

April Zohn

From: April Zohn
Sent: Monday, August 08, 2016 2:30 PM
To: Jeff Merrill
Cc: Gus Williams; April Zohn
Subject: Smith-Bybee DSL Exemption Language

Hi Jeff,

Per previous emails with Melinda Butterfield at DSL, all work within Smith-Bybee is regulated under ORS 196.820, which prohibits placement of fill below 11 feet MSL unless the fill is "to enhance or maintain fish and wildlife habitat at or near Smith Lake or Bybee Lake." Although all of the work at the tide gates / fish ladder would occur within the footprint of the existing structure, a DSL Removal-Fill (R/F) permit would technically be required for all improvements that occur below the 11-foot contour line (e.g., placement of concrete in the fish ladder baffles).

That said, Melinda also noted that ORS 141-085-0530 allows a permit exemption for "fish passage and fish screening structures in "essential indigenous anadromous salmonid habitat (ESH)" if:

1. The work requires removal / placement of less than 50 CY of material
2. The work is for construction or maintenance of fish passage and screening structures

To use this exemption, an applicant is required to contact ODFW to determine if a fish plan is required, and to verify the structure complies with the fish passage statutes at ORS 509.580-509.910. Our ongoing coordination with Todd Alsbury at ODFW should meet this requirement.

We should verify with Gus after the design has been reviewed by ODFW and NMFS, but assuming we'd place less than 50 CY of material into the ladder, I believe our project meets the conditions for this exemption. DSL indicated there is nothing else we need to do to use this exemption. If, however, Metro would like verification from DSL that this exemption applies, we'd need to submit a complete permit application for their review.

I'll send a separate email specific to the Multnomah Channel South WCS exemption.

Thanks.
April

April Zohn
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(503) 310-2753 (cell)
azohn@ducks.org
www.ducks.org

April Zohn

From: Michelle Day - NOAA Federal <michelle.day@noaa.gov>
Sent: Friday, April 14, 2017 11:14 AM
To: April Zohn
Cc: Ed Meyer
Subject: NMFS review of Fish Passage - Smith-Bybee

Hi April,

NMFS has reviewed the plans for the Smith-Bybee WNA Fish Ladder Improvements and we don't see anything that would likely adversely affect fish passage. However, in the interest of fish safety, we would like them to include a 1 inch chamfer on the edges of concrete ramps they are putting in the ladder. This should reduce the possibility of injury if any fish slide over these edges.

Let me know if you have any questions,
-Michelle

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*Michelle Day
Fish Biologist
Washington Coast and Lower Columbia River Branch
Oregon/Washington Coastal Area Office
NOAA Fisheries West Coast Region
U.S. Department of Commerce
Office: 503-736-4734*

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DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OREGON 97208-2946

April 27, 2017

Regulatory Branch
Corps No. NWP-2002-175-2

Jonathan Soll
Metro
600 NE Grand
Portland, Oregon 97232
Jonathan.Soll@oregonmetro.gov

Dear Mr. Soll:

The U.S. Army Corps of Engineers (Corps) received your request for Department of the Army authorization to conduct maintenance and safety improvements at an existing water control structure. The project is located at the Smith-Bybee Wetlands Natural Area in a tributary to the Columbia Slough in Portland, Multnomah County, Oregon. The site is in Sections 31 and 36, Township 2 North, Range 1 East and 1 West. (Lat 45.61525 / Long -122.743518). This letter verifies your project as depicted on the enclosed drawings (Enclosure 1) is authorized by Nationwide Permit (NWP) No. 3, Maintenance (*Federal Register, January 6, 2017, Vol. 82, No. 4*) provided you obtain a 401 Water Quality Certification (WQC) decision from the Oregon Department of Environmental Quality (DEQ).

The work would include construction of a new walkway on top of the existing structure; replacing the existing tide gates and low water gate with sliding flap gates that can be manipulated using bevel and gear operators; modifying the fish baffles to reduce marine mammal stranding; and installing new trash racks on the outlet side of the structure. No work will occur outside of the foot print of the existing structure. Work will occur during the in-water work window for the Columbia Slough from June 15 to September 15.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed Nationwide Permit 3 Terms and Conditions (Enclosure 2); and the following special conditions:

- a. Upon starting the activities authorized in this permit/verification letter, Permittee shall notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch the work has started. Notification shall be provided by e-mail to cenwp.notify@usace.army.mil and the email subject line shall include: Corps project number and the projects county location. NWP-2002-175/2, Multnomah County. Refer to Regional Condition 1 (Enclosure 2).
- b. Permittee shall implement the Inadvertent Discovery Plan (Enclosure 3) and immediately notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch if human remains or cultural resources are discovered during the performance of the authorized work. We also draw your attention to Regional Condition 3.
- c. All in-water work within the Fairview Creek headwaters area shall be performed during the in-water work period of June 15 to September 15, to minimize impacts to aquatic species.

Exceptions to this time period require specific approval from the Corps and the National Marine Fisheries Service. Refer to Regional Condition 4 (Enclosure 2).

d. Permittee shall complete the enclosed "Compliance Certification" (Enclosure 4) and provide it to the Corps within 60 days of project completion.

The authorized work does not require 401 Water Quality Certification from the Oregon Department of Environmental Quality (DEQ). No further coordination with DEQ is required provided the work is performed in accordance with all of the enclosed conditions.

Please note, Portland District NWP Regional General Condition 3, Cultural Resources and Human Burials Inadvertent Discovery Plan, details procedures should an inadvertent discovery occur. You must ensure that you comply with this condition during the construction of your project.

We have determined the aquatic resources identified on the enclosed PJD form "may be" waters of the U.S. (Enclosure 5). The aquatic resources shown on the enclosed drawings are considered "potential jurisdictional waters" and the boundaries are approximate. These waters have been treated as jurisdictional waters of the U.S. for purposes of computation of impacts and compensatory mitigation requirements. Please see the enclosed PJD form for additional information on the applicability of a PJD. If you concur with the PJD, please sign and return the PJD form to either the letterhead address above or the email address below within 30 days of the date of this letter.

The enclosed PJD is advisory in nature and may not be appealed. However, you have the option to request an Approved Jurisdictional Determination (AJD). An AJD is an official determination regarding the presence or absence of waters of the U.S. and is an appealable action. The enclosed *Notification of Administrative Appeal Options and Process and Request for Appeal* form describes options regarding PJDs and AJDs (Enclosure 6). If an AJD is requested, please be aware that we may require the submittal of additional information to complete the AJD and work authorized in this letter may not occur until the AJD has been finalized.

The enclosed PJD finds there "may be" waters of the U.S. in the subject review area and the determination does not have an expiration date. However, the Corps may re-evaluate this determination at any time if new information warrants revisions.

The verification of this NWP is valid until March 18, 2022, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2022, you will have until March 18, 2023, to complete the activity under the enclosed terms and conditions of this NWP. If the work cannot be completed by March 18, 2023, you will need to obtain a new NWP verification or authorization by another type of Department of the Army permit.

Our verification of this NWP is based on the project description and construction methods provided in your permit application. If you propose changes to the project, you must submit revised plans to this office and receive our approval of the revisions prior to performing the work. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Compliance Certification* form (Enclosure 5). We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form at the following address: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

If you have any questions regarding this NWP verification, please contact Melody White at the letterhead address, by telephone at (503) 808-4385, or email Melody.J.White@usace.army.mil.

FOR THE COMMANDER, JOSE L. AGUILAR, COLONEL, CORPS OF ENGINEERS, DISTRICT
COMMANDER:



Digitally signed by
YBALLE.DOMINIC.P.1260129267
DN: c=US, o=U.S. Government,
ou=DoD, ou=PKI, ou=USA,
cn=YBALLE.DOMINIC.P.1260129267
Date: 2017.04.27 10:16:32 -07'00'

For Shawn H. Zinszer
Chief, Regulatory Branch

Enclosures

cc:

Oregon Department of State Lands (Butterfield)
Oregon Department of Environmental Quality (401applications@deq.state.or.us)
Ducks Unlimited, c/o April Zohn (Azohn@ducks.org)

PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

- A. REPORT COMPLETION DATE FOR PJD:** April 18, 2017
- B. NAME AND ADDRESS OF PERSON REQUESTING PJD:** Metro, Jonathan Soll,
600 NE Grand, Portland, Oregon 97232
- C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CENWP-OD-G, NWP-2002-175/2, Smith-Bybee Wetlands Natural Area – Water Control Structure and Fish Ladder Improvements
- D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:
(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AT DIFFERENT SITES)**
State: Oregon County: Multnomah City: Portland
Center coordinates of site (lat/long in degree decimal format):
Latitude: 45.61525 ° North, Longitude: 122.743518° West
Universal Transverse Mercator: (see Lat/Long above)
Name of nearest waterbody: Smith-Bybee Wetlands to Columbia Slough
- E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination. Date: April 18, 2017
- Field Determination. Date(s): *Date*

TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.

Site Number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimate amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
NWP-2012-175 Water Control Structure	45.61525	-122.743518	100-feet by 100-feet	non-wetland waters	Section 10 & 404

- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.

- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "may be" waters of the U.S. and/or that there "may be" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for PJD (check all that apply)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:
Map:
 - Data sheets prepared/submitted by or on behalf of the PJD requestor.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report. Rationale:
 - Data sheets prepared by the Corps:
 - Corps navigable waters' study:
 - U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data
 - USGS 8 and 12 digit HUC maps.
 - U.S. Geological Survey map(s). Cite scale & quad name:
 - Natural Resources Conservation Service Soil Survey. Citation:
 - National wetlands inventory map(s). Cite name:
 - State/local wetland inventory map(s):
 - FEMA/FIRM map(s):
 - 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
 - Photographs Aerial (Name & Date): Google Earth 4-18-2017
or Other (Name & Date):
 - Previous determination(s). File no. and date of response letter:
 - Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

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Y.J.1292348157

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WHITE.MELODY.J.1292348157
DN: c=US, o=U.S. Government,
ou=DoD, ou=PKI, ou=USA,
cn=WHITE.MELODY.J.1292348157
Date: 2017.04.18 14:57:58 -0700'

Signature and date of Regulatory
staff member completing PJD

April Zohn

Digitally signed by April Zohn
DN: cn=April Zohn, o=Ducks
Unlimited, Inc, ou,
email=azohn@ducks.org, c=US
Date: 2017.05.02 11:11:35 -0700'

Signature and date of person requesting
PJD (REQUIRED, unless
obtaining the signature is impracticable)¹

¹ Districts may establish timeframes for requester to return signed PJD forms. If the requester does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.



US Army Corps
of Engineers *
Portland District

Compliance Certification

1. **Permit Number:** NWP-2002-175-2
2. **Permittee Name:** Metro, Jonathan Soll
3. **County Location:** Multnomah Co.

Upon completing the activity authorized by the permit, please complete the sections below, sign and date this certification, and return it to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch. The certification can be submitted by email at cenwp.notify@usace.army.mil or by regular mail at the following address:

U.S. Army Corps of Engineers
CENWP-OD-GL
P.O. Box 2946
Portland, OR 97208-2946

4. **Corps-required Compensatory Mitigation (see permit special conditions):**
 - a. Mitigation Bank / In-lieu Fee Credit Transaction Documents:
 Not Applicable Submitted Enclosed
 - b. Permittee-responsible mitigation (e.g., construction and plantings) has been constructed (not including future monitoring). As-built report:
 Not Applicable Submitted Enclosed
5. **Endangered Species Act – Standard Local Operating Procedures (SLOPES)**
(see permit special conditions):
 - a. SLOPES Action Completion Report:
 Not Applicable Submitted Enclosed
 - b. SLOPES Fish Salvage Report:
 Not Applicable Submitted Enclosed
 - c. SLOPES Site Restoration / Compensatory Mitigation Report:
 Not Applicable Submitted Enclosed

I hereby certify the work authorized by the above-referenced permit has been completed in accordance with all of the permit terms and conditions.

Signature of Permittee

Date

April Zohn

From: Michelle Day - NOAA Federal <michelle.day@noaa.gov>
Sent: Friday, April 14, 2017 11:14 AM
To: April Zohn
Cc: Ed Meyer
Subject: NMFS review of Fish Passage - Smith-Bybee

Hi April,

NMFS has reviewed the plans for the Smith-Bybee WNA Fish Ladder Improvements and we don't see anything that would likely adversely affect fish passage. However, in the interest of fish safety, we would like them to include a 1 inch chamfer on the edges of concrete ramps they are putting in the ladder. This should reduce the possibility of injury if any fish slide over these edges.

Let me know if you have any questions,
-Michelle

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*Michelle Day
Fish Biologist
Washington Coast and Lower Columbia River Branch
Oregon/Washington Coastal Area Office
NOAA Fisheries West Coast Region
U.S. Department of Commerce
Office: 503-736-4734*



Oregon

Kate Brown, Governor

Department of Fish and Wildlife

North Willamette Watershed District

17330 SE Evelyn Street

Clackamas, OR 97015-9514

(971) 673-6000

(971) 673-6070

odfw.com

June 5, 2017

April Zohn
Environmental Compliance Specialist
Ducks Unlimited, Inc.
17700 SE Mill Plain Blvd, Suite 100
Vancouver, WA 98683



Re: Fish Passage Pan Review and Approval for the Smith-Bybee Water Control Structure

Dear Ms. Zohn,

Thank you for your patience as you waited for our review and concurrence on proposed modifications to the water control/fish passage structure at the Smith-Bybee Wetland Complex. We appreciate the opportunity to review the proposed designs provided by your engineer. We do not have any specific recommendations but do support the recommendation by Michelle Day at NMFS to chamfer the edges of the concrete ramps to reduce potential for injury of juvenile salmonids passing through the structure.

Please let us know how the project goes once it is complete by providing as-built drawings that we can include with the file on this project. If you have any questions or need assistance (in-water work extension, unusual finding during construction) as you are implementing your project, please contact me via phone or email.

Thank you!

Todd Alsbury
District Fish Biologist
North Willamette Watershed District

Cc: File
Fish Passage Program Staff-Salem

ODFW FISH PASSAGE APPROVAL
Smith-Bybee Wetlands Water Control/Fish Passage Structure
 • ODFW has used the following criteria to determine the level of review required.

For ODFW Use Only

	YES	NO	N/A
1. Is the bed within the crossing as wide as the active channel:.....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Is the bed within the culvert at the same slope, and at grades continuous with, the surrounding stream:.....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3a. If the crossing is open-bottomed, is there 3 feet of vertical clearance between the active channel width elevation and the inside top of the crossing:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
OR			
3b. If the crossing is closed-bottomed, will bed depth within the culvert be 20-50% of the crossing height:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Is the bed material that will be used sufficient to assure water depth will be similar to that in the surrounding stream (i.e., will not go sub-surface prematurely):	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Are the bed material or retention measures that will be used sufficient to assure that the bed will be maintained through time:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. If the crossing is longer than 40 feet, will partially-buried, over-sized rock be placed within the crossing's bed:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Will the bed within the crossing be placed during construction:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. If trash racks are present, are they above the active channel width elevation and do vertical bars have at least 9 inches of clear space between them:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. If there is an upstream pond, wetland, or backwater area, has its desired state after construction been determined, and have these considerations been addressed in the design:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Are upstream grade control measures satisfactory:.....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Are the construction timing and measures adequate based on the location:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Are there plans to maintain the crossing:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- If all answers are "Yes" or "Not Applicable", this plan is eligible for approval by an ODFW biologist.
- If any answer is "No" or there are other concerns, consult with the Fish Passage Coordinator.

APPLICATION IDENTIFIER: Duck's Unlimited/Metro	ODFW # NA
DATE RECEIVED: 2/3/17	
APPROVED <input checked="" type="checkbox"/>	SIGNATURE: _____ DATE: 6/5/17
DENIED <input type="checkbox"/>	TITLE: ODFW District Fish Biologist
CONDITIONS: NO SPECIFIC CONDITIONS NECESSARY	