, developed a rapid hydrogeomorphic-based method for assessing tidal wetland functions and values. This project was funded by an EPA grant. Field data was collected from 120 tidal wetlands throughout the coastal region as part of the project. Numerous agency staff, private consultants and volunteers helped with data collection, field testing and peer review. The Guidebook may be used for Removal-Fill permits, compensatory mitigation planning and design, and tidal wetland restoration planning and monitoring. The products include:

Part 1: A "Guidebook" for assessing tidal wetland functions and values

Part 2: Science review and data analysis

Part 3: Description ("profiles") of tidal wetlands of the Oregon Coast

Database of all field data collected and an extensive bibliography

Revised GIS maps of tidal wetlands of the Oregon Coast

Oregon Rapid Wetland Assessment Protocol

To fulfill a commitment to the 2003 legislature, in the fall of 2004 DSL initiated a project to develop recommendations for a methodology that could be used statewide to assess

the functions, values and condition of wetlands for permitting purposes. It is neither feasible nor necessary to develop HGM guidebooks (such as the tidal wetland Guidebook described above) for all of Oregon. DSL assembled an interagency group (state and federal) and an advisory committee that worked for several months to evaluate existing methods used throughout the United States, assess Oregon's needs, and make specific recommendations for an Oregon Rapid Wetland Assessment Protocol. The final report containing the recommendations was completed in January 2006, and EPA funding was obtained to develop the protocol. The protocol should be completed by Summer 2008.

Evaluation and Recommendations for Estuarine Mitigation Rules

Oregon Sea Grant funded a full time Natural Resource Policy Fellow for one year (July 2005 to July 2006) to work at DSL on estuarine wetland mitigation. Oregon's estuarine mitigation rules were adopted in 1984 and have become very outdated. The project involved investigating estuarine permits issued in the last several years and associated mitigation requirements, researching current estuarine science, contacting other coastal states that implement regulatory programs, and developing recommendations for improvements. The findings and recommendations are included in a Masters Degree Report (Buckley, A.A. 2006, *Estuarine Habitat Mitigation in Oregon: Policy Review, Analysis, and Recommended Improvements*). The recommendations will be used by DSL in a future rulemaking.

Voluntary Wetland Restoration Program Pilot Project

In May 2005, the wetlands program was awarded a three-year grant from EPA that funded two full-time wetland restoration specialists to assist landowners and other agencies with permitting for voluntary wetland restoration and enhancement projects, and to improve project implementation and tracking. The restoration specialists (one located in Salem and one in North Bend) are working closely with OWEB, the U.S. Fish and Wildlife Service, Ducks Unlimited, the Natural Resources Conservation Service, and many other groups. Restoration and enhancement of wetlands is an important element of DSL's Wetland Conservation Strategy and is crucial to meeting the state's no-net-loss and net-gain of wetlands goals. The project should also contribute significantly to salmon recovery efforts under the Oregon Plan for Salmon and Watersheds.

Public Information and Training

DSL regularly provides information to the public, permit applicants, private consultants, and other groups on wetlands and regulations. Information is provided in the form of e-mail updates, the DSL newsletter, regular meetings with consultants and other interested parties, and short courses. Some examples of wetland program public information and training during the reporting period include:

Wetland Planning Training

The guidebook described above was distributed to cities and DSL wetlands staff has held training sessions. DSL staff provide ongoing assistance and guidance to cities developing Local Wetlands Inventories, and wetland staff frequently attend meetings with city and county planners and elected officials to help cities understand wetland regulations and the relationship between local and state requirements and responsibilities.

Wetland Functions Workshops

Wetland staff conduct trainings for other agency staff and private consultants in how to use the wetland function assessment guidebooks, such as the tidal wetland function assessment guidebook described above. Workshops have also been held at professional meetings in the region.

Watershed Stewardship Training Materials and Workshops

DSL wetland specialists helped OSU Extension develop the wetland portions of the watershed stewardship curricula and provided several of the trainings for watershed council members and others.



Industrial Site and Wetland Planning Assistance to Cities and Counties

Background

The agency's role in the effort to prepare industrial lands for development was strengthened under HB 2011 passed by the 2003 Legislature, which contained the following provisions:

- DSL became a member agency of the state and nine regional Economic Revitalization Teams (ERT).
- DSL received authority to create an economic revitalization liaison position. Originally created as a limited duration position; the position was subsequently made permanent in 2005.

DSL was directed to create an expedited process for identifying and mitigating the loss of wetlands on industrial sites.

Accomplishments

DSL adopted new rules in 2004 for an expedited planning and authorization process for industrial sites. Since that time, expedited services delivered by the DSL-ERT Liaison to date have included:

- Rapid assessment of approximately 120 candidate sites for potential wetland issues.

- Coordination of contracts for professional wetland consulting services on candidate industrial certification sites.
- Approximately 40 candidate certification sites have received expedited wetland delineation report review. All reviews were completed in less than 120 days.
- Technical assistance provided to 16 industrial sites for the development of wetland mitigation plans and/or removal-fill application documents.
- Coordination with US Army Corps of Engineers on federal wetland permit issues for various sites.
- Participation in nine regional Economic Revitalization Teams to facilitate the development of projects with significant opportunities for job creation.

Examples of Successes in Fiscal Years 2004-2005 and 2005-2006

The following new industrial projects in Oregon are currently in the DSL-ERT planning or development phase:

- Lowe's warehouse/distribution facility, Lebanon: 350 new family-wage jobs.
- Google hi-tech industrial park, Port of the Dalles: 75 new high wage jobs.
- PepsiCo manufacturing/bottling facility, Albany: 200 new jobs proposed.
- John Day Airport Industrial Park: up to 40 new jobs created and proposed.
- LaGrande Technology Park: \$2.1 million infrastructure investment currently underway.
- Jefferson Business Park, Madras: 20 new jobs created and 40 jobs retained for this community.
- Southport Lumber Company, Coos Bay: New mill created 82 new family-wage jobs.
- Canby Industrial Park, Canby: Six projects equaling \$19 million investment and 243 jobs to be created.
- Townsend Industrial Park, Fairview: Three completed projects resulting in 582 new and retained jobs.
- Umpqua Dairy distribution facility, Central Point: 15 new jobs created.

Compensatory Wetland Mitigation



*OAR 141-085-0006(3)) defines compensatory mitigation as follows:
"Compensatory mitigation" means replacement of water resources that are damaged or destroyed by an authorized activity.*

In addition to on-site or off-site compensatory wetland mitigation (CWM) involving the creation, restoration and/or enhancement of wetlands by the applicant, DSL also accepts, subject to certain conditions, CWM involving approved Wetland Mitigation Banks, Payment to Provide or Conservation. For example, 31.31 credits were withdrawn from approved mitigation banks in FY 04-05, and 32.31 credits were withdrawn from approved mitigation banks in FY 05-06 (see Table 12).

Table 12 Mitigation Bank Credits Withdrawn

Mitigation Bank	Credits Withdrawn 04-05	Credits Withdrawn 05-06
Amazon Creek	0.48	5.33
Cow Hollow	1.18	2.53
Fernhill (approved June 2005)	0	0
Frazier Creek	3.03	0.527
Marion	2.68	1.39
Mid-Valley	0	5.2
Mud Slough	14.545	11.67
Oak Creek	0.98	0
Weathers	1.61	1.18
West Eugene	1.3	4.48
*Astoria Airport	5.5	0
**Don Wilbur Estuarine	0	0
**Evergreen	0	0
**Foster Creek	0	0
**Mirror Lake	0	0
**Muddy Creek	0	0
**One Horse Slough	0	0
**Riverbend Landfill Company	0	0
Totals	31.31	32.31

*Bank status inactive as of July 2006

**Bank status under review as of July 2006

Wetlands Payment-to Provide (PTP) is a form of compensatory wetland mitigation allowed by DSL through the Removal-Fill permit process when other methods of providing compensatory wetland mitigation are not available or will not produce adequate wetland mitigation. The PTP program allows applicants to pay the costs equivalent to completing the required wetland mitigation into DSL's Wetland Mitigation Bank Revolving Fund (WMBRF) or to a third party who is capable of accomplishing the required mitigation. This option is available only to applicants who cannot accomplish their own mitigation, and who have no access to an established wetland mitigation bank.

The Department accepted \$295,890 in payments-to-provide in FY 2004-2005, and \$147,698 in FY 2005-2006 (see Table 13).

Table 13 Compensatory Mitigation Payment to Provide (PTP) Deposits

	FY 2004-2005	FY 2005-2006
Number of Permittees	70	69
PTP Totals	\$295,890	\$147,698

DSL dispersed \$52,000 in grants to 2 wetland projects in FY 04-05 (see Table 13).

Table 14 shows the recipients of PTP funds who undertook wetland projects. As of February 2005, the cash balance of the WMBRF (Fund 0090) was \$ 2,311,873.80.

Table 14 PTP Funds Disbursed to Recipients in FY 02-03 and FY 03-04

Recipient	Date	Amount	Project Description
Confederated Tribes of the Umatilla Indian Reservation	January 2005	\$12,000	Longley Meadows wetland creation project
Salem-Keizer Urban Watershed Councils Association	January 2005	\$40,000	Curly's Dairy/Lake Labish wetland complex management and enhancement
TOTAL Disbursed		\$52,000	

Table 15 only accounts for on-site and off-site compensatory wetland mitigation (CWM) involving the creation, restoration and/or enhancement of wetlands undertaken by the applicant. The data in Table 15 shows that the goal of no net loss of freshwater wetland area was attained statewide just by applying the mitigation ratios. When the PTP projects summarized in Table 12 above are added in along with the 63.62 mitigation bank credits withdrawn (31.31 and 32.31 in FYs 2004-2005 and 2005-2006, respectively), clearly a net increase in wetland area resulted compared to fills authorized by DSL.

Table 15 No-Net-Loss Calculations: Authorized Wetland Fill, Enhancement* Compensatory Wetland Creation (CR) and Restoration (RES) in Acres Fiscal Years 2004-2005 and 2005-2006

	Authorized Fill	Enhancement*	Creation	Restoration	Summation
FY 04-05					
Creation and Restoration		(70)	45	37	82
Authorized Fill	76				-76
Net Wetland Gain					(+) 6
FY 05-06					
Creation and Restoration		(155)	87	88	175
Authorized Fill	155				-155
Net Wetland Gain					(+) 20

**DSL does not include compensatory wetland enhancement in no-net-loss calculations.*