

DEPARTMENT OF THE ARMY PERMIT
REGIONAL GENERAL PERMIT
FOR
STREAM HABITAT RESTORATION WITHIN THE STATE OF
OREGON (RGP 3)

PERMIT NO.: NWP-2007-01023

EFFECTIVE DATE: August 1, 2008

EXPIRATION DATE: August 1, 2013

ISSUING OFFICE: U.S. Army Corps of Engineers, Portland District

This general permit authorizes the placement of fill material in waters of the United States within the State of Oregon subject to the terms and conditions contained herein for the purpose of restoring streams and enhancing aquatic habitat. This general permit is issued upon the recommendation of the Chief of Engineers as provided by 33 CFR 325.2(e)(2), pursuant to Section 404 of the Clean Water Act (P.L. 95-217) and Section 10 of the River and Harbor Act of 1899.

USE OF RGP-3: Prior to conducting activities authorized by RGP-3, a prospective permittee must first notify the Portland District, Corps of Engineers (Corps). Notification may be made by using the Oregon Department of State Lands application form for the General Authorization for the Placement of Large Wood and Boulders. Prior to verifying that a specific action meets the criteria of RGP-3, the Corps must coordinate with the State Historic Preservation Office (SHPO) and appropriate American Indian Tribe to determine if the proposed action would impact cultural resources, treaty fishing access sites, usual and accustomed areas, or Traditional Cultural Properties. If a cultural resource survey has been completed for the project site, reports documenting the results of the survey should be submitted with the application to facilitate SHPO/Tribal review.

ELIGIBILITY CRITERIA

1. To be eligible a project must be constructed for the purpose of improving aquatic habitat.
2. Projects are not eligible for this general permit if:
 - (a) Permanent anchoring (including rebar, cabling, excavation of the stream bank or bed, or keying into the streambank) is used to meet stability criteria. Biodegradable manila or sisal rope may be used for temporary stabilization;

- (b) The project is located within a Federally designated Wild and Scenic Waterway;
- (c) The project is located within an area that is tidally influenced;
- (d) The project is located within city limits or urban growth boundary;
- (e) The project design includes the construction of access roads within waters of the United States or associated riparian areas. This includes grading or sloping the ground surface and temporarily placing rock or dirt in order to access the waterway. However, operation of equipment across the surface of the ground with minimal tread disturbance or clearing of preexisting roads, skid roads, or similar constructed features is allowable;
- (f) The project would convert wetlands to another type of water or have any other negative impacts to wetlands.
- (g) The project can not avoid taking heavy equipment through off-channel habitats such as beaver oxbows, side channels, and backwater sloughs that are occupied or unsurveyed suitable habitat for Oregon chub or Warner sucker.
- (h) The project occurs with the range of and may affect federally listed plant or invertebrate species;
- (i) The project occurs in critical habitat or habitat occupied by the Modoc sucker; and
- (j) The project can not be conducted consistent with the conditions and/or criteria contained in the RGP.

ACTIVITIES AUTHORIZED BY THIS GENERAL PERMIT

This general permit authorizes the following work in waters of the United States within the state of Oregon.

I. Placement of large wood, including logs, trees and rootwads, in stream channels where large wood should naturally occur but is currently lacking due to past management practices or other conditions.

A. Large Wood placement must be for the purpose of increasing coarse sediment storage, habitat diversity and complexity, retaining gravel for spawning habitat, improving flow heterogeneity, providing long-term nutrient storage and substrate for aquatic organisms, moderating flow disturbances, increasing retention of leaf litter, or providing refuge for fish during high flows.

B. Large wood placement projects must rely on the size of the wood for stability, to the extent possible. No excavation or permanent anchoring is allowed [see Eligibility Criteria (a) above].

C. Logs and trees must not be removed from locations where they serve a valuable function or are wildlife trees. Use of decayed or fragmented wood found lying on the ground or partially sunken in the ground is not allowed.

D. Log habitat structures must contain a minimum of two key wood pieces that meet minimum length and diameter requirements in relation to the

stream size and slope. The addition of other large wood and coarse wood to the structures is permitted.

1. Key pieces of wood must be intact, hard, and either undecayed or partially decaying.
2. The length of the key wood pieces, if the rootwad is still attached, must be at least one and one-half times the bankfull width of the waterway (including the rootwad). If the rootwad is not attached, the length of the key wood piece must be at least twice the stream's bankfull width; and
3. The diameter of the key wood pieces must meet the following minimum thresholds.
 - (a) For streams with a bankfull width of 0-10 feet the minimum diameter of wood shall be 10 inches and the slope of the stream segment must not exceed 15%.
 - (b) For streams with a bankfull width of 10-20 feet the minimum diameter of wood shall be 16 inches and the slope of the stream segment must not exceed 9%.
 - (c) For streams with a bankfull width of 20-32 feet the minimum diameter of wood shall be 18 inches and the slope of the stream segment must not exceed 5%.
 - (d) For streams with a bankfull width of 32-50 feet the minimum diameter of wood shall be 22 inches and the slope of the stream segment must not exceed 3%.
 - (e) Wood placement is not allowed under this general permit in streams with a bankfull width greater than 50 feet.

E. Wood may be repositioned in the stream as necessary to alleviate threats to public safety or substantial property damage, provided the habitat and resource value of the wood is maintained in that stream segment. Any repositioning of wood must be done as specified in the Placement of Large Wood section.

II. Placement of Boulders to stabilize large wood. Boulders may be used with large wood to provide resistance to downstream movement under the following circumstances:

- A. The volume of boulders used must be restricted to the minimum amount necessary to provide resistance to downstream movement for the large wood.
- B. Boulders must be sized appropriately for the stream. For stability, it is recommended that key boulders be a minimum of twice the diameter of the average of the ten largest naturally occurring boulders in the project stream reach (measured upstream and downstream of the project site). Smaller sizes should be used only if a shear stress analysis of the stream reach shows that a smaller boulder would be stable at high flows.
- C. Boulders and wood may not be combined to form barbs (or similar hydraulic structures), to channelize stream flow, or for use as streambank stabilization.

III. Placement of boulders within stream channels where rock and boulders would naturally occur to retain substrate but are currently lacking is permitted, subject to the following criteria:

- A. Boulder placement must be for the purpose of increasing habitat diversity and complexity, improving flow heterogeneity, providing substrate for aquatic organisms, moderating flow disturbances, or providing refuge for fish during high flows by placing large boulders in stream beds where similar natural rock has been removed.
- B. The stream reach to be treated with boulders must meet the following criteria:
 - 1. The channel must have a slope of less than 10%;
 - 2. The riparian area must be intact and well-vegetated, including trees and shrubs where those species would naturally occur, or restoration and reestablishment of those conditions must be part of project;
 - 3. The stream bed must consist of bedrock or predominantly coarse gravel or larger sediments;
 - 4. The gravel depth must be less than 30 inches of gravel over bedrock in over 50% of the treatment area; and
 - 5. The total length of stream to be treated with boulder clusters is limited to 500 feet as measured in the middle of the stream from the first boulder upstream to the last boulder downstream. If the project is restoring multiple segments of the stream the combination of all segments may not exceed 500 feet.
- C. Boulders may be placed according to the following criteria:
 - 1. Boulders must be sized appropriately for the stream.
 - (a) For stability, key boulders must be, to the extent practicable, a minimum of twice the diameter of the average of the 10 largest naturally occurring boulders in the project stream reach (measured upstream and downstream of the project site). Smaller sizes should be used only if a shear stress analysis of the stream reach shows that a smaller boulder would be stable at high flows.
 - (b) Boulder size must be of a size sufficient to be stable under expected high flows (typically 25 year recurrence interval). Boulders shall not use permanent anchoring, including rebar or cabling, for meeting size or stability criteria.
 - 2. Boulders shall be placed in patterns which replicate natural stream conditions and that do not substantially modify stream hydraulics. No boulders will be placed to form weirs (e.g., step pools), barbs, dams, or for streambank stabilization or structural armoring of any kind.
 - 3. Individual boulder clusters may not exceed one-third of the active channel width and may not be placed on a single side of the stream. The boulder patterns must not be configured to shift the stream flow to a single flow pattern in the middle or to the side of the stream.
 - 4. Boulder clusters must have a minimum of a two-foot gap between clusters to allow adult and juvenile fish passage and may not be placed to occupy more than 25% of the flowing channel width at the time of placement.
 - 5. Boulders shall not be placed in aggrading or braided channels.
 - 6. Coarse wood may be placed under the boulders to increase recruitment of sediment.

7. Boulders must be individually placed (no end dumping allowed).
8. Boulders must not be placed by excavating the streambed or stream bank.

IV. Spawning gravel: The placement of spawning gravel in stream channels where gravel would naturally occur but is currently lacking, subject to the following criteria:

- A. Spawning Gravel must be for the purpose of improving spawning substrate by compensating for an identified loss of a natural gravel supply.
- B. The placement of gravel must be done in association with a current or past instream habitat restoration project.
- C. Gravel shall be made up of multiple sizes of material, with no more than 5% of the gravel being smaller than 0.25 inch and 10% of the gravel being larger than 4 inches.
- D. The gravel shall be washed, rounded (less than 25% fractured face), composed of hard durable particles resistant to weathering, and be composed of similar type of rock to that which is found in the stream basin. No organic soils, silt, clay or soft friable particles may part of the gravel placement.
- E. No fabric or wire mesh may be used to hold the gravel in the stream. The placement of coarse wood to retain gravel is permitted.
- F. Gravel shall not be placed in pools, block or impede fish passage.
- G. This permit does not authorize the excavation of gravel from waters of the United States.

CONDITIONS

1. **In-water Work Window:** All in-water work shall be conducted during the listed in-water work window, as applicable, unless otherwise approved by the Corps of Engineers. (Refer to Oregon Department of Fish and Wildlife (ODFW) "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" http://www.dfw.state.or.us/lands/inwater/inwater_guide.pdf).
2. **Cultural Resources and Human Burials:** Permittees shall immediately notify the Portland District Regulatory Branch if at any time during the course of the work authorized, human burials, cultural resources, or historic properties, as identified by the National Historic Preservation Act, may be affected. Notification shall be by fax (503-808-4375) within 24 hours of the discovery and in writing within 48 hours. Failure to stop work in the area of exposure until such time as the Corps has complied with the provisions of 33 CFR 325, Appendix C, the National Historic Preservation Act and other pertinent regulations, could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.
3. **Erosion Control:** During construction, permittee shall ensure that all practicable erosion and sediment control measures are installed and maintained in good working

order to prevent unauthorized discharge of materials carried by precipitation, snow melt, wind or any other conveyance mechanism into any waterways and wetlands. The permittee is referred to Oregon Department of Environmental Quality's (DEQ) *Oregon Sediment and Erosion Control Manual*, April 2005, for proper implementation of practicable sediment and erosion control measures.

4. Hazardous, Toxic, and Waste Materials. Petroleum products, chemicals, fresh cement, construction debris, or other deleterious waste materials shall not be allowed to enter waterways or wetlands.

5. Heavy Equipment.

a. Permittee shall ensure that all heavy equipment is operated from the bank and not placed in the stream except under the following conditions:

- i. The streambed consists of bedrock, or where no compaction will occur in the streambed and only minimal compaction will occur in the floodplain; or
- ii. There is no surface flow in the channel; or
- iii. Equipment cannot safely reach the channel work site due to steep and/or rugged terrain; or
- iv. It is necessary to cross the stream to avoid springs, wetlands, or other sensitive areas; or
- v. It is necessary to avoid or minimize disturbance of riparian vegetation that is serving a unique or valuable function.

b. Equipment used for in-stream work must be cleaned prior to entering the two-year flood plain and otherwise prepared to protect against the release of any petroleum products, chemicals or deleterious materials. Wash and rinse water must not be discharged into waterways, unless adequately treated.

c. Heavy equipment working in wetlands must be placed on removable mats or pads. Following the removal of the mats or pads, the area must be restored to pre-project conditions.

6. Fish Passage. The activities authorized by this general permit must not restrict fish passage.

7. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

8. Flooding. The project must not cause the water to rise or be redirected in such a manner that it results in flooding, or deleterious or harmful impacts to any structures or substantial property outside of the project reach;

9. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

10. Endangered Species Act (ESA) Compliance.

a. Projects occurring in streams with listed species under the regulatory authority of the National Marine Fisheries Service must meet the applicable terms and conditions of the SLOPES IV Restoration Programmatic Biological Opinion, issued February 25, 2008.

b. **Federally-listed Plants and Invertebrates.** If plant or invertebrate species or critical habitat listed under the Federal ESA are likely to be present in the project site,

biological surveys are conducted, as appropriate, by qualified biologists/botanists in accordance with standard survey protocol prior to the issuance of the permit. If such listed species are found in the immediate restoration area and can not be avoided, then the project is not eligible for coverage under this RGP.

c. **Canada Lynx.** Restoration activities that reduce vegetative habitat and cover will not occur in snowshoe hare habitat. Snowshoe hare habitat is considered area where live limb (e.g. trees and shrubs) can be reached by hares at snow depth. Restoration activities (i.e., above local ambient noise and visual activity levels) will not occur within 0.25 miles of lynx denning habitat from May 1 to August 31.

d. **Columbia White-tailed Deer.** Project personnel will be instructed to reduce vehicle speeds around project sites where Columbian white-tailed deer occur to avoid vehicle-deer collisions. Project personnel will be instructed not to approach adults or fawns at any time. Restoration activities (i.e., above local ambient noise and visual activity levels) will not occur in fawning areas from June 1 to July 15.

e. **Marbled Murrelet**

1. No suitable, potential, or critical murrelet habitat is to be removed or downgraded.
2. For project sites located near occupied or unsurveyed suitable habitat, work will not occur during the critical nesting period from April 1 to August 5, unless a protocol survey determines murrelets are not present.
3. Projects will not occur within the applicable harassment distances (see Table 1 below) and will only occur during daylight hours between two hours after sunrise to two hours before sunset from August 6 to September 15.
4. Project personnel will take appropriate measures not to attract potential avian or mammalian predators to project sites. This includes: eliminating human-introduced food sources and properly disposing of organic waste.

Table 1. Harassment distances table for various activities within marbled murrelet habitat.	
Type of Activity	Distance at which marbled murrelets may flush or abort a feeding attempt during August 6 to September 15.
Blasting	≤ 1 mile
An impact pile driver, a jackhammer, or a rock drill, heavy equipment	≤ 100 yards
A helicopter	≤ 440 yards
Chainsaws (hazard trees, pre-commercial and commercial thinning)	≤ 100 yards
Visual construction activity	≤ 300 yards

f. **Northern Spotted Owl**

1. No suitable, dispersal, or critical Northern spotted owl habitat is to be removed or downgraded.
2. For project sites located near occupied or unsurveyed suitable habitat, work will not occur during the critical nesting period from *March 1 to July 15*.
3. Projects will not occur within the applicable harassment distances (see Table 2 below) and will only occur during daylight hours between two hours after sunrise to two hours before sunset from *July 16 to September 30*.

4. Project personnel must take appropriate measures not to attract potential avian or mammalian predators to project sites. This includes: eliminating human-introduced food sources and properly disposing of organic waste.

Type of Activity	Distance at which spotted owl may flush or abort a feeding attempt from July 16 to September 30
Blasting	≤ 1 mile
An impact pile driver, a jackhammer, or a rock drill	≤ 60 yards
A helicopter	≤ 440 yards
Chainsaws (hazard trees, precommercial and commercial thinning)	≤ 65 yards
Heavy equipment	≤ 35 yards

g. Federally Listed Aquatic Species. Federally Listed Aquatic Species that may be affected by this RGP include warner sucker (*Catostomus warnerensis*), Oregon chub (*Oregonichthys crameri*), bull trout (*Salvelinus confluentus*), Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*), Lost River sucker (*Deltistes luxatus*), and shortnose sucker (*Chasmistes brevirostris*). Projects located within the occupied or unsurveyed suitable habitat or designated critical habitat of federally listed aquatic species listed above must meet the following criteria:

1. For project sites located in spawning habitat, work will not occur unless a qualified biologist confirms federally listed aquatic species are not present.
2. Placement of large wood and boulders will be limited to:
 - a. Placement by helicopter, suspended cable, or placed with a walking excavator during the ODFW in-water work period; and comply with the disturbance distance listed in the northern spotted owl and marbled murrelet disturbance tables.
 - b. Other placement equipment or techniques are allowed if a qualified biologist confirms federally listed aquatic species listed above are not present.
 - c. All equipment entering waters containing the federally listed aquatic species listed above will use vegetable oil or other biodegradable acceptable hydraulic fluid substitute.
3. Placement of boulders will be confined to bedrock dominated streams that have established riparian vegetation where the boulders are shaded over 50% of the daylight hours.
4. Spawning gravel may be placed with the use of a conveyor belt, suspended cable or helicopter during the ODFW in-water work period, and comply with the disturbance distance listed in the northern spotted owl and marbled murrelet disturbance tables.

11. Navigation.

- a. No activity may cause more than a minimal adverse affect on navigation.
- b. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure of work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free

navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

12. Inspection of the Project Site. The permittee shall allow representatives of the Corps to inspect the authorized activity to confirm compliance with the general permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the Corps representative conducting the inspection.

13. Water Quality. All activities authorized under this general permit must comply with the Water Quality Certification issued by the Oregon Department of Environmental Quality on April 16, 2008 (Attachment 1).

14. Coastal Zone Management. The Oregon Department of Land Conservation and Development determined by letter dated April 27, 2008, the activities covered by this permit fall within the scope of Nationwide Permit 27 (Aquatic Habitat Restoration, Establishment, and Enhancement Activities). Therefore, projects located within the coastal zone must comply with the applicable conditions of the concurrence letter for the nationwide permit program dated August 3, 2007 (Attachment 2).

15. Post Project Reporting Requirements. A written report containing the following information shall be provided within 60 days of project completion:

- 1) For all projects a written report that includes: the RGP number, name and location of the stream, location of the completed work (latitude and longitude), 6th Field HUC, dates during the which the work occurred, summary of pollution and erosion control inspection, bankfull depth and width, stream slope, a set of photographs that show the before, midpoint and completed structure for each type of activity listed below, method of placement and:
 - a) For large wood project the report must include:
 - i) Number of large wood structures;
 - ii) Number of key pieces with log length and diameter;
 - iii) Number of key pieces per structure;
 - iv) The source of the logs.
 - b) For projects that use boulders or wood in combination with boulders, the report must include:
 - i) For projects that include wood all the information in 1) a) i-iv;
 - ii) A plan view drawing of each structure showing the position of the wood and/or boulders in the stream and on the stream bank with a note on which structure is represented in the set of photographs;
 - iii) Active channel width and depth at the time of construction;
 - iv) Number of boulders used;
 - v) Size of the boulders used;
 - vi) The distance of each structure measured from the upstream placed boulder to the down stream placed boulder;
 - vii) A representative stream cross section drawing. For boulders placed in a reach where the stream slope is greater than 3% and less than 10% the report must contain a longitudinal profile diagram for the length of the stream in the project area.

- c) For project that include the placement of gravel the report must include:
 - i) Number of placement sites;
 - ii) Length, width and depth of the gravel at each placement site;
 - iii) Size ranges of the gravel placed.

LIMITS OF THIS AUTHORIZATION

- a. This general permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
- b. This general permit does not grant any property rights or exclusive privileges.
- c. This general permit does not authorize any injury to the property or rights of others.
- d. This general permit does not authorize interference with any existing or proposed Federal project.

LIMITS OF FEDERAL LIABILITY

In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

REEVALUATION OF PERMIT DECISION

The District Engineer may reevaluate this general permit at any time, and, if appropriate, suspend, modify, or revoke this permit as provided in 33 CFR 325.7. The District Engineer may also suspend, modify, or revoke authorization under this general permit for any specific geographic area, class of activities, or class of waters within the state of Oregon.

This general permit will be reviewed annually to determine whether the projects authorized by this general permit result in no more than minimal effects, both individually and cumulatively, and to ensure that the terms and conditions of this permit are being observed. The District Engineer will invite the participation of other interested federal and state agencies in this review. If this review concludes that changes in permit terms or conditions are warranted, modification of the permit will be proposed as provided in 33 CFR 325.7, including public notice and opportunity for comment.

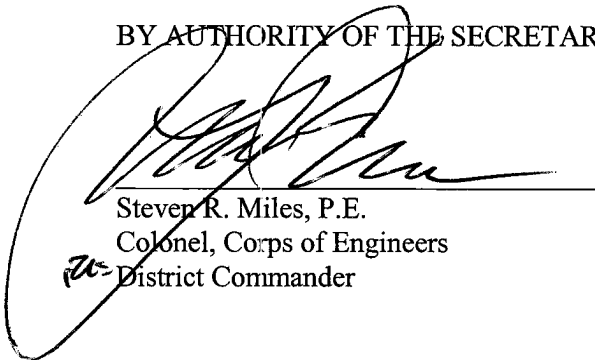
Activities authorized under this general permit that are under construction or under contract for construction in reliance upon this authorization will remain authorized provided the activity is completed within 12 months of the date of this general permit's

expiration, modification or revocation, unless the District Engineer has exercised his discretionary authority to modify, suspend, or revoke the authorization of a specific project in accordance with Corps regulations.

EXPIRATION OF THIS AUTHORITY

This general permit will expire five years from the date on which it becomes effective, unless it is extended prior to that date.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:



Steven R. Miles, P.E.
Colonel, Corps of Engineers
District Commander

7-28-08
(Date)



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

Northwest Region Portland Office

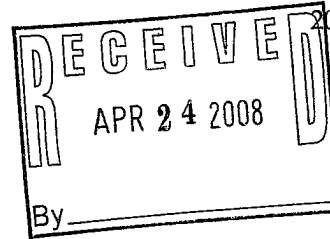
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April 16, 2008

Ms. Judy Linton
U.S. Army Corps of Engineers
ATTN: CENPP-CO-GP
P.O. Box 2946
Portland, OR 97208-2946

The Department of Environmental Quality (DEQ) has reviewed the Public Notice for US Army Corps of Engineers (USACE) Action ID # NWP-2007-01023, *Proposal to Issue a Regional General Permit for Stream Habitat Restoration*, issued by USACE on December 21, 2007, which requested Water Quality Certification (WQC) under Section 401 of the Clean Water Act.

Activity Description: The Regional General Permit for Stream Habitat Restoration authorizes projects constructed for the purpose of improving fish habitat, which meet eligibility requirements and involve placement of: 1) large wood, 2) boulders to stabilize large wood, 3) boulders, and 4) spawning gravel, in waters of the state throughout the state of Oregon.

DEQ has determined the proposed activities and permit conditions to be consistent with DEQ's previous review and certification of USACE Nationwide Permit (NWP) Category 27. Therefore, DEQ has attached the applicable Conditions from the NWP 401 WQC, which was issued July 18, 2007 following a 35-day public review pursuant to OAR 340-048-0027. Each activity considered for authorization under the Regional General Permit for Stream Habitat Restoration in Oregon must comply with these conditions. DEQ reserves the right to modify these conditions as necessary to ensure compliance with water quality standards and programs of any permit, license, or project where necessary on a case-by-case basis.

DEQ certifies that there is reasonable assurance that the activities will be conducted in a manner that will not violate applicable state water quality standards, including the Antidegradation Policy for Surface Waters in *Oregon Administrative Rule (OAR) 340-041-0004*, and will comply with the applicable sections of the Clean Water Act, provided the following conditions are incorporated into the permits.

CONDITIONS

- 1) **Duration of Certification:** This 401 WQC expires approximately five years after the date of issuance, to coincide with expiration of the USACE Regional General Permit.
- 2) **Bank Stabilization Exclusion:** This 401 WQC does not cover placement of rock below Ordinary High Water for the purpose of streambank stabilization.
- 3) **Turbidity:** All practical Best Management Practices (BMPs) on disturbed banks and within the stream shall be implemented to minimize turbidity during in-water work. OAR 340-041-0036 states that turbidity shall not exceed 10% above natural stream turbidities, except where allowed by the rule. This rule also states that limited duration activities necessary to accommodate essential dredging, construction or other legitimate activities and which cause the turbidity standard to be exceeded may be authorized provided all practical

turbidity control techniques have been applied and a section 401 water quality certificate has been granted.

- a. **Monitoring:** Turbidity monitoring shall be conducted and recorded as described below. Monitoring shall occur each day during daylight hours when in-water work is being conducted. A properly and regularly calibrated turbidimeter is recommended, however, visual gauging is acceptable.
 - i. Representative Background Point: a sample or observation must be taken every four hours at a relatively undisturbed area approximately 100 feet upcurrent from in-water disturbance to establish background turbidity levels for each monitoring cycle. Background turbidity, location, date, and time must be recorded prior to monitoring downcurrent.
 - ii. Compliance Point: Monitoring shall occur every four hours approximately 100 feet down current from the point of discharge, within any visible plume, and be compared against the background measurement or observation. The turbidity, location, date, and time must be recorded for each sample.

- b. **Compliance:** Results from the compliance points should be compared to the background levels taken during each monitoring interval. Exceedances are allowed as follows:

MONITORING WITH A TURBIDIMETER		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1 ST MONITORING INTERVAL	ACTION REQUIRED AT 2 ND MONITORING INTERVAL
0 to 5 NTU above background	Continue to monitor every 4 hours	Continue to monitor every 4 hours
5 to 29 NTU above background	Modify BMPs & continue to monitor every 4 hours	Stop work after 8 hours at 5-29 NTU above background
30 to 49 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 2 hours at 30-49 NTU above background
50 NTU or more above background	Stop work	Stop work
VISUAL MONITORING		
No plume observed	Continue to monitor every 4 hours	Continue to monitor every 4 hours
Plume observed	Modify BMPs & continue to monitor every 4 hours	Stop work after 8 hours with an observed plume

When monitoring visually, turbidity that is visible over background is considered an exceedance of the standard.

If an exceedance over the background level occurs, the applicant must modify the activity and continue to monitor every four hours or as appropriate (above). If an exceedance over the background level continues after the second monitoring interval, the activity must stop until the turbidity levels return to background. If, however, turbidity levels return to background at second monitoring level due to implementation of BMPs or natural attenuation, work make continue with appropriate monitoring as above.

If an exceedance occurs at: 50 NTU or more over background; 30 NTU over background for 2 hours; or 5-29 NTU over back ground for 8 hours, the activity must stop immediately for the remainder of that 24-hour period.

- c. **Reporting:** Copies of daily logs for turbidity monitoring shall be available to DEQ, USACE, NMFS, USFWS, and ODFW upon request. The log must include: background NTUs, compliance point NTUs, comparison of the points in NTUs, and location, date, time, and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions.
 - d. **BMPs to Minimize In-stream Turbidity:**
 - i. Sequence/Phasing of work – The applicant will schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;
 - ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket shall be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or both of the load, or by using a closed-lipped environmental bucket shall be implemented;
 - iii. Machinery will not drive into the flowing channel, except as specified in Condition 5 of the USACE Regional General Permit;
 - iv. Limit the number and location of stream crossing events. Establish temporary crossing sites as necessary at the least impacting areas and supplement with clean gravel or other temporary methods as appropriate;
 - v. Excavated material will be placed so that it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled; and,
 - vi. Use of containment measures such as silt curtains, geotextile fabric, and silt fence will be implemented and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.
- 4) **Erosion Control:** The applicant is referred to DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005. The following erosion control measures (and others as appropriate) or comparable measures as specified in an NPDES 1200-C permit (if required) shall be implemented during construction/project activities:
- a. Filter bags, sediment traps or catch basins, vegetative strips, berms, Jersey barriers, fiber blankets, bonded fiber matrices, geotextiles, mulches, wattles, sediment fences, or other measures used in combination shall be used to prevent movement of soil from uplands into waterways or wetlands;
 - b. An adequate supply of materials needed to control erosion must be maintained at the project construction site;
 - c. To prevent stockpile erosion, use compost berms, impervious materials or other equally effective methods, during rain events or when the stockpile site is not moved or reshaped for more than 48 hours;
 - d. Erosion control measures shall be inspected and maintained daily, or more frequently as necessary, to ensure their continued effectiveness and shall remain in place until all exposed soil is stabilized;

- i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, mobilize work crews immediately to make repairs, install replacements, or install additional controls as necessary.
 - ii. Remove sediment from erosion and sediment controls once it has reached 1/3 of the exposed height of the control.
 - e. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian or wetland areas shall use removable pads, mats, or other methods as necessary to prevent soil compaction, unless doing so would be more impactful to these or surrounding resources.
 - f. Flag or fence off avoided wetlands and newly planted areas to protect from disturbance and/or erosion.
 - g. Dredged or other excavated material shall be placed on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands;
 - h. Sediment from disturbed areas or in any way able to be tracked by vehicles onto pavement shall not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state and impair water quality. Placement of clean aggregate at all construction entrances, and other BMPs such as truck or wheel washes if needed, will be used when earthmoving equipment will be leaving the site and traveling on paved surfaces; and,
 - i. Projects which disturb one acre or more require an NPDES 1200C Storm Water Discharge Permit. Contact the appropriate DEQ regional office for more information (Contact information can be found at: <http://www.deq.state.or.us/wq/>).

- 4) **Deleterious Materials:** The following conditions relating to control of hazardous, toxic and waste materials shall be observed:
- a. **Treated Wood: Ineligibility-** Projects which propose installation of chemically treated wood that will contact surface or ground water or that will be placed over water where it will be exposed to abrasion require individual, site specific review and are, therefore, **not certified by this 401 WQC.**
 - b. Projects that require removal of chemically treated wood must:
 - i. Ensure that no treated wood debris falls into waters of the State. If treated wood debris falls into waters of the State, it must be removed immediately and disposed of properly.
 - ii. Dispose of all treated wood debris removed during a project, including treated wood pilings, at an upland facility approved for hazardous materials of this classification. Do not leave treated wood pile(s) in the water or stacked on the streambank.
 - iii. Immediately place removed piling onto an appropriate dry storage site.
 - iv. Attempt to remove the entire temporary or permanent piling.
 - v. If complete removal is not possible, ensure that any treated wood piling to remain submerged is broken, cut, or pushed at least 3 feet below the sediment surface.
 - vi. Fill and cover holes left by each treated timber piling removed with clean, native substrates that match surrounding streambed materials. If chemically treated wood piles are removed using a vibratory hammer, ensure that holes are capped with clean fill as the pile is removed. Surrounding the pile with clean material prior to removal will allow the hole to fill in upon extraction in order to contain any undecomposed chemicals which have pooled beneath

the substrate and may tend to escape upon extraction of the pile as they are less dense than the surrounding water. Clean fill must be accounted for in project description and threshold limits.

- c. Biologically harmful materials and construction debris including, but not limited to: petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete shall not be placed in waterways or wetlands. Authorized fill material must be free of these materials. The applicant must remove all foreign materials, refuse, and waste from the project area.
 - d. An adequate supply of materials needed to contain deleterious materials during a weather event must be maintained at the project site and deployed as necessary.
 - e. Machinery refueling shall not occur in waterways, wetlands, or riparian areas.
- 5) **Spill Prevention:** Fuel, operate, maintain, and store vehicles and construction materials in areas that minimize disturbance to habitat and prevent adverse effects from potential fuel spills.
- a. Complete vehicle staging, cleaning, maintenance, refueling, and fuel storage in a vehicle staging area placed 150 feet or more from any waters of the state. An exception to this distance can be made if all practicable prevention and containment measures [as in 5) b through e below, or others] are employed and this distance is not possible because of any of the following site conditions:
 - i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);
 - ii. Natural resource features would be degraded as a result of this setback, or,
 - iii. Either no contaminants are present or full containment of potential contaminants to prevent soil and water contamination is provided;
 - b. Inspect all vehicles operated within 150 feet of any waters of the State daily for fluid leaks before leaving the vehicle staging area. Repair any leaks detected in the vehicle staging area before the vehicle resumes operation;
 - c. Before operations begin and as often as necessary during operation, steam clean (or an approved equal) all equipment that will be used below bankfull elevation until all visible external oil, grease, mud, and other visible contaminants are removed;
 - d. Diaper all stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state; and,
 - e. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed contain spills must be maintained at the project construction site and deployed as necessary.

6) **Spill & Incident Reporting:**

- a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the discharge shall be promptly reported to the Oregon Emergency Response

Service (OERS, 1-800-452-0311). Containment and cleanup must begin immediately and be completed as soon as possible.

- b. If the project operations causes a water quality problem which results in distressed or dying fish, the operator shall immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW, NMFS and USFWS as appropriate.

- 7) **Vegetation Protection and Restoration:** Riparian, wetland, and shoreline vegetation in the authorized project area shall be protected from unnecessary disturbance to the maximum extent practicable through:
 - a. Minimization of project and impact footprint;
 - b. Designation of staging areas and access points in open, upland areas;
 - c. Fencing or other barriers demarking construction areas; or
 - d. Use of alternative equipment (e.g., spider hoe or crane)

If authorized work results in unavoidable vegetative disturbance; riparian, wetland, and shoreline vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved, at the completion of the authorized work.

- 8) DEQ is to have site access upon reasonable request.
- 9) This WQC is invalid if the project is operated in a manner not consistent with the project description contained in the permit application materials.
- 10) A copy of this WQC letter shall be kept on the job site and readily available for reference by the USACE, DEQ personnel, the contractor, and other appropriate state and local government inspectors.
- 11) DEQ reserves the option to modify, amend or revoke this WQC, as necessary, in the event new information indicates that the project activities are having a significant adverse impact on State water quality or critical fish resources.

Please direct any questions about this letter to Alexandra Cyril at the address on this letterhead, by phone at (503) 229-6030, or by email at cyril.alex@deq.state.or.us.

Sincerely,



Sally Puente,
Water Quality Manager
Northwest Region

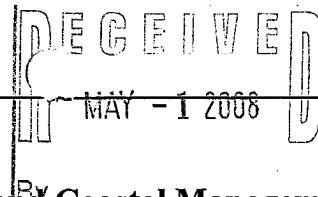
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cc: Jay Charland, DLCD
Marc Liverman, NMFS
Yvonne Vallette, EPA
John Marshall, USFWS



Oregon

Theodore R. Kulongoski, Governor



Ocean and Coastal Management Program

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, Oregon 97301-2540

Phone (503) 373-0050

FAX (503) 378-6033

www.lcd.state.or.us/coastal/html

April 29, 2008

Ms. Judy Linton
U.S. Army Corps of Engineers
PO Box 2946
Portland, Oregon 97208-2946

Permit #: NWP 2007-1023

Permit Type: 404

Description: Regional General Permit for Stream Habitat Restoration

Dear Ms. Linton:

The Department of Land Conservation and Development (DLCD) has reviewed the above referenced permit for consistency with the Oregon Coastal Management Program (OCMP). To be consistent with the OCMP, the proposed project must be consistent with: 1) the statewide planning goals; 2) the applicable acknowledged city or county comprehensive plan; and 3) selected state authorities (e.g. those governing removal-fill, water quality, and fish & wildlife protections).

The activities covered by this permit appear to fall within the scope of Nationwide Permit 27, *Aquatic Habitat Restoration, Establishment, and Enhancement Activities*. This Nationwide Permit has previously received conditional advance concurrence from DLCD. Therefore, any activities permitted under this new Regional General Permit would also qualify for an NWP 27, and therefore would be consistent with the OCMP.

Thank you for the opportunity to work with you on the development of this permit. If you have any questions or comments regarding this coastal zone management consistency finding, the consistency review process, or the Oregon Coastal Management Program, please contact me at 503-373-0050 ext. 253 or by e-mail at: jay.charland@state.or.us

Sincerely,

Jay Charland
Coastal Permits Coordinator

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cc: OCMP File

ATTACHMENT 2



Oregon

Theodore R. Kulongoski, Governor

Ocean and Coastal Management Program

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, Oregon 97301-2540

Phone (503) 373-0050

FAX (503) 378-6033

www.lcd.state.or.us/coastal/html

August 3, 2007

Mr. Lawrence Evans
Chief, Regulatory Branch
Portland District
US Army Corps of Engineers
PO Box 2946
Portland, Oregon 97208-2946

Re: Nationwide Permit Program

Dear Mr. Evans:

In response to Colonel O'Donovan's April 4, 2007 letter, the Oregon Coastal Management Program (OCMP) has reviewed the new Nationwide Permits, Conditions, and Definitions, as published in the Federal Register on March 12, 2007 (72 FR 11092), for consistency with the OCMP. To be consistent with the OCMP, a federal permit, license, or funded activity must be consistent with:

- The statewide land use planning goals;
- Local jurisdiction acknowledged comprehensive plans and implementing ordinances;
- Select state authorities (e.g., the Removal/Fill Law, water quality regulations, fish and wildlife regulations, the Territorial Sea Plan).

As the state's designated lead coastal zone management agency, the Department of Land Conservation and Development (DLCD) has coordinated a review of the new Nationwide Permits among our partner state agencies. With the two exceptions noted below, advance concurrence on all Nationwide Permits is hereby authorized, provided the Corps attaches and applies to each permit issued the ten conditions and explanatory notes in Appendix A and Appendix B to this letter (Ref 15 CFR 930.4). DLCD reserves the right to modify these conditions as necessary to ensure the consistency of any permit, license, or project.

Advance concurrence is not extended to the following two classes of permits:

- Any permit where the project is within or directly impacts the Territorial Sea (waters and seabed extending three (3) nautical miles seaward from the coastline, in conformance with federal law), excepting projects permitted under NWP 1 or NWP 5.
- Any project utilizing NWP 29 or NWP 39 requiring a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or

Mr. Lawrence Evans
August 3, 2007

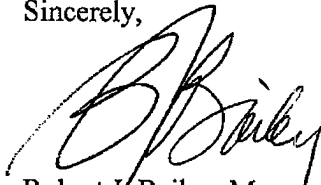
county council or commission.

The District Engineer shall be responsible for determining when permit applications meet one or both of these circumstances. In these instances, the applicant will be asked by the District Engineer to contact the OCMP. DLCD will undertake an individual review of the project to ensure proper adherence to the OCMP. Guidance for District Engineer in making this determination is attached as Appendix C. In cases where advance concurrence clearly applies, no communication between the District Engineer and the DLCD during the application review is required. The Corps will continue to copy DCLD on all final authorization and issues letters. Questions regarding whether a specific project qualifies for advance concurrence, or requests for further clarification of the guidance in Appendix C are most welcome, and will be addressed promptly.

Please direct any comments or questions about this letter or the Oregon Coastal Management Program to Jay Charland, Coastal Permits Coordinator. He can be reached at 503-373-0050 ext. 253, or by e-mail at jay.charland@state.or.us.

Thank you for your continued cooperation and coordination with the Oregon Coastal Management Program.

Sincerely,



Robert J. Bailey, Manager
Oregon Coastal Management Program

cc Kevin Moynahan, DSL
Yvonne Vallette, EPA
John Marshall, USFWS

Sally Puent, DEQ
Patty Snow, ODFW
Marc Liverman, NMFS

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Mr. Lawrence Evans
August 3, 2007

Appendix A

Standard CZM Conditions

All projects permitted, licensed, or funded by the federal government are subject to review for consistency with the Oregon Coastal Management Program (OCMP). Conditions may be placed on federal permits, licenses, or funding to ensure consistency with the OCMP. The 10 Standard CZM conditions given below are required as part of that consistency concurrence for Nationwide Permits issued in Oregon's Coastal Zone.

Appendix B provides an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies relevant to each condition.

An applicant may choose to not follow one or more of the OCMP conditions. In that instance, an agreement between the OCMP and the applicant must be reached on what conditions will be attached to the federal permit, license or action.

Failure to come to an agreement shall trigger an objection to the federal action by the OCMP. In that instance, the permittee may appeal the state's objection to the Secretary of Commerce, pursuant to 15 CFR 930, subpart H, within 30 days of receipt of the letter informing the applicant of the OCMP's objection. (Ref. 15 CFR 930.63(e)) In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the OCMP and the federal funding, permitting or licensing agency. The Secretary may collect fees from the permittee for administering and processing the request. (Ref 15 CFR 930.63, 1-1-07 Edition)

Appendices A & B addresses the requirements of 15 CFR 930.4(a)(1).

CZ Condition 1. Consistency with Local Comprehensive Plans.

(1) Authorization for projects in Oregon's coastal zone under any nationwide permit is valid only if the proposed project is consistent with or not subject to the applicable local comprehensive plan and implementing land use regulations, or to the statewide land use planning goals where applicable. Permits or other authorizations must be obtained, when required, from the applicable local government before work is initiated under any nationwide permit. Verification of the local jurisdiction's decision must be given to the Corps of Engineers in the form of a completed block seven (7) of the Joint Permit Application. All appeals of the local jurisdiction's decision(s) must be resolved before any regulated work may begin.

(2) All conditions placed on an authorization or permit by the local government are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

Mr. Lawrence Evans
August 3, 2007

CZ Condition 2. Consistency with Removal-Fill Law.

(1) Authorization for projects in Oregon's coastal zone under any nationwide permit is valid only if the proposed project is consistent with or not subject to the state statutes for state lands and removal-fill in waters of the state. Permits or other authorizations must be obtained when required from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) For projects found not subject to the Removal/Fill Law by DSL, any changes in project design or implementation which may reasonably be expected to require application of the Removal/Fill Law shall be submitted to DSL for review.

(3) All conditions placed on a Removal-Fill permit by the Oregon Department of State Lands are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

CZ Condition 2a. Leases of State Lands.

(1) Authorization for projects in Oregon's coastal zone under any nationwide permit is valid only if the proposed project has obtained any required lease or other license required for the use of state lands or waters. Permits or other authorizations must be obtained when required from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) All conditions placed on a lease, license, or authorization by the Oregon Department of State Lands are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

CZ Condition 3. Department of Environmental Quality.

(1) Authorization for a project in Oregon's coastal zone under any nationwide permit is valid only if the proposed project has been certified or does not require certification by the Oregon Department of Environmental Quality (DEQ) through its 401 Water Quality Certification process.

(2) All conditions placed on a DA license, permit, or authorization by the Oregon Department of Environmental Quality are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

CZ Condition 4. In-Water Work.

(1) All in-water work, including temporary fills or structures, shall occur within the ODFW recommended period for in-water work for the affected water body. Exceptions to the recommended time periods require specific approval from the Corps, and:

Mr. Lawrence Evans
August 3, 2007

- (i) The Corps shall coordinate exceptions to work windows with ODFW and NMFS (NOAA Fisheries). Decisions to not apply ODFW or NMFS work windows shall be accompanied by written approval from ODFW;
- (ii) On tribal lands, the Corps shall coordinate exceptions with the EPA.

(2) No work shall be authorized within or directly impacting areas identified by the Oregon Department of Fish and Wildlife (ODFW) as used by or susceptible for use by spawning fish, unless approved by ODFW. This restriction shall apply year-round, and is not limited by spawning season or by the presence or absence of fish at any given time.

CZ Condition 5. Fish and Aquatic Life Passage.

(1) Where applicable, all authorized projects shall be in conformance with ODFW standards for fish passage (<http://www.dfw.state.or.us/fish/passage/>). Decisions to abrogate ODFW fish passage standards shall be accompanied by written approval from ODFW.

(2) No work shall be authorized that does not provide for adequate passage of "aquatic life." Aquatic life shall be interpreted to include amphibians, reptiles, and mammals whose natural habitat includes waters of this state and which are generally present in or around, or pass through the project site.

(3) This condition is effective only where ODFW regulations apply.

CZ Condition 6. Heavy Equipment Use

(1) Heavy equipment shall be operated from the bank, and not placed in a stream unless specifically authorized. In-stream work may be authorized by the Corps of Engineers if necessary in the interest of safety or due to site conditions prohibiting work from the bank.

(2) Heavy equipment in wetlands or on soft soils must be placed on mats or other similar devices to minimize damage to natural resources.

(i) If the period of use of heavy equipment on the wetland area will exceed 14 (fourteen) calendar days from start to finish, the applicant/permittee shall notify the Corps prior to starting the work. The Corps shall assess if the longer work period is necessary, and what additional protective measures may be required to minimize or mitigate the impacts.

(ii) All mats or other protective measures shall be removed at the end of each workday unless the Corps determines that to do so would cause greater harm to the resource.

(3) Irrespective of measures taken to limit unintended impacts from heavy equipment, any damage done to vegetation, land, or waterways within or impacting waters of the state beyond the scope of the permit shall be mitigated.

(4) This condition is effective only in situations where the Removal-Fill Law applies.

Mr. Lawrence Evans
August 3, 2007

CZ Condition 7. Collateral Damage

(1) Permittees shall be required to repair, restore, or mitigate for any and all impacts within or impacting waters of the state which occur in the course of the work, including those beyond the scope of the permitted work, whether intentional or unintentional, including those impacts due to accident, misinterpretation, or misunderstanding.

(2) This condition is effective only in situations where the Removal-Fill Law applies.

CZ Condition 8. Multiple Permits

(1) For each NWP-authorized activity, the acreage of impact for a permitted activity shall not exceed the limit for that specific permit. When there are two or more nationwide permits combined for a single project site, the impact for each activity must be limited to that specifically permitted under each applicable NWP. For example, when combining two NWPs at a single site, if one nationwide permit authorizes $\frac{1}{4}$ acre of impact for a house, and another $\frac{1}{2}$ acre of impact for a road, the total impact *due to the house* may not exceed $\frac{1}{4}$ acre.

(2) This condition is effective only in situations where the Removal-Fill Law applies.

CZ Condition 9. Aquaculture

(1) For projects involving commercial aquaculture or mariculture cultivation of oysters, clams, and mussels, authorization for projects in Oregon's coastal zone under a nationwide permit is valid only if the applicant has obtained authorization, as required, from the Oregon Department of Agriculture (ODA) for use of state submerged and submersible lands for aquaculture purposes.

(2) All conditions placed on an aquaculture or mariculture operation by the ODA are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

(2) This condition is effective only in situations under the jurisdiction of the ODA.

Mr. Lawrence Evans
August 3, 2007

Appendix B

Standard CZM Conditions - Basis in Law

This appendix provides an explanation of why the conditions given in Appendix A are necessary to ensure consistency with enforceable policies of the Oregon Coastal Management Program, and references the specific enforceable policies relevant to each condition. This Appendix addresses the requirements of 15 CFR 930.4(a)(1).

CZ Condition 1. Consistency with Local Comprehensive Plans.

OAR 660-031-0030 requires denial of a state permit when a proposed activity is not in compliance with a Statewide Planning Goal or compatible with an Acknowledged Comprehensive Plan. Further support for this condition is found in ORS 197.180(1)(a & b), which requires compliance with goals and acknowledged plans.

Paragraph two is considered a logical extension of the requirements of -0030 and 197.180. Any condition required for local approval must also be an enforceable provision of the coastal program (through the Goals and acknowledgement) to be included in the federal permit to ensure consistency.

CZ Condition 2. Consistency with Removal-Fill Law.

The OCMP states that the general criteria for assessing consistency are whether the activity or project conforms to the mandatory policies set forth in applicable state statutes and rules. (Green Book, p 51) Those statutes are found in Table 3, page 23, of the Green Book. As referenced in the Green Book, ORS 541 (later renumbered ORS 196 in 1987) is the Removal-Fill Law. DSL is responsible for administering this law, and the decision to issue a permit or find no jurisdiction constitutes an affirmative determination of consistency with the Removal-Fill Law. (Green Book, p 17)

Paragraph two is considered a logical extension of the requirements of ORS 196. Any condition required for state approval must also be an enforceable provision of the coastal program (through the Goals and plan acknowledgement) to be included in the federal permit for consistency.

CZ Condition 2a. Leases of State Lands.

OAR 141-082-0060 gives DSL the authority to place terms on a lease of state lands as it sees fit. This rule is based upon ORS 274.

Paragraph two is considered a logical extension of the requirements of -0060 and ORS 274. Any condition required for state approval must also be an enforceable provision of the coastal program to be included in the federal permit for consistency.

Mr. Lawrence Evans
August 3, 2007

CZ Condition 3. Department of Environmental Quality.

The OCMP states that the general criteria for assessing consistency are whether the activity or project conforms to the mandatory policies set forth in applicable state statutes and rules. (Green Book, p 51) Those statutes are found in Table 3, page 23, of the Green Book. ORS 454, 459, 467, and 468 are referenced as DEQ authorities under the OCMP.

* Note. To be valid any condition asserted under consistency determination must be based on an authority included in the OCMP. Any other authority may be valid under the requirements of Section 401 of the Clean Water Act, but would not be valid for federal coastal zone consistency. ORS 454, 459, 467, and 468 are referenced as DEQ authorities under the OCMP. Coastal Zone condition 3 is independent of any other conditions DEQ might place on a 401 certifications which are based on authorities other than 454, 459, 467, and 468.

CZ Condition 4. In-Water Work.

(1) The Fish and Wildlife Commission is responsible for the protection and management of fish and wildlife in the state. (ORS 496.012) Any federal action should be fully consistent with ODFW policies promulgated under ODFW authorities (ORS 496, 498, 501, and 506), irrespective of ORS 196 (Removal/Fill Law) or other authorities.

ODFW promulgated the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources* under ORS 496.012 and 496.138. OAR 141-085-0029(9)(c) requires consultation by DSL with ODFW if in-water work is requested outside the dates set by ODFW in the *Guidelines*. The Corps is given leave to abrogate these rules, but a clear record of their decision is appropriate.

(2) This condition is based upon the plenary authority of ORS 496.012, is consistent with SLOPES, but goes a little further in exerting ODFW authority.

CZ Condition 5. Fish and Aquatic Life Passage.

The Fish and Wildlife Commission is responsible for the protection and management of fish and wildlife in the state (ORS 496.012). This is taken to include the management and protection of habitat, though 496.012 does not use 'habitat.' Any federal action should be fully consistent with ODFW policies promulgated under OCMP-incorporated ODFW authorities (ORS 496, 498, 501, and 506), regardless of ORS 196 (Removal-Fill Law) or other authorities. (Green Book, p 23)

ORS 509.585 sets out requirements for fish passage at artificial obstructions. ORS 509 was incorporated in the OCMP as a routine program change on March 20, 2002 in a letter to Nan Evans from John King.

"Waters of this state" shall be interpreted consistent with its meaning for ORS 496.012. See also definition given in OAR 141-085.

Mr. Lawrence Evans
August 3, 2007

Relevant definitions:

141-085-0010 (5) "Aquatic Life and Habitats" means the aquatic environment including fish, wildlife and plant-species dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.

(225) "Waters of this State" means natural waterways including all tidal and nontidal bays, intermittent and perennial streams (i.e., streams), lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean, which is in the boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS 390.605.

496.004 (19) "Wildlife" means fish, shellfish, wild birds, amphibians and reptiles, and feral swine as defined by State Department of Agriculture rule, and other wild mammals.

CZ Condition 6. Heavy Equipment Use

The basis for this condition is found at OAR 141-085-0029.7, .8, and .9c & d, and relates to the minimization of impacts generally for any activity.

CZ Condition 7. Collateral Damage

This condition is based upon OAR 141-085-0029.9.c, minimization of impacts, and 141-085-0079, enforcement. This condition would extend a specialized provision to the NWP program based upon general provisions of the OAR. There are currently provisions in state law requiring this type of restoration, but nothing explicit. This would clarify an existing situation, making enforcement easier and bringing to bear the Corps' enforcement authority.

CZ Condition 8. Multiple Permits

OAR 141-089-0100(6) prohibits the use of more than one state general permit on a project. This condition brings Corps practice more in line with state enforceable policy. *DSL approval is required for the modification of this condition.*

CZ Condition 9. Aquaculture

ORS 622.220 gives ODA authority over shellfish aquaculture. ORS 622 is incorporated into the OCMP.

Mr. Lawrence Evans
August 3, 2007

Appendix C

Guidance for Determination of Denial of Advance Concurrence

Advance concurrence is not extended to the following two classes of permits:

- Any permit where the project is within or directly impacts the Territorial Sea (waters and seabed extending three (3) nautical miles seaward from the coastline, in conformance with federal law), excepting projects permitted under NWP 1 or NWP 5.
- Any project utilizing NWP 29 or NWP 39 requiring a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission.

The District Engineer shall be responsible for determining when proposed projects meet one or both of these circumstances. In these instances, the DLCD will undertake an individual review of the project to ensure proper adherence to the OCMP.

Territorial Sea:

Oregon's Territorial Sea extends from the shoreline seaward for a distance of three (3) nautical miles. Estuaries are not considered to be part of the Territorial Sea. Excepting projects permitted under NWP 1, *Aids to Navigation*, and NWP 5, *Scientific Measurement Devices*, any project which occurs on or under the Territorial Sea, or on or beneath the sea bottom, shall be reviewed on an individual basis by DLCD for consistency with OCMP. In addition, any project which results in new or increased activity or impacts on or under the Territorial Sea, or on or under the sea bottom, shall be reviewed on an individual basis by DLCD for consistency with OCMP.

Examples of activities falling under this exception include:

- Construction of an offshore structure or platform;
- Installation of wave or wind energy extraction devices and related infrastructure;
- Installation of a buried or exposed cable;
- A new or expanded port facility which increases ship traffic in the Territorial Sea;
- A new or relocated shipping channel in the Territorial Sea.

These examples are illustrative, not comprehensive. Any questions regarding application of this criterion should be directed to the Oregon Coastal Management Program office.

NWP 29 and 39

Advance concurrence is withheld from any project utilizing NWP 29 or 39 *and* requiring a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission. Such projects may be identified by block seven (7) of the Joint Permit Application.

Mr. Lawrence Evans

August 3, 2007

Examples of situations falling under this exception include:

- Permit applications where the city/county has checked the box "This project is **not** consistent with the comprehensive plan..." in block seven (7) of the JPA;
- The project would require an amendment to a comprehensive plan;
- The project would require a change in zoning;
- The project would require an exception to a Statewide Planning Goal.

These examples are illustrative, not comprehensive. Any questions regarding application of this criterion should be directed to the Oregon Coastal Management Program office.