

OREGON DEPARTMENT OF STATE LANDS



# AQUATIC RESOURCE MANAGEMENT PROGRAM ANNUAL REPORT

**FISCAL YEAR 2021**  
*July 1, 2020 to June 30, 2021*



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## INTRODUCTION

Established by the Oregon Constitution in 1859, the State Land Board oversees the Common School Fund, which sends tens of millions every year to Oregon's K-12 public schools. The Land Board has been composed of the Governor, Secretary of State and State Treasurer throughout its history.

The Oregon Department of State Lands (Department) is the Land Board's administrative agency, carrying out the day-to-day work of managing Common School Fund lands and resources, and protecting wetlands and waters.

The Department's Aquatic Resources Management Program:

- ***Manages the waters dedicated to the Common School Fund at statehood.*** These waters include the submerged and submersible lands within the bed and banks of 12 Oregon rivers – 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. Submerged and submersible lands also include tidally influenced bays and estuaries along the Pacific Ocean, and the Territorial Sea (waters and seabed to three miles offshore the Pacific coastline). The Department oversees use of state-owned submerged and submersible land, managing applications and authorizations for waterway leases, easements, boat docks and boat house registrations, public facility licenses, sand and gravel operations, and special uses.
- ***Protects the state's waterways and wetlands through administration of Oregon's Removal-Fill Law.*** The Removal-Fill Law was enacted in 1967 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) 2021: July 1, 2021, through June 30, 2021.

# 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.

Since Statehood, other water bodies have been determined to be navigable, and therefore state-owned, through legislative, judicial, or administrative proceedings. These navigable waters include rivers, lakes, and tidally influenced waters. For further information, including lists of rivers and lakes that have been determined navigable, please visit the Department's [State-Owned Waterways](#) web page.

### Uses of a State-Owned Waterway

The people of Oregon own the state's submerged and submersible land; 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 boating, fishing, swimming, and any other legal activity.

The following uses of state-owned submerged and submersible lands typically require an authorization from the Department:

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

Authorization types include leases, licenses, easements, registrations, and short-term access agreements. Common authorizations and associated uses include:

- **Lease:** 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 and leases and easements for long-term environmental dredging or the placement of a sediment cap.

### STATE-OWNED WATERWAY AUTHORIZATIONS

The Department manages over 5,000 authorizations for a variety of uses, as defined above, on state-owned submerged and submersible land (Table 1). Prior to the COVID-19 pandemic, applications for use of state-owned submerged and submersible land were accepted only by mail. Electronic applications were not accepted, except for renewals for registration of waterway structures which has been available online since 2017. As the DSL Salem office was closed to the public for the duration of FY 2021, the Department began accepting applications and fees for all types of waterway authorizations electronically, while also continuing to accept applications by mail. The Department converted to electronic files for new and renewing authorizations during FY 2021, improving staff access to files and records. The Department continues to improve electronic application processes to enhance customer service and reduce processing times.

**Table 1. Active Waterway Authorizations by Type**

Authorization Type	As of June 30, 2021
Public Facility License Waterway (WW)	223
Easements WW	1,218
Registration of Waterway Structures	2,930
Waterway Lease	499
Sand & Gravel WW	16
Short Term Access Authorization	96
Special Use License/Permit	73
Special Use Lease	17
Temporary Use Permit WW	5
<b>Total</b>	<b>5,077</b>

New waterway authorizations are down from the previous fiscal year, but in line with the 5-year average (Table 2). Staff have diligently worked to ensure docks and other structures are authorized and in compliance with state requirements. Staff have also focused on pursuing easements for existing uses that never applied for or received authorization, as well as for new uses.

**Table 2. New Waterway Authorizations by Type**

Authorization Type	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	5-Year Total	5-Year Average
Public Facility License WW	2	2	3	1	1	9	2
Easements WW	27	32	20	19	16	114	23
Registration of Waterway Structures	27	13	82	44	15	181	36
Waterway Lease	3	4	6	3	2	18	4
Sand & Gravel WW	1	1	1	1	2	6	1
Short Term Access Authorization	30	34	37	38	42	181	36
Special Use License/Permit	2	0	17	19	13	51	10
Special Use Lease	1	0	0	2	0	3	1
Temporary Use Permit WW	0	0	0	0	0	0	0
<b>Totals</b>	<b>93</b>	<b>86</b>	<b>166</b>	<b>127</b>	<b>91</b>	<b>563</b>	<b>113</b>

Table 3 captures trends for renewal of waterway authorizations. Most notable is the high number of renewals for registration of waterway structures in FY 2021. The Department's online renewal process, implemented in FY 2017, allows the public to renew and pay for their registration with only a few clicks online. This has improved customer service and reduced Department processing time. The high number of renewals over the past several years continues to demonstrate the effectiveness of the online renewal process.

**Table 3. Renewed Waterway Authorizations by Type**

Authorization Type	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	5-Year Total	5-Year Average
Public Facility License WW	12	12	11	2	2	39	8
Easements WW	4	5	8	3	2	22	4
Registration of Waterway Structures	390	331	557	776	412	2,466	493
Waterway Lease	55	20	25	15	20	135	27
Sand & Gravel WW	7	1	2	4	0	14	3
Short Term Access Authorization	0	0	0	0	0	0	0
Special Use License/Permit	2	3	1	3	2	11	2
Special Use Lease	1	1	0	2	0	4	1
Temporary Use Permit WW	0	0	0	0	0	0	0
<b>Totals</b>	<b>471</b>	<b>373</b>	<b>604</b>	<b>805</b>	<b>438</b>	<b>2,691</b>	<b>538</b>

Revenue for FY 2021 is \$3.7 million (Table 4) with Easements and Waterway Leases continuing to provide the highest amount of revenue. Easement revenue fluctuates depending on the number of easements authorized and their associated land values, and the type of fees assessed. For example, in FY 2020 there was a spike in easement revenue, primarily from seven easements (\$933,000) in Multnomah County where land values are higher. Easement revenue in FY 2021 was still high relative to FY 2018 and

FY 2019 and included a fee for damages related to a Territorial Sea easement (\$250,000) and authorization of a cable easement in Portland (\$330,000).

Revenue from Sand and Gravel authorizations is primarily from royalty payments based on the volume of material extracted. Revenue from Sand and Gravel authorizations increased after an unusually low revenue year in FY 2020, which could reflect general trends of increased activity in construction and housing sectors.

A noteworthy increase in revenue for Short Term Access Authorizations is a result of increased environmental remediation and restoration activities proposed on state-owned lands. Though some types of authorizations for restoration projects do not have application fees, environmental remediation and restoration activities being conducted due to an Environmental Protection Agency (EPA) or Oregon Department of Environmental Quality (DEQ) order are subject to application fees.

**Table 4. Gross Waterway Revenue Received by the Department**

<b>Agency Object Type</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
Public Facility License	\$9,000	\$7,125	\$4,750	\$2,250
Easements-WW	\$177,300	\$718,136	\$1,323,103	\$868,134
Registration of Waterway Structures	\$119,590	\$204,320	\$235,078	\$170,345
Waterway Lease	\$2,182,514	\$2,070,827	\$2,747,035	\$2,248,251
Sand & Gravel WW	\$521,478	\$578,205	\$275,608	\$343,756
Short Term Access Authorization	\$1,000	\$1,625	\$2,750	\$11,250
Special Use License/Permit	\$0	\$6,080	\$8,194	\$9,790
Special Use Lease	\$74,058	\$23,094	\$45,224	\$51,140
<b>Totals (rounded)</b>	<b>\$3,084,940</b>	<b>\$3,609,412</b>	<b>\$4,641,742</b>	<b>\$3,704,917</b>

Table 5 forecasts waterway authorizations scheduled for renewal in the upcoming year.

**Table 5. Future Renewing Waterway Authorizations by Type**

<b>Authorization Type</b>	<b>FY 2022</b>
Public Facility License WW	7
Easements WW	6
Registration of Waterway Structures	455
Waterway Lease	33
Sand & Gravel WW	4
Short Term Access Authorization	27
Special Use License/Permit	7
Special Use Lease	1
Temporary Use Permit WW	0
<b>Total</b>	<b>540</b>

## **SUBMERGED LANDS ENHANCEMENT FUND**

The Submerged Lands Enhancement Fund makes grants available for projects that enhance, improve, or protect the banks of state-owned waterways. The Department did not fund any projects for FY 2021 due to the COVID-19 pandemic. Department staff heard from partners that field visits would be too difficult given non-essential travel restrictions, childcare obligations, and uncertain budgets. The Department intends to promote funding opportunities for the 2021-2023 biennium in the hopes that any necessary field work, contracting, and project planning by applicants is now possible and will allow for a competitive proposal solicitation.

## **ABANDONED AND DERELICT VESSELS AND LONG-TERM CAMPING**

The Department has witnessed an increase in the frequency of abandoned and derelict vessels and unauthorized long-term camping on state-owned lands in recent years, resulting in increased demand on Department resources. A limited duration Outreach and Compliance Coordinator position was added in July 2020 to work on these issues. In FY 2021, the coordinator worked with government and community partners on vessel removals and camp cleanups. Work is often completed through management agreements, which support the Department in managing state-owned lands experiencing heavy use. The Department spent \$97,967 on cleanup activities during FY 2021, including vessel removal and camp cleanups.

In the wake of the COVID-19 pandemic, complaints increased regarding camping on or adjacent to state-owned lands, leaving the Department with a difficult path forward to find solutions to situations involving the unhoused. The Department followed CDC guidance, which discourages the relocation of unhoused individuals to limit the transmission of COVID-19. However, the observed effects on state-owned lands from long-term camping has been significant. Major concerns include the accumulation of trash, debris, and human waste, the potentially devastating damage that can be caused by fires during the dry season, restriction or loss of public access, and illegal activities occurring at camps. To keep up with this growing social dilemma in the Portland metropolitan area, the Department has agreements with METRO Regional Government, Multnomah County Sheriff's Office, and the Oregon Parks and Recreation Department to continue our partner-based approach in finding a sustainable and compassionate path forward.

Public land is often the last space available to unhoused individuals. Enforcement options are limited due to a lack of local alternative housing options. Currently, the Department is unable to identify alternative spaces for houseless individuals; instead, the Department and its community partners have begun looking into alternative methods to manage the impacts of long-term camping on state-owned lands until alternative housing options are available and accessible. For example, the Department continues to work with an established houseless community at the Sandy River Delta near Portland where, after months of relationship building, residents are safeguarding against fires and bringing garbage to biweekly pickup locations facilitated by Metro Regional Government and the Multnomah County Sheriff's Office HOPE team. This

collaborative relationship has greatly reduced the impacts of long-term camping on public land and has been pivotal in the Department's management approach in this location. The Outreach and Compliance Coordinator regularly takes part in coordinated outreach efforts regarding resources and services, and site cleanups, at Sandy River Delta and other areas with houseless communities. Through these efforts, 61 tons of solid and hazardous waste were removed from state-owned lands in FY 2021 in the Portland Metro Area.

There has also been a noticeable increase in the use of abandoned and derelict vessels for shelter. The Department continues to work closely with the Oregon State Marine Board (OSMB) on vessel complaints and was successful in removing 16 vessels in FY 2021, 10 of them in coordination with the OSMB. Vessel removal projects can be time-consuming and take multiple site visits to coordinate due to rapidly changing circumstances, such as the location of the vessel and waterway conditions. To streamline the removal of vessels, the Department has entered into a price agreement with nine different marine contractors. The price agreement will allow the Department to request bids and approve work more quickly, resulting in a more efficient service procurement process and reducing the need for multiple site visits to assess site conditions. The Outreach and Compliance Coordinator has reconvened the Metro Abandoned and Derelict Vessel working group to bring together stakeholders in the area where abandoned and derelict vessels, and use of those vessels for shelter, is most prevalent. This is an open quarterly meeting that provides an opportunity for exchanging information with partners and interested parties, and working together toward solutions.

## **RULEMAKING**

### ***Rules Governing the Establishment of Restrictions on the Public Recreational Use of State-Owned Land***

Rulemaking efforts related to public recreational uses on state-owned land seek to protect against: (1) loss of, or damage to property; (2) loss of, or damage to natural resources and the environment; (3) degradation of water quality; and (4) loss of, or damage to riparian vegetation and wildlife habitat.

In August 2019, the Department implemented an emergency closure on the banks of the Columbia River between river miles 102 to 106 and 120 to 121, and along the Oregon Slough between river miles 0 to 2.5 to public recreational use, including campsites, on state-owned land. "Campsite" is defined as any place where any bedding, sleeping bag or other material used for bedding purposes, or any stove is placed, established, or maintained for the purpose of maintaining a temporary place to live, whether such a place incorporates the use of any tent, lean-to, shack, or any other structure. The Department initiated rulemaking to make this closure permanent at the October 2019 Land Board Meeting and held one Rules Advisory Committee (RAC) meeting on May 13, 2020. A public hearing regarding the potential closure was held on June 17, 2020, and had two people in attendance; no public testimony was provided. The State Land Board approved the closure at the August 2020 meeting; the effective

date for the permanent closure was September 21, 2020.

### ***Rules Governing Special Use Authorizations***

As part of the broader update to Division 125, Special Use Authorizations, the State Land Board approved the initiation of this rulemaking at the February 2021 meeting. The Special Use rules relating to communications facilities on state-owned land will be moved to Division 126 and updated to implement rate study results, create a structure and fees to address co-location of multiple communication services at a site, and incorporate industry best practices. A RAC is convening to assist with the rulemaking process and the rulemaking team has already engaged in Government-to-Government Consultation with the Klamath Tribes and met with the Confederated Tribes of Grand Ronde in May 2021.

### **AGREEMENTS FOR MANAGEMENT OF CERTAIN STATE LANDS**

The Department is currently party to the following agreements:

- Inter-Governmental Agreement (IGA) with the Multnomah County Sheriff's Office – Assistance with monitoring of state-owned waterways in Multnomah County, \$10,000 per biennium.
- IGA with Lane County Parks – Management of the North Jetty Property at the mouth of the Siuslaw River in Lane County, \$42,000 per Biennium.
- Memorandum of Agreement with Oregon Parks and Recreation Department (OPRD) – Management of State-owned property adjacent to Alfred A. Loeb State Park in Curry County on the Chetco River.
- Inter-Agency Agreement with 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 Recreation Site, \$27,621 per biennium.
- Memorandum of Understanding (MOU) with U.S Fish and Wildlife Service and Clatsop County – Communication, coordination, and compliance regarding the floating recreational cabins, houseboats, boathouses, docks, or floats located adjacent to lands within the Lewis and Clark National Wildlife Refuge.
- IGA with the Oregon Department of Fish and Wildlife – Management of state-owned lands within Sauvie Island in Multnomah and Columbia Counties.
- MOU with Human Access Project – Restoration and stewardship of DSL lands along the Willamette River.
- IGA with Metro Regional Government – Assistance with cleanup of illegal camps on state-owned lands in the Portland Metro area, \$10,000 per fiscal year.
- IGA with the City of Eugene – Assistance with cleanup of illegal camps on state-owned lands in the Eugene area, \$15,000 per fiscal year.
- MOU with Willamette Riverkeepers – Assistance with cleanup of illegal camps, as well as the restoration and stewardship of Department owned lands along the Willamette River.
- MOU with SOLVE – Assistance with cleanup of illegal camps.

## **PORTLAND HARBOR SUPERFUND SITE**

The Department continues to engage with public partners and other stakeholders on various aspects of the Portland Harbor Superfund Site on the Willamette River. During FY 2021 the Department engaged in the following activities:

- Processed applications for conducting sediment sampling on state-owned submerged and submersible lands and for other activities directly and indirectly related to response actions and cleanup on submerged and submersible lands.
- Coordinated with public agencies (including EPA, ODOT, DEQ, and the Oregon Health Authority), the Governor's Office, and others on issues associated with investigation, cleanup, and other issues.
- Refined and developed procedures, guidance, and other materials for authorizing remediation activities on state-owned lands, while planning for future outreach to stakeholders.
- Continued work to clarify the state's ownership boundaries within the Portland Harbor Superfund Site and supported Department of Justice work related to the non-judicial allocation of Portland Harbor response costs, including reviewing technical information and materials and researching and providing program information.
- Participated in public entity partnership efforts including the Portland Harbor Remedial Design Trust, Willamette Cove Remedial Design, an Institutional Control Implementation and Assurance Plan, an Information Management Plan, and the Portland Harbor Interim Database.
- Entered into a settlement agreement with the EPA as a funding source for the Swan Island Basin Remedial Design.

## SECTION 2: REMOVAL-FILL PROGRAM

### REMOVAL-FILL PERMITS

Oregon's Removal-Fill Law ([ORS 196.795-990](#)) requires people who plan to remove or fill material in wetlands or waterways to obtain a permit from the Department. This permit is broadly referred to as the "Removal-Fill Permit." The law applies to all landowners, whether private individuals or public agencies.

The purpose of the law, enacted in 1967, is to ensure protection and the best use of Oregon's water resources for home, commercial, wildlife habitat, public navigation, fishing and recreational uses.

In most cases, a permit is required if an activity will involve filling or removing 50 cubic yards or more of material in a wetland or waterway. For activities in state-designated Essential Salmonid Habitat, State Scenic Waterways and compensatory mitigation sites, a permit is required for any amount of removal or fill.

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. 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. Work must be limited to the minimum necessary to alleviate the threat.

Table 6 shows permit activity in FY 2021, with the Department seeing an increase for all permit types. The increased number of permits issued is somewhat surprising considering the tumultuous fiscal year, but seems to reflect active project development despite the pandemic. The trend of increased GA and GP authorizations continues from last year. Emergency Permits are unique in that they are generally driven by

weather events rather than the economy. Information about authorizations approved in state-designated Essential Salmonid Habitat (ESH) is provided separately in Table 6 as required by ORS 196.885.

**Table 6. Removal-Fill Authorizations by Type**

Authorization Type	Applications Received	Approved	Denied	Total Decisions	Approved in ESH (of total)
IP	193	377	0	377	145
GA	117	113	0	113	90
GP	51	87	0	87	19
EP	39	38	0	38	22
<b>Totals</b>	<b>400</b>	<b>615</b>	<b>0</b>	<b>615</b>	<b>276</b>

One GP of particular interest is the Bureau of Land Management/U.S. Forest Service general permit, which is issued by order and is represented in Table 6 as one authorization. However, this GP authorizes projects that fall within 11 aquatic restoration activities, with BLM and USFS required to provide DSL with notice of specific projects. In FY 2021 there were 59 projects constructed under that authorization, with 81 notifications of projects in the fiscal year.

### **ESSENTIAL SALMONID HABITAT (ESH)**

The Department’s essential salmonid habitat (ESH) requirements were established by the 1993 Legislative Assembly and fully implemented by the Department in 1996.

Oregon provides greater protection for streams that provide critical habitat for Chinook salmon, steelhead trout, and other sensitive, threatened, or endangered fish species. Projects that remove or add any volume of material in ESH streams typically require a Department of State Lands removal-fill permit; in most non-ESH waters, projects that remove less than 50 cubic yards of material do not require a removal-fill permit.

Using data provided by the Oregon Department of Fish and Wildlife, the Department creates the map that shows all ESH designations for Oregon’s waterways. Through rulemaking that became effective on May 14, 2021, the Department adopted the 2021 ESH map and created a process to update the map as often as yearly through a process that includes a public review and comment period.

Table 6 and Table 7 include the subset of permits issued for work in ESH waters.

### **AUTHORIZED VOLUMES OF REMOVAL AND FILL**

Table 7 shows total volumes (in cubic yards) of material permitted to be removed and filled in waterways and wetlands by authorization type. Figure 1 depicts the location of the authorized removal-fill activities. It is important to note the total volume authorized

each year will always be more than the actual volume removed or filled. Many 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 7. Removal-Fill Authorized Volumes (cubic yards) for FY 2021**

Auth Type	Total Removal Volume	Total Fill Volume	Removal Volume in ESH (of total)	Fill Volume in ESH (of total)	Removal Volume in Wetlands (of total)	Fill Volume in Wetlands (of total)
IP	15,817,414	3,568,383	654,479	752,856	12,689,438	1,089,030
GA	5,813	5,335	3,408	1,991	397	396
GP	394,168	111,161	338,698	66,217	11,560	21,897
EP	9,339	9,685	8,690	9,051	0	0
<b>Totals</b>	<b>16,226,733</b>	<b>3,694,563</b>	<b>1,005,275</b>	<b>830,115</b>	<b>12,701,394</b>	<b>1,111,322</b>

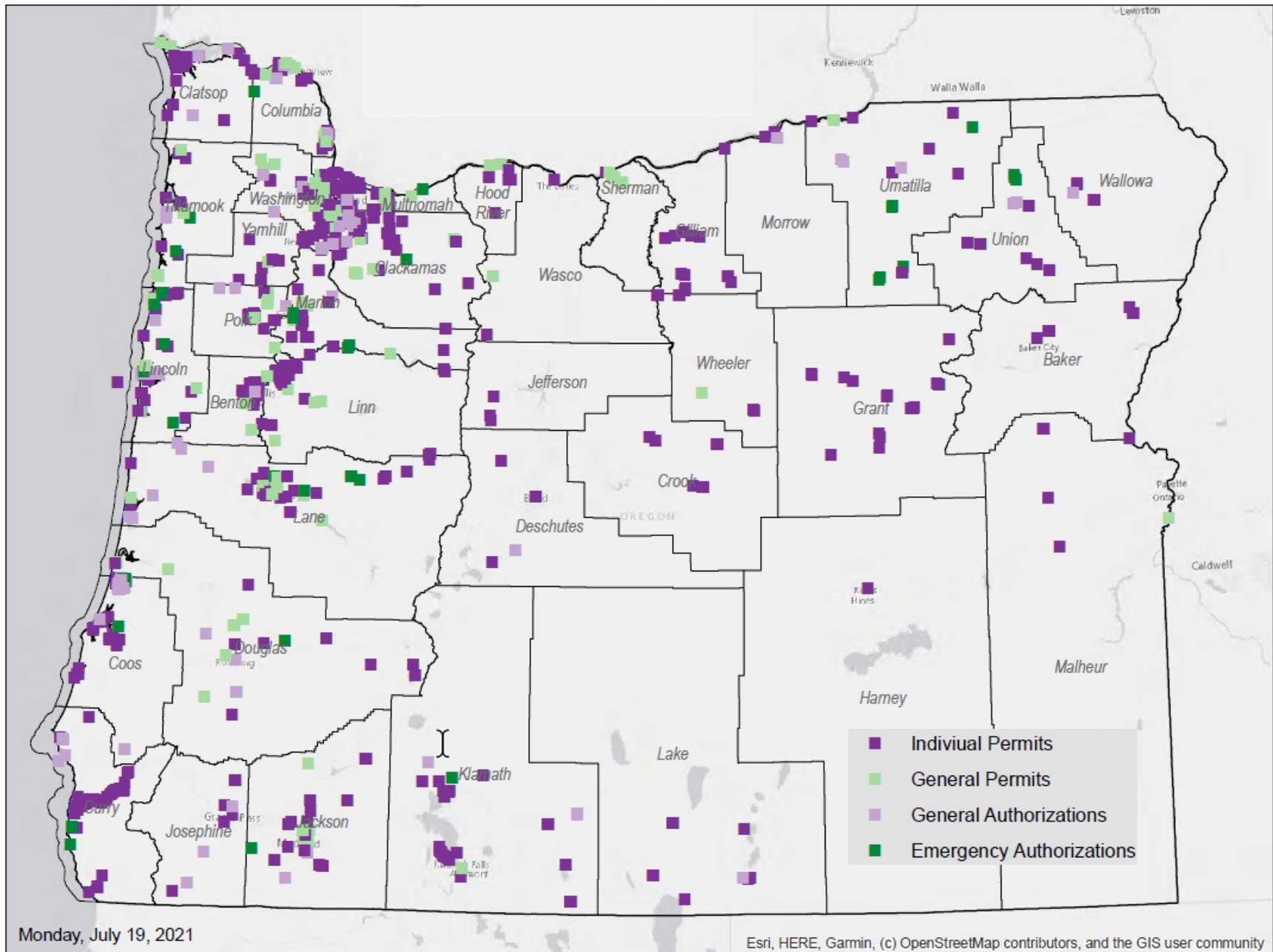
Table 8 shows the number of acres of wetlands authorized to be removed from the landscape or gained through creation or restoration. The net gain or loss of acres is a meaningful measurement for wetlands but is not useful for waterways. Wetlands can be removed from the landscape entirely, whereas streams can be improved or degraded, but they generally are not removed from the landscape.

The Department's goal is no net loss of wetlands – wetland acres gained through creation or restoration (including from mitigation banks) should equal wetland acres lost. In FY 2021 there was a net loss of 13.26 acres of wetland from authorized activities. Losses are compensated for in each removal-fill authorization and often include purchase of mitigation bank credits or payment to the Department through our in-lieu fee programs described in Section 3. Gains from mitigation banks and other Department-funded mitigation projects are recorded in the fiscal year that they are approved. No new banks or in-lieu funded projects were approved in FY 2021. Over the previous five years, wetland gains have outpaced authorized wetland losses mainly due to a few larger voluntary restoration projects and approval of new mitigation banks.

**Table 8. Authorized Gains and Losses in Wetlands for FY 2021**

Authorization Type	Wetland Acres Gained	Wetland Acres Lost	Net Wetland Acres
IP	132.05	157.72	-25.67
GA	15.00	0.02	14.98
GP	0.27	2.84	-2.57
EP	0.00	0.00	0.00
<b>Totals</b>	<b>147.32</b>	<b>160.58</b>	<b>-13.26</b>

Figure 1. Location of Authorized Removal-Fill Activities for FY 2021



## **NEW LEGISLATION AND LEGISLATIVE ACTIVITIES**

### ***Regulation of Undersea Cables***

House Bill 2603, enacted by the 2021 Legislative Assembly, requires owners or operators of undersea cables to obtain financial assurances for the installation and removal of cables placed in Oregon's Territorial Sea. Those responsible parties must also create a plan for removal of the cable after its use has concluded. These additional requirements will be implemented through the Department's proprietary authorizations under ORS 274.

This bill also directs the Department of Land Conservation and Development, in coordination with DSL, to conduct a study of the permitting and siting of undersea cables. Results of the study will be reported to the Ocean Policy Advisory Council, which will develop recommendations for amendments to Oregon's Territorial Sea Plan by September 25, 2023.

### ***Environmental Restoration Weirs***

House Bill 2298, enacted by the 2021 Legislative Assembly, directs the Department of Fish and Wildlife to administer a program for authorizing voluntary stream restoration projects and habitat improvement through construction of environmental restoration weirs in any closed basin.

The Department of Fish and Wildlife will adopt program rules for the covered restoration activities; these activities will no longer be regulated by DSL under Oregon's Removal-Fill Law.

### ***Claims Against Dissolved Business Entities***

House Bill 2377, enacted by the 2021 Legislative Assembly, allows claims against insurance assets of dissolved business entities, notwithstanding certain time limitations that otherwise would bar claims. This bill helps support the Department's efforts in the cleanup of the Portland Harbor Superfund Site by allowing a path forward to hold Potentially Responsible Parties (PRP) financially accountable if insurance policies existed, even if the specific business entity has dissolved.

### ***Agricultural Channel Maintenance***

House Bill 2437, enacted by the 2019 Legislative Assembly, directed the Department of State Lands, Oregon Department of Agriculture (ODA) and Oregon Department of Fish and Wildlife to work together to develop an ODA-led process for reviewing removal-fill activities in traditionally maintained agricultural drainage channels that are not designated Essential Salmonid Habitat and are seasonally dry. The agencies have continued work in FY 2021 to develop a memorandum of understanding, which should be completed in Fall 2021, to coordinate on various forms and processes, and to provide technical assistance as requested.

Since the passage of HB 2437, stakeholders identified additional clarification needed to support the intent and success of the newly established process. Several bills providing such clarification were enacted during the 2021 Regular Legislative Session:

- House Bill 2032 allows for the implementation of HB 2437 (2019) on a regional basis, which will allow for capacity building and adaptive management by ODA as the statewide program is implemented.
- House Bill 3185 clarifies the spreading of material from agricultural channel maintenance activities in undisturbed wetlands is prohibited. The Department may need to conduct rulemaking to further define “undisturbed wetland.”

### ***Partial 404 Assumption***

House Bill 2436, also enacted by the 2019 Legislative Assembly, directed the Department to develop recommendations, including proposed legislation for the 2020 Legislature, to proceed with partial assumption of the federal Clean Water Act 404 dredge and fill program currently administered by the U.S. Army Corp of Engineers (Corps).

Partial 404 assumption as envisioned by the 2019 Legislative Assembly would apply to “development activities” within urban growth boundaries, mining and activities associated with mining, and the creation of mitigation banks. Farming, ranching, and forestry activities are specifically excluded from the list of development activities included in the direction to explore partial 404 assumption (DSL would not assume authority and existing permitting processes would remain in effect for those activities).

DSL’s key accomplishments during FY 2021 and as of the writing of this report include the following:

- Continued collaboration with other state agencies, federal agencies, and Tribes with a role in implementing 404 assumption, including DEQ, Oregon Department of Land Conservation and Development, Oregon Department of Fish and Wildlife, Oregon Department of Geology and Mineral Industries, Corps, Oregon federally recognized Tribes; and the EPA.
- Continued communication with the DSL 404 Assumption Initiative Workgroup. The workgroup is comprised of over 100 members representing state, local and federal agencies, mining, private development, farmers, forestry, irrigators, wetland consultants and mitigation bankers, public utilities, public interest and conservation organizations, and Oregon tribes and tribal organizations.
- Updated the comprehensive 404 assumption webpage with all meeting notes, resources, references, and the GIS map of assumable waters in Oregon.
- Continued participation in a nationwide discussion on 404 assumption via the Association of State Wetland Managers monthly meetings.
- Presented nationwide webinars on 404 assumption via the Association of State Wetland Managers.

The EPA’s rules and policies regarding 404 assumption have not been finalized. It remains unknown whether partial 404 assumption as envisioned by the Oregon Legislature will be allowable. Due to uncertainty at the federal level, the Department was not able to make policy recommendations to the 2020 Oregon Legislature. The

Department did submit and present a report to the House Interim Committee on Agriculture and Land Use during December 2020 Legislative Days.

The report detailed the Department's efforts to explore partial 404 assumption, including working group feedback, and outlined issues that remain unresolved. The report included resources that would be required to continue the Department's 404 assumption efforts and to implement a proposed program.

No additional direction was given by the 2021 Legislative Assembly to support the continued efforts of partial 404 assumption.

## **WETLANDS RESOURCES AND ASSISTANCE FOR COMMUNITIES**

### ***Statewide Wetlands Inventory***

The Department is responsible for developing, maintaining, and distributing the Statewide Wetlands Inventory (SWI) as a tool to help communities identify and protect wetlands. The SWI currently includes the National Wetlands Inventory developed by the U.S. Fish and Wildlife Service, local wetlands inventories (LWIs) that cover many urban and urbanizing areas in Oregon, and other mapping that indicates potential locations of wetlands and other waters.

The Department has obtained and applied for additional EPA Wetland Program Development grants to add Department-approved wetland mapping to the SWI, including wetland delineations, determinations and compensatory mitigation sites.

Outreach for the initial release of the SWI update and web map began in 2018 and is ongoing. The Department's Aquatic Resource Planner gave two in-person trainings for multiple jurisdictions in FY 2021 in conjunction with LWI development trainings for individual cities.

### ***Local Wetlands Inventories***

Local wetland inventories (LWIs) have much more detailed and accurate mapping than the National Wetlands Inventory. LWIs are used by cities and counties for planning purposes and they provide more accurate wetland location information for the public, landowners, and developers. In FY 2021, the Department provided continued support and draft review for inventories in progress in Dallas, Grants Pass, Hillsboro, Springfield, and Tigard, and approved Pendleton's LWI. This fiscal year the Department also added 91 newly standardized and digitized LWIs to our web site for free download by planners, consultants, and the public; these will be added to the SWI in the future.

As part of achieving Oregon's land use planning goals, cities and counties identify wetlands of local significance in an LWI. DSL staff have been leading an effort to develop a new wetland functional assessment method for this purpose for several years with assistance from the Lane Council of Governments. The Department's Aquatic Resource Planner continues to work with Lane Council of Governments to finalize products for consultants and planners and determine how to best integrate the new

assessment method into state rule.

### **Outreach**

Outreach and presentations about the SWI, the process for counties and cities to notify the Department of potential development in or near wetlands (wetland land use notices), regulations, and participation in long-range wetland planning efforts is a significant part of the Aquatic Resource Planner's position.

Much of the outreach with county and city representatives in FY 2021 was related to general notices for local land use actions. In FY 2021 there were 945 general notices received from 29 counties, 36 cities and 9 other federal, state, and non-governmental organizations regarding proposed activities. Notices are reviewed for outreach about the wetland land use notice process and long-range planning recommendation opportunities, as well as by Real Property Program staff for potential concerns on state-owned property. *Please see page 23 for additional information about the wetland land use notification process and FY 2021 data.*

### **Wetland Conservation Plans and Advance Aquatic Resource Plans**

Wetland Conservation Plans (WCP) were developed as a method for local governments and communities to make long-range plans for development, mitigation and protection of wetlands identified on LWIs. WCPs 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) 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, then the removal-fill permitting process is streamlined as outlined in the plan.

Two AARPs have been approved. The first, for 19 selected industrial sites in Linn and Benton Counties, was sponsored by the Oregon Cascades West Consortium and approved in October 2015; the plan expired in April 2021. The Port of The Dalles sponsored an AARP for six industrial sites that was approved in July 2016 and expired in July 2021. Some of the participants within the Oregon Cascades West planning area have shown interest in updating and revising their plan for future reapplication for a new AARP.

## SECTION 3: PROGRAM REPORTING FOR THE REMOVAL-FILL LAW

### MONITORING

The Department monitors permits for compliance with the type of authorization issued and specific conditions described in the authorization. Monitoring includes focused study of certain authorizations to identify issues and adaptive management needs, and permit-specific monitoring as needed because of potential compliance issues or because they have mitigation requirements.

For FY 2021, staff focused on a statistically valid sampling for the six permit types identified in Table 9. The study was designed to establish a sample size sufficient to be 95% sure that the results are representative within a 5% margin of error. A statistically valid sampling was achieved for all target permit types except emergency permits. The most common reasons for noncompliance issues among the statistically valid sample were failure to construct the project as designed, failure to minimize impacts, failure to limit removal-fill impacts to authorized areas/volumes, and failure to rectify temporary impacts.

Compliance checks were also completed for specific permits for known compliance issues, complaint follow-up, and logistical efficiency with the statistically valid monitoring effort. A total of 157 compliance checks were completed, including 98 in the statistically valid sample.

**Table 9. Statistically Valid Permit Compliance Monitoring Results**

Authorization Type	Number Monitored	Compliant	Non-compliant
Individual Permits with Temporary Impacts	13	11 (85%)	2 (15%)
General Permit for Transportation Related Structures	46	40 (87%)	6 (13%)
General Permit for Minor Removal-Fill Impacts	6	5 (83%)	1 (17%)
General Authorization for Temporary Impacts to Non-Tidal Wetlands	5	2 (40%)	3 (60%)
General Authorization for Waterway Bank Stabilization	7	7 (100%)	0 (0%)
Emergency Permits	21	19 (90%)	2 (10%)
<b>TOTAL</b>	<b>98</b>	<b>84 (86%)</b>	<b>14 (14%)</b>

The Department monitors mitigation sites and impact sites that require restoration, both for permitted activities and violations. Due to the time needed to establish mitigation

sites and restore impact sites, including soil stability and plant development, there will always be numerous sites actively being monitored. Currently, the Department is actively monitoring 547 projects (Table 10). The Department's goal is to keep pace by closing as many files as are opened; however, this will vary from year to year depending on the number of permits or enforcements.

**Table 10. Mitigation Monitoring FY 2021**

Authorization Type	Active	Opened	Closed
Wetland	264	15	13
Stream	283	27	12
<b>Totals</b>	<b>547</b>	<b>42</b>	<b>25</b>

## ENFORCEMENT

When the Department becomes aware of potential noncompliance issues, the alleged violation is investigated to determine whether a violation has occurred. Table 11 shows the number of permit compliance checks and permitted and nonpermitted enforcements opened and closed. Also shown are the subset of those violations specifically occurring in ESH waters. Civil penalties may or may not be assessed or collected in the same year the violation occurred, so civil penalty amounts for a fiscal year are not directly related to the number of enforcement files. The total amount of civil penalties collected will also be affected by the scope of the violations and negotiations during resolution of the violations.

The Department opened 72 enforcement files during the reporting period. Of the almost 864 active permits, including those being monitored, only seven enforcements were opened for projects with a permit. This is likely due, at least in part, to the interaction, coordination, and education made possible through permitting and monitoring. The Department closed 61 enforcement files in FY 2021. 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 11. Compliance Checks, Enforcements, Civil Penalties and Final Orders**

	Number of compliance checks	Enforcement Files Opened	Enforcement Files Closed	Civil Penalties Assessed	Civil Penalties Collected	Final Orders
Permitted	249	7	6	\$5,000	\$6,000	2
Unpermitted Work	157	65	55	\$125,135	\$88,605	35
ESH Permitted	102	3	4	\$3,000	\$3,000	1
ESH Un-permitted Work	66	28	22	\$47,666	\$36,666	19

The BLM/USFS general permit, though only one permit, authorizes many restoration projects statewide. As a result, there are compliance checks unrepresented in Table 11. In FY 2021, staff reviewed five project reports for the BLM/USFS general permit and conducted three on-site project compliance checks.

**Contested Cases**

There were three contested cases requested in FY 2021 related to enforcements. Of these, one is being discussed with the attorney of the requestor, one enforcement was closed by the Department, and one request is still under review.

Four contested case hearings requested in previous fiscal years progressed during FY 2021. One request was withdrawn by the requestor, and one enforcement was settled before going to hearing. The other two requests were heard by the courts and were ruled in DSL’s favor. DSL has issued final orders for both these enforcements.

**WETLAND LAND USE NOTIFICATION PROCESS**

The wetland land use notification process was initiated in 1989 as part of the Oregon Wetlands Conservation Act. All counties and cities are required to notify the Department of certain development activities proposed in wetlands or waters that are mapped on the Statewide Wetlands Inventory. 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 is likely to require a removal-fill permit and/or a more precise wetland boundary location (wetland delineation). The objective of the notification process is to provide coordination between local (city or county) development approvals and state wetland regulations. Overall, the wetland land use notice process has proven to be an effective “early warning” mechanism for landowners and developers that a state permit may be required in addition to the local approval.

The Department continues to receive more notices each year. The increase can be attributed to the Department’s continuing outreach efforts to local government planners and a growing economy, despite slowdowns due to the COVID-19 pandemic. Table 12 shows the Department responded within 30 days for 1,098 notices but exceeded that time for 82 notices (7%) in FY 2021. The number of notices that took more than a 30-day response time doubled from last year, but the total number of notices increased by 46%. The Department continues to look for ways to increase efficiencies and reduce review times, including revisions to the notice form and automated distribution of notices to staff.

**Table 12. Department Response Time for Wetland Land Use Notices**

<b>Response Time</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
30 Days or Less	634	761	1098
More than 30 Days	121	43	82
<b>Totals</b>	<b>755</b>	<b>804</b>	<b>1180</b>

## JURISDICTIONAL DETERMINATIONS AND DELINEATION REPORT REVIEWS

The Department offers the public a determination of whether wetlands or other waters of the state may be present on a parcel of land and provides reviews of delineation reports. A determination, conducted by the Department without charge, identifies if wetlands or other waters of the state are present on a site and 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 delineation report). 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. The Department prepared 339 determinations and reviewed 318 delineation reports in FY 2021 (Table 13).

**Table 13. Jurisdictional Determinations and Delineation Report Reviews**

<b>Number of Reviews</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
Determination	320	317	339
Delineation	319	296	318
<b>Totals</b>	<b>639</b>	<b>613</b>	<b>657</b>

## COMPENSATORY MITIGATION

Oregon Administrative Rule 141-085-0006(3) defines compensatory mitigation as “*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 at the impact site or conduct mitigation nearby by either creating or restoring wetlands, enhancing degraded wetlands, or in certain limited cases, preserving high-value wetlands that are threatened. Some applicants have the option of purchasing wetland credits from a mitigation bank or an in-lieu fee project, or they may pay into the Department’s Removal-Fill Mitigation Fund. The Department promotes mitigation banking because it is ecologically valuable to consolidate mitigation and generally more efficient and cost effective to perform compensatory mitigation on a larger scale.

### ***Mitigation Banking***

There were 23 approved mitigation banks in Oregon in FY 2021. Table 14 shows the cumulative sales and balances of these mitigation banks as of June 30, 2021. During the fiscal year, 13 mitigation banks made 67 separate sales totaling 47.56 credits, with an average credit purchase size of 0.71 acre.

One of Oregon’s top-performing mitigation banks sold out in FY 2021. The Evergreen Bank near Philomath sold a total of 84.5 credits in 60 separate sales over a 15-year period. The nearby Mary’s River Bank, started last year by the same sponsor, is

expected to have similar ecological success and mitigation efficiency.

In addition to the wetland banks shown in Table 14, there are two mitigation banks that have non-wetland credit types. The City of Salem operates the Salem Stream Bank, which has stream credits. The bank has had 75% of its credits released and approved for sale, and 5% have been sold, but no sales occurred in FY 2021. There was also a new bank approved in FY 2021 named Linnton Mill, which is located at river mile 5 on the Willamette River. The project will provide credits beginning in FY 2022 for both the removal fill/Federal Clean Water Act 404 programs, in addition to Natural Resource Damage Assessment credits already approved by the Portland Harbor Natural Resource Trustee Council.

Five bank sponsors are currently working on new mitigation bank agreements that have yet to be approved.

**Table 14. Mitigation Bank Credit Sales and Balances as of June 30, 2021**

Mitigation Bank	County	Total possible credits	% of credit released	% sold to date (out of total possible)	Balance of credits remaining (out of total possible)
Butler	Washington	45.60	71	65	16.12
Claremont	Clatsop	11.62	58	55	5.19
Coyote Prairie North	Lane	78.68	91	91	7.14
Evergreen	Benton	84.52	100	100	0
Foster Creek	Clackamas	27.57	95	93	1.90
Garret Creek	Clackamas	15.49	81	56	6.74
Long Tom	Lane	61.14	100	83	10.59
Marion	Marion	34.09	79	88	4.10
Mary's River	Benton	71.41	34	20	57.31
Mid-Valley phase 2	Benton	4.73	90	90	0.49
Muddy Creek	Benton	60.33	88	82	10.78
Mud Slough phase 4	Polk	43.80	100	65	15.24
Oak Creek	Linn	38.98	58	58	16.40
ODOT Bobcat Marsh	Washington	5.26	100	53	2.46
ODOT Crooked River	Crook	5.32	90	30	3.75
ODOT Greenhill	Lane	8.11	60	14	6.97
ODOT Lost River	Klamath	13.41	80	32	9.1
ODOT Vernal Pool	Jackson	20.95	83	54	9.64
One Horse Slough	Linn	66.91	98	95	3.45
Rogue Valley Vernal Pool	Jackson	24.70	80	51	12.10

South Santiam	Linn	50.49	39	12	44.66
Tualatin Valley	Washington	31.13	75	75	7.77
Wilbur Estuary	Lane	44.12	75	6	41.28
<b>Total Wetland Credits</b>		<b>1,033.26</b>			<b>293.18</b>

***Mitigation Bank Program Compliance and Efficiency***

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

Department staff inspect each active mitigation bank annually to evaluate whether expectations have been met, to verify information in the monitoring reports, and to discuss and resolve emerging issues. Staff have also been working with bank sponsors and land trusts to promote the establishment of long-term stewardship plans to ensure the gains of wetland functions and values are sustained. Staff met with several Portland-area entities exploring the possibility of banking for multiple credit types, but none of those entities have yet submitted initial documents for agency review. Staff have also coordinated with the Corps to update and improve mitigation bank templates for more efficient preparation of new mitigation bank documents.

***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 Department to construct mitigation sites and compensate for lost functions and values. There are two DSL in-lieu fee programs available:

- The Payment In-Lieu (PIL) program allows payment for compensatory mitigation for small impacts (generally less than 0.2 acres) to waters of this state when other methods of providing compensatory wetland mitigation are not available or are inadequate. The Corps does not accept PIL mitigation for their federal 404 permits.
- The 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 in some areas, 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 “advanced” credits, but a project must be approved and meet performance requirements before credits are released and the mitigation obligation is fulfilled.

The Department's in-lieu programs provided 1.54 mitigation credits for 22 permit authorizations. Credits sales for PIL and ILF, and ILF credit sales and balances are shown in Table 15 and Table 16, respectively.

One project in the Umpqua Basin was partially funded through the Oregon Removal-Fill Mitigation Fund in FY 2021, with a payment from the fund of \$213,000. The Department is providing payments under a contract with North Douglas Betterment for development of mitigation credits at the proposed Yoncalla Creek Mitigation Bank. In exchange, the Department will receive credits to satisfy the Department's mitigation obligation in the area. This is the second of three payments; the final payment is expected in FY 2023. The Yoncalla Creek Mitigation Bank project has received construction permits from all regulating agencies, has started construction, and is working through the bank approval process.

The Department has ongoing projects funded in previous years for the areas shown in Table 16. Three of the advance service areas show a negative balance of credits remaining. The Clear Lake project has been constructed in the Lower Columbia area, but the Department has not yet requested a credit release because field visits to confirm gains were restricted by the landowner due to COVID-19. The Department is under contract to purchase credits from the Yoncalla Creek Mitigation Bank to satisfy credits sold in the Umpqua area, as described above. The Kilchis River Preserve has been constructed in the Wilson Trask Nestucca advance credit area and the Department is currently seeking final approval from the Corps.

**Table 15. Deposits into the Oregon Removal-Fill Mitigation Fund in FY 2021**

Number of Permits using the PIL Program	10
PIL \$ Totals	\$100,924.52
PIL Credits Sold	1.056
Number of Permits using the ILF Program	12
ILF \$ Totals	\$36,002.22
ILF Credits Sold	0.4875
Mitigation Fund Deposits \$ Total	\$136,926.74
<b>Total Mitigation Credits Sold</b>	<b>1.54</b>

**Table 16. In-Lieu Credit Sales and Balances as of June 30, 2021**

<b>Site Name</b>	<b>County</b>	<b>Credits Released</b>	<b>Cumulative Credits Sold</b>	<b>Balance of Credits Remaining</b>
Tamara Quays	Lincoln	2.16	1.81	0.34
Half Mile Lane	Washington	13.24	5.10	8.14
Pixieland	Lincoln	4.02	2.38	1.64
Lower Columbia advance credit area	Clatsop	0	3.38	-3.38
Umpqua Interior Foothills advance credit area	Douglas	0	7.52	-7.52
Wilson Trask Nestucca advance credit area	Tillamook	0	2.37	-2.37

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