

Oregon Department of State Lands

Aquatic Resource Management Program Report

Fiscal Year 2018
(July 1, 2017 through June 30, 2018)



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INTRODUCTION

The Oregon Department of State Lands (Department) is the administrative arm of the State Land Board, Oregon's oldest board. Established by the Oregon Constitution in 1859, the Land Board has been composed of the Governor, Secretary of State, and State Treasurer throughout its history.

The Department's Aquatic Resources Management (ARM) Program manages aquatic resources dedicated to the Common School Fund at statehood, including among other resources, submerged and submersible lands within the bed and banks of 12 waterways within the state. Those waterways include all or segments of the John Day, Chetco, Columbia, Coos, Coquille, Klamath, McKenzie, Rogue, Sandy, Snake, Umpqua and Willamette Rivers, as well as many lakes such as the Klamath, Devils, Siltcoos, Tahkenitch and North and South Tenmile. Submerged and submersible lands also include tidally influenced bays and estuaries along the Pacific Ocean to three miles offshore (the Territorial Sea). The Department processes applications within submerged and submersible land for waterway leases, easements, boat docks and boat house registrations, public facility licenses, sand and gravel operations, and special uses.

The ARM also protects the state's waterways and wetlands through administration of Oregon's Removal-Fill Law, enacted in 1967. The Removal-Fill Law was passed to conserve, restore and protect water resources for their contribution to aquatic life and habitats, fisheries, aquatic-based economies, tourism, public recreation, navigation, water quality, floodwater storage, and other natural resource functions.

This report provides information regarding management of state-owned waterways and fulfills the annual report requirement in the state's Removal-Fill Law (Oregon Revised Statutes (ORS) 196.885). This report covers Fiscal Year (FY) 2018. A fiscal year for Oregon state government is July 1 through June 30.

SECTION 1 – STATE WATERWAYS

State-Owned Waterways

Upon becoming a state, the State of Oregon acquired ownership of all submerged and submersible land underlying navigable waterways, waterways affected by tidal action, and the Territorial Sea (waters and seabed extending three geographical miles seaward from the Pacific coastline). The state also owns the submerged and submersible land underlying meandered lakes within its borders.

After Statehood, other water bodies have been determined to be navigable, and therefore state-owned, through legislative, judicial or administrative proceedings which include rivers, lakes, and tidally influenced waters. For further information, including rivers and lakes that have been determined navigable please refer to the website: Oregon.gov/DSL.

Uses of a State-owned Waterway

The people of Oregon are the owners of the submerged and submersible land and the

Department is responsible for management of these publicly owned lands. The public has rights to use the beds and banks of navigable waterways for any legal activity, such as boating, fishing and swimming.

The following are typical uses of state-owned submerged and submersible lands that require an authorization from the Department. Authorizations include leases, licenses, easements, registrations and short-term access agreements.

- Houseboats
- Boat ramps
- Docks, floats and wharfs
- Marinas and moorages
- Marine industrial facilities
- Bridges
- Utilities and pipeline crossings
- Sand and gravel operations
- Remedial cleanup
- Non-water dependent commercial uses (restaurants for example)
- Pilings, mooring buoy, voluntary habitat restoration, revetment, attenuations, retaining wall, rip rap, tide-gates

The following are common terms used with authorizations and their definitions.

- **Lease** - For uses that are generally longer term and are either water or non-water dependent.
- **Public Facilities License** - Publicly owned structures and uses such as boat ramps, docks, fishing and swimming platforms, viewing structures, and navigation aids.
- **Registrations** - Non-commercial uses and smaller structures such as boat docks, float or small boat houses (under 2,500 square feet), or floating recreational cabins (under 1,500 square feet), pilings, erosion control structures and voluntary habitat restorations.
- **Easements** - Required for long-term or permanent structures and uses on state-owned land. Types of uses include bridge and utility line crossings, erosion control structures and dredge spoils.
- **Remedial Activity** - All environmental remediation and restoration activities proposed on state-owned lands require an authorization. This includes access authorizations for individual or regular sampling, to leases and easements for long term environmental dredging or the placement of a sediment cap.

Proprietary Authorizations

The Department manages over 5,000 authorizations for a variety of uses (see above) on state-owned submerged and submersible land. Table 1 provides an overview of the number of authorizations managed by the Department by use classification.

Table 1. Active Proprietary Authorizations by Type

Authorization Type	As of July 1, 2018
Public Facility License Waterway (WW)	234
Easements WW	1,200
Registration of Waterway Structures	2,850
Waterway Lease	548
Sand & Gravel WW	17
Short Term Access Authorization	313
Special Use License/Permit	27
Special Use Lease	18
Temporary Use Permit WW	10
Totals	5,217

Department staff focused on obtaining authorizations for new uses of state-owned waterways and renewals for uses that are in compliance with their authorizations yet expiring. Table 2 looks at the Department workload for new waterway authorizations over the last five years. Table 3 evaluates the trend for Department workloads with regards to renewing authorizations. Table 4 outlines the revenue received for the past four years. Table 5 forecasts proprietary authorizations that will be renewed for the next few years.

Table 2. New Proprietary Authorizations by Type

Authorization Type	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	5-Year Total	5-Year Average
Public Facility License WW	3	4	6	2	2	17	3
Easements WW	28	25	21	27	32	133	27
Registration of Waterway Structures	30	45	76	27	13	191	38
Waterway Lease	8	8	9	3	4	32	6
Sand & Gravel WW	1	1	0	1	1	4	1
Short Term Access Authorization	25	32	41	30	34	162	32
Special Use License/Permit	2	2	2	2	0	8	2
Special Use Lease	1	1	2	1	0	5	1
Temporary Use Permit WW	0	0	0	0	0	0	0
Totals	131	141	167	103	101	654	131

Table 3. Renewed Proprietary Authorizations by Type

Authorization Type	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	5-Year Total	5-Year Average
Public Facility License WW	38	48	9	12	12	119	24
Easements WW	2	2	2	4	5	15	3
Registration of Waterway Structures	450	738	282	390	331	2,191	438
Waterway Lease	32	69	50	55	20	226	45
Sand & Gravel WW	0	1	2	7	1	11	2
Short Term Access Authorization	0	1	2	0	0	3	1
Special Use License/Permit	0	0	3	2	3	8	2
Special Use Lease	0	1	1	1	1	4	1
Temporary Use Permit WW	0	0	0	0	0	0	0
Totals	524	982	354	474	376	2,710	542

Table 4. Gross Revenue Received by the Department

Agency Object Type	FY 2015	FY 2016	FY 2017	FY 2018
Public Facility License	\$16,875.00	\$10,500.00	\$40,666.00	\$9,000.00
Easements-WW	\$185,749.93	\$207,252.56	\$768,133.19	\$177,299.84
Registration of Waterway Structures	\$147,582.00	\$111,354.59	\$128,353.00	\$119,590.00
Waterway Lease	\$1,888,658.50	\$2,302,702.31	\$2,040,478.56	\$2,182,514.00
Sand & Gravel WW	\$435,451.78	\$584,203.42	\$677,043.16	\$521,478.04
Short Term Access Authorization	\$3,468.00	\$750.00	\$4,250.00	\$1,000.00
Special Use License/Permit	\$8,775.00	\$2,625.00	\$3,050.00	\$0
Special Use Lease	\$1,750.00	\$27,699.58	\$40,474.39	\$74,057.71
Sale of S & S Land	(\$67,338.00)	\$750.00	\$25,000.00	\$0
Sale of Filled Land	\$750.00	\$0	\$139,769.00	\$0
Civil Penalties	\$10,116.00	\$37,344.20	\$49,566.00	\$55,966.00
Grand Total	\$2,631,38.21	\$3,285,181.66	\$3,916,783.30	\$3,127,864.56

Table 5. Future Renewing Proprietary Authorizations by Type

Authorization Type	FY 2019	FY 2020	FY 2021	FY 2022
Public Facility License WW	13	7	5	7
Easements WW	8	9	39	5
Registration of Waterway Structures	545	661	389	423
Waterway Lease	27	29	44	32
Sand & Gravel WW	4	6	2	0
Short Term Access Authorization	4	4	1	0
Special Use License/Permit	2	4	0	1
Special Use Lease	0	3	1	2
Temporary Use Permit WW	1	3	1	0
Totals	619	742	490	481

Table 6 shows enforcement actions including defaults and trespasses. The table shows the number of opened and closed enforcement records during a five-year period. The Proprietary Coordinators during this period targeted compliance monitoring and pursued default and trespass situations.

Table 6. Proprietary Enforcement Records

Enforcements*	2014	2015	2016	2017	2018	Totals
Opened	34	6	21	7	22	90
Closed	17	6	11	1	29	64

* Prior to 2014 the Proprietary Program did not use Enforcement records (previously also known as "Violations").

Default – When rent has not been paid for the authorization, such as a lease, the lessee is in default until the rent is paid in full, or if the rent is not paid the state may terminate the lease.

Trespass – Unauthorized use of Department lands.

Goble Site Cleanup

In 2012, the Department entered into a waterway lease agreement to moor the River Queen, a steam-powered automobile ferry near Goble, Oregon, on the Columbia River. The lessees were to restore the River Queen, which had been in the same location for many years and owned by the previous lessee.

On April 22, 2015, the Department conducted a site visit of the leasehold. Department staff noted several vessels, in various states of disrepair, had been brought into the leasehold. In addition, there was an accumulation of chemicals, debris, old RVs, scrap metal and other items stored on the barges. The Department had concerns that the lessees were operating a salvage operation on the site and verbally directed them not to bring any more vessels into the leasehold. On May 19, 2015, the Department of Environmental Quality (DEQ), the U.S. Coast Guard (USCG), and the Department conducted a joint site visit to perform a preliminary inventory of vessels and chemicals. The Department worked in coordination with DEQ and

USCG to identify and mitigate environmental threats. Numerous solid and liquid waste risks and violations were identified including asbestos, bunker oil, PCB contaminated oil, diesel fuel, and unidentified solids and liquids. The state and federal partners attempted to work collaboratively with the lessees but repeatedly met resistance.

The Department issued a Notice of Lease Termination on November 14, 2016, due to repeated violations and unwillingness of the lessees to bring the leasehold into compliance. The lessees requested a hearing on the Lease Termination. A settlement agreement was reached that required lease termination on May 30, 2017.

The Department has been pursuing efforts to have the lessees pay for the cleanup, and to date has put liens on all the lessees' assets, and the lessees have signed a waiver for the Department to receive insurance funds, if there are any. On June 1, 2017, the USCG entered the Goble Site and began a two-week process of removing hazardous substances and fuels on the site to reduce the threat of pollution to the waterway. USCG was the lead agency on site during this first phase.

The Department entered the site by mid-June 2017 and used several contract agreements to assist in the cleanup of the Goble site. Contractors secured the site, removed asbestos and other hazardous materials, removed solid waste and debris from the vessels, and disposed of 10 vessels from the site. The most complex and challenging part of the project was the removal of the 230-foot River Queen, which was built in 1922. The River Queen was too degraded to safely tow from the site and was too large to fit in a standard dry dock for removal. Ultimately, the River Queen was partially disassembled on site in order to fit in a dry dock, which increased cleanup costs.

The leasehold site has been restored to its original condition and is clear of all debris.

Table 7 shows the total tons of hazardous and solid waste removed from the site, as well as recycled materials.

Table 7. Hazmat Removed from the Site

	Asbestos	Solid Waste	Hazardous Waste	Liquid Waste	Other Misc. Waste	Recycled Steel
Tons	140	511	81	114	106	933

In summary, the Department began cleanup in June 2017 and completed it in August 2018 by working with other government entities and specialized contractors. The Department completed the cleanup and restoration of the site at a total cost of approximately \$12 million. The Department continues efforts to recover costs from the lessees and their insurers.

Submerged Lands Enhancement Fund

The Department received three applications for grants under the Submerged Lands Enhancement Fund created by the Oregon legislature in 2017. In June 2018, the Department convened the Application Review Team consisting of Department staff and other government

representatives from coordinating agencies. The total budget for the biennium is \$100,000. All three projects were independently scored and granted. The projects granted are: controlling for invasive aquatic plant management by the Willamette Riverkeeper; removal and replacement of a boat ramp and dock structure for the City of Coquille; and removal of small-scale debris along 70 miles of the Lower Columbia, Lower Willamette, and Multnomah Channel by the Lower Columbia Estuary Partnership. All projects will be complete by summer 2019.

Legislation

LC 0489: A legislative proposal that would authorize the Department to use moneys in a restoration subaccount of the Submerged Lands Enhancement Fund to purchase insurance or otherwise defray costs to clean up or otherwise address damage to state-owned submerged or submersible lands. It also would authorize the Department's ability to assess a surcharge on the payment required for leases, easements, registrations, access agreements or other proprietary authorizations. If the legislation is passed, the Department anticipates the surcharge assessed may range from three to ten percent of the payment amount otherwise required.

Rulemaking

Revisions to Oregon Administrative Rule (OAR) 141-140, siting of ocean renewable energy facilities in the territorial sea.

DSL recently completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

DSL updated the application fees to ensure they are adequately covering the costs of administering the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease.

DSL convened a Rule Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20), Newport (June 21) and Astoria (June 28). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1 to July 14. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting. The final rule became effective on January 1, 2018.

Revisions to Oregon Administrative Rule (OAR) 141-122 and OAR 141-123 to create separate rules for easements on trust lands and non-trust lands.

OAR 141-122: Concerns granting easements for structures and uses on state-owned trust lands. Trust lands are managed to maximize revenue for the benefit of schools.

OAR 141-123: Concerns granting easements for structures and uses on state-owned non-trust lands, such as state-owned waterways. Non-trust lands are managed for public trust values such as navigation, commerce, fisheries and recreation.

Existing rules for easements on trust lands (OAR 141-122) would be modified, and new rules

for easements for non-trust lands (OAR 141-123) will be added. A RAC was convened in December 2017 and first met in January 2018. The RAC and the Department held four meetings to develop rules governing the Department's easements for trust and non-trust lands, with an emphasis on fiber optic cable rules and compensation. The RAC and the Department also developed a financial impact statement looking at how the new rules will impact businesses in Oregon. Three meetings throughout the state were held in August 2018 to hear public comment. The new rules are likely to be adopted in January 2019.

Portland Harbor Superfund Site

Staff continued work to clarify the state's ownership boundaries within the Portland Harbor Superfund area and issued authorizations and permits for remedial activities, investigative work, and ongoing Portland Harbor industrial activity. Staff also assisted with submissions to the U.S. Environmental Protection Agency (EPA), conducted work related to the non-judicial allocation of Portland Harbor response costs, and coordinated with other state agencies on a state-level response to issues associated with cleanup, including DEQ, OHA, ODOT, the Governor's Office, and others.

Inter-Governmental Agreements for Management of Some Department Lands

The Department is currently party to the following agreements.

- Inter-Governmental Agreement (IGA) with Multnomah County Sheriff Office (MSCO) – Assistance with monitoring of State waterways in Multnomah County, \$10,000 per biennium.
- Inter-Agency Agreement (IAA) with Oregon Parks and Recreation (OPRD) – monitoring and cleaning up property owned by the Department along the Sandy River on or near Dabney State Park and Lewis and Clark State Park, \$26,000 per biennium.
- IAA with OPRD – monitoring and cleaning up property owned by the Department near the South Jetty of the Siuslaw River, \$5,000 per year.

Transient Boaters

In the past several years, there has been an increase in the number of people living on boats on the Willamette and Columbia Rivers in Portland without authorization. This is problematic for many reasons. The living conditions are unsafe. Access by emergency services is difficult. Many of the vessels are without working engines and cannot be quickly moved to safety, if needed. There is a higher risk of pollution from sewage, oil slicks and other wastes. Most of the vessels do not have sanitation. Many of the vessels are in disrepair and end up becoming abandoned, derelict or sunken, requiring public money for retrieval and disposal.

Many of the inhabitants are in violation of other boat-related regulations, including titles and registrations, and safety equipment, such as anchor lights. Most of the boats are "anchoring out" or tethered to structures on land. This has caused conflict with other river users who encounter the anchor lines. The Multnomah County Sheriff's Office (MCSO) Marine Patrol spends considerable staff resources responding to complaints of pollution, crime, and vessels that have become adrift or sunken. Some of the public docks managed by the City of Portland continue to be occupied by transient boaters and are not available to the public for recreational use.

The Transient Boater Work Group

The Transient Boater Work Group was formed in Summer 2014 to address this issue. The work group includes representatives from the following agencies and citizen groups:

- Department of State Lands (DSL)
- Oregon State Marine Board (OSMB)
- Department of Environmental Quality (DEQ)
- Oregon State Police (OSP)
- Oregon Department of Justice (DOJ)
- Multnomah County Sheriff's Office (MCSO)
- Multnomah County Housing
- Multnomah County Chair's Office
- Citizens
- City of Portland Parks and Recreation
- Portland Housing Bureau
- City of Portland Office of Neighborhood Involvement
- City of Portland Mayor's office
- JOIN, Connecting a Street to a Home
- Columbia River Yachting Association
- Waterfront Organization of Oregon
- City of Portland Police Dept. Intensive Street Engagement
- Metro Regional Government

Enforcement Planning

The long-term goals of enforcement are to find alternative housing for transient boaters in violation of state law, reduce the number of trespass situations and identify high-priority areas for enforcement.

Enforcement Roles and Responsibilities

- **DSL:** Lead for administrative actions
- **OSMB:** Support for boating data and seizure, and removal (50 percent of the cost).
- **MCSO:** Law enforcement support; assist with serving orders and provide support during seizures.
- **JOIN:** Assist boaters with housing services and transport of personal belongings, if needed.
- **City of Portland Police:** Provides continuous outreach for services and housing referrals.

The Department, OSMB, and MCSO have conducted outreach to transient boaters explaining the regulations and provided brochures with information about complying with moorage and boating safety laws, as well as housing referral information. The Department in coordination with the work group is pursuing a strategy of progressive enforcement of transient boaters. Outreach and education efforts are followed by notices of trespass and ultimately seizure of vessels.

The Department has spent approximately \$29,511.50 in the past two years for removal and disposal of 15 vessels, not including staff time. Between July 1, 2017, and June 30, 2018, the Department served three pre-seizure notices or trespass notices, and seized and disposed of 13 vessels in conjunction with the Oregon State Marine Board.

SECTION 2 – REMOVAL-FILL PROGRAM TRENDS

Removal-Fill Permits

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

Individual Permits (IP): A permit for projects that have more than minimal adverse effects to waterways and wetlands, are more complicated and often involve more than one removal-fill activity, may involve a substantial mitigation obligation, and do not qualify for any of the General Permits or General Authorizations. The processing timeline is up to 120 days.

General Permits (GP): A streamlined permit covering activities substantially similar in nature, recurring or ongoing, and have predictable effects and outcomes. A GP may be established by order or by rule. GPs issued by rule may be on a statewide basis or a geographic basis. GPs issued by order are for an applicant or group of applicants. For example, the Bureau of Land Management/U.S. Forest Service GP (GP-42104-RF) issued by order, authorizes 11 aquatic restoration activity categories in multiple waterways in all Oregon counties. The processing timeline is up to 40 days for most GPs.

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

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

The Department saw a 30% increase (336 to 436) in permit numbers compared to FY 2017. This includes increases in Individual Permits by 32% (193 to 255), General Permits by 55% (38 to 59), and General Authorizations by 63% (59 to 96). Emergency Permits are very weather dependent, rather than economy driven, and decreased by 56% (46 to 26).

Table 8. Removal-Fill Authorizations by Type

Authorization Type	Applications Received	Approved	Denied	Total Decisions	Approved in ESH
IP	255	338	1	339	163
GA	96	83	5	88	58
GP	59	57	0	57	28
EA	26	24	1	25	21
Totals	436	502	7	509	270

Essential Indigenous Anadromous Salmonid Habitat (ESH)

The Department's essential indigenous anadromous salmonid habitat (ESH) requirements were established by the 1993 Legislative Assembly and fully implemented by the Department in 1996. Authorization is required for any amount of fill or removal for activities occurring within stream reaches used for spawning or rearing of state and federally listed anadromous fish species, unless the activity is specifically exempt. Table 9 includes the subset of permits in ESH waters.

The Department works with the Oregon Department of Fish and Wildlife to update the ESH

designations for Oregon’s waterways to reflect new data, improved mapping techniques, and habitat reopened to salmonid and other species through recovery and restoration efforts. The maps were last updated and adopted into rule in March 2015.

Authorized Volumes of Removal and Fill

Table 9 below contains total volumes (in cubic yards) of material permitted to be removed and filled in all waters of the state, including wetlands. It is important to note the total volume authorized each year will always be more than the actual volume removed or filled. Many, if not most, projects take several years to complete, but the permit is granted for the total amount and kept active each year. There are significant volumes permitted for some activities, particularly maintenance dredging, that occur on an as-needed basis, but are kept active, some of them for decades.

Table 9. Removal-Fill Authorized Volumes (cubic yards) for FY 2018

Auth Type	Removal Volume	Fill Volume	ESH Only Removal	ESH Only Fill	Wetland Removal Volume	Wetland Fill Volume
IP	3,064,939	5,407,781	1,665,317	1,279,849	472,449	1,749,726
GA	4,028	2,652	1,744	1,183	100	96
GP	54,062	28,204	12,483	15,111	8,124	8,628
EA	1,355	2,462	1,355	2,345	0	100
Total	3,124,384	5,441,099	1,680,899	1,298,488	480,673	1,758,550

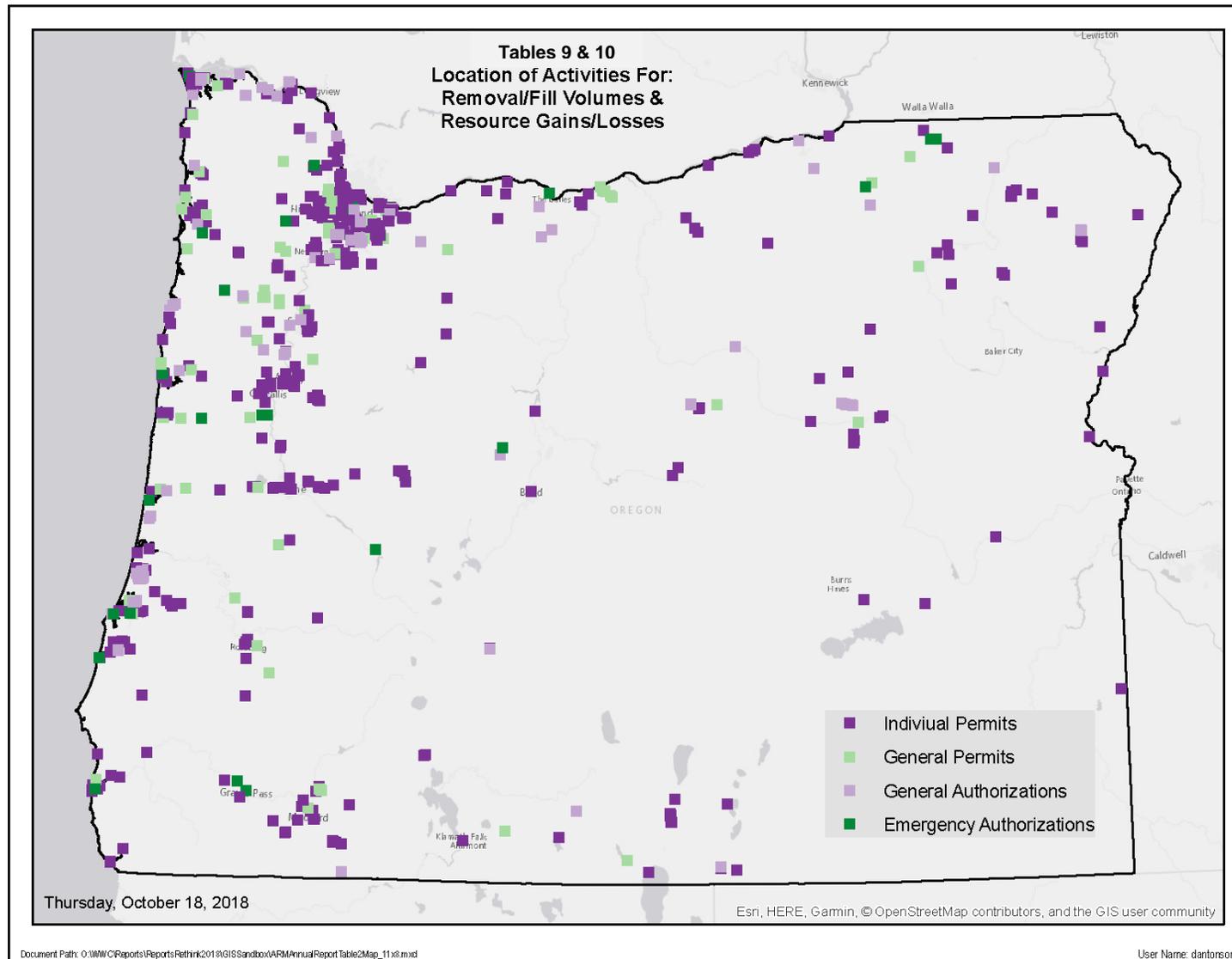
Table 10 shows the number of acres of wetlands authorized to be removed from the landscape or created or restored. The net gain and loss of acres is generally a meaningful measurement only for wetlands but is not very useful for waterways. Wetlands can be removed from the landscape entirely; whereas streams can be improved or degraded, but they generally cannot be removed from the landscape. See Figure 1 for locations of Removal-Fill activities.

The Department’s goal is no net loss of wetlands from the aggregate of property development and creation and restoration of wetlands. Wetland gains have outpaced wetland losses over the past five years by 474 acres due to a few large voluntary restoration projects.

Table 10. Gains and Losses in Wetlands for FY 2018

Authorization Type	Wetland Acres Gained	Wetland Acres Lost	Net Wetland Acres
IP	46.88	61.03	-14.15
GA	5.2	0	5.2
GP	0	2.05	-2.05
EA	0	0	0
Total	52.08	63.08	-11

Figure 1. Location of Activities for Removal-Fill Volumes & Resource Gains/Losses for FY 2018



Recreational Placer Mining

In Essential Salmonid Habitat (ESH), a removal-fill permit is required to fill, remove, or move any amount of material below the ordinary high water mark. To facilitate permitting for placer mining in ESH, DSL adopted a General Authorization (GA).

The number of recreational placer mining authorizations hit its peak in 2012 (Figure 2). The number is somewhat inflated due to many duplicate authorizations. The Department has since revised the process to not allow duplicate authorizations. Since 2014, the numbers have dramatically declined due to the limits imposed by a moratorium (Senate Bill 838 2013) and now the additional limitations placed by Senate Bill 3 (2017). The GA, per Senate Bill 3, has been revised to, among other things, only allow non-motorized methods (e.g. gravity and siphon dredges).

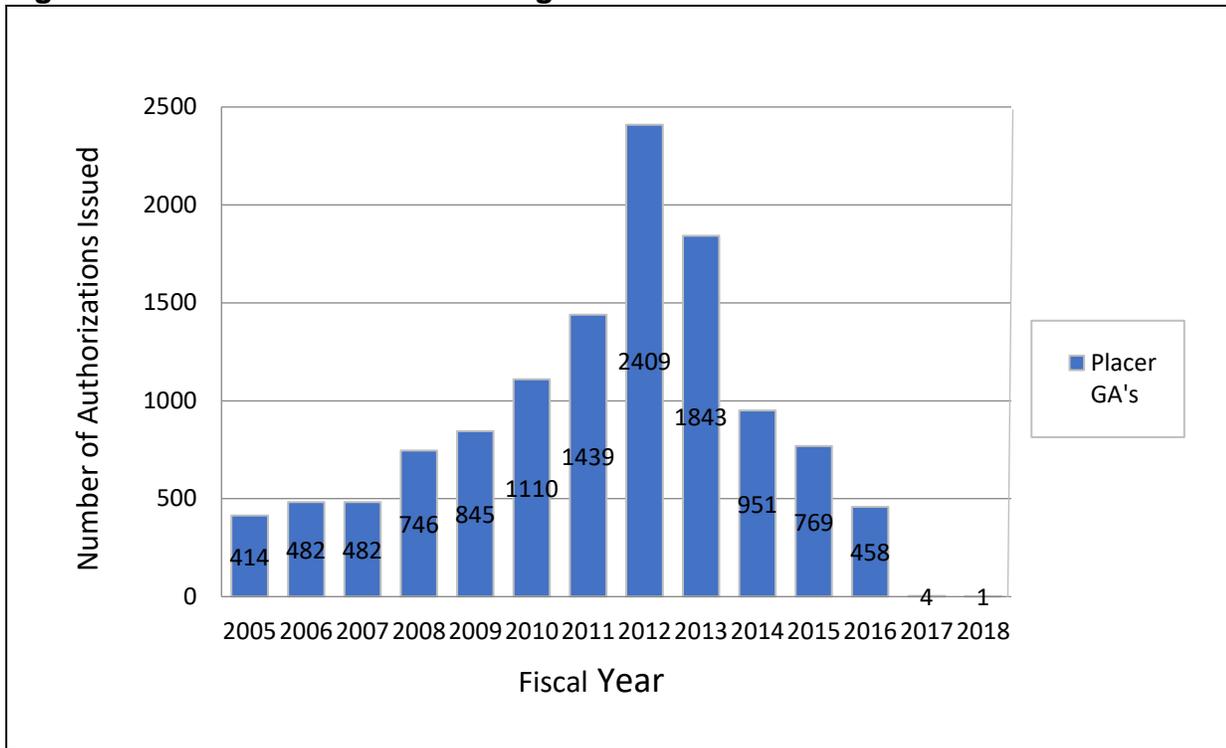
The Department received 104 applications during the reporting period. Only one authorization was issued. Most applications were not authorized because the mining proposed did not require an authorization (33), the waterway requested was not open to mining (45), or the application was a duplicate or insufficient information was provided (26).

The agency has constructed a new web-based application that will add significant clarity to the process and minimize errors, such as those described above. The information the applicant enters will be screened by the web-based application. If the information entered identifies a stream, type of activity, method, or type or size of equipment that is not allowed by rule the applicant is prevented from proceeding. A pop-up window explains the problem to the applicant. There are also pop-ups cautioning or reminding the applicant of important items, but do not prevent them from proceeding.

Reporting

There were seven year-end reports received for work performed during FY 2018. None reported filling or removing within waterways.

Figure 2. Recreational Placer Mining General Authorizations



Legislation

Legislative Work Group on Wetlands Regulation and Wetlands Inventory and LC 2728

House Bills 2785 and 2786 brought to the attention of the House Committee on Agriculture and Natural Resources (Committee) the challenges with Oregon’s current system for regulating wetlands on agricultural lands. The Committee was introduced to a grower from Junction City encountered unexpected requirements relating to removal-fill in unmapped wetlands when reconstructing and expanding a building. The Department has developed a more robust State Wetlands Inventory (SWI) to improve the screening process for identifying potential jurisdictional areas and has been testing it with stakeholders.

Committee Chair Representative Brian Clem formed a Wetland Regulation Working Group to address wetland regulation in Oregon. The Department helped staff the working group and played an active role in providing information, answering questions and discussing alternatives with the Committee. Two subgroups were active in FY 2018 and charged with identifying short-term recommendations for the 2019 legislative session, as well as longer-term priorities. At the writing of this report both subgroups submitted reports with recommendations to the full Committee in December 2018.

The Mapping, Mitigation, and Assumption Sub-Work Group recommended actions on the Statewide Wetlands Inventory (SWI) and Wetland Land Use notification (WLUN) process; mitigation banking, and partial state assumption of the Federal Clean Water Act 404 program. The report to the Committee includes several funding proposals: 1) 1.0 FTE for the Department for WLUN response capacity; 2) 1.0 FTE for the Department for 404 assumption

process capacity; and 3) funding for Business Oregon to support a public mitigation bank pilot program loan. Other recommendations for legislative action include amending ORS 196.643 to allow payments to the Oregon Removal-Fill Mitigation Fund when credits from approved mitigation banks are available, legislative approval to allow the Department to partially assume federal 404 jurisdiction, and amendment of ORS 196.800-.905 uncodified session law to reflect the exclusion of agriculture or forest uses from assumption authority.

The Agricultural Channel Maintenance Sub-Work Group recommended actions dealing with agricultural maintenance. The report to the committee included recommended legislation to: 1) authorize maintenance of agricultural channels during dry conditions; 2) direct the Department to develop and adopt a General Permit for maintenance during wet conditions; 3) identify funding for Oregon State University to study ways to meet agricultural channel maintenance needs while minimizing negative impact to, or improving, habitat complexity and water quality; and 4) reporting by the Department of State Lands, Department of Agriculture, and Department of Fish and Wildlife to the legislative committees related to agriculture and natural resources regarding the status of ditch maintenance activities, compliance and program outcomes, and recommendations on modifications to conditions based on scientific study and agency program data. The recommendations regarding maintenance of agricultural channels during dry conditions were further developed by the Committee co-chairs/chair into Legislative Concept 2728. As of the writing of this report, the Committee had voted to approve LC 2728 as a committee bill for the 2019 Regular Session.

Rulemaking

General Permit for Floodplain Connectivity

Between 2016 and 2017 the Department conducted rulemaking to attempt to implement the intent of tabled legislation from the 2015 Session (HB 3217). As of June 2017, the Department had convened a rules advisory committee (RAC), developed a draft rule, conducted public noticing and hearings, and prepared a final draft rule for adoption. In June 2017, the Department received a request from the Coastal Caucus to suspend the rulemaking effort due to constituency concerns. The rulemaking was placed on indefinite suspension at that time.

Aquatic Resource (Compensatory) Mitigation Framework

The Department initiated rulemaking (OARs 141-085, 141-089, and 141-093) to update the statewide compensatory mitigation requirements using a watershed-based approach, and function-based assessment and accounting methods; and to make other non-substantive edits for routine rules maintenance.

The Department is changing policy because in 2008, the federal government adopted a new rule – the Final Compensatory Mitigation Rule – which promotes a watershed- and function-based approach to compensatory mitigation. Studies show that the current practice of requiring acreage-based mitigation is leading to an overall loss of functions and values of aquatic resources across the nation. The new mitigation framework aims to bring Oregon’s mitigation program into alignment with the federal standard and to provide more successful, sustainable benefits for the environment. Development of the policy, a new function assessment method for streams, and stakeholder outreach has been underway since 2009.

The Department convened a RAC to assist with this rulemaking effort. The RAC met five times to further develop the rules. The public comment period was open from November 1 through December 7 and the Department held three public hearings in Bend (November 15), Salem (November 20), and Astoria (November 28). The Department received 22 comments on the proposed rules and is currently responding to those concerns.

This new approach to compensating for wetland and stream losses will be collaboratively implemented by DSL, US Army Corps of Engineers-Portland District (Corps) and US Environmental Protection Agency-Region 10 (EPA) will be implemented by April 1, 2019 at the earliest.

Statewide Wetlands Inventory and Goal 5 Planning Assistance

Statewide Wetlands Inventory

The Department is responsible for developing, maintaining and distributing the Statewide Wetlands Inventory (SWI). The SWI initially was based upon the National Wetlands Inventory (NWI) developed by the U.S. Fish and Wildlife Service (USFWS). Local Wetlands Inventories (LWIs) that cover many urban and urbanizing areas in Oregon are added to the SWI as they are approved. The SWI also includes other recognized mapping that indicates potential locations of wetlands and waters. Other department approved wetland mapping such as wetland delineations and compensatory mitigation sites are part of the SWI but are not yet available in digital GIS format.

Development of the SWI update web map tool began in FY 2017. Internal and external reviews and revisions were completed, and release is anticipated before the end of FY 2019. Outreach about the SWI update web map to local government planners and other groups started in FY 2018 and is ongoing.

The Department obtained an Environmental Protection Agency (EPA) Wetland Program Improvement Grant to support the development of an ESRI GIS format geodatabase of all approved LWIs so that this mapping can be added to the digital SWI update. Older LWIs exist only in hard-copy/pdf format and need to be digitized entirely. Newer LWIs have digital datasets that need to be standardized into ESRI GIS format and a single organizational structure. When complete this geodatabase will be added to the SWI web map and supporting webpage.

LWIs have much more detailed and accurate mapping than the NWI and include other descriptive information and wetland functional assessments that are used to make Locally Significant Wetland determinations for Goal 5 compliance. LWIs are used by cities and counties for planning purposes, they also provide good wetland location information for the public, landowners, and developers. The Department assists local governments and their consultants with LWI development, and ultimately reviews and approves LWIs. In FY 2018, the Department approved LWIs for the Medford Urban Reserves and Urban Growth Boundary Expansion area and for the City of Monmouth.

Department staff have been leading an effort to develop a new wetland functional assessment method for local planning efforts, especially for LWIs. This new assessment method will replace the Oregon Freshwater Wetland Assessment Methodology for Locally Significant Wetland determinations. The Department's Aquatic Resource Planner convened and continues to work with a technical advisory committee to integrate the new assessment method into the Division 86 Locally Significant Wetland rules.

Outreach included presentations to local planning staff about the SWI, regulations, and participation in long-range wetland planning efforts. Events included three Oregon Coastal Zone Planners meetings, several Oregon Cascades West Regional Consortium and Council of Governments, Columbia County Natural Resources Conservation Service and Soil and Water Conservation District meetings, DLCD Community Services Regional Representatives, Association of Oregon Counties Planning Directors, City of Monmouth Planning Commission, Corvallis Regional Economic Development Commission, Albany/Millersburg Economic Development, and Connect 2018 Conservation Partnership.

The Aquatic Resource Planner corresponded with county and city representatives and with members of the public about notices, land use planning, related wetland topics, regulatory process and other inquiries.

Wetland Conservation Plans and Advance Aquatic Resource Plans

Wetland Conservation Plans (WCP) were developed subsequent to the 1989 wetlands bill as a method for local governments and communities to make long range plans for development, mitigation and protection of wetlands identified on the Local Wetlands Inventory. They are approved by final order of the Director and include local land use planning decisions. To date West Eugene has the only WCP, which was approved in 1994.

Advance Aquatic Resource Plan (AARP) rules were developed from a long process involving multiple State, Federal, Local Government and other stakeholder participation. AARPs are similar in many ways to WCPs. Wetlands and waters are identified, functional assessments completed, and decisions are made regarding the best use of each wetland, then the plan is approved by final order of the director. AARPs differ from WCPs because the plan is not a land use decision; the plan area is determined by the participants, and both the landowners and future developers voluntarily agree, or not, to the conditions of the plan. If the participant chooses to comply with the terms of the AARP there is some streamlining of the Removal-Fill permitting process built into the plan.

Two AARPs have been approved. The first is for 19 selected industrial sites in Linn and Benton Counties sponsored by the Oregon Cascades West Consortium was approved on October 2, 2015. The Port of The Dalles sponsored The Dalles' AARP for six industrial sites, approved July 8, 2016. After participating in the development of both Plans, the U.S. Army Corps of Engineers declined to recognize the plan efforts with either a Letter of Permission or a Regional General Permit, respectively, on October 6, 2017.

SECTION 3 – PROGRAM REPORTING FOR THE REMOVAL-FILL LAW

Monitoring

The Department monitors mitigation sites and impact sites that require restoration, both for permitted activities and violations. Due to the nature of the time it takes for establishment of mitigation sites and restoring impact sites, including soil stability and plant development, there will always be a quantity of sites actively being monitored. Currently, the Department is actively monitoring 240 sites (see Table 11 below). The Department’s goal is to keep pace by closing as many as are opened, however, this will vary from year to year depending on the number of permits or enforcements each year.

Table 11. Wetland Mitigation Monitoring FY 2018

Authorization Type	Active	Opened	Closed
Wetland	109	45	27
Stream	131	107	9
Total	240	152	36

Enforcement

When the Department becomes aware of potential non-compliance issues, the alleged violation is investigated to determine whether a violation has occurred or not. Table 12 shows the number of permitted and non-permitted enforcements opened and closed. Also shown are the subset of those violations specifically occurring in ESH waters. The civil penalties collected may or may not be assessed in the same year as the violation, which may increase or decrease the penalties collected in a fiscal year relative to the penalties assessed. The total amount of civil penalties collected will also be affected by negotiations during resolution of the violation.

The Department opened 110 enforcement files during the reporting period. Of the over 500 active authorizations only 1 enforcement was opened for projects with a permit. This is likely due, at least in part, to the interaction, coordination, and education that is made possible through permitting and monitoring. The Department closed 114 enforcement files in FY 2018. Enforcement files are closed either through Consent Agreements and other orders, or when further investigation reveals either no violation occurred or there was insufficient evidence to confirm a violation.

Table 12. Compliance Checks, Enforcements, Civil Penalties, & Final Orders FY 2018

	Number of compliance checks	Enforcement Files Opened	Enforcement Files Closed	Civil Penalties Assessed	Civil Penalties Collected	Final Orders
Permit Violation	114	1	2	\$16,000	\$6,000	1
Unpermitted Work	109	109	112	\$252,620	\$66,689	47
ESH Permit Violation	38	0	0	\$0.00	\$0.00	0
ESH Un-permitted Work	35	35	42	\$63,906	\$40,975	21

Contested Case Hearings

The Department managed nine files with a request for a contested case during FY 2018. Many of the requests remained active from prior years. Table 13 below shows the final status of the contested files within the fiscal year.

Table 13. Status of Requested Hearings at End FY 2018

Cases Settled/	Cases Pending	Hearing Held	Department Decision	Appealed to Higher	Higher Court Upheld Department
1	3	1	1	1	

Wetland Land Use Notification

The wetland land use notification process was initiated in 1989 as part of the wetlands program legislation. All counties and cities are required to notify the Department of certain development activities proposed in wetlands that are mapped on the Statewide Wetlands Inventory. The Department reviews the notice and provides a written response within 30 days to the applicant and local government as to whether the proposed action requires a removal-fill permit and/or a more precise wetland boundary location (delineation). The Department was successful in responding within 30 days for 663 notices but exceeded that time for 22 notices (3% of all notices) in FY 2018.

The objective of the notification process is to provide coordination between local (city or county) development approvals and state wetland regulations. Overall, the wetland land use notice process has proven to be an effective “early warning” mechanism for landowners and developers that a state permit may be required in addition to the local approval. Table 14 shows the increase in notices for FY 2018 compared to the prior two fiscal years, which is at least in part a result of the Department’s increased outreach to local planners.

Table 14. Department Response Time for Wetland Land Use Notices

Response Time	FY 2016	FY 2017	FY 2018
30 Days or Less	407	550	623
More than 30 Days	29	21	16
Total	436	571	639

Wetland/Jurisdictional Determinations and Wetland Delineation Report Review and Approval

The Department offers the public service of providing an agency determination on whether wetlands or other waters of the state may be present on a parcel of land and provides reviews of delineation reports. A wetland determination, conducted without charge, identifies if wetlands or other waters of the state are present on a site that may be subject to state permit requirements. If wetlands and/or waters are present, a delineation and report by a wetland consultant may be needed to accurately locate and map the wetlands and waters (a wetland delineation report). Wetlands staff review the delineation reports submitted to the Department. Landowners, developers and local governments use the approved delineation report and maps

to avoid or minimize impacts to waters of the state, or to determine the impacts that will require a state permit. Table 15 shows the number of wetland determinations and delineation report reviews conducted for FY 2018.

Table 15. Wetland Determinations and Delineation Report Reviews

Fiscal Year	Determination	Delineation	Total
2016	230	266	496
2017	185	281	466
2018	330	332	662

Compensatory Mitigation

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

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

Mitigation Banking

There are currently 27 approved mitigation banks in Oregon. Table 16 details the sales and balances of the mitigation banks for FY 2018. During the last year, five new potential banks started the establishment process, but have not yet been approved.

Table 16. Mitigation Bank Credit Sales and Balances as of June 30, 2018

Mitigation Bank	County	Total possible credits	% of credit released	% sold to date	Balance of credits remaining
Amazon Creek	Lane	39.78	100.00	100.00	0
Butler	Washington	45.60	45.00	24.00	34.80
Claremont	Clatsop	11.97	28.00	5.00	11.36
Cow Hollow	Douglas	15.22	100.00	100.00	0
Coyote Prairie North	Lane	78.68	76.00	52.00	37.64
Evergreen	Benton	84.52	90.00	58.00	35.67
Foster Creek	Clackamas	27.57	75.00	84.00	4.02
Frazier Creek	Benton	13.00	100.00	100.00	0
Garret Creek	Clackamas	15.49	66.00	17.00	12.86
Long Tom	Lane	59.51	85.00	85.00	8.98
Marion	Marion	38.30	62.00	58.00	16.06
Mid-Valley phases 1-2	Benton	21.53	98.00	98.00	4.20
Muddy Creek	Benton	60.33	80.00	75.00	14.94
Mud Slough phases 1-4	Polk	157.90	93.00	71.00	45.90
Oak Creek	Linn	38.98	58.00	58.00	16.41
ODOT Bobcat Marsh	Washington	5.26	100.00	27.00	3.77
ODOT Crooked River	Crook	5.56	39.00	5.00	5.27
ODOT Greenhill	Lane	8.11	20.00	14.00	6.97
ODOT Lost River	Klamath	13.44	41.00	29.00	9.59
ODOT Vernal Pool	Jackson	20.95	78.00	44.00	11.64
One Horse Slough	Linn	66.91	90.00	65.00	24.19
Rogue Valley Vernal Pool	Jackson	24.70	50.00	15.00	21.44
Tualatin Valley	Washington	31.10	72.00	50.00	16.04
Weathers	Marion	9.19	100.00	100.00	0
West Eugene	Lane	135.52	100.00	100.00	0
Wilbur Estuary	Lane	51.34	64.00	3.00	49.66
Total wetland credits		1,121.56	-	-	431.43
Salem Stream Bank *	Marion	10,741*	30.00	3.00	10,405.00

*The Salem stream credit units are not based on acreage and thus are not comparable to the wetland credits balances

Mitigation Bank Program Compliance and Efficiency

Mitigation Banking represents an important efficiency for both the Department and for permit applicants. They can provide greater ecological benefits, are more efficient for Department staff to manage than smaller mitigation sites and can be a profitable business venture for the bank sponsor. Banks are a popular option for applicants. The per acre cost is generally less than for individual mitigation sites and obligation for the mitigation requirement is transferred to the bank sponsor once credits are purchased.

Department staff inspect each mitigation bank annually to evaluate whether expectations have been met, to verify information in the monitoring reports, and to discuss and resolve emerging issues. One bank is in remedial status due to weed invasion. Agency staff has been working with some bank sponsors to promote the establishment of long-term stewardship plans where previous administrative rules did not require such plans.

Compensatory Mitigation – Department In-Lieu Programs

In-lieu fees are accepted into the Oregon Removal-Fill Mitigation Fund as a form of compensatory mitigation for unavoidable adverse effects on waters of this state. The funds are used by the agency to construct mitigation sites and compensate for lost functions and values. There are two in-lieu fee programs available. The Payment In-Lieu (PIL) program allows payment for compensatory mitigation for small impacts (generally <0.2 acres) to waters of this state when other methods of providing compensatory wetland mitigation are not available, or inadequate. The U.S. Army Corps of Engineers does not accept PIL mitigation for their federal 404 permits. The Oregon Department of State Land In-Lieu Fee (ILF) program was approved by the Corps in 2009 and provides compensatory mitigation for both waters of this state and waters of the United States; i.e., the credits may be used to satisfy mitigation requirements for both Oregon removal-fill permits and federal 404 permits. Under the ILF program, areas are approved to sell a maximum number of credits, but a project must be approved and meet performance requirements before credits are released and the mitigation obligation is fulfilled.

The Department’s in-lieu programs provided mitigation for 17 permit authorizations for a total of 3.74 credits. Credits sales for PIL and ILF, and ILF credit sales and balances are shown in Table 17 and 18, respectively. Funds are deposited in the Oregon Removal-Fill Mitigation Fund.

No new projects were funded through the Oregon Removal-Fill Mitigation Fund in FY 2018. The Department has ongoing projects funded in previous years for all areas shown in Table 18, except the Umpqua Interior Foothills. For this area, the Department has continued working with a private mitigation bank developer and plans to purchase credits once that project is approved and credits are released.

Table 17. Deposits into the Oregon Removal-Fill Mitigation Fund

	<i>FY 2018</i>
Number of Permits using the PIL Program	8
PIL \$ Totals	\$106,237
PIL Credits Sold	0.75
Number of Permits using the ILF Program	9
ILF \$ Totals	\$210,683
ILF Credits Sold	2.99
Mitigation Fund Deposits \$ Total	\$316,920

Table 18. In-Lieu Credit Sales and Balances as of June 30, 2018

<i>Site Name</i>	<i>County</i>	<i>Credits Released</i>	<i>Credits Sold</i>	<i>Balance</i>
Tamara Quays	Lincoln	2.16	-1.81	0.34
Half Mile Lane	Washington	13.24	-4.72	8.52
Pixieland	Lincoln	4.02	-1.99	2.03
Lower Columbia advance credit area	Clatsop	0	-2.76	-2.76
Umpqua Interior Foothills advance credit area	Douglas	0	-7.52	-7.52
Wilson Trask Nestucca advance credit area	Tillamook	0	-0.46	-0.46

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