

General Authorization for Fish Habitat Enhancement

141-089-0005

Standards for Review and Eligibility

(1) This rule sets forth conditions under which a person may, without an individual removal-fill permit from the Director, place or remove material within waters of this state for the purposes of fish habitat enhancement.

(2) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that fish habitat enhancement projects would not result in long-term harm to water resources of the State, would cause only minimal individual and cumulative environmental impacts, and are substantially similar in nature.

(3) To be eligible for the general authorization provided by this rule, a project must conform to the following specifications and Division of State Lands guidelines for fish habitat enhancement projects:

(a) Randomly placed rock. Boulders may be placed individually or in groupings according to *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999—or its replacement), a publication of the Oregon Plan for Salmon and Watersheds (available at http://www.oregon-plan.org/hab_guide/index.html).

(b) Deflectors. Deflectors are only authorized under this GA for use in adding structure and increasing habitat complexity. All material shall be placed using the lowest impact method of construction (i.e., from the bank or instream). Deflector logs must conform to guidelines set forth in *A Guide to Placing Large Wood in Streams*, Oregon Department of Forestry and Oregon Department of Fish and Wildlife (May 1995—or its replacement) (available at <http://www.odf.state.or.us/FP/RefLibrary/RefsList.htm>). The bed and the bank may be stabilized with nonstructural methods or riprap consistent with section (4)(h) of this rule not more than 15 feet upstream and downstream of the structure. Rock fill shall not exceed 50 cubic yards at each site.

(c) Rock and log weirs and full-spanning boulder weirs may be placed within the bed and banks only if they promote fish passage, prevent streambed degradation and/or recruit spawning gravel and do not require annual reconstruction. The weirs must incorporate a keystone rock or rocks that allow for juvenile fish passage at all flows. Keystone rocks are placed in a position that is lower in elevation than the adjacent rocks with a drop at low water that is not more than six (6) inches. Large woody material shall be stabilized as specified under section (3)(b). If necessary, the stream bank may be stabilized with nonstructural methods or toe rock less than bankfull elevation not more than 15 feet upstream and downstream of the structures. Any fill shall allow fish passage at all flows. Fills shall be of a size appropriate to the stream, as determined by the Oregon Department of Fish and Wildlife, but in no case shall they exceed 150 cubic yards per site.

(d) Gravel placement. Clean, river-run gravel suitable for spawning may be placed within the bed and banks either in conjunction with other structures or in isolated sites. The gravel being placed must come from within the same river

system. Total amount of river-run gravel placed shall not exceed 100 cubic yards per site.

(e) Pool and pond construction. Pools and ponds shall be designed to allow fish to escape during low water periods. Bed material may be removed to create instream pools and hydrologically connected off-channel ponds, so long as pool depth does not exceed natural maximum scour depth.

(f) Back/side channel construction. Gravel materials may be removed to create or clear side or back channels.

(g) Barrier removal and placement of fishways. Artificial barriers to fish passage may be removed and fish passage structures may be placed within the bed and banks of waters of the state. This includes culvert, tidegate or road replacement to allow fish passage. All culverts shall conform to *Oregon Department of Fish and Wildlife fish passage criteria (Road/Stream Crossing Restoration Guide (1999—or its replacement) available at <http://www.nwr.noaa.gov/1salmon/salmesa/4ddocs/orfishps.htm>)*.

(h) Woody material. Large woody material (the diameter of large wood is generally considered to be 10 inches or greater), including root wads and trees may be placed within the bed and banks according to *A Guide to Placing Large Wood in Streams*.

(4) This general authorization is valid only if the proposed activity complies with the following operating conditions:

(a) Fill or removal activity shall not adversely affect existing wetlands unless specifically authorized in writing by the Division of State Lands.

(b) Fill or removal activities shall not block channels or tributaries from existing or historical fish passage. Fill or removal activities shall not individually or cumulatively cause significant increase in floodwater height in a stream reach if such increase would cause an imminent threat to human developments.

(c) Fill and removal activities within State Scenic Waterways require approval from the Director and a finding that such activities would be consistent with the policies set forth under ORS 390.805 to 390.925 and OAR 141-100-0000 to 141-100-0090.

(d) The activity shall not jeopardize state or federal threatened or endangered species or their critical habitat, if applicable.

(e) The activity shall be conducted during the time period specified by the Oregon Department of Fish and Wildlife.

(f) Waste materials and spoils shall be placed above the bank line and not in any wetland, Federal Emergency Management Agency designated floodway, or area historically subject to landslides.

(g) Petroleum products, wet cement, chemicals or deleterious materials shall not be allowed to enter the water.

(h) Vegetation removal shall be limited to the minimum amount necessary for construction access and keying in of structures. Vegetation removal shall be accomplished by cutting close to the ground. Grubbing or digging is not a permitted method of vegetation removal. Any large wood produced from clearing shall be reserved for use in the stream or for other watershed or habitat enhancement projects.

(i) All disturbed areas shall be revegetated with local native plant species (i.e., grasses, shrubs and/or trees) unless otherwise approved by DSL.

(j) Projects shall not substantially interfere with or create a hazard to recreational navigation on those streams capable of use for that purpose. All structures shall be placed in a manner that does not increase the upland surface area. Structures shall be constructed using equipment operating outside the waterway or wetland unless otherwise approved by DSL.

(k) The stream shall not be diverted from the natural bed.

(l) The applicant shall obtain all necessary federal, state and local approvals before proceeding under this General Authorization; including compliance with the local comprehensive land use planning and zoning ordinances.

(5) An application for general authorization under this rule shall be submitted on an application form available from the Division and shall include the following information:

(a) Applicant name, address, phone number and project location;

(b) Description of the project sufficient to demonstrate compliance with the requirements of sections (3) and (4) of this rule;

(c) Oregon Department of Fish and Wildlife District Biologist signature and allowed work period;

(d) Vicinity map or aerial photograph indicating the location of the proposed work;

(e) Plan view of the proposed work, including the location of spoil disposal; and

(f) For projects that require spoil disposal or alcove or off-channel pond construction, a grading plan or cross-section showing the slope of the proposed work.

(6) The Division shall send copies of the application to the local planning department, the local Soil and Water Conservation District, Department of Land Conservation and Development (if the project is in the coastal zone), State Historic Preservation Office, Oregon Department of Environmental Quality, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. If the project is on a federally designated Wild and Scenic River, the Division shall send a copy to the appropriate U.S. Forest Service or Bureau of Land Management office.

(7) Within 15 working days of receipt by the Division of an application for a General Authorization, the Division shall notify the applicant and all agencies listed in OAR 141-089-0005(6) whether the proposed project qualifies for the general authorization under this rule. If the Division determines that the proposed project does not qualify for the general authorization under this rule, and so notifies the applicant, the applicant may submit an application for a removal or fill permit, as provided in ORS 196.800 through 196.990.

(8) The following are general conditions. Each project will be reviewed individually by the Division, and additional project-specific conditions based on their applicability to the project may be included by the Division in the letter of authorization.

(a) All necessary access permits or rights-of-way shall be obtained prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(b) Work shall be in compliance with local land use comprehensive planning, zoning requirements or other local, state, or federal regulations pertaining to the project. All necessary approvals and permits shall be obtained before proceeding under this authorization.

(c) The authorized work shall not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard.

All practicable measures to control erosion and meet the above turbidity standard shall be implemented. The following methods may be appropriate depending upon site characteristics.

- i. Prevent all construction waste products and debris from entering waterway;
- ii. Use filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures sufficient to prevent movement of soil;
- iii. Use impervious materials to cover stockpiles during rain event;
- iv. Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness;
- v. No heavy machinery is allowed in an unaltered wetland or other unaltered waterway unless authorized in writing by the Division; and
- vi. Planted areas shall be protected from disturbance and/or erosion.

(d) Violations of the terms and conditions of general authorizations are subject to administrative and/or legal action which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

(e) A copy of the authorization shall be available at the work site whenever authorized operations are being conducted.

(f) Employees of the Division of State Lands and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(g) The Division of State Lands makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and 390 and related administrative rules.

(h) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(i) If any archeological resources and/or artifacts are uncovered during excavation, all construction activity shall immediately cease, and the State Historic Preservation Office shall be contacted by the permit holder at (503) 378-4168, ext. 232.

(9) The Division may either waive the 15-day timeline set forth under subsection 7 above or require an individual permit for projects which would otherwise be authorized by this general authorization if the project would have more than minimal individual or cumulative environmental impacts.

(10) This general authorization shall be reviewed by the Division on or before January 1, 2003, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 – ORS 196.990 & ORS 390.805 – ORS 390.925

Hist.: LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1996, f. 6-13-96, cert. ef. 7-1-96; DSL 3-1999, f. & cert. ef. 3-9-99



Oregon

John A. Kitzhaber, M.D., Governor

Division of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 378-3805
FAX (503) 378-4844
<http://statelands.dsl.state.or.us>

April 16, 2002

JD02/25189
ELAINE STEWART
METRO-SMITH AND BYBEE LAKES WILDLIFE AREA
600 NE GRAND AVE
PORTLAND OR 97232-2736

RE: General Authorization for Fish Enhancement
DSL Application Number 25189-GA

State Land Board

John A. Kitzhaber
Governor

Bill Bradbury
Secretary of State

Randall Edwards
State Treasurer

Dear Ms. Stewart:

On March 12, 2002, the Division of State Lands received notification of fish habitat enhancement projects proposed for North Slough (tributary of Columbia Slough), located in Multnomah County. The Division has reviewed these projects against requirements of the General Authorization adopted as administrative rule OAR 141-89-005 (enclosed). The Division finds that the proposed work is within the conditions of the General Authorization. In-stream work shall be conducted between June 15 and September 15 unless otherwise coordinated with the Oregon Department of Fish and Wildlife and approved by DSL.

This authorization expires April 15, 2005. Please read the conditions of this authorization (141-89-005[4]) carefully. If you have any questions, please contact Krik Jarvie at extension 320.

Sincerely,

Lori Warner
Manager
Field Operations – Western Region

KJ:jed
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Enclosure

c: Dan Gresham, Corps of Engineers
Jim Grimes, Oregon Dept. of Fish and Wildlife
Tom Melville, Dept. of Environmental Quality
Multnomah County Planning Department
East & West Multnomah SWCD
Historic Preservation
US Fish and Wildlife
National Marine Fisheries Service