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CHAPTER 141

DEPARTMENT OF STATE LANDS

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FILING CAPTION: Revisions to the administrative rules administering and enforcing General Authorizations in waters of this state.

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RULES:

141-089-0620, 141-089-0625, 141-089-0630, 141-089-0635, 141-089-0640, 141-089-0645, 141-089-0650, 141-089-0655, 141-089-0656, 141-089-0660, 141-089-0665, 141-089-0670, 141-089-0675, 141-089-0680, 141-089-0685, 141-089-0690, 141-089-0695, 141-089-0700, 141-089-0705, 141-089-0710, 141-089-0715, 141-089-0720, 141-089-0725, 141-089-0730, 141-089-0735, 141-089-0740, 141-089-0745, 141-089-0750, 141-089-0755, 141-089-0760, 141-089-0765, 141-089-0770, 141-089-0775, 141-089-0780, 141-089-0785, 141-089-0790, 141-089-0795, 141-089-0800, 141-089-0805, 141-089-0810, 141-089-0815

AMEND: 141-089-0620

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to remove outdated information.

CHANGES TO RULE:

141-089-0620

General ¶

(1) Special Headings and Fonts. Where headings, special fonts or double-spacing are used, they are for the convenience of the user only and have no substantive effect.¶

(2) Applicability of OAR 141-085. Unless otherwise specified under OAR 141-089, the provisions of OAR 141-085 apply to General Authorizations.¶

(3) Previous GAs Repealed. OAR 141-089-0095 through 141-089-0615 were repealed on March 1, 2011 (GA).

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

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

AMEND: 141-089-0625

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to clarify and simplify.

CHANGES TO RULE:

141-089-0625

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

(1) Waiver of Permit Requirements. An individual removal-fill permit, general removal-fill permit, or DEQ remedial action waiver may not be necessary if a proposed activity project meets the requirements of a General Authorization (GA). Any person proposing to conduct a removal-fill activity project under a GA must first notify the Department in writing and pay any applicable fee to the Department comply with the rules in this division. ¶

(2) Establishment. General Authorizations are adopted, amended and repealed as granted through adoption of administrative rules in accordance with the Administrative Procedure Act (ORS 183.310 through 183.550). A General Authorization may be granted on a statewide or other geographic basis. ¶

(3) Criteria for Adoption Granting. The Department may adopt grant a GA based upon a finding that the category of activities of removal-fill: ¶

(a) Are substantially similar in nature; ¶

(b) Would cause only minimal individual and cumulative environmental impacts; and ¶

(c) Would not result in long-term harm to the water resources of this state. ¶

(4) Department Findings. These General Authorizations are made as in OAR 141-089 are granted pursuant to ORS 196.850 and are based upon the determination that the authorized activities are similar in nature and that when conducted in accordance with these rules, will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects cause no more than minimal individual and cumulative environmental effects, and will not result in long-term harm to water resources of this state. ¶

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

(6) Expiration of General Authorization Review of GAs. The Department will conduct a review of the GAs on or before March 1, 2016 is Division 141-089 every five years from the date of the last OAR 141-089 rule amendment. The review will include public notice and opportunity for public hearing. At the completion of its review, the Department will decide whether to modify, reissue or rescind the GAs engage in rulemaking to modify or rescind the Division 141-089 rule if it determines that modification or rescinding is appropriate.

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

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

AMEND: 141-089-0630

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended per direction from the Oregon Department of Justice (141-089-0630(1)(b)) and additionally to clarify and simplify.

CHANGES TO RULE:

141-089-0630

Project Applicability ¶¶

(1) Applicability. ~~This rule in OAR 141-089 sets forth conditions under which a person may, without an individual removal-fill permit, general removal-fill permit, or DEQ remedial action permit waiver from the Department, place or remove or fill material within waters of this state, as defined in OAR 141-085 for the purposes set forth in each GA. This rule-0510. The rules in OAR 141-089 does not apply to activities proposed within areas designated as:~~¶¶

~~(a) A State Scenic Waterway; or~~¶¶

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

~~(a) A State Scenic Waterway, as defined by OAR 141-100-0005(11).~~¶¶

~~(b) Willamette River between river miles 1.9 and 11.8.~~¶¶

~~(2c) Department Determination of Eligibility. To be eligible for a GA, a project must comply with the general Aquatic Resource of Special eConditions describcern as defined in OAR 141-0895-0650 as well as individual GA purpose, eligibility, authorized activities and activity-specific conditions. In the event a dispute arises concerning or about the applicability of a general authorization to any project notification, the Department will make the final determination510, unless the project is for habitat improvement purposes.~~¶¶

~~(32) Thresholds and Best Management Practices (BMPs). BMPs necessary to comply with the general conditions described in OAR 141-089-0650 are not included in the thresholds under each general authorizationremoval-fill volumes for a GA.~~¶¶

~~(43) Project with More Than Minimal Impacts. The Department may require an individual removal-fill permit, general removal-fill permit, or DEQ remedial action permit waiver for a project that would otherwise be authorized by a general authorization,GA if the Department determines that the activityproject might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of theis state. The Department may also require an application for an individual removal-fill permit, general removal-fill permit, or DEQ remedial action waiver if requested to do so by the Oregon Department of Fish and Wildlife (ODFW), the Oregon Department of Environmental Quality (DEQ), or the affected local land use planning department.~~¶¶

~~(54) Combining Activities. The following General AuthorizationAny GAs may be combined to covefor a single project when the combined activities result in no more than minimal impacts:~~¶¶

~~(a) Waterway Habitat Restoration;~~¶¶

~~(b) Wetland Ecosystem Restoration;~~¶¶

~~(c) Waterway Bank Stabilization;~~¶¶

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

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

~~(f), with the following exceptions: the Non-motorized In-stream Placer Mining in ESH GA (141-089-0820 et seq.) may not be combined with any other GA and the Minimal Disturbance within Essential Salmonid Habitat GA (OAR 141-089-0660, et seq.) may only be combined with the Temporary Impacts to Non-Tidal WetlandsWetlands and Waterways GA (OAR 141-089-0700, et seq.).~~¶¶

~~(65) Entire Project. Projects eligible for GAs must rely solely on GAs for their authorization. GAs may not be combined with either Individual Permits or authorizations under General Permitsauthorization except that any GA, excepting the Non-motorized In-stream Placer Mining in ESH GA (141-089-0820 et seq.), may be combined with a Notification for Exempt Voluntary Habitat Restoration Activities as described and conditioned in OAR 141-085-0534. GAs may not be combined with any other form of removal-fill authorization.~~¶¶

~~(6) Anytime the rules in OAR 141-089 authorize the Department to make a determination that would authorize a GA for a project that deviates from standards otherwise adopted in rule, the Department may, but is never required, to make such a determination when the responsible party demonstrates that the project would cause no~~

more than minimal individual and cumulative environmental impacts and would not result in long-term harm to the water resources of this state.

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

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

AMEND: 141-089-0635

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for consistency with other rule amendments and repeals.

CHANGES TO RULE:

141-089-0635

Fees; Disposition of Fees ¶

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

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

~~(b) Temporary Impacts to Non-Tidal Wetlands;~~¶

~~(c) Piling Placement or Removal~~ Wetlands and Waterways; and¶

~~(d) Removing and Disposing of Sediment Behind Tidegates and Within Hydraulically Closed Perimeters~~ Over-Water Structures Fill and Removal.¶

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

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

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

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

AMEND: 141-089-0640

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to clarify submittal requirements and to make rule consistent with parallel approval requirements of ODFW.

CHANGES TO RULE:

141-089-0640

~~Pre-Construction~~ Project Notification ¶

- ~~(1) Project Notification Required. Except as provided in OAR 141-089-0820 to 141-089-0835:¶~~
~~(1) P, a person who wishes to conduct a project ("responsible party") must submit a complete project N~~otification Required. A complete project notification must be submitted to the Department at least 30 calendar days before starting the project. A complete notification is one that contains all the into the Department at least 30 calendar days before the responsible party wants to start the project. A complete notification is one that provides sufficient information to allow the Department to conclude that the project qualifies for a GA, contains all the information required on the form provided by the Department, all attachments required by that form, and all of the following.¶
~~(a) A copy of fish passage plan authorization or no jurisdiction determination from ODFW, except for the following project types:¶~~
~~(A) Minimal Disturbance within ESH: Investigative drilling; scientific measuring devices if not channel spanning; survey for historical resources.¶~~
~~(B) Over-Water Structures Fill and Removal: Derelict piling removal.¶~~
~~(C) Temporary Impacts to Wetlands and Waterways: Temporary impacts to wetlands that are above ordinary high water line or highest measured tide line; temporary placement of spud piles.¶~~
~~(D) Waterway Bank Stabilization Using Bioengineering: Bank terracing, sloping, and reshaping; placement of large wood that is not a channel-spanning sill.¶~~
~~(E) Waterway Habitat Improvement: Engineered log jams.¶~~
~~(F) Wetland Ecosystem Improvement: Vegetation management; microtopography establishment; macrotopography establishment above the 100-year floodplain; removal of materials above ordinary high water line or highest measured tide line; low earthen berms and spillways above the 100-year floodplain; placement of exclusion fencing; maintenance and reconstruction of wetland ecosystem improvement structures above the 100-year floodplain.¶~~
~~(b) Documentation of fish screen approval (b) or other documentation from ODFW for projects including installation, maintenance, or replacement of fish screening structures under the Waterway Habitat Improvement GA (OAR 141-089-0780, et seq.) and for mation required on theintenance and reconstruction of water intake structures under the Minimal Disturbance within ESH GA (OAR 141-089-0660, et seq.).¶~~
~~(c) Any requests for Department determinations allowed under the rules in OAR 141-089 that would authorize a GA form a provided by the Department and all required attachject that deviates from standards otherwise adopted in rule, including sufficient information to allow the Department to make the determination authorized by rule.¶~~
~~(2) A notification not including items in subsections (1)(a) through (1)(c), when required, will be returned to the responsible party without further review by the Departments.¶~~
~~(23) Review of the Notification. Within 30 calendar days of receipt, the Department will review the notification for completeness and eligibility; for a GA and make one of the following determinations and notify the responsible party that:¶~~
~~(a) The notification is complete and the project is eligible under the GA:¶~~
~~(a) The notification is complete and the project is eligible under one or more individual GAs. For work below the ordinary high water line or highest measured tide line, the determination will include required timing for such work pursuant to OAR 141-089-0650(6). If the Department does not respond within 30 calendar days to a notification, the lack of response shall constitute a determination that the notification is complete and the project is eligible under one or more GAs and that any request for a determination under OAR 141-089-0640(1)(c) is denied;¶~~
~~(b) The notification is incomplete and the personresponsible party must supply certain specified missing, inaccurate or insufficient information. The personmay amend and resubmit theresponsible party may submit a revised notification within 120 calendar days of the notice for reconsiderationdetermination under this paragraph, unless instructed by the Department to do otherwise. Submission of anamend revised notification starts a new 30-day review period; or,¶~~
~~(c) The project is ineligible for certain specified reasons. The person, which could include a conclusion that~~

applicant did not provide sufficient information to allow the Department to conclude the project qualifies for a GA. The responsible party may then either revise the project and submit for reconsideration within 120 days of the notification or apply for an individual permit under OAR 141-085y other type of removal-fill authorization for which the project may qualify. Submission of an amend revised notification commences a new 30-day review period.

~~(34) Timeframe for Resubmittal~~Closure of Incomplete or Ineligible Notifications. If a revised notification or application is not resubmitted within 120 calendar days of an incompleteness or ineligible determination, the Department will presume that the responsible party does not intend to provide revisions to the notification and may administratively close the file. If the Department closes the file under these circumstances, the Department will retain the application fee. ~~If the Department receives a subsequent notification or application for the same or similar project after a file has been closed, the responsible party must pay any applicable fees for the new notification at time of submission.~~

~~(4) Project I~~

(5) Project Implementation. The responsible party may begin implementation. The person submitting the notification may begin the project:

~~(a) Immediately upon receipt of aing the project subject to a notification upon~~ determination by the Department under OAR 141-089-0640(23)(a) that the project is eligible;

~~(b) Thirty (30) calendar days after Department received the notification, unless~~ Revisions to a Notification. A responsible party with an unexpired, eligible notification may request, and the Department may approve, revisions to the notification. Upon submittal of a revised notification, the Department issued a determination under OAR 141-089-0640(2)(b) or (c) will review and make a new eligibility determination using the process described in OAR 141-089-0640(3). Revisions may be subject to additional fish passage or fish screening review by ODFW.

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

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

AMEND: 141-089-0645

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for clarification.

CHANGES TO RULE:

141-089-0645

Expiration of Project Eligibility ¶

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

(1) ~~A notification confirmed as eligible under a GA will be~~ determination under OAR 141-089-0640(3)(a) is valid
for three years or until the project is complete, whichever occurs first; and¶

(2) Requests for renewals or extensions will not be granted.

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

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

AMEND: 141-089-0650

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to establish consistency with parallel requirements for authorizations under Div. 85 and ensure that authorized projects will achieve the requirements of 141-089-0625(3).

CHANGES TO RULE:

141-089-0650

General Conditions ¶

The following conditions apply to all ~~general authorization~~ individual GAs, unless otherwise specified in a ~~specific GA or an authorization issued under a GA.~~ ¶

~~(1) Responsible Party. The person listed on the notification as the responsible party is responsible for individual GA or a notification under OAR 141-089-0640(3)(a).~~ ¶

(1) Copy of Approved Determination for Inspection. A copy of the determination under OAR 141-089-0640(3)(a) must be available at the work site whenever the activities of all contractors or other operators involved in project work covered by the GA. ¶

~~(2) Copy of Approved Notification Available for Inspection. A copy of the notification approved by the Department must be available at the work site wproject is being conducted.~~ ¶

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

(3) Lower Willamette River Management Plan (LWRMP or Plan; OAR 141-080) Consistency. For projects within the purview of the LWRMP, the project must comply with the LWRMP without the never noticed activities are being conducted for a minor exception, unless preapproved by the Director, or major exception as described in the Plan. ¶

~~(34) Site Access Required. Employees of the Department and all authorized representatives must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under a notification.~~ ¶

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

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

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

~~(76) Work Period in Jurisdictional Areas. Fill or removalProject activities below the Ordinary High Water Line or highest measured tide line must be conducted when recommended by ODFW, unless otherwise coordinated with Oregon Department of Fish and Wildlife and consistent with "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources", Oregon Department of Fish and Wildlife, March 2024, or other recommendations provided in writing by DSL. Work isby ODFW included in a response to a notification. Project activities are prohibited when fish eggs are present within the reach where activities are being conduct at the project sited.~~ ¶

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

~~(98) Erosion Control Methods. The following erosion control measures must be installed at the constructionproject site prior to construction and maintained during and after construction to prevent erosion and minimize movement of soil into waters of this state:~~ ¶

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

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

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

~~(d) Unless part of the permanent fill, all construction access points through, and staging areas in, riparian and~~

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

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

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

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

(h) All erosion control structures must be removed when the project is complete and soils are stabilized and vegetated.¶

~~(10)~~ If necessary, removal of erosion control structures may be performed after expiration of the approved OAR 141-089-0640(3)(a) determination.¶

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

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

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

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

(123) Waste Disposal. Old piling, spoil material, and other waste material discarded by the project must be disposed of in an appropriate disposal facility. There must be no temporary storage of piling, spoils, or other waste material below top of bank, in any wetland, Federal Emergency Management Administration designated floodway, or an area historically subject to landslides.¶

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

~~(14) Work Area Isolation. The work area must be isolated from the water during construction. All structures and materials used to isolate the work area must be removed immediately following construction and water flow ret. For the purposes of this general condition, "spoil material" means any material displaced by construction (e.g., soil, sand, gravel, etc.) and is not intended to be re-incorporated into the project.¶~~

(14) Operation of Equipment in the Water.¶

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

(b) All machinery operated below ordinary high water line or highest measured tide line must use biodegradable hydraulic fluids, be steam cleaned and inspected for leaks prior to each use, and be diapered to prevent leakage of fuels, oils, or other fluids below ordinary high water line or highest measured to pre-construction conditions. All fish must be salvaged from the isolated area in accordance with Oregon Department of Fish and Wildlife requirements side line. Any equipment found to be leaking fluids must be immediately removed from and kept above the ordinary high water line or highest measured tide line until repaired.¶

(15) Fish Passage Required. The project must meet ODFW requirements for fish passage, ORS 509.585.¶

(16) Temporary Ground Disturbances. Unless otherwise approved by the Department, all temporarily disturbed project areas must be returned to original ground contours and seeded upon completion of ground disturbing actions, and planted with woody vegetation, as appropriate, by March of the year following construction completion.¶

(157) Spoil Disposal. Spoil materials, not uNonnative Species. The project will not involve the introduction of nonnative plants other than for temporary soil stabilization. Native seed in the project, must be placed in an upland location. Spoil materials used in the project must be included in the cumulative removal-fill calculation for the activity mixes are preferred. When native seed mix is not available, nonnative seed mix that will hold the soil and not persist may be used if certified free of noxious weeds.¶

(18) Irrigation. Where power and irrigation water can be made available, irrigation must be provided as necessary until vegetation is established. Irrigation structures must be removed when no longer needed. Invasive weed control must additionally be provided until native vegetation is established.¶

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

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

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

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

AMEND: 141-089-0655

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for clarification.

CHANGES TO RULE:

141-089-0655
Enforcement II

Failure to submit a notification, receive an OAR 141-089-0640(3)(a) determination, or adhere to the terms of any general authorization GA when performing activities project authorized under this division OAR 141-089, is a violation of the Removal-Fill Law and may be subject to appropriate enforcement in accordance with ORS chapter 196 and OAR 141-085.

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

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

AMEND: 141-089-0656

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for clarification.

CHANGES TO RULE:

141-089-0656

Authorization Decision Appeals ¶

A ~~person~~responsible party whose project is determined by the Department to be ineligible for a ~~general authorization~~GA may appeal the Department's decision ~~according to~~termination under the same process laid out in OAR 141-085-0575(1), (5) through (10) and 141-085-0580.

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

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

AMEND: 141-089-0660

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for clarification and consistency with other rules.

CHANGES TO RULE:

141-089-0660

Minimal Disturbance within ESH - Purpose ¶

~~These rules OAR 141-089-0660 to 141-089-0675 set forth the conditions under which a person may, without an individual removal-fill permit from the Department, fill, remove or move small quantities of material for certain activities within waters of this state designated Essential Indigenous Anadromous Salmonid Habitat (ESH, general removal-fill permit, or DEQ remedial action permit waiver from the Department, fill or remove material for a project within waters of this state designated ESH. Temporary impacts to wetlands or waterways associated with a project may be authorized by combining this GA (OAR 141-089-0660, et seq.) with the Temporary Impacts to Wetlands and Waterways GA (OAR 141-089-0700, et seq.).~~

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

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

AMEND: 141-089-0665

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for consistency with OAR 141-089-0670.

CHANGES TO RULE:

141-089-0665

Minimal Disturbance within ESH - Eligibility Requirements ¶

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

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

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

AMEND: 141-089-0670

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to expand limitations and provide additional details for approved project activities and to add a new authorized project.

CHANGES TO RULE:

141-089-0670

Minimal Disturbance within ESH - Authorized Activities ¶

~~Eligible project~~Project activities are limited to the following:¶

(1) Investigative Drilling and Sampling. ~~R~~Not more than 10 cubic yards of removal and fill for investigative drilling and sampling to gather necessary technical data for designing structures or characterizing sediments.¶

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

(3) Surveys. ~~R~~For Historical Resources. Not more than four cubic yards of removal and fill at any individual site and, cumulatively, not more than 10 cubic yards of removal and fill for surveys conducted for historical resources.¶

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

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

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

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

AMEND: 141-089-0675

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: The rule is being amended to expand the specific conditions for existing authorized projects and to provide the specific conditions for a new authorized project.

CHANGES TO RULE:

141-089-0675

~~Activity~~ Minimal Disturbance within ESH - Project-Specific Conditions ¶

~~(1) G~~Projects eligible for this GA must adhere to the general ~~C~~conditions ~~Apply~~. Projects eligible for this General Authorization must in OAR 141-089-0650 and the following project-specific conditions:¶

~~(2) Maintenance and reconstruction projects are conditioned as follows:¶~~

~~(a) "Maintenance" has the same meaning as OAR 141-085-0510;¶~~

~~(b) "Reconstruction" has the same meaning as OAR 141-085-0510;¶~~

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

~~(d) The maintenance or reconstruction would not significantly adhere to the General Conditions listed under OAR 141-089-0650~~sely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.¶

~~(23) Scientific Measurement. All scientific measurement devices, including all associated structures and fills including anchoring devices, buoys, and cables, must be removed within 30 days after the research is completed.¶~~

~~(3) Surveys. The responsible party must isolate all in-stream exploratory trenching. Where necessary, removal of devices may occur after expiration of a determination pursuant to OAR 141-089-0640(3)(a) without further authorization requirement.¶~~

~~(4) Surveys for Historical Resources. All in-stream exploratory excavation must be isolated from the active channel.¶~~

~~(45) Maintenance of Water Intakes. Investigative Drilling and Sampling. Existing roads, paths and drilling pads must be used whe-responsible p available. Temporary must implacment measures necessary to prevent streambed gradient alterations and streambank erosion.¶~~

~~(5) Investigative Drilling and sampling. The of mats is allowed to provide site access. Temporary mats must be removed upon completion of the project. Drill holes must be refilled in accordance with Oregon Water Resources Department requirements.¶~~

~~(6) Maintenance and Reconstruction of In-Water Structures. Notwithstanding the definition of "reconstruction" in OAR 141-085-0510, respconobile party must use existing roads, paths and drilling pads where available. Temporary placement of mats is allowed to provide site access. Temporary mats must be removed upon completion of truction does not need to be in-kind if the existing structure contains deleterious materials (e.g., concrete, metals, plastics, angular rock) that will be removed and reconstructed with environmentally preferable materials (e.g., untreated wood, gravel, boulders).¶~~

~~(7) Beaver Pond Levelers and Exclusion Devices. At such time that the device(s) are no longer required due to beaver abandonment or removal, or the adverse effects of damming activity have otherwise been resolved, the device(s) must be removed from the waterway. Where necessary, removal of devices may occur after expiration of a determination pursuant to OAR 141-089-0640(3)(a) without further authorized workation requirement.~~

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

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

AMEND: 141-089-0680

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for clarification and consistency with other rules.

CHANGES TO RULE:

141-089-0680

Over-Water Structures Fill and Removal - Purpose ¶

These rules OAR 141-089-0680 to 141-089-0695 set forth the conditions under which a person may, without an individual removal-fill permit from the Department, place or remove piling in waters of this state designated a general removal-fill permit, or DEQ remedial action permit waiver from the Department, conduct fill and removal for certain over-water structures and piling in waters of this state. Temporary impacts to wetlands or waterways Essential Indigenous Anadromous Salmonid Habitat (ESH) as described in OAR 141-102 associated with a project may be authorized by combining this GA (OAR 141-089-0680, et seq.) with the Temporary Impacts to Wetlands and Waterways GA (OAR 141-089-0700, et seq.).

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

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

AMEND: 141-089-0685

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for consistency with OAR 141-089-0690.

CHANGES TO RULE:

141-089-0685

Over-Water Structures Fill and Removal - Eligibility Requirements

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

- ~~(1) Purpose. Individual piling~~Fill and removal for certain over-water structures as further defined in OAR 141-089-0690 and piling or anchors placed for over-water structure support (e.g., piling associated with docks, piers, boardwalks), mooring and turning dolphins, navigational aids or stabilization, navigational aids (e.g., channel markers, mooring and turning piles or dolphins) without footings or other support structure as approved by the Department.
 - ~~(2) Piling Material. Round steel piling 24 inches in diameter or smaller, steel H-piling designated as HP24 (depth of section 24 inches or less) or smaller, or untreated wood, pre-cast concrete or plastic piling.~~
 - ~~(3) Limited Placement. Piling~~Limited Placement. Over-water structures, piling, and anchors must be placed:
 - ~~(a) So as not to form headwalls or other bank treatment structures;~~
 - ~~(b) So as not to impede normal water flow into or within wetlands or deflect water in a manner that causes erosion;~~
 - ~~(c) So as not to create new uplands;~~
 - ~~(d) In non-wetland waters; and~~
 - ~~(e) In non-tidal waters; and~~
 - ~~(f) By vibratory hammer or impact hammer, subject to the activity-specific conditions set forth in OAR 141-089-0695. Hydraulic jetting is not allowed.~~
 - ~~(4) Removal. Piling must be removed by means of vibratory method only according to the activity-specific conditions set forth in OAR 141-089-0695~~wetland waters.
- Statutory/Other Authority: ORS 196.600 - 196.692, 196.795 - 196.990
Statutes/Other Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

AMEND: 141-089-0690

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to propose five new authorized projects, which include replacing the current authorized projects.

CHANGES TO RULE:

141-089-0690

Over-Water Structures Fill and Removal - Authorized Activities Projects ¶

~~(1) Number of Piling Installed is Limited. Placement of no mo~~Project activities are limited to the following. For (1), (2) and (3), docks and structures may be affixed or anchored below or above the ordinary high water line or highest measured than fiveide line.¶

~~(1) Fill and removal for residential docks and associated pilings or one dolphin consisting of three to five pilings; and¶~~

~~(2) Number of Piling Removeanchors.¶~~

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

~~(3) Seasonal fill and removal for public recreation structures. For the purposes of this section, "public recreation structures" mean non-commercial swimming, viewing and fis Limited. Removal of no mhing platforms, water slides, water ski ramps or similar structures, and including floating restrooms, deployed fore than five pilings or one dolphin consisting of three to five pilingsse benefit of the general public. It does not include structures used as boat docks.¶~~

~~(4) Fill and removal for navigational aids (e.g., channel markers, mooring, turning piles or dolphins).¶~~

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

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

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

AMEND: 141-089-0695

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to provide the project specific conditions for the five new authorized projects.

CHANGES TO RULE:

141-089-0695

Activity Over-Water Structures Fill and Removal - Project-Specific Conditions ¶

(1) Projects eligible for this GA must adhere to the g activities must adhere to the general conditions in OAR 141-089-0650 and the following specific conditions, as applicable.¶

(2) Fill and Removal for Residential Docks and Associated Piling or Anchors. The project is conditioned as follows:¶

(a) Fill for placement of a new dock, modification of an existing dock, or relocation of an existing dock to a new site must be consistent with ODFW Residential Dock Guidelines, February 2016.¶

(b) No permanent impact to wetlands is authorized.¶

(3) Piling or Anchor Replacement for Existing Nonresidential Docks and Other Over-Water Structures. The project is conditioned as follows:¶

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

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

(c) The project may include placement or replacement of dock floats. If polystyrene is used, an Encapsulated Foam Certification is required from the OR State Marine Board. The project cannot result in a reduced amount of light penetrat-conditionstion though the dock; and¶

(d) No permanent impact to wetlands is authorized.¶

(4) Seasonal Fill and Removal for Public Recreation Structures. The project is conditioned as follows:¶

(a) No placement of new piling is authorized;¶

(b) Fill of up to four cubic yards total anchor volume is allowed. Anchors must be inert material and may not include solid waste as defined in OAR 141-089-0650 and the following activity-specific conditions:¶

(1340-093-0030);¶

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

(d) No permanent impact to wetlands is authorized.¶

(5) Fill and Removal for Navigational Aids. The project is conditioned as follows:¶

(a) Fill of up to 10 piling or anchors and removal of up to 10 piling or anchors per project is authorized; and¶

(b) No permanent impact to wetlands is authorized.¶

(6) Derelict and Abandoned Piling Removal. The project is conditioned as follows:¶

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

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

(c) No permanent impact to wetlands is authorized.¶

(7) Conditions for Piling or Anchor Replacement and Removal. Projects involving the fill or removal of piling or anchors are conditioned as follows:¶

(a) Piling Material. Piling is limited to round steel piling 24 inches in diameter or smaller, steel H-piling designated as HP24 (depth of section 24 inches or less) or smaller, or untreated wood, precast concrete, or plastic piling.¶

(b) Anchor Material. Anchor material is limited to nonleachable, inert material and cannot include solid waste.¶

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

(2d) Sound Attenuation for Pile Driving. A vibratory hammer must be used whenever feasible. If an impact hammer must be used to drive or proof steel piles, sound attenuation measures including cushion blocks (wood blocks between pile and hammer) and bubble curtains operated to distribute air bubbles around 100 percent of the piling for the full depth of the water column must be used.¶

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

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

(3e) Method for Removal of Piling. Removal of piling must be conducted using a vibratory method.¶

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

(bB) Upon removal, piling must be handled to effectively contain all adhering sediment. All return flows must meet

state water quality standards; and¶

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

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

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

(6h) Prevent Perching. Piling extending above dock or railing level must be fitted with devices to effectively prevent perching by fish-eating bird species.¶

(7i) Barge or Top of Bank Position. Piling must be placed or removed from a barge-mounted or above top-of-bank position. If barge-mounted, barge must not at any time be grounded in the bed or banks.¶

(j) Backfilling. Placement of native sand or other native materials is required in holes left by the removal of piling unless otherwise approved by the Department.¶

(k) Where needed, temporary placement of containment booms is allowed. Containment booms must be removed immediately following the completion of the project.

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

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

AMEND: 141-089-0700

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for clarification and consistency with other rules.

CHANGES TO RULE:

141-089-0700

Temporary Impacts to Wetlands and Waterways - Purpose ¶

~~These rules~~ OAR 141-089-0700 to 141-089-0715 set forth the conditions under which a person may, without an individual removal-fill permit, ~~general removal fill permit, or DEQ remedial action permit waiver~~ from the Department, temporarily ~~place~~ fill or remove material in ~~non-tidal wetland~~ wetlands and waterways.

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

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

AMEND: 141-089-0705

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for consistency with OAR 141-089-0710.

CHANGES TO RULE:

141-089-0705

Temporary Impacts to Wetlands and Waterways - Eligibility Requirements

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

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

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

(3) Wetland Delineation and Concurrence. For temporary impacts to wetlands, a copy of a valid, Department-approved wetland delineation map and concurrence letter must be provided with the notification pursuant to OAR 141-089-0640, unless otherwise directed by the Department.

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

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

AMEND: 141-089-0710

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to expand the limitations for the current authorized project and include three new authorized projects.

CHANGES TO RULE:

141-089-0710

Temporary Impacts to Wetlands and Waterways - Authorized Activities Projects ¶

~~The project is limited to~~ activities are limited to the following.¶

~~(1) Temporary impacts of 0.250 acres or less of non-tidal wetlands. This threshold applies to all activities associated with the project (e.g., placement of the utility lines, material stockpiling, equipment storage, staging and vehicle access);¶~~

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

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

~~(4) The temporary placement of spud piles (i.e., piles driven into the bed of a waterway to provide stability for a floating work platform) during construction activity.~~

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

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

AMEND: 141-089-0715

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to provide the project specific conditions for the three new authorized projects and expand the current specific conditions.

CHANGES TO RULE:

141-089-0715

Activity Temporary Impacts to Wetlands and Waterways - Project-Specific Conditions ¶¶

(1) Projects eligible for this GA activities must adhere to the general conditions in OAR 141-089-0650 and the following activityproject-specific conditions:¶¶

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

(2) Timing of Temporary Impact Rectification. Re-establishment of waterway structures for work area isolation must be placed to:¶¶

(a) Maintain near-normal downstream flow for the duration of placement and return flow to pre-construction contours and planting to re-vegetate temporarily disturbed areas must be completed within 24 months of the initial impacts. However, if the temporary impact requires only one construction season, site rectification must be completed within the same construction season as the temporary impact. Planting must include species of sufficient number, spacing, and diversity to replace affected aquatic functionsditions at project completion.¶¶

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

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

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

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

(3f) Post-Construction Report Required. Within two years of planting, a report must be submitted to the Department. The report must include:¶¶

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

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

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

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

(5) Stockpile Topsoil. When trenching, the upper 12 inches of topsoil must be removed and stockpiled separately from subsurfaceTrenching in Wetlands. If there is trenching or excavation in wetlands, the top layer of soil must be separated from the rest of the excavated material and put back on top when the trench or pit is backfilled. If the native underlying soils are not used as the final layer in backfilling.¶¶

(6) Prevent Hydraulic Piping. The project must be constructbedding material and a coarser nonnative soil or other material is used, preventative measures such as clay or concrete plugs must be used tso preventthat underground hydraulic piping does not dewater the site orand adjacent wetlands. If the native underlying soils are not used as bedding material, and a coarser, non-native soil or other material is used, preventive measures must be used such as restoration of the restrictive layer and placement of clay or other impermeable plugs. Such plugs must be pl¶¶

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

(7) Timing of Temporary Wetland Impact Rectification. Notwithstanding the definition of "Temporary Impacts" in OAR 141-085-0510, the reestablishment of preconstruction contours and planting to revegetate temporarily disturbed wetland areas must be completed within 12 months of the initial impacts or before the expiration of the OAR 141-089-0640(3)(a) determination, whichever comes first, unless otherwise approved by the Department. Planting must include species of sufficient number, spacing, and diversity to replace affected aquatic functions.¶¶

(8) Timing of Temporary Waterway Impact Rectification. Reestablishment of preconstruction contours and planting to revegetate temporarily disturbed waterway areas must be completed immediately upon project completion or before or expiration of the OAR 141-089-0640(3)(a) determination, whichever comes first, unless

otherwise approved by the Department. Planting must include species of sufficient number, spacing, and diversity to replace affected aquatic functions.

(9) Rectification Monitoring Report Required. Unless otherwise directed by the Department, a rectification report demonstrating restoration of predisturbance grades and revegetation must be provided to the Department within 90 days of temporary impacts rectification. The rectification report must include:

(a) Cover sheet including authorization number, responsible party's name, current contact information, monitoring date, and report submittal date.

(b) A description of any deviation in the temporary impact size or locations as described in the OAR 141-089-0640(3)(a) determination. Any deviations must be accompanied by a scaled drawing or map that illustrates the deviation area(s).

(c) A description of any deviation to the restoration of preconstruction grades or revegetation.

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

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

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

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

AMEND: 141-089-0720

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for clarification and consistency with other rules.

CHANGES TO RULE:

141-089-0720

Waterway Bank Stabilization Using Bioengineering - Purpose-

~~These rules OAR 141-089-0720 to 141-089-0735 set forth the conditions under which a person may, without an individual removal-fill permit, general removal fill permit, or DEQ remedial action permit waiver from the Department, place fill or remove material in non-tidal waterways for the purpose of stabilizing the actively eroding banks of non-tidal waterways.~~ waterways using bioengineering methods. Temporary impacts to wetlands or waterways associated with a project may be authorized by combining this GA (OAR 141-089-0720, et seq.) with the Temporary Impacts to Wetlands and Waterways GA (OAR 141-089-0700, et seq.).

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

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

AMEND: 141-089-0725

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for consistency with OAR 141-089-0730.

CHANGES TO RULE:

141-089-0725

Waterway Bank Stabilization Using Bioengineering - Eligibility ¶

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

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

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

AMEND: 141-089-0730

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to provide clarification and additional detail for three currently authorized projects, remove one currently authorized project to eliminate redundancy, and remove one currently authorized project for relocation to 141-089-0790.

CHANGES TO RULE:

141-089-0730

Waterway Bank Stabilization Using Bioengineering - Authorized Activities Projects

~~(1) Bio-Engineering. This activity includes placement of woody vegetation, vegetated geogrids, biodegradable logs, straw bales or straw logs used for bank~~ Project activities are limited to the following.

~~(1) Bank Terracing, Sloping, and Reshaping. Such protection, bank reshaping, terracing and erosion control.~~

~~(2) Bank Terracing. This activity includes bank terracing and sloping include bank terracing and sloping, and associated placement of biodegradable erosion control, to facilitate establishment of woody vegetation. The~~ project must meet the following criteria:

~~(a) The slope must not be steeper than 3:1 (H/V) ratio;~~

~~(b) Bank treatments must be replanted with native woody vegetation; and~~

~~(c) If fabric is necessary, no petroleum-based fabric horizontal:vertical) ratio unless otherwise allowed.~~

~~(3) Placement of Large Wood. Trees or root wads may be used. The project must meet the following criteria: approved by the Department when natural slopes within the waterway reach are steeper than 3:1;~~

~~(a) Trees must have a trunk diameter greater than or equal to 12 inches;~~

~~(b) The basal ends must be oriented upstream;~~

~~(c) If fastening is necessary the entire bank treatment area must be replanted with native vegetation appropriate to the area and at a density consistent with natural stream bank densities in the area, only smooth, single-string wire, degradable rope or pinning may be used. Braided wire cable is not allowed unless otherwise approved by the Department; and~~

~~(d) If anchoring is necessary, only rock ballast, untreated wood posts, Planting of native vegetation must be completed by March of the year following stabilizing wood or key pieces of wood may be used as anchors.~~

~~(4) Engineered Log Jams. Log jams may be placed in order to stabilize the bank formation of the new contours unless otherwise approved by the Department.~~

~~(2) Placement of Large Wood. Trees or woody vegetation establishment. The wads may be used. A project must meet the following criteria:~~

~~(a) The length of key pieces of wood with trimmed At a minimum, root wads must be one and one-half times the bankfull width or a minimum of 25 feet in length when bankfull width exceeds 15 feet. The length of key pieces of wood with trimmed rootwads must be the twice the bankfull width or a minimum of 30 feet in length when bankfull width exceeds 15 feet diameter, trunk diameter and tree length, or their cumulative effect, must be of a size sufficient to withstand the rate of flow that caused the bank erosion;~~

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

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

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

~~(d) If fastening is necessary, only smooth, single-string wire, pinning or degradable rope may be used. Braided wire cable is not allowed of a species native to the riparian zone within the project area or a reference area unless otherwise approved by the Department;~~

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

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

~~(5) Log Toe Placement. The project must meet the following criteria:~~

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

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

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

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

complex;¶¶

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

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

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

(e) The structure must not exceed 100 cubic yards and 40% of the channel cross-section width; and¶¶

(f) The activity is limited to 100 cubic yards for every one-half mile of waterway; and¶¶

(c) Logs must be of a species native to the riparian zone within the project area unless otherwise approved by the Department.

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

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

AMEND: 141-089-0735

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to clarify and expand the specific conditions for authorized projects.

CHANGES TO RULE:

141-089-0735

~~Activity~~ Waterway Bank Stabilization Using Bioengineering - Project-Specific Conditions ¶

~~Proposed projects eligible for this General Authorization~~ (1) Project activities must adhere to the general conditions in OAR 141-089-0650 and the following activity project-specific conditions: ¶

~~(12) Anchoring. Anchoring materials must:~~ ¶

~~(a) Not restrict or redirect flows; and~~ ¶

~~(b) Be set below grade to minimize the appearance.~~ ¶

~~(23) Ballast. Use of rock and gravel for ballast and porous weirs is limited as follows:~~ ¶

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

~~(b) Rock must be placed in a manner that does not increase and cannot function to armor the bank;~~ ¶

~~(b) Rip-rap and rock thoe upland surface areacement is not allowed;~~ ¶

~~(c) Rock must be placed in a way as to minimize adverse impacts to the active channel; and downstream banks; and~~ ¶

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

~~(e) Only erosion resistant rock from an upland source may be used. No broken concrete or asphalt is a, from a dewatered position or, from a construction platform-mounted position.~~ ¶

~~(4) Native Materials. Material used must be similar to materials currently or historically found naturally in the stream reach except as followed:~~ ¶

~~(3a) Natural Materials. Material used must be similar to materials currently or histo~~ Use of straw bales, straw or coir logs, jute fabric, or other biodegradable material may be used where necessary for temporary erosion control; ¶

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

~~(c) Pinning material for large wood placements; and~~ ¶

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

~~(5) Uplands. A project may not create new uplands naturally in the stream reach or reestablish lost uplands resulting from the bank erosion event(s), other than incidental creation necessary to achieve the bio-engineered bank stabilization.~~

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

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

REPEAL: 141-089-0740

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being repealed due to redundancy with other exemption and authorization options.

CHANGES TO RULE:

~~141-089-0740~~

~~Purpose-~~

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

~~Statutory/Other Authority: ORS 196.600-196.692, 196.795-196.990~~

~~Statutes/Other Implemented: ORS 196.600-196.692, 196.795-196.990~~

REPEAL: 141-089-0745

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being repealed due to redundancy with other exemption and authorization options.

CHANGES TO RULE:

~~141-089-0745~~

~~Eligibility Requirements-~~

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

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

~~Statutory/Other Authority: ORS 196.600-196.692, 196.795-196.990~~

~~Statutes/Other Implemented: ORS 196.600-196.692, 196.795-196.990~~

REPEAL: 141-089-0750

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being repealed due to redundancy with other exemption and authorization options.

CHANGES TO RULE:

~~141-089-0750~~

~~Authorized Activities~~

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

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

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

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

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

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

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

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

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

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

REPEAL: 141-089-0755

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being repealed due to redundancy with other exemption and authorization options.

CHANGES TO RULE:

~~141-089-0755~~

~~Activity Specific Conditions~~

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

~~Statutory/Other Authority: ORS 196.600-196.692, 196.795-196.990~~

~~Statutes/Other Implemented: ORS 196.600-196.692, 196.795-196.990~~

REPEAL: 141-089-0760

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being repealed due to lack of general authorization users and redundancy with other exemption and authorization options.

CHANGES TO RULE:

~~141-089-0760~~

~~Purpose-~~

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

~~(2) This general authorization is exclusive to:¶¶~~

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

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

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

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

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

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

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

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

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

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

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

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

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

REPEAL: 141-089-0765

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being repealed due to lack of general authorization users and redundancy with other exemption and authorization options.

CHANGES TO RULE:

~~141-089-0765~~

~~Eligibility Requirements; Ineligible Projects-~~

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

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

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

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

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

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

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

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

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

REPEAL: 141-089-0770

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being repealed due to lack of general authorization users and redundancy with other exemption and authorization options.

CHANGES TO RULE:

~~141-089-0770~~

~~Mandatory Requirements~~

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

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

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

~~Statutory/Other Authority: ORS 196.600 - 196.692, 196.795 - 196.990~~

~~Statutes/Other Implemented: ORS 196.600 - 196.692, 196.795 - 196.990~~

RULE SUMMARY: This rule is being repealed due to lack of general authorization users and redundancy with other exemption and authorization options.

CHANGES TO RULE:

~~141-089-0775~~

~~Conditions of Issuance of General Authorization~~

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

- ~~(1) The responsible party must conduct all work in compliance with the comprehensive plan, zoning requirements and other local, state and federal regulations pertaining to the project. Local land use planning department approval must be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits must be obtained before starting the authorized project. All necessary approvals and permits must be obtained before starting the project under this General Authorization.~~
- ~~(2) The responsible party must obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.~~
- ~~(3) The responsible party must conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period. Work is prohibited when fish eggs are present within the reach where activities are being conducted.~~
- ~~(4) The responsible party must ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.~~
- ~~(5) When listed species are present, the responsible party must comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the responsible party must contact the Department as soon as possible.~~
- ~~(6) The responsible party must not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the responsible party must immediately stop work at the discovery site and contact the Department.~~
- ~~(7) The responsible party must ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.~~
- ~~(8) The responsible party must ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access.~~
- ~~(9) The responsible party must ensure that areas disturbed in the course of completing the authorized work are stabilized with the appropriate erosion control best management practices and re-vegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department. Grass seed mixes of exotic and certified-free of noxious weeds that will hold the soil and not persist, are permitted.~~
- ~~(10) The responsible party must ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.~~
- ~~(11) The responsible party must adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification must be retained on-site.~~
- ~~(12) For drainage ditch cleaning activities, the responsible party must comply with the following:~~
 - ~~(a) Removal of existing woody vegetation, other than that growing within the maintained channel bed is prohibited;~~
 - ~~(b) Only sand and silt sediments may be removed. This General Authorization is not for the removal of gravel;~~
 - ~~(c) Erosion of disturbed areas (e.g., drainage ditch banks and work areas) must be minimized through re-vegetation with grass and/or planting of trees and shrubs;~~
 - ~~(d) Removal must be conducted with land-based equipment from one side of the drainage ditch unless specifically authorized by the Department;~~
 - ~~(e) At any time excavated material is placed on adjacent dikes it must be stabilized to eliminate erosion back into the drainage ditch; and~~
 - ~~(f) If excavated material is to be thinly spread over adjacent wetland, wet pasture or farmed wetland, it is to be spread before the onset of winter rains, and controlled from eroding back into the drainage ditch.~~

- (13) The responsible party must not remove and/or dispose of sediments in violation of the applicable state water quality standards.¶¶
- (14) The responsible party must keep a copy of the approved notification available at the work site whenever the authorized activity is being conducted.¶¶
- (15) Employees of the Department and all duly authorized representatives must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this General Authorization.¶¶
- (16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.¶¶
- (17) The State of Oregon, and its officers, agents and employees must be held harmless from any claim, suit or action for property damage or personal injury or death arising out of the design, material, construction or maintenance of the authorized improvements.¶¶
- (18) The Department may add other project-specific conditions to the approved notification as necessary to meet the requirements of this General Authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.¶¶
- (19) The Department may, at any time, by notice to affected responsible parties, revoke or modify any approved notification of a project granted under this General Authorization if it determines the conditions of the General Authorization are insufficient to minimize individual or cumulative environmental effects.¶¶
- (20) The responsible party is responsible for the activities of all contractors or other operators involved in project work covered by the notification.
- Statutory/Other Authority: ~~ORS 196.600 - 196.692, 196.795 - 196.990~~
- Statutes/Other Implemented: ~~ORS 196.600 - 196.692, 196.795 - 196.990~~

AMEND: 141-089-0780

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for clarification and consistency with other rules.

CHANGES TO RULE:

141-089-0780

Waterway Habitat Improvement - Purpose ¶

~~These rules~~OAR 141-089-0780 to 141-089-0795 set forth the conditions under which a person may, without an individual removal-fill permit, general removal-fill permit, or DEQ remedial action permit waiver from the Department, placefill or remove material in waterways ~~of this state~~ for the ~~purpose~~effect of improving functions and values of aquatic habitat and facilitating species recovery in waterways. Temporary impacts to wetlands or waterways associated with a project may be authorized by combining this GA (OAR 141-089-0780, et seq.) with the Temporary Impacts to Wetlands and Waterways GA (OAR 141-089-0700, et seq.).

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

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

AMEND: 141-089-0785

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for consistency with OAR 141-089-0790.

CHANGES TO RULE:

141-089-0785

Waterway Habitat Improvement - Eligibility Requirements ¶

~~Projects eligible for this general authorization must be for the purpose of waterway habitat restoration~~(1) Compatible with Management Plans. The project must not be detrimental to existing functions and values that address problems identified in a watershed management plan or water quality management plan.¶

~~(2) Nonnative Species. The project will not involve the introduction of nonnative plants other than for temporary soil stabilization. Native seed mixes are preferred. When native seed mix is not available, nonnative seed mix that will hold the soil and not persist may be used if certified free of noxious weeds.¶~~

~~(3) Consistent with Habitat Incentive Agreements. If the project is under a Habitat Incentive Agreement with ODFW, the project must be in conformance with that Agreement.¶~~

~~(4) Compensatory Mitigation. Projects cannot be for the purpose of constructing compensatory mitigation required by an individual removal-fill permit or general removal-fill permit.~~

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

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

AMEND: 141-089-0790

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to clarify and expand current authorized projects, combine two currently authorized projects to reduce duplication, add one currently authorized project relocated from 141-089-0730, and add two new authorized projects.

CHANGES TO RULE:

141-089-0790

Waterway Habitat Improvement - Authorized Activities Projects ¶

~~¶~~Project activities are limited to the following. The activities may be combined for a single project and the removal-fill volume thresholds for each activity may be calculated separately:¶

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

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

(b) Side channels or alcoves being reconnected must be naturally formed and not require alteration or reconstruction, and the reconnection cannot result in dewatering mainstem flow (i.e., the mainstem must continue to carry the main flow post-construction; and¶

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

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

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

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

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

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

(3) Fish and Wildlife Passage. This activity project includes installation or replacement of fish passage structures including, but not limited to, vertical slot fishways, nature-like fishways and lamprey ramps to aid fish and/or wildlife passage. ~~This project must meet the following criteria:¶~~

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

~~(b) Passage structures must be designed to consider the velocity, depth, pool-length and jump-height preferences of native species additionally includes replacing, improving, or relocating water diversion structures for the primary purpose of restoring or improving fish passage. The project must meet the following criteria:¶~~

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

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

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

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

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

~~(b) Screens must meet ODFW fish screen criteria~~The project is not otherwise exempt pursuant to OAR 141-085-0530; and¶

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

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

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

- (b) Porous weirs must not result in culvert inlet or outlet scour;¶
- (c) Porous weirs must be sized appropriately for the system so as not to require annual maintenance;¶
- (d) Porous weirs must be constructed of materials that mimic natural substrate found within the system;¶
- (e) The structure must not exceed 100 cubic yards and 40% of the channel cross-section width; and Not exceed 40 percent of the channel cross-section width unless otherwise approved by the Department; and¶
- (f) Not exceed 100 cubic yards for every one-half mile of waterway, unless otherwise approved by the Department.¶
- (6) Remove, Modify, Repair, or Replace Existing Culverts and Tide Gates for Fish Passage. Tide gate and culvert removal, modification, repair, or replacement that will create or improve fish passage is allowed when:¶
- (fa) The activity is limited to 100 cubic yards for every one-half mile of waterway project is not otherwise exempt pursuant to OAR 141-085-0530;¶
- (b) The project may include the incorporation of simulated streambed material and shadow boulders inside and beyond the culvert, as necessary;¶
- (c) Any placement of new rock to stabilize culvert inlet and outlet must include planting of native woody vegetation appropriate to the area and at a density consistent with natural stream bank densities in the area, unless otherwise approved by the Department; and,¶
- (6d) SiThe project cannot include Cchannel and Alcove Habitat. This activity is limited to reconnecting existing side channel or alcove habitat, as followsrealignment, other than that necessary when placing a new culvert or tidegate immediately adjacent to the existing culvert or tidegate, and cannot convert bed substrate type.¶
- (7) Habitat Logs, Beaver Dam Analogs, and Post-Assisted Log Structures. This project includes construction of low-profile structures within a waterway in a manner designed to mimic the hydrological, geomorphological, and ecological functions of natural beaver dams or otherwise mimic natural wood accumulations. The project must meet the following criteria:¶
- (a) Cumulative removal-fill volume may not exceed 2100 cubic yards for every one-half mile of waterway unless otherwise approved by the Department;¶
- (b) Reconnection consists only of the removal of artificial barriers; and¶
- (c) The side channel or alcove being reconnected must be naturally formed and does not require alteration or reconstruction. No cabling, wiring, or mortaring of materials or use of steel or treated posts is allowed;¶
- (c) Wood posts must be untreated and, to the extent possible, must be driven to a depth of at least 1.5 times the expected scour depth of the waterway and with at least one foot of clear space between posts;¶
- (d) Log placements must be consistent with "Guide to Large Wood and Boulder Placements" (ODFW, 2011), except that nonrandom placement of logs is permissible.¶
- (e) Beaver dam analogs and post-assisted log structures must be consistent with "Beaver Restoration Guidebook" (USFWS, et al.) and "Low Tech Process-Based Restoration of Riverscapes: Design Manual" (USU Restoration Consortium);¶
- (7f) Remove or Replace Existing Culverts and Tide Gates for Fish Passage. Tide gate and culvert replacement for fish passage through the installation of a larger culvert or for replacing the culvert with a bridge is allowed when:¶ Weaves must be sufficiently loose to allow fish passage through the structures while maintaining fish rearing habitat in the delayed water area upstream of the structure;¶
- (g) Only river-run gravels or cobbles may be used where rock is necessary to prevent under-scour;¶
- (h) Native woody vegetation must be preserved to the maximum extent practicable. When not practicable, woody vegetation must be knocked down to allow resprouting rather than removed; and,¶
- (i) No water may be diverted from the waterway for a beneficial use within the area in which flow is delayed or slowed by the project without the appropriate water-use authorization from Oregon Water Resources Department.¶
- (8) Engineered Log Jams. The project must meet the following criteria:¶
- (a) At a minimum, wood pieces, or their cumulative effect, must be of a size sufficient to withstand 25-year flood event rates of flow;¶
- (b) Large wood must be of a species native to the riparian zone within the project area or a reference area unless otherwise approved by the Department;¶
- (ac) The new culverengineered log jam must not occupy more than 20 percent of tidegate is not exempt he bankfull width;¶
- (d) If fastening is necessary, only pinning may be used; and¶
- (be) The project is consistent with ODFW Fish Passage Statutes, as evidenced in writing by an ODFW fisheries biologist¶ If anchoring is necessary, only rock ballast, untreated posts, stabilizing wood, or key pieces of wood may be used as anchors.¶
- (9) Maintenance and Reconstruction of In-Stream Habitat Structures. Removal and fill necessary to maintain or reconstruct the serviceability of existing, man-made in-stream habitat structures not otherwise exempted by OAR 141-085-0534. The terms "maintenance" and "reconstruction" have the same meanings as in OAR 141-085-0510.

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

AMEND: 141-089-0795

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to clarify and expand project specific conditions.

CHANGES TO RULE:

141-089-0795

~~Activity~~ Waterway Habitat Improvement - Project-Specific Conditions ¶

~~Proposed projects eligible for this General Authorization~~ (1) Projects must adhere to the general conditions in OAR 141-089-0650 and the following ~~activity~~ project-specific conditions: ¶

~~(12)~~ (12) Anchoring. Anchoring materials must not restrict or redirect flows, be set below grade to minimize the appearance, and be placed in areas naturally containing ~~such~~ the anchoring material. ¶

~~(23)~~ (23) Rock and Gravel Placement. Rock and gravel ~~placement are subject to~~ fill must comply with the following conditions: ¶

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

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

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

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

(e) Only erosion-resistant rock from an upland source may be used. ~~No broken concrete or asphalt~~ ¶

~~(4) Material must be similar to materials currently or historically found naturally in the stream reach except that it is allowed the following may be used:~~ ¶

~~(3a) Natural Materials. Material used must be similar to materials currently~~ (3a) Straw bales, straw or coir logs, jute fabric or other bio-degradable material where necessary for temporary erosion control; ¶

~~(b) Other temporary use of nonnatural materials as necessary for historically found naturally in the stream reach~~ compliance with OAR 141-089-0650; ¶

~~(c) Pinning material and ballast rock for placement of engineered log jams pursuant to OAR 141-089-0790(8); and~~ ¶

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

~~(45) Self Sustaining. Activities~~ Projects, other than installation or replacement of passage structures ~~or~~, fish screens, beaver dam analogs, and post-assisted log structures, must be self-sustaining and not require annual maintenance or manipulation. ¶

~~(56) Post-Project Reporting. Upon completion of the project, the~~ a project must be reported to the Oregon Watershed Enhancement Board at <http://www.oregon.gov/OWEB> by completing the Oregon Watershed Restoration Inventory (OWRI) form. The ~~DSL General Authorization~~ department GA number must be included on the reporting form.

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

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

AMEND: 141-089-0800

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for clarification and consistency with other rules.

CHANGES TO RULE:

141-089-0800

Wetland Ecosystem Improvement - Purpose ¶

~~These rules OAR 141-089-0800 to 141-089-0815 set forth the conditions under which a person may, without an individual removal-fill permit, general removal-fill permit, or DEQ remedial action permit waiver from the Department, carry out restoration activities projects for the purpose of wetland ecosystem restoration. Under this General Authorization (GA), w~~
improvement. Wetland ecosystem restoration improvement means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historical functions to a disturbed or altered wetland. Temporary impacts to wetlands or waterways associated with a project may be authorized by combining this GA (141-089-0800, et seq.) with the Temporary Impacts to Wetlands and Waterways GA (OAR 141-089-0700, et seq.).

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

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

AMEND: 141-089-0805

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for consistency with OAR 141-089-0810.

CHANGES TO RULE:

141-089-0805

Wetland Ecosystem Improvement - Eligibility Requirements ¶

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

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

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

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

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

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

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

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

(7) Consistent with Habitat Incentive Agreements. If the project is under a Habitat Incentive Agreement with ODFW, the project must be in conformance with that plan Agreement. ¶

(9) ~~Compensatory Mitigation. Projects cannot be for the purpose of constructing compensatory wetland mitigation.~~

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

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

AMEND: 141-089-0810

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended to clarify existing authorized projects and add two new authorized projects.

CHANGES TO RULE:

141-089-0810

Wetland Ecosystem Improvement - Authorized Activities Projects ¶

~~The following activities are allowed under this general authorization:~~ Projects are limited to the following. ¶

- (1) Vegetation Management. Ground-altering activities needed to re-establish and maintain native vegetation, such as mechanized land clearing to remove non-native vegetation and disking for seedbed preparation and planting of native wetland species is allowed. ¶
- (2) Floodplain Contouring. Floodplain contouring of wetland terraces to reconnect a waterway to an adjacent wetland or expand the area of seasonal inundation. ~~This activity is allowed. This project~~ does not include modification of a stream channel. ¶
- (3) Microtopography Establishment. Grading and contouring to re-establish microtopography (e.g., hummocks, minor ridges, very shallow depressions) in areas that have been previously leveled, scalped, or otherwise disturbed to eliminate pre-existing microtopography. ~~Activity is allowed. The project~~ is limited to six-inch maximum elevation rise or drop. ¶
- (4) Macrotopography Establishment. Shallow excavation to create scrapes, basins, meanders, and swales that do not exceed two feet in depth from existing or original ground surface and have minimum side slopes of 6:1 or gentler is allowed. If shallow excavation is combined with berm construction described in ~~§section 6(6)~~ §section 6(6) of this rule, the maximum depth of inundation must not exceed two feet. ¶
- (5) Removal of Materials. Removal of soil or other materials that have been placed in a wetland for the purpose of restoring or improving the natural and/or historical topography is allowed. ¶
- (6) Low Earthen Berms and Spillways. Construction of low earthen berms and vegetated spillways that impede, contain, or direct surface water may be used to extend the area or duration of shallow inundation. The design height of the berms must be no more than 18 inches from the existing ground level and have a maximum top width of four feet, variable slopes at a minimum of 6:1 or gentler on the water side, and maximum slopes of 6:1 on the land side, unless gentler slopes do not result in the conversion of wetland to upland. These structures may be installed to manipulate seasonal water depth, duration and degree of fluctuation that would be characteristic of natural or historical hydrologic conditions and to manage invasive species. When berms are combined with shallow excavation described in ~~§section (4)~~ §section (4) of this rule, the maximum depth of inundation must not exceed two feet. ¶
- (7) Removal of Structures. Removal of diversion structures, water control structures, ~~small (three feet high or less) berms,~~ and tidegates, as long as the removal does not cause water to rise or be redirected in such a manner to result in damage to structures or substantial property is allowed. ¶
- (8) Placement of Temporary Exclusion Fencing in Wetlands. Where necessary to protect plantings from herbivores, temporary exclusion fencing may be placed in wetlands. ¶
- (9) Maintenance and Reconstruction of Wetland Ecosystem Improvement Structures. Removal and fill necessary to maintain or reconstruct the serviceability of existing, man-made wetland ecosystem improvement structures not otherwise exempted by OAR 141-085-0534 is allowed. The terms "maintenance" and "reconstruction" have the same meanings as in OAR 141-085-0510.

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

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

AMEND: 141-089-0815

NOTICE FILED DATE: 01/11/2024

RULE SUMMARY: This rule is being amended for consistency with other rules.

CHANGES TO RULE:

141-089-0815

~~Activity~~ Wetland Ecosystem Improvement - Project-Specific Conditions ¶

~~Proposed projects eligible for this General Authorization~~ (1) Projects must adhere to the general conditions in OAR 141-089-0650 and the following ~~activity~~ project-specific conditions: ¶

~~(12) Invasive Species. Persons must control invasive species and comply with Oregon's weed laws (ORS Chapters 452, 561 and 570)~~ Water storage. Water may not be stored for a beneficial use without the appropriate water-use authorization from Oregon Water Resources Department; and ¶

~~(23) Post-Project Reporting. Upon completion of the project, the project must be reported to the Oregon Watershed Enhancement Board at <http://www.oregon.gov/OWEB> by completing the Oregon Watershed Restoration Inventory (OWRI) form. The DSL General Authorization~~ department GA number is required to be included on the reporting form.

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

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