

MEMORANDUM FOR RECORD

SUBJECT: Determination of Compliance with 404(b)(1) Guidelines conditions for the issuance of General permits for Permit Application Number NWP-2007-999/1 (U.S. Forest Service and Bureau of Land Management Aquatic Habitat Restoration, RGP-4)

DATE: April 6, 2015

A. The 404(b)(1) Guidelines at 40 CFR 230.7(a) state: "A General permit for a category of activities involving the discharge of dredged or fill material complies with the Guidelines if it meets the applicable restrictions on the discharge in [Section] 230.10 and if the permitting authority determines that:

- (1) The activities in such category are similar in nature and similar in their impact upon water quality and the aquatic environment;
- (2) The activities in such category will have only minimal adverse effects when performed separately; and
- (3) The activities in such category will have only minimal cumulative adverse effects on water quality and the aquatic environment."

B. Section 230.10 has three main requirements that must be met for all dredged or fill material discharge activities:

(1) No discharge shall be permitted if there is a practicable alternative that would have less impact on the aquatic ecosystem as long as the alternative does not have other significant adverse environmental consequences;

(2) No discharge shall be permitted that: (a) results in violations of state water quality standards, (b) violates toxic effluent standards, (c) jeopardizes the continued existence of species listed under the Endangered Species Act, or (d) violates the requirement to protect marine sanctuaries; and

(3) No discharge shall be permitted that results in significant degradation of waters of the U.S. Effects contributing to significant degradation include effects on municipal water supplies, special aquatic sites, life stages of aquatic life and other wildlife dependent on aquatic ecosystems, and effects on recreational, aesthetic, and economic values.

An evaluation of the prohibitions listed in 230.10(b) and the factors in 230.10(c) are addressed in Sections 10, 11, and 12 of the Department of the Army Environmental Assessment and Statement of Findings (EA/SOF) for the subject permit application. This evaluation is completed using the Project Design Criteria specified in Appendix II including fill/removal thresholds specified for each activity type. Project-specific proposals may not exceed these criteria to qualify for RGP-4. The Guidelines at 230.7(b)(1) indicates that a consideration of alternatives as required by 230.10(a) is not directly applicable to General permits; however, the Corps provides a discussion of alternatives considered in the development of this Regional General Permit in Section 9 of the EA/SOF.

C. The following is a discussion regarding the activities proposed for authorization under RGP-4 as required by 230.7(a):

(1) The activities in such category are similar in nature and similar in their impact upon water quality and the aquatic environment.

USFS/BLM are proposing to conduct 11 activity types within the overall habitat restoration category to cover the full range of restoration options and needs for the watersheds throughout the state of Oregon.

Impacts of one specific activity type may differ from another (e.g. the placement of wood has different impact considerations than culvert removal). To ensure impacts are minimal the Corps has identified a specific set of limitations and terms and conditions, and for each activity type. These criteria specify how individual actions are to be designed so that impacts are predictable, no matter where the action occurs, and result in no more than minimal individual and cumulative adverse effects on the aquatic environment.

The activities authorized by RGP-4 are sufficiently similar in nature and environmental impact to warrant authorization by a general permit. The terms of RGP-4 will authorize a specific category of activities (i.e., discharges of dredged or fill material for aquatic habitat restoration activities conducted on lands administered by the USFS/BLM) in a specific category of waters (i.e., waters of the United States). The limitation on the scopes of activities covered, and the restrictions imposed by the terms and conditions of this RGP will result in the authorization of activities that have similar impacts on the aquatic environment, namely aquatic habitat restoration activities.

(2) The activities in such category will have only minimal adverse effects when performed separately.

General aquatic conservation measures have been developed that will apply to all activity types to minimize adverse effects to the aquatic environment. In addition, each specific activity type has project design criteria, maximum removal/fill thresholds, and exclusions for project types that are known to be more complex, could potentially have greater adverse effects, or would be located in environmentally sensitive areas (e.g. estuaries). To further ensure minimal adverse effects, the RGP requires USFS/BLM to notify the Corps prior to project implementation through the submittal of a pre-construction notification (PCN). This PCN provides project-specific information that allows the Corps to verify the project is covered by the RGP and determine if further review is warranted.

If a situation arises in which a specific action requires further review, or is more appropriately reviewed under the individual permit process, provisions of this RGP allows the district engineer to take such action.

(3) The activities in such category will have only minimal cumulative adverse effects on water quality and the aquatic environment.

On a statewide basis, the USFS and BLM propose to conduct no more than 170 projects each year under the authorization of this RGP. With the restriction on issuance of a RGP for no more than five years [33 CFR 325.2(e)(2)], the upper limit of projects that could be implemented during the construction seasons of 2015 through 2019 is 850. The actual number of projects completed in any given year or during the five-year life of the RGP is, however, entirely subject

to funding and may be less than the upper limits stated above. During the construction period of 2009 through 2013 for example, only 690 projects statewide were authorized under the original RGP-4. Given that individual projects are (a) constructed in streams throughout the state, (b) are conducted in watersheds determined to have a priority need for aquatic restoration (based on Federal/State fish recovery plans, FS/BLM aquatic conservation strategies, a watershed's restoration potential, and other factors), (c) include conservation measures, project design criteria, and maximum fill/removal thresholds for all activities, and (d) will have an overall net environmental benefit, the Corps has determined the activities proposed to be authorized by RGP-4 will result in no more than minimal cumulative adverse effects to the aquatic environment. The Oregon Department of Environmental Quality has issued Water Quality Certification for RGP-4 (April 2, 2015) and determined that implementation of the project will be consistent with applicable provisions of the CWA, state water quality standards (OAR Chapter 340 Division 41), and other appropriate requirements of state law provided the water quality certification conditions are incorporated into RGP-4 and adhered to by the USFS/BLM.

If a situation arises in which a specific action requires further review, or is more appropriately reviewed under the individual permit process, provisions of the RGP allow the district engineer to take such action.

D. Conclusion: Based on the evaluation of the applicable restrictions on the discharge and the activities proposed for authorization under this General permit, as required by 40 CFR 230.7, the Corps has determined the reauthorization of RGP-4 complies with the 404(b)(1) Guidelines' conditions for the issuance of General permits.