

Department of the Army Permit
Regional General Permit
For
Bonneville Power Administration Funded Habitat Improvement Projects
Within the Columbia River Basin in Oregon

Permit No.: NWP-2011-00127

Effective Date: October 15, 2011

Expiration Date: October 15, 2016

Issuing Office: U.S. Army Corps of Engineers, Portland District, Regulatory Branch (Corps)

This regional general permit (RGP) authorizes project proponents who receive funding through the Bonneville Power Administration (BPA) to place fill material and certain structures in waters of the United States (subject to the terms and conditions herein) for the purpose of habitat improvement. This general permit is issued upon the recommendation of the Chief of Engineers as provided by 33 CFR 325.2(e)(2), pursuant to Section 404 of the Clean Water Act (P.L. 95-217) and Section 10 of the Rivers and Harbors Act of 1899.

Project proponents should contact the Corps if questions arise regarding compliance with any of the terms and conditions of this RGP. Project proponents should also contact the Corps if there are questions about whether a specific activity is exempt from regulation or is outside of the Corps' jurisdiction.

PROJECT LOCATION

Projects will occur within waters of the U.S., as defined in 33 CFR 328.3, in the Columbia River Basin in Oregon. This geographic scope encompasses the Columbia River estuary and mainstem, as well tributary watersheds.

PURPOSE OF RGP

The purpose of the RGP is to expedite the authorization of recurring activities that are similar in nature and have minor individual and cumulative adverse impacts on the aquatic environment. Use of the RGP is intended to reduce the amount of paperwork and time required to authorize qualifying

projects by referencing, where appropriate, environmental compliance work done by BPA. The RGP makes use of applicable programmatic Endangered Species Act and Essential Fish Habitat consultations, and is the subject of programmatic State water quality certification and coastal zone management consistency concurrence.

BACKGROUND

BPA's responsibilities for protecting, mitigating and enhancing fish and wildlife resources in the Columbia Basin are defined by a collection of laws, treaties and executive orders. The Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act, 16 U.S.C. Sec. 839 et seq.) requires that BPA use the Northwest Power Act and BPA's pre-Act legal authorities to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of the Columbia River Basin hydroelectric dams from which BPA markets power. Under the Northwest Power Act, the Northwest Power and Conservation Council (NWPPCC), which is a four-state compact entity (with representatives from Oregon, Washington, Idaho, and Montana), develops the Columbia Basin Fish and Wildlife Program (Program). Beginning in 1996, BPA began enlisting NWPPCC to periodically solicit projects intended to help meet BPA's share of the Program's measures and objectives through an open and public process. The NWPPCC is directed by the Northwest Power Act to conduct a review of submitted restoration project proposals and to make recommendations to BPA for project funding from BPA's annual fish and wildlife program budget. The NWPPCC accomplishes its review of the project proposals with the assistance of an Independent Scientific Review Panel (ISRP).

The NWPPCC must have the ISRP "review a sufficient number of projects to ensure that the list of prioritized projects recommended to BPA is consistent with the NWPPCC's program. The ISRP assesses whether projects are based on sound scientific principles, benefit fish and wildlife, and have a clearly defined objective and outcome with provisions for monitoring and evaluation of results. After its review, the ISRP rates each project as fundable, fundable in part, not fundable or requiring a further response, based on the panel's application of the criteria. The NWPPCC fully considers the ISRP's evaluation in making its final project recommendations to BPA.

Based largely on the NWPPCC's final recommendations, BPA makes funding decisions and implements projects through contracts with numerous entities, including Columbia Basin tribes, states, other federal agencies, universities, and private vendors. BPA also considers its other fish and wildlife obligations, such as those required by ESA and the Clean Water Act (CWA) in the decision making process. BPA funds and implements a wide array of protection, mitigation, and enhancement actions, including restoring habitat, improving fish passage, and acquiring land to protect habitat.

BPA RESPONSIBILITIES PERTINENT TO THIS RGP

Endangered Species Act Consultation. Pursuant to Section 7 of the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.), BPA is required to consult with National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) to ensure that actions it funds are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

Magnuson-Stevens Fishery Conservation and Management Act. BPA is required to consult with National Marine Fisheries Service (NMFS) on activities that may adversely affect essential fish habitat, under the Magnuson-Stevens Fishery Conservation and Management Act of 1996 (Public Law 104-267).

Cultural Resources/Tribal Coordination. Pursuant to its responsibilities under Section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470) and 36 CFR 800, BPA is required to consult with the appropriate Tribes and State Historic Preservation Office for projects that have the potential to cause effects on historic properties. BPA is the primary lead Federal agency for Section 106 consultation.

National Wild and Scenic Rivers Act. Pursuant to its responsibilities under the National Wild and Scenic Rivers Act (16 USC 1271 et seq.), the BPA will ensure that the project proponent has consulted with the appropriate federal agency responsible for management of the designated Wild and Scenic River to ensure that funded projects will not adversely affect the outstanding values for which the river or component was designated or considered.

Columbia River Gorge National Scenic Act. The Columbia River Gorge National Scenic Area Act of 1986 established the Columbia River Gorge National Scenic Area and established standards by which projects and developments proposed within the scenic area are reviewed and approved by. BPA is required to comply with those standards and must coordinate with the appropriate agency responsible for reviewing activities within the Gorge Scenic area.

ACTIVITIES AUTHORIZED BY RGP

This RGP authorizes project proponents to implement BPA funded habitat improvement projects that will be conducted within waters of the U.S. These activities, are subject to BPA, NWPCC, and ISRP review, and are designed to maintain, enhance, create, and/or restore watershed functions to benefit fish species, other aquatic organisms, water quality, riparian areas, floodplains, and wetlands.

The activities proposed for inclusion in the RGP are predictable as to their effects, and consistent with large scale conservation strategies and the best available science. The proposed activities are similar in nature and will not cause more than minimal individual and cumulative effects.

The habitat improvement categories are as follows:

1. Surveying, Construction, Operation, and Maintenance Activities
2. Planning and Habitat Protection Actions
3. Instream Habitat Actions
4. Livestock Impact Reduction
5. Irrigation and Water Delivery/Management Actions

A detailed description of the Project Categories and General Conservation Measures for the project categories included with the BPA RGP can be found in Attachment 1.

PROCEDURES FOR USE OF THIS RGP

Projects authorized by this RGP are categorized into one of four “levels” according to potential environmental consequences and the applicability of programmatic evaluations. Notification requirements and review timelines vary between the four project levels. Level 1 requires post-construction notification, while Levels 2, 3, and 4 require pre-construction notification. See Table 1 for summary.

Basic Information Requirements

Regardless of which level is used, the following information must be provided (via a permit application and an accompanying RGP notification form, Attachment 2) for all projects that utilize this RGP:

- **Contact Information:** Project proponent contact name, email address, mailing address, and phone number.
- **Project Location:**
 - Detailed vicinity map
 - Provide 5th and 6th field watershed, stream name, river mile, and county.
 - For specific project sites - provide Township/Range/Section, Quarter/Quarter and latitude and longitude (decimal degrees).
 - For linear projects - provide Township/Range/Section, Quarter/Quarter and latitude and longitude for start and end points.
- **Timing:** Actual start and completion dates.
- **Activity Type:** Activity categories that apply.
- **Project Description:** Brief narrative of the project and objectives, appropriate plan view and cross-section drawings, fill or removal volume estimates, acreage impacts, etc. Provide BPA project number, contract number, and work element.
- **Extent:** Number of stream miles or acres that were treated.

Level 1 Projects

Applicability: Level 1 is intended for projects that do not require review under related laws prior to the Corps issuing an authorization. To qualify for Level 1 Notification, a project must meet the general conservation measures and design criteria specified in Sections A and B of Attachment 1, in addition to **all** of the conditions listed below:

- Does not affect ESA species or designated critical habitat protected under the Endangered Species Act (ESA), Magnusson-Stevens Act (MSA), or the Marine Mammal Protection Act (MMPA); AND
- Does not affect reserved treaty rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights; AND
- Does not affect cultural and historic resources listed or eligible for listing in the National Register of Historic Places pursuant to the National Historic Preservation Act; AND
- Does not affect designated or nominated Wild and Scenic River corridors; AND
- Does not occur in a state's coastal zone; AND
- Has local land use approval; AND
- Meets conditions of the Water Quality Certification (WQC) issued by Oregon Department of Environmental Quality; AND
- Does not occur within an "area of interest" of the Environmental Protection Agency (EPA) (see <http://www.epa.gov/superfund/sites/query/queryhtm/nplfin.htm>); AND
- Does not impact more than 0.1 acres of wetlands nor 300 linear feet of stream; AND
- Does not cause conversion of a stream or natural wetland to another aquatic habitat type.

Notification Requirements: Within 60 days of completion of the work performed in waters of the U.S., the project proponent must submit a post-construction report of completed activities. In addition to the basic information requirements, the post-project completion report will include the following:

- Documentation of "no effect" for ESA, NHPA Section 106, and reserved treaty rights.

Level 2 Projects

Applicability: Level 2 is intended for projects that are within the scope of the BPA Habitat Improvement Program (HIP) Biological Opinion and which need no further approvals under related laws prior to the Corps issuing an authorization.

To qualify for Level 2 Notification, a project must meet the general conservation measures and design criteria specified in Sections A and B of Attachment 1, in addition to **all** of the conditions listed below:

- Impacts to ESA species and EFH are addressed through use of the current BPA HIP Biological Opinion¹; AND
- BPA has completed NHPA Section 106 review and consultation with SHPO and interested Tribes; AND
- Has coverage under an existing Section 7(a) written determination for effects to designated or nominated Wild and Scenic River corridors (if applicable); AND
- Has local land use approval; AND
- Meets the standard CZM conditions required by this RGP (if applicable); AND
- Meets conditions of applicable Water Quality Certification (WQC) issued by Oregon Department of Environmental Quality; AND
- Does not occur within an “area of interest” of the Environmental Protection Agency (EPA) (<http://www.epa.gov/superfund/sites/query/queryhtm/nplfin.htm>).

Notification Requirements: Project proponents must notify the Corps at least 45 days prior to the planned start of the project.

In addition to the basic information requirements, for Level 2 projects the project notification will include the following (project proponents should submit the RGP notification form as a supplement to the Joint Permit Application or other application forms):

- **Related Laws:** Brief narrative and supporting documentation to demonstrate compliance with the ESA, concurrence on NHPA Section 106, and other required determinations.
- **Documentation of ESA consultation, SHPO coordination, and Tribal coordination should be provided with the RGP notification form. The HIP notification form and any required NMFS concurrences should be provided with the RGP notification form.**

Corps Review Process: In addition to evaluating the project for consistency with this RGP, the Corps will review a Level 2 Notification to ensure adequate documentation of compliance with related laws, including but not limited to:

- The current BPA HIP Biological Opinion.
- A finalized resource specific NHPA Section 106 Concurrence; and/or coverage under a prior-submitted programmatic NHPA Section 106 Memorandum of Agreement (MOA) and/or Concurrence for effects to known listed or eligible for listing cultural and/or historic properties.
- If applicable, documentation of coordination/consultation with Treaty Tribes to ensure project will not impair reserved treaty rights.

¹ formal title: Endangered Species Act Section 7 Formal Programmatic Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Implementation of the Bonneville Power Administration Habitat Improvement Program in Oregon, Washington, and Idaho, CY 2007-CY 2012 (HIP II), January 10, 2008 or most recent version)

- If applicable, a project-specific non-conditioned Section 7(a) written determination for effects to a designated or nominated Wild and Scenic River corridor; or coverage under a prior-submitted, programmatic MOA/Section 7(a) written determination for effects to designated or nominated Wild and Scenic River corridors.
- If applicable, the standard CZM conditions required by this RGP.

Work in waters of the U.S. may proceed according to the terms of the RGP provided the Corps does not object to the proposed project within 45 days from the date the Corps receives the Level 2 Notification. The Corps may assert discretionary authority to determine if Level 2 Projects should be evaluated as Level 4 Projects.

Level 3 Projects

Applicability: Level 3 is intended for projects that are within the scope of a current programmatic consultation (other than BPA's HIP Biological Opinion or the Corps' SLOPES Biological Opinion) or are the subject of a completed or ongoing individual consultation, and which need no further approvals under related laws prior to the Corps issuing an authorization.

To qualify for Level 3 Notification, a project must meet the general conservation measures and design criteria specified in Sections A and B of Attachment 1, in addition to **all** of the conditions listed below:

- Impacts to ESA species and EFH are addressed through a current non-BPA/non-Corps programmatic consultation or are the subject of a completed individual consultation; AND
- BPA has completed NHPA Section 106 review and consultation with SHPO and interested Tribes; AND
- Has coverage under an existing Section 7(a) written determination for effects to designated or nominated Wild and Scenic River corridors (if applicable); AND
- Has local land use approval; AND
- Meets the standard CZM conditions required by this RGP (if applicable); AND
- Meets conditions of applicable Water Quality Certification (WQC) issued by Oregon Department of Environmental Quality; AND
- Does not occur within an "area of interest" of the Environmental Protection Agency (EPA) (<http://www.epa.gov/superfund/sites/query/queryhtm/nplfin.htm>).

Notification Requirements: Project proponents must notify the Corps at least 45 days prior to the planned start of the project. In addition to the basic information requirements, for Level 3 projects the project notification will include the following (project proponents should submit the RGP notification form as a supplement to the Joint Permit Application or other application forms):

- Proponents will provide documentation showing the applicability of an individual or programmatic Biological Opinion.

Corps Review Process: In addition to evaluating the project for consistency with this RGP, the Corps will review a Level 3 Notification to ensure adequate documentation of compliance with related laws, including but not limited to:

- Programmatic coverage established in existing Biological Opinions, including but not limited to the following Biological Opinions;
 - Programmatic Biological and Conference Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Restoration Actions Funded or Carried Out by the U.S. Fish and Wildlife Service in Oregon and Southwest Washington Using the Partners for Fish and Wildlife, Coastal, and Recovery Programs, October 21, 2009.
 - Intra-Service Programmatic Formal and Informal Section 7 Consultation and Conference for the Oregon Fish and Wildlife's Office Restoration and Recovery Programs, April 27, 2010, when U.S. Fish and Wildlife Service is the lead Federal Agency for ESA consultation.
 - Endangered Species Act – Section 7 Programmatic Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation Act Essential Fish Habitat for Fish Habitat Restoration Activities in Oregon and Washington CY2007-C2012 (FS-2008/03505, BLM-2008/03506, BIA-2008/03507), June 27, 2008, when the USFS, BLM or BIA are the lead Federal Agency for ESA consultation.
 - Biological Opinion and Letter of Concurrence, USDA Forest Service, USDI Bureau of Land Management, and the Coquille Indian Tribe for Programmatic Aquatic Habitat Restoration Activities in Oregon and Washington that affect ESA-listed Fish, Wildlife, and Plant Species and their Critical Habitat. (8330.F0055[07], TS Number 07-516, Tails Number 13420-2007-F-0055). June 14, 2007 when the USFS, BLM, or BIA are the lead Federal Agency for ESA consultation.
- Other review requirements will be the same as for Level 2 projects.

Work in waters of the U.S. may proceed according to the terms of the RGP and other relevant approvals provided the Corps does not object to the proposed project within 45 days from the date the Corps receives the Level 3 Notification. Any required individual ESA consultation must be complete before a project can be authorized under this RGP. The Corps may assert discretionary authority to determine if Level 3 Projects should be evaluated as Level 4 Projects.

Level 4 Projects:

Applicability: Level 4 is intended for projects that require a project-specific determination that environmental impacts are no more than minimal individually and cumulatively, or that have outstanding issues regarding related laws that must be addressed prior to the Corps issuing a

permit, or that require the Corps to serve as the lead Federal agency for ESA or Section 106 consultation.

Level 4 review is triggered if **ANY** one of the following apply:

- The project involves the removal, set back, or modification of an existing dike or levee; OR
- Impacts to ESA species and EFH are addressed through use of a programmatic consultation for which the Corps is the lead agency (e.g., SLOPES or equivalent); OR
- The project requires a variance to the general conservation measures or design criteria specified in Sections A and B of Attachment 1; OR
- BPA has not completed NHPA Section 106 consultation with SHPO and interested Tribes, or the Corps is the lead agency for NHPA Section 106 consultation; OR
- Affects a designated or nominated Wild and Scenic River corridors and does not have coverage under an existing Section 7(a) written determination; OR
- Does not have local land use approval(s); OR
- The project occurs in a state's coastal zone and does not meet the standard CZM conditions required by this RGP; OR
- The project is inconsistent with the applicable Section 401 Water Quality Certification associated with this RGP, or the project is not covered by an existing Section 401 Water Quality Certification; OR
- Occurs within an "area of interest" of the Environmental Protection Agency (EPA) (<http://www.epa.gov/superfund/sites/query/queryhtm/nplfin.htm>).

Notification Requirements: Project proponents will notify the Corps prior to commencing work in waters of the U.S. Work in waters of the U.S. and **shall not proceed until a Notice-to-Proceed written verification is obtained from the Corps.**

The project applicant must provide pre-construction notification to the Corps under a Level 4 Notification. In addition to the basic information requirements and submittal of the RGP notification form (as a supplement to the Joint Permit Application or other application forms), for Level 4 projects additional information may be required. The Corps will request this information from the project proponent after completing initial review of the RGP notification form.

Corps Review Process: As needed to assess impacts or ensure compliance with related laws, the Corps may request additional information which may include, but is not limited to:

- For projects which utilize the Corps' programmatic ESA consultations, the proponent will submit the appropriate documentation (SLOPES IV action notification form):
 - Standard Local Operating Procedures for Endangered Species to Administer Stream Restoration and Fish Passage Improvement Activities Authorized or Carried Out by the U.S. Army Corps of Engineers in Oregon (SLOPES IV Restoration), February 25, 2008.

- Programmatic Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Revisions to Standard Local Operating Procedures for Endangered Species to Administer Maintenance or Improvement of Road, Culvert, Bridge and Utility Line Actions Authorized or Carried out by the U.S. Army Corps of Engineers in Oregon (SLOPES IV Roads, Culverts, Bridges and Utility Lines), August 13, 2008.
- If the CZM terms and conditions of this RGP can't be met, the project must go through local and state agency planning review and project proponent must obtain local and state agency planning approval prior to project implementation.

Work in waters of the U.S. and **shall not proceed until a Notice-to-Proceed written verification is obtained from the Corps.** A Notice-to-Proceed may include additional project-specific special conditions.

ANNUAL REVIEW

The Corps will coordinate an annual review meeting with appropriate agencies to discuss the annual monitoring report and any compliance site visits conducted by the Corps or others to collectively determine if the objectives of this RGP are being met. The Corps will invite other federal and state agencies and representatives of Native American Tribes to participate in this review process.

GENERAL PERMIT CONDITIONS:

- A. **MAINTENANCE.** The project proponent must maintain individual projects authorized by this RGP in good condition and in conformance with the terms and conditions of this RGP. A project proponent is not relieved of this requirement if they abandon the individual projects, although they may make a good faith transfer to a third party in compliance with Condition (B), below.
- B. **PROPERTY TRANSFER.** If property owner sells properties associated with this RGP, the property owner must transfer the individual authorization(s) to the new owner(s) and forward evidence (i.e. written documentation of new owner accepting transferred authorization) to the Corps to validate the transfer of the authorization(s).
- C. **GENERAL CONSERVATION MEASURE, PROJECT DESCRIPTION AND DESIGN CRITERIA.** Project proponents shall ensure individual projects implemented under this RGP meet the requirements of the General Conservation Measures, Project Descriptions and Design Criteria, in Attachment 1. If terms and conditions identified in the programmatic biological opinions, or from an individual biological opinion are more restrictive, then the terms and conditions from the biological opinion shall take precedence.

- D. **WATER QUALITY CERTIFICATION.** The project proponent must comply with the applicable programmatic or individual Water Quality Certification conditions issued by Oregon Department of Environmental Quality (Attachment 3).
- E. **CONTAMINATED SITES.** Projects located within an “area of interest” of the EPA may not proceed until the Corps has issued a project-specific authorization (<http://www.epa.gov/superfund/sites/query/queryhtm/nplfin.htm>).
- F. **COASTAL ZONE CONSISTENCY.** The project proponent must comply with the conditions of the applicable programmatic or individual concurrence letter issued by Oregon Department of Land Conservation and Development, as appropriate (Attachment 4).
- G. **ENDANGERED SPECIES ACT COMPLIANCE.** No activity is authorized under this permit which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. Project proponents shall comply with the terms and conditions of the appropriate programmatic or individual biological opinion.
- H. **CULTURAL RESOURCES AND HISTORIC PROPERTIES.** BPA is the lead Federal agency for complying with federal cultural resources and historic preservation laws and regulations for the projects within the scope of this RGP, including the National Historic Preservation Act (NHPA). BPA will individually review projects to determine if activities may affect historic properties, including traditional cultural properties and properties registered or eligible for registration in the latest published version of the National Historic Register of Historic Places. No individual project shall proceed under the RGP until requirements under federal cultural resources and historic preservation laws and regulations are met. Project proponents must provide documentation to the Corps, as part of a complete pre or post construction notification, demonstrating that the appropriate tribes (see Attachment 5) and SHPO have evaluated the proposed project for impacts to cultural resources and that their concerns have been addressed.
- I. **TRIBAL RIGHTS.** BPA will individually review projects to determine if the activities may affect reserved treaty rights and will conduct the appropriate level of coordination/consultation with the Treaty Tribes. No activity or its operation may impair reserved tribal rights, including but not limited to, reserved water rights and treaty fishing and hunting rights. Where applicable, project proponents must provide documentation of coordination between BPA and interested Treaty Tribes as part of a complete pre or post construction notification.
- J. **INADVERTENT DISCOVERY.** Permittee shall immediately notify the Portland District Engineer if at any time during the course of the work authorized, human burials, cultural

items, or historic properties, as identified by the National Historic Preservation Act and Native American Graves and Repatriation Act, are discovered and/or may be affected. The permittee shall implement the following procedures:

- i. Immediately cease all ground disturbing activities.
- ii. Project Located in Oregon: Notify the Oregon State Historic Preservation Office (503-986-0674).
- iii. Project Located in Washington: Notify the Washington Department of Archaeology and Historic Preservation (360-586-3077).
- iv. Notify the Portland District Engineer. Notification shall be made by fax (503-808-4375) as soon as possible following discovery but in no case later than 24 hours. The fax shall clearly specify the purpose is to report a cultural resource discovery. Follow up the fax notification by contacting the Portland District Engineer representative (by email and telephone) identified in the verification letter.
- v. Failure to stop work immediately and until such time as the Portland District Engineer has coordinated with all appropriate agencies and Native American tribes, and complied with the provisions of 33 CFR 325 (Appendix C), the National Historic Preservation Act, Native American Graves and Repatriation Act, and other pertinent regulations could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.

K. WILD AND SCENIC RIVERS. If a BPA funded project impacts a designated or nominated Wild and Scenic River, the project proponent will coordinate with the Bureau of Land Management and/or the U.S. Forest Service to develop procedures and performance standards for the project that may affect designated or nominated Wild and Scenic River corridors. Performance Standards will be incorporated as conditions of the RGP for projects subject to the Wild and Scenic Rivers Act.

L. NAVIGATION.

- i. No activity may cause more than a minimal adverse affect on navigation.
- ii. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure of work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

M. COMPLIANCE INSPECTIONS. Compliance inspections may be conducted to ensure that work performed under this general permit is in compliance with its terms and conditions.

The District Engineer or his authorized representative will request permission from the property owner for access to the work site. A request for access will be specific enough as to the date and time of access, and opportunity will be provided for the property owner or representative to be onsite during inspection.

- N. **ACCURACY OF INFORMATION.** If any activity is authorized by this general permit based on false, incomplete, or inaccurate information provided by the applicant, the authorization shall not be valid and the Government may institute appropriate legal proceedings.

LIMITS OF THIS AUTHORIZATION

- a. This general permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
- b. This general permit does not grant any property rights or exclusive privileges.
- c. This general permit does not authorize any injury to the property or rights of others.
- d. This general permit does not authorize interference with any existing or proposed Federal project.

LIMITS OF FEDERAL LIABILITY

In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to any persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

REEVALUATION OF PERMIT DECISION

This general permit will be reviewed by the Corps within one year of its effective date to determine whether the projects authorized by this general permit result in no more than minimal effects, both individually and cumulatively, and to ensure that the terms and conditions of this permit are being met. The District Engineer will invite other interested Federal and state agencies and representatives of Native American Tribes to participate in this review. If this review concludes that changes in permit term or conditions are warranted, modification of the permit will be proposed as provided in 33 CFR 325.7, including public notice and opportunity for comment.

The District Engineer may reevaluate this general permit at any time, and, if appropriate, suspend, modify, or revoke this permit as provided 33 CFR 325.7. The District Engineer may also suspend, modify, or revoke authorization under this general permit for any specific geographic area, class of activities, or class of waters within the state of Oregon. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. Project proponent fails to comply with the terms and conditions of this RGP.
- b. The information provided by BPA and/or project proponent in support of the RGP application proves to have been false, incomplete, or inaccurate.
- c. Significant new circumstances or information becomes available relevant to environmental concerns and bearing on the proposed action which the Corps did not consider in reaching the original public interest decision.

Such reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.5. These procedures also apply to a third party.

Activities authorized under this general permit that are under construction or under contract for construction in reliance upon this authorization will remain authorized provide the activity is completed within 12 months of the date of this general permit's expiration, modification, or revocation, unless the District Engineer has exercised his discretionary authority to modify, suspend, or revoke the authorization of a specific project in accordance with Corps regulations.

EXPIRATION OF THIS AUTHORITY

This general permit will expire five years from the date on which it becomes effective, unless it is extended prior to that date.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:


John W. Eisenhauer, P.E.
Colonel, Corps of Engineers
District Commander

Date 12/11/11

General Conservation Measures and Habitat Improvement Activities involving Removal and Fill covered by this Army Corps of Engineers Regional General Permit (RGP)

A. General Conservation Measures and Practices: The measures described in this section apply to all Habitat Restoration Activity Categories listed in part B of this appendix.

General Conservation Measures Applicable to All Activity Categories.

All projects that fall under the habitat restoration categories will be guided by Conservation Measures, to help restore or enhance stream channel, riparian, wetland, and/or upland functions that would likely to occur under natural disturbance regimes. Conservation Measures are intended to minimize effects to the aquatic environment, and the following apply, when relevant, to all activity categories:

- a. Follow the appropriate Oregon Department of Fish and Wildlife (ODFW) guidelines for timing of in-water work. Exceptions to ODFW in-water work windows must be requested and granted in writing from the local ODFW fish biologist, National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), Department of State Lands (DSL) and the Corps as appropriate.
- b. All projects shall comply with the following requirement for fish passage:
 - Projects in Oregon must meet the most current ODFW fish passage criteria as described in OAR 635-412-0035
 - The most current NMFS fish passage criteria as described in NMFS Anadromous Salmonid Passage Facility Design Guidelines (NMFS 2007).
 - In cases where fish passage criteria differ, the most stringent requirement shall apply. Updated fish passage criteria shall supersede older versions.
- c. Construction impacts will be confined to the minimum area necessary to complete the project. Boundaries of clearing limits associated with site access and construction will be marked to avoid or minimize disturbance of riparian vegetation, wetlands, and other sensitive sites.
- d. All water intakes used for a project, including pumps used in work area isolation, will be screened according to NMFS fish screen criteria.

- e. Fish passage will be provided for all life stages of all species in the project area during construction, unless otherwise approved in writing by NMFS, ODFW, and/or USFWS, and will be maintained after construction for the life of the project. Upstream passage is not required during construction if it did not previously exist.
- f. All work areas below ordinary high water will be isolated from flowing waters, unless more impact would result from placement and removal of isolation structures. Methods of isolation include, but are not limited to: timing work at low water so as to effectively work in the dry; using silt curtains; and construction of cofferdams using water bladders, inflatable bags, geo blocks, sand or gravel bags with plastic lining, jersey barriers, sheet pilings, or similar materials. The applicant and its contractors are referred to Appendix D of DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005, for isolation techniques (<http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf>)
- g. For all work below ordinary high water where total isolation from flowing water is not possible, all practicable turbidity control measures will be implemented. Turbidity will be monitored visually every 4 hours during work in daylight hours, by comparing a reference of background levels observed approximately 100 feet upcurrent from the disturbance against a compliance observation taken approximately 100 feet downcurrent from the disturbance. Any visible plume will be noted and additional management measures (e.g., silt containment curtains, slowing of excavation equipment, stopping of work) will be applied to reduce turbidity increases caused by the project. If background levels are maintained or restored using management measures, work will continue. If background levels cannot be restored using management measures, work will stop until the next daylight period when background levels have naturally resumed. A log of the monitoring which includes date, time, location and narrative of background and compliance point observations and management measures applied, will be made available to the Corps upon request.
- h. The applicant will develop and implement a Pollution and Erosion Control Plan (PECP) for each authorized project. PECPs will include methods and measures to minimize erosion and sedimentation associated with all aspects of the project, including staging areas, stockpiles and access roads; to prevent and control hazardous material spills; and methods to prevent construction debris from dropping or otherwise entering any stream or waterbody. When an acre or more is disturbed, the PECP will be used to obtain a

National Pollutant Discharge Elimination System (NPDES) 1200-C permit from DEQ (see: <http://www.deq.state.or.us/wq/stormwater/construction.htm>).

- i. During construction, erosion controls and streams must be monitored daily during the rainy season and weekly during the dry season as necessary to ensure controls are properly functioning. If monitoring or inspection determines that the erosion controls are ineffective, repairs, replacements or the installation of additional measures will be completed. Proper maintenance includes removal of sediment and debris from erosion controls such as silt fences or haybales, once it has reached one-third of the exposed height of the control.
- j. All discharge water created by construction will be treated prior to discharge to waters as follows: (1) Design, build and maintain facilities to collect all construction discharge water and apply the best technology available, applicable to site conditions, to remove debris, sediment, petroleum products, metals, nutrients, and other pollutants; (2) Construction water discharge will not exceed 4 cubic feet per second when released through any aperture to a waterway and will be controlled to avoid erosion when released to land; (3) Do not release construction discharge water within 300 feet upstream of spawning areas or areas with submerged estuarine vegetation; (4) Do not allow pollutants including green concrete, contaminated water, silt, welding slag, or sandblasting abrasive to contact any wetland, stream or the 2-year floodplain.
- k. Project will not use treated wood that may contact flowing water or wetlands or that will be placed over water or wetlands and includes wood products treated with alkaline copper quartnary, ammoniacal copper arsenate, ammoniacal copper zinc arsenate, copper naphthenate, chromate copper arsenate, pentachlorophenol, or creosote.
- l. Use of heavy equipment will be restricted as follows: (1) Equipment selected must have the least adverse effect on the environment; (2) ensure that only enough supplies and equipment to complete a specific job will be stored on site; (3) complete vehicle staging, cleaning, maintenance, refueling, and fuel storage, in a vehicle staging area placed at least 150 feet from any stream, waterbody, or wetland, unless otherwise approved in writing by the Corps; (4) Diaper all equipment operating within 150 feet of any stream, waterbody, or wetland to prevent leaks, unless suitable containment is provided to prevent potential spills from entering any stream or waterbody.

- m. If adult or juvenile fish are reasonably certain to be present, or if the work area is less than 300 feet upstream of spawning habitats, the work area will be completely isolated from the active flowing stream and any captured fish will be released at a safe release site. Qualified staff will attempt to capture and release fish from the isolated area using trapping, seining, electro-fishing, or other methods that are prudent to minimize risk of injury. All fish capture must follow NMFS, ODFW, and USFWS electrofishing guidelines.
- n. Any large wood, native vegetation, topsoil, and native channel materials displaced by construction will be stockpiled for use during site restoration. When construction is finished, all streambanks, soils, and vegetation will be cleaned up and restored as necessary to renew ecosystem processes that form and maintain productive fish habitats. Fencing will be installed as necessary to prevent access to revegetated sites by livestock or unauthorized persons.
- o. Temporary access roads must be constructed according to the following: (1) Do not build temporary roads mid-slope or on slopes steeper than 30%; (2) Walk low-impact, tracked drills to a survey site without the need for an access road. Minimize soil disturbance and compaction for other types of access whenever a new temporary road is necessary within 150 feet of a stream, waterbody, or wetland by clearing vegetation to ground level and placing clean gravel over geotextile fabric, unless otherwise approved by the Corps.
- p. The following are required for all temporary stream crossings: (1) Do not allow equipment in the flowing water portion of the stream channel where equipment activity could release mechanical fluids or sediment downstream; (2) cross only at designated, prepared stream crossings; (3) minimize the number of temporary stream crossings; (4) survey and map any potential spawning habitat to avoid designating a temporary crossing within 300 feet up-current of known or suspected spawning habitat; (5) designate crossings with the shortest length possible and with the most perpendicular orientation to the stream as possible; (6) designate crossings at areas with stable banks and the least vegetation disturbance possible; (7) supplement designated crossings with clean gravel or other materials with lower impact; (8) when the project is completed, remove materials placed for crossings to the extent with least impact, obliterate all temporary access roads, stabilize the soil, and revegetate the site.
- q. If any streambank or riparian vegetation is removed, the finished bank will be stabilized and replanted. Vegetation will be established or other stabilization measures will be in place prior to onset of the rainy season or high water flows.

B. Project Description and Design Criteria of the Five Habitat Restoration Activities

1. Surveying, Construction, Operation, and Maintenance Activities

Description – Many of the proposed projects to be covered under this RGP are likely to involve one or more of the following activities:

- onsite activities before site alteration may include surveying, minor vegetation clearing, placement of stakes and flagging guides, minor movements of machines and personnel over the action area;
- construction of temporary access roads, depending on the scope of the action, may even entail subgrade stabilization base course construction, aggregate production, and other activities listed;
- establishment of construction staging area occurs when actions require heavy equipment; that equipment is delivered to the site, fueled, maintained and stored in temporary facilities when not in use;
- materials storage applies to soil, rocks or other materials that may be hauled to and stored at the action site;
- site preparation involves removal of surface vegetation and major root system, construction can also involve the discharge of water for actions such as concrete washout, pumping for work area isolation, and washing vehicles;
- earthwork means use of heavy machinery to move natural soils from one location to another by excavating, filling, or compacting;
- site restoration and cleanup involves protection of bare earth by seeding, planting, mulching, and fertilizing;
- ongoing operation and maintenance of facilities is required for most projects.

2. Planning and Habitat Protection Actions – Survey Stream Channels, Floodplains, and Uplands; Install Stream Monitoring Devices such as Streamflow and Temperature Monitors; Protect Streambanks Using Bioengineering Methods.

Description – The BPA proposes to fund habitat and animal inventories in uplands, floodplains, and streambeds and to install monitoring equipment. Electro-shocking of fish for research purposes is not included, as this work is covered through an ESA Section 10 research permit. Work covered under this activity category may entail use of trucks, survey equipment, and crews using hand tools, and includes the following activities:

- measuring/assessing and recording physical measurements by visual estimates or with survey instruments;
- manually installing rebar or other markers along transects or at reference points;
- manually installing piezometers and staff gauges to assess hydrologic conditions;

- manually installing recording devices for streamflow and temperature;
- locating and measuring physical features associated with structures on watercourses, such as culverts, bridges, gauges, and dams;
- visually locating and recording fish presence, redds, or carcasses in support of carrying out other restorations activities described in this RGP;
- conducting snorkel surveys to determine species of fish in streams and observing interactions of fish with their habitats in support of carrying out other restorations activities described in this RGP;
- conducting habitat evaluation procedures, making observations, and walking transects for wildlife habitat assessment;
- visually locating, identifying, and recording plant presence, frequency, and condition;
- excavating cultural resource test pits using hand shovel only;
- inventorying roads for general condition, needed work, and sediment sources.

All actions proposed for streambank protection must provide the greatest degree of natural stream and floodplain function achievable through application of an integrated, ecological approach. The following bank protection techniques are proposed for use either individually or in combination:

- Woody plantings and variations (*e.g.*, live stakes, brush layering, fascines, brush mattresses);
- Non-invasive herbaceous cover, where analysis of available records (*e.g.*, historical accounts and photographs) shows that trees or shrubs did not exist on the site within historic times; primarily for use on small streams or adjacent wetlands;
- deformable soil reinforcement, consisting of soil layers or lifts strengthened with fabric and vegetation that are mobile (“deformable”) at approximately two- to five-year recurrence flows. Projects using deformable soil reinforcements must meet the following criteria: must be bio-degradable, break down within 10-15 years, and penetrable by plant roots;
- coir logs (long bundles of coconut fiber), straw bales and straw logs used individually or in stacks to trap sediment and provide a growth medium for riparian plants;
- bank reshaping and slope grading, in isolation from the wetted channel, when used to reduce a bank slope angle without changing the location of its toe, to increase roughness and cross-section, and to provide more favorable planting surfaces;
- tree and large wood rows, live siltation fences, brush traverses, brush rows and live brush sills in floodplains, used to reduce the likelihood of avulsion in areas where natural floodplain roughness is poorly developed or has been reduced; and
- floodplain flow spreaders, consisting of one or more rows of trees and accumulated debris used to spread flow across the floodplain.

Attachment 1: General Conservation Measures, Project Descriptions, and Design Criteria

Design Criteria - In addition to the General Conservation Measures, the following applicable design criteria and additional measures must be implemented with this activity:

- a. Except for escapement (redd) surveys, no in-water work will occur within 300 feet of spawning areas during anadromous fish spawning and incubation times.
- b. Hydraulic and topographic measurement within the wetted channel may be completed anytime except during the spawning period, unless a natural resource specialist with experience in fish handling verifies that no redds are occupied within 300 feet downstream from the measurement site.
- c. Workers will avoid redds and listed spawning fish while walking within or near stream channels to the extent possible. Avoidance will be accomplished by examining pool tailouts and low-gradient riffles for clean gravel and characteristic shapes and flows prior to walking or snorkeling through these areas.
- d. If redds or listed spawning fish are observed at any time, workers will step out of the channel and walk around the habitat unit on the bank at a distance from the active channel.
- e. Surveyors will coordinate with other local agencies to prevent redundant surveys.
- f. Excavated material from cultural resource test pits will be stockpiled in isolation from stream channels. All material will be replaced back into test pits and stabilized as needed when testing is completed.
- g. Multiple stream sites will be used for field trips to minimize effects on any given stream or riparian buffer area.

The following additional design criteria and measures must be implemented for streambank protection:

- a. Use of Large Wood and Rock. Whenever possible, large wood will be used as an integral component of all streambank protection treatments.
- b. Large wood will be intact, hard, and undecayed to partly decaying with untrimmed root wads to provide functional refugia habitat for fish. Use of decayed or fragmented wood found lying on the ground or partially underground is not acceptable.

- c. The use of rock, stone and similar materials will be avoided or minimized. When rock is necessary where it will contact water at the stream edges, all reasonable efforts will be made to incorporate vegetation or other means for shading rock and the stream edge.
- d. If ballasting and anchoring of large wood is necessary for structural stability, the following anchor techniques can be implemented in the following preferential order: (1) natural stability points within the stream, including but not limited to mature riparian trees, meander bends, and natural channel constrictions; (2) vertical piles using large wood; (3) gravel and/or rock ballast; (4) rebar pinning; and (5) biodegradable rope. The use of cable is not permitted under this RGP. Rock may also be used to prevent scouring or downcutting in a project area, including use for rock barbs, vanes and weirs when used in conjunction with large wood in the project

3. Instream Habitat Actions

Description –

Install Habitat –Forming Natural Material Instream Structures (Large Wood, Boulders, and Gravel).

Instream Habitat Actions in waters of the United States must result in net increases in aquatic resource functions and services. These types of activities include:

- The placement of large wood in stream channels. These structures include engineered log jams and other cover structures designed with large wood and/or boulder materials. Structure placement activities will be limited to areas where structures are, or would be, naturally present. Placement design may include structure types that are designed to lower a stream's width-to-depth ratio while providing habitat and migratory corridors capable of connecting existing habitats and promoting a naturally functioning channel.
- The placement of large boulders within the stream channel. This includes rock necessary to construct grade control structures, rock barbs/vanes, or drop structures to control stream grade, facilitate fish passage, provide in-stream habitat, and provide scour protection.
- The placement of structures (log and/or rock) that are designed to lower a streams width to depth ratio while providing a naturally functioning channel, or designed as grade control structures to enhance instream habitat and fish passage.
- Gravel augmentation. Gravel augmentation will occur only in areas where the natural supply has been eliminated or significantly reduced (below dams, weirs, *etc.*). Clean gravel will be placed immediately downstream of the obstruction, allowing the stream to naturally sort and distribute the material.

Work may require the use of heavy equipment, excavator-type machinery, cable yarders, draft horses, helicopters, power tools, or hand tools.

Improve Secondary Channel Habitats.

Actions proposed for this activity category include (1) removing or modifying sediment bars, flood deposits, or artificial fill that block fish passage, and (2) removing channel and/or bank sediments to open a channel or increase the channel area. Secondary channel habitat improvement activities will provide the greatest degree of natural stream and floodplain function achievable through application of an integrated, ecological approach. Work may entail use of heavy equipment, power tools, and/or hand tools.

Create, Rehabilitate, and Enhance Riparian and Wetland Habitat

For purposes of this RGP, the riparian and wetland habitat creation, rehabilitation, and enhancement activity is limited to the following list:

- remove weirs or other water control structures;
- remove and/or set back levees, dikes, and berms;
- reshape streambanks as necessary to reestablish vegetation;
- excavate and remove artificial fill materials from former wetlands;
- reintroduce beavers in areas where they have been removed;
- excavate pools and ponds to groundwater to create wetlands in uplands;
- remove structural bank protections, and other engineered or created structures that do not meet the description and minimization measures under Streambank Protection Using Bioengineering Methods;
- re-contour off-stream areas that have been leveled or filled in.

Common practices for riparian or wetland creation includes the use of heavy equipment, such as excavators, backhoes, and graders. Power tools and crews with hand tools may also be used. Soil may be moved out of or brought onto a site, depending on the specific characteristics of the site. Hydric soils may be salvaged to provide appropriate substrate and/or seed source for hydrophytic plant community development. Hydric soils will only be obtained from wetland salvage sites.

Improving Fish Passage

The BPA proposes the following activities to improve fish passage:

- removal of trash and other artificial debris dams that block fish passage;
- removal of tide gates that block fish passage to estuarine habitat (replacement of existing tidal gates or installation of new tide gates is not covered by this RGP);

- modification of a dam apron with shallow depth (less than 10 inches), or high flow velocity to provide depths and velocities passable to upstream migrants;
- channel modification of a diffused or braided flow to improve fish passage;
- re-engineering of improperly designed fish passage or fish collection facilities;
- periodic maintenance of fish passage or fish collection facilities to ensure proper functioning, *e.g.*, cleaning debris buildup, replacement of parts;
- installation of a fish ladder at an existing facility. The removal of natural blockages such as beaver dams and log jams is not allowed.

Maintain, Remove, and Replace Bridges, Culverts, and Fords

The BPA proposes the following bridge, culvert, and ford activities:

- Remove culverts, where possible, and reestablish natural channel cross sections;
- Replace undersized culverts that present a barrier to fish movement with appropriately sized culverts or bridges;
- Lower perched culverts to meet the natural bed of the stream;
- Excavate and realign misaligned culverts;
- Modify culverts by, for example, installing step-and-pool weirs at culvert outlets, trash and debris racks, or erosion protection structures at culvert outlets or inlets where replacement or lowering is not feasible;
- Redesign stream crossings determined to be inappropriate for culvert installations to steel or concrete reinforced bridge installations, or vehicle fords;
- Remove or lower artificial structures that impede fish passage;
- Repair, upgrade or replace bridges and culverts.

These proposed activities will entail use of heavy equipment, power tools, and/or crews with hand tools.

Design Criteria -

Install Habitat –Forming Natural Material Instream Structures (Large Wood, Boulders, and Gravel).

In addition to the General Conservation Measures, the following conditions must be implemented with this activity:

- a. Gravel to be placed in streams shall be represent a natural gradation for that stream reach, be clean and free of weed seeds, and be non-angular. When possible, gravel of the same lithology as found in the watershed will be used. Gravel shall not be from an instream source unless otherwise approved of by the Corps, USFWS, WDFW, ODFW, and NMFS.

- b. Large wood structures will be designed to minimize the need for anchoring. However, depending on site location and design criteria, some structures may be anchored. Key boulders (footings) or large wood can be buried into the streambank or channel but shall not constitute the dominant placement method of boulders and large wood. If anchored, a variety of methods may be used. These include buttressing the wood between riparian trees, using vertical posts, pinning the structure to existing structures, and/or ballasting/anchoring with boulders, gravel, or new log wedges. Biodegradable manila/sisal rope may be used to temporarily stabilize structures.
- c. Installation of Large wood will comply with the size requirements outlined in *A Guide to Placing Large Wood in Streams* (ODFW/ODF 1995) and placement guidance in the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (ODFW/ODF 1999), or Appendix I of the *Integrated Streambank Protection Guidelines* (WDFW et al. 2003) or the most recent relevant guidance.
- d. Large Boulder installation must incorporate bioengineering to the extent possible.
- e. In-stream work will be planned and scheduled to minimize both the extent and duration of in-water disturbance. Any excavation needed to key in components will be minimized, accomplished in isolation from the wetted channel or using in-stream sediment controls, and all excavated material will be placed where it cannot re-enter the waterway uncontrolled.

Improve Secondary Channel Habitats.

In addition to the General Conservation Measures, the following condition must be implemented with this activity:

- Off-and side-channel habitat projects in streams with habitat for ESA-listed anadromous fish must be reviewed and approved by NMFS under the terms of existing programmatic biological opinions.

Create, Rehabilitate, and Enhance Riparian and Wetland Habitat

In addition to the General Conservation Measures, the following conditions must be implemented with this activity:

- a. Adequate precautions will be taken to prevent the creation of fish passage issues or stranding of juvenile or adult fish;

- b. Setting back existing berms, dikes, and levees in streams with habitat for ESA-listed anadromous fish will require review and approval by NMFS under the terms of existing programmatic biological opinions.

Improving Fish Passage

In addition to the General Conservation Measures, the following additional measures must be implemented with this activity:

- Conceptual Design Review. Designs for upstream passage facilities will be developed in coordination with NMFS, in accordance with NMFS Anadromous Salmonid Passage Facility Design Guidelines (NMFS 2007) or the most recent guidance.

Maintain, Remove, and Replace Bridges, Culverts, and Fords

In addition to the General Conservation Measures, the following design criteria and additional measures must be implemented with this activity as appropriate:

- a. Permanent stream crossings will be designed in the following priority:
 - i. Nothing – realign road to avoid crossing the stream.
 - ii. Bridge – new bridges will preferentially span the stream and floodplain to allow for long-term dynamic channel stability, *i.e.*, no bents, piers or other support structures below bankfull elevation.
 - iii. Streambed simulation – bottomless arch, embedded culvert, or vehicle fords crossing only intermittent streams that do not support anadromous fish spawning habitat.
- b. New culvert widths will meet the most recent NMFS, ODFW, WDFW and/or USFWS requirements.
- c. Include suitable grade controls when necessary to prevent culvert failure caused by changes in stream bed elevation.
- d. An explanation of why a particular design was chosen will be provided.
- e. If the crossing will occur near an active spawning area, only full span bridges or streambed simulation will be used.
- f. Fill width will be limited to the minimum necessary to complete the crossing, and existing stream width will not be reduced.

- g. Place all large wood, cobbles, and gravels recovered during cleaning downstream of the culvert.
- h. Culverts or bridge abutments will not be filled with vegetation, debris, or mud. Abutments will be properly protected (*e.g.*, rock armored) to prevent future scouring actions and erosion hazards.
- i. Post-construction stormwater management measures will be developed and implemented to infiltrate runoff from all impervious surfaces associated with the project or remove pollutants carried in the runoff prior to its discharge to the stream, wetlands or groundwater.
- j. Pile removal will follow the following steps to minimize creosote release, sediment disturbance, and total suspended solids:
 - i. Install a floating surface boom to capture floating surface debris.
 - ii. Keep all equipment out of the water, grip piles above the waterline, and complete all working during low water and low current conditions.
 - iii. Dislodge the piling with a vibratory hammer, whenever feasible—never intentionally break a pile by twisting or bending.
 - iv. Slowly lift the pile from the sediment and through the water column.
 - v. Place the pile in a containment basin on a barge deck, pier, or shoreline without attempting to clean or remove any adhering sediment.
 - vi. Fill holes left by each piling with clean, native sediments.
 - vii. Dispose of all removed piles, floating surface debris, any sediment spilled on work surfaces, and all containment supplies at a permitted upland disposal site.
 - viii. If a pile breaks above the surface of contaminated sediment, or less than 2 feet below the surface, make every attempt short of excavation to remove it. If removal can't be completed without excavation, saw the stump off at least 3 feet below the surface of the sediment.
 - ix. If a pile breaks above contaminated sediment, saw the stump off at the sediment line; if a pile breaks within contaminated sediment, make no further effort to remove it and cover the hole with a cap of clean substrate. If dredging is likely in the project area, a global positioning device must be used to note the location of the broken pile for future reference.

4. Livestock Impact Reduction

This project category in the RGP includes activities that may be considered exempt from regulation under Section 404 of the Clean Water Act or otherwise not within the jurisdiction of the Corps. This RGP does not identify and the conservation measures and design criteria do not apply to such activities.

Description -

Construct Fencing for Grazing Control

Livestock exclusion fences or cross-fences, designed to minimize impacts to wildlife, will be installed to assist in grazing management. Individual fence posts will be pounded or dug using hand tools or augers on backhoes or similar equipment. Fence posts will be set in the holes, backfilled, and fence wire strung or wooden rails placed. Installation may involve the removal of native or non-native vegetation along the proposed fence line. Occasionally, rustic wood X-shaped fence that does not require setting posts will be used.

Install Off-Channel Watering Facilities

The proposed watering facilities will consist of various low-volume pumping or gravity-feed systems to move the water to a trough or pond at an upland site. Either above-ground or underground piping will be installed between the troughs or ponds and the water source. Water sources may include springs and seeps, streams, or groundwater wells. Pipes will generally range from 0.5 to 4 inches diameter. Placement of the pipes in the ground will typically involve minor trenching using a backhoe or similar equipment. All new wells or other stock watering sources installed under this activity will be permitted by the appropriate state agency.

Harden Fords for Livestock Stream Crossing

Livestock stream crossings will be installed to allow access to pastures and watering sources where livestock and other farm animals access and cross a stream channel on a somewhat infrequent basis. Culverts or bridges will be installed for frequent crossing locations in accordance with the Maintain, Remove, and Replace Bridges, Culverts, and Fords activity category. Hardening stream crossings will involve the placement of river rock along the stream bottom. Work will entail the use of heavy equipment, power tools, and/or hand tools. Additional use of fences will reduce straying off fords or watering areas into spawning gravels or large rearing pools.

Design Criteria -

Construct Fencing for Grazing Control

Attachment 1: General Conservation Measures, Project Descriptions, and Design Criteria

The General Conservation Measures are applicable. No additional design criteria.

Install Off-Channel Watering Facilities

In addition to the General Conservation Measures, the following design criteria and additional measures must be implemented with this activity:

- a. Off-channel livestock watering facilities will be located to minimize compaction and/or damage to sensitive soils, slopes, vegetation, or fish spawning habitat due to congregating livestock and to avoid or minimize impacts to existing wetlands where applicable.
- b. Wherever feasible, new livestock water developments will be placed, and existing water developments moved, at least 0.5 mile away from riparian areas, unless livestock movement is otherwise limited by terrain.
- c. Each watering development will have a float valve, fenced overflow area, return flow system, or other means, as necessary, to minimize water withdrawal and potential runoff and erosion.
- d. All intake screening projects will be consistent with the most recent NMFS Screen Guidelines.

Harden Fords for Livestock Stream Crossing

In addition to the General Conservation Measures, the following design criteria and additional measures must be implemented with this activity:

- a. The number of crossings will be minimized.
- b. Crossings will be located to minimize compaction and/or damage to sensitive soils, slopes, or vegetation. Fords will be placed on bedrock or stable substrates whenever possible.
- c. Crossings will not be placed in areas where ESA-listed salmon or steelhead spawn or are suspected of spawning, or within 300 feet upstream of such areas if spawning areas may be disturbed.
- d. Essential crossings will be designed and constructed or improved to accommodate reasonably foreseeable flood risks, including associated bedload and debris, and to prevent the diversion of streamflow out of the channel and down the trail if the crossing fails.

- e. Bank cuts, if any, will be stabilized with vegetation, and approaches and crossings will be protected with rounded rock (not crushed rock) when necessary to prevent erosion.
- f. Livestock crossings will not create barriers to the passage of adult and juvenile fish.

5. Irrigation and Water Delivery/Management Actions

This project category in the RGP includes activities that may be considered exempt from regulation under Section 404 of the Clean Water Act or otherwise not within the jurisdiction of the Corps. This RGP and the conservation measures and design criteria do not apply to such activities.

Description -

Convert Water Conveyance from Open Ditch to Pipeline or Line Leaking Ditches and Canals

Open ditch irrigation water conveyance systems will be replaced with pipelines to reduce evaporation and transpiration losses. Leaking irrigation ditches and canals will be converted to pipeline or lined with concrete, bentonite, or appropriate lining materials. The criteria, plans and specifications, and operation and maintenance protocols of the NRCS conservation practice standards for irrigation water conveyance may be consulted for guidance. The most recent versions of NRCS guidance will be used.

Convert from Instream Diversions to Groundwater Wells for Primary Water Source

Wells will be drilled as an alternative water source to surface water withdrawals. Water from the wells will be pumped into ponds or troughs for livestock, or used to irrigate agricultural fields. Instream diversion infrastructure will be removed or downsized and designed to facilitate fish passage, if feasible. If an instream diversion is downsized, it will be covered under this RGP only by following all criteria outlined in the Consolidate Diversions, or Replace Existing Irrigation Diversions with Pump Stations, or Remove Unneeded Diversion Structures Activity Category. The criteria, plans and specifications, and operation and maintenance protocols of the NRCS conservation practice standards for water well code (NRCS 1999c) may be consulted for guidance. All new wells or other stock watering sources installed under this activity will obtain applicable permits from the appropriate state agency.

Install New or Upgrade/Maintain Existing Fish Screens

Attachment 1: General Conservation Measures, Project Descriptions, and Design Criteria

Irrigation diversion intake and return points will be designed or replaced to prevent fish and other aquatic organisms of all life stages from swimming or being entrained into the irrigation system. Intake pipes or discharges will be screened with mesh sizes small enough to prevent access to the withdrawal and outlet structures. Designs will prevent fish and other aquatic organisms from becoming trapped against the screen by excessive water velocities or entrained or impinged by improperly designed screens. Periodic maintenance of fish screens will be conducted to ensure their proper functioning. Maintenance includes activities such as cleaning debris buildup and replacement of parts, and may require temporary removal of the screen.

Consolidate Diversions, or Replace Existing Irrigation Diversions with Pump Stations, or Remove Unneeded Diversion Structures

Push-up dams, concrete structures, or other instream irrigation diversion structures will be replaced with pumping stations to improve fish passage and habitat. Work will entail use of heavy equipment, power tools or crews with hand tools.

Install or Replace Return Flow Cooling Systems

Above-ground pipes and open ditches that return tailwater from flood-irrigated fields back to the river will be replaced. Return flow cooling systems will be constructed by trenching and burying a network of perforated PVC pipes that will collect irrigation tailwater below ground, eliminating pools of standing water in the fields and exposure of the water to direct solar heating. No instream work is involved except for installing the drain pipe outfall. Most work will be in uplands or in riparian buffer areas that are already plowed or grazed.

Install Irrigation Water Siphon Beneath Waterway

Siphons transporting irrigation water will be installed beneath waterways where irrigation ditch water currently enters a stream and commingles with stream water, with subsequent withdrawal of irrigation water back into an irrigation ditch system downstream. Work may entail use of heavy equipment, power tools, and/or hand tools.

Design Criteria -

Convert Water Conveyance from Open Ditch to Pipeline or Line Leaking Ditches and Canals

The General Conservation Measures are applicable. No additional design criteria.

Convert from Instream Diversions to Groundwater Wells for Primary Water Source

Attachment 1: General Conservation Measures, Project Descriptions, and Design Criteria

In addition to the General Conservation Measures, the following condition must be implemented with this activity as appropriate:

- Conversion of instream diversions to groundwater wells will only be used in circumstances where there is an agreement to ensure that any surface water made available for instream flows is protected from surface withdrawal by another water-user.

Install New or Upgrade/Maintain Existing Fish Screens

In addition to the General Conservation Measures, the following design criteria must be implemented with this activity:

- Conceptual Design Review. Designs for fish screen facilities will be developed in coordination with NMFS, ODFW, and USFWS in accordance with the most recent guidance.

Consolidate Diversions, or Replace Existing Irrigation Diversions with Pump Stations, or Remove Unneeded Diversion Structures

In addition to the General Conservation Measures, the following design criteria and additional measures must be implemented with this activity as appropriate:

- a. Diversion structures will be designed and screened to meet NMFS Anadromous Salmonid Passage Facility Design Guidelines (NMFS 2007) or the most recent guidance. The design of the proposed irrigation diversion installation will enable the irrigators to comply with all appropriate state water right agency rules and regulations.
- b. Multiple existing diversions may be consolidated into one diversion as long as there is no new instream construction or structures, and if the consolidated diversion is located at the most downstream existing diversion point.
- c. Diversions will be designed so that diverted water withdrawal is equal to or less than the irrigator's state water right, or equal to the current rate of diversion, whichever is less.
- d. Project design will include the installation of a totalizing flow meter device on all diversions for which installation of this device is possible. A staff gauge or other device capable of measuring instantaneous flow will be utilized on all other diversions.
- e. Small in-stream rock structures that facilitate proper pump station operations are allowed when designed in association with the pump station.

- f. Unneeded or abandoned irrigation diversion structures will be removed where they are barriers to fish passage, have created unacceptable habitat modifications, or are causing sediment concerns through deposition behind the structure or downstream scour.
- g. Coordination with appropriate local governments, irrigation districts, and state and Federal agencies will be required.

Install or Replace Return Flow Cooling Systems

The General Conservation Measures are applicable. No additional design criteria.

Install Irrigation Water Siphon Beneath Waterway

In addition to the General Conservation Measures, the following design criteria and additional measures must be implemented with this activity as appropriate:

- a. Directional drilling to create siphon pathway will be employed whenever possible.
- b. Trenching will occur in dry stream beds whenever possible; work area isolation will be employed in perennial streams.
- c. Stream widths will be maintained at bankfull width or greater.
- d. No part of the siphon structure will block fish passage.
- e. No concrete will be placed within the bankfull width.
- f. Siphon surface structures will be set back from the top of the streambank at least 10 feet.
- g. Minimum cover over a siphon structure within the streambed shall be 3 feet of natural substrate.
- h. Waterway will be reconstructed to a natural streambed configuration upon completion.

References

- National Marine Fisheries Service (NMFS.) 2008. Anadromous Salmonid Passage Facility Design. <http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish_Passage_Design.pdf>
- National Marine Fisheries Service (NMFS.) 2000. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act. <<http://www.nwr.noaa.gov/ESA-Salmon-Regulations-Permits/4d-Rules/upload/electro2000.pdf>>
- Oregon Department of Environmental Quality (DEQ). National Pollutant Discharge Elimination System (NPDES) 1200-C permit. <<http://www.deq.state.or.us/wq/stormwater/construction.htm>>
- Oregon Department of Environmental Quality (DEQ). 2005. DEQ's Oregon Sediment and Erosion Control Manual. Oregon Department of Environmental Quality. <http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf>
- Oregon Department of Fish and Wildlife (ODFW). 1995. A Guide to Placing Large Wood in Streams. <<http://www.dfw.state.or.us/lands/>>
- Oregon Department of Fish and Wildlife (ODFW). 2006. Oregon Administrative Rules Oregon Department of Fish and Wildlife DIVISION 412 FISH PASSAGE. <<http://www.dfw.state.or.us/fish/passage/>>
- Oregon Department of Fish and Wildlife (ODFW). 2006. Oregon Department of Fish and Wildlife Fish Screening and Passage Program. Fish Screening Criteria. <http://www1.wrd.state.or.us/pdfs/ODFW_Fish_Screening_Criteria.pdf>
- Oregon Department of Fish and Wildlife (ODFW). 2008. Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources. June 2008. <<http://nrimp.dfw.state.or.us/nrimp/default.aspx?p=259>>
- Washington Department of Ecology (DOE). National Pollutant Discharge Elimination System (NPDES) Permit. <<http://www.ecy.wa.gov/programs/wq/stormwater/construction/index.html>>
- Washington Department of Ecology (DOE). 2004. Stormwater Management Manual for Eastern Washington. Washington Department of Ecology. <<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/StrmwtrMan.html>>

Washington Department of Ecology (DOE). 2005. Stormwater Management Manual for Western Washington. Washington Department of Ecology.
< <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/StrmwtrMan.html>>

Washington Department of Fish and Wildlife (WDFW). 1992. Fishway Design Guidelines for Washington State. Washington Department of Fish and Wildlife.
<<http://wdfw.wa.gov/hab/ahg/fishguid.pdf?>>

Washington Department of Fish and Wildlife (WDFW). 1999. Fish Passage Design at Road Culverts: A Design Manual for Fish Passage at Road Crossings. Washington Department of Fish and Wildlife. <<http://wdfw.wa.gov/hab/engineer/cm>>

Washington Department of Fish and Wildlife (WDFW). 2000. Draft Fish Protection Screen Guidelines for Washington State. <
<http://wdfw.wa.gov/conservation/habitat/planning/ahg/>>

Washington Department of Fish and Wildlife (WDFW). 2003. Integrated Streambank Protection Guidelines, Appendix I. < <http://wdfw.wa.gov/conservation/habitat/planning/ahg/>>

Project Notification Form
Regional General Permit for BPA-Funded Habitat Improvement Projects within the Columbia River Basin

To be filled out by project proponent:

To be filled out by Corps:

Project Proponent:	Corps #: NWP - -
Project Name:	Date Received:

Note: This form provides supplemental information necessary for the Corps to quickly review projects. This form must be accompanied by one of the following permit applications:

- U.S. Army Engineering Form 4345 (<http://www.usace.army.mil/CECW/Documents/cecwo/reg/eng4345a.pdf>)
- Joint Permit Application (JPA; for projects in Oregon) (http://www.oregon.gov/DSL/PERMITS/forms.shtml#Permit_Forms)
- Oregon Dept. of State Lands "General Authorization" Notification (for projects in Oregon) (http://www.oregon.gov/DSL/PERMITS/forms.shtml#Permit_Forms)

Required Information

Items noted by ● require information or documentation in addition to that provided on the permit application

Contact Information	<input type="checkbox"/> Proponent's Contact Info. (<i>provide on accompanying permit application</i>) ● <input type="checkbox"/> Name of BPA Environmental Compliance Lead: Phone Number:
Project Location	<input type="checkbox"/> Location Description (<i>provide on accompanying permit application</i>) ● <input type="checkbox"/> Location Map
Project Summary	<input type="checkbox"/> Project Description (<i>provide on accompanying permit application</i>) ● <input type="checkbox"/> Legible and accurate plan and profile drawings
Regional General Permit Requirements	● Does the project meet the general conservation measures, practices and criteria described in Appendices A and B of the RGP? <input type="checkbox"/> Yes <input type="checkbox"/> No → RGP Level 4 * ● Do you propose to modify or remove a dike or levee? <input type="checkbox"/> No <input type="checkbox"/> Yes → RGP Level 4 *
Endangered Species Act (ESA)	● Select from the following options: <input type="checkbox"/> No Effect (<i>provide memo from BPA Environmental Compliance Lead</i>) <input type="checkbox"/> Within scope of Habitat Improvement Project (HIP II) BiOp → RGP Level 2 Date of BPA Review: <input type="checkbox"/> Other ESA coverage: → RGP Level 3 <input type="checkbox"/> Programmatic Consultation(s) Title(s): <input type="checkbox"/> Individual Consultation(s) (<i>BiOp(s) attached</i>) <input type="checkbox"/> Request for Corps of Engineers to consult (includes Corps' programmatic BiOps) → RGP Level 4 *
Cultural Resources & Coordination	● <input type="checkbox"/> Provide BPA Cultural Resources Review Sheet ● <input type="checkbox"/> Provide documentation of BPA coordination with interested Tribes
Wild and Scenic Rivers Act	● Select <u>one</u> of the following options: <input type="checkbox"/> The project is <u>not</u> in a Wild and Scenic River corridor <input type="checkbox"/> BPA completed consultation with the managing agency (<i>documentation attached</i>)
Land Use Compatibility	● For projects within the State of Oregon only, select <u>one</u> of the following options (<i>provide appropriate documentation with signatures from local land use authority</i>) <input type="checkbox"/> Land use compatibility is documented in the Joint Permit Application (Block 7) <input type="checkbox"/> Land use compatibility is documented on the Oregon DEQ form (http://www.deq.state.or.us/pubs/permithandbook/lucs.htm) <input type="checkbox"/> Land use compatibility has not yet been determined → RGP Level 4 *

* Note: Projects for which ESA or § 106 documentation is not provided will be treated as Level 4 reviews. Projects subject to Level 4 review shall not proceed until the Corps has issued a project-specific authorization.

Factors for determining the level of notification and evaluation required for individual projects.				
	Level 1	Level 2	Level 3	Level 4
Activity Types	Only applies to projects that: <ul style="list-style-type: none"> • Do <u>not</u> impact ≥ 0.1 ac of wetland nor ≥ 300 linear ft of stream • Do <u>not</u> convert a stream or natural wetland to another aquatic habitat type 	No specific limits other than those prescribed by conditions of the RGP.		<ul style="list-style-type: none"> • Required for projects that involve the removal, set back, or modification of a dike or levee • Required for projects that cannot implement applicable conservation measures and practices
Endangered Species Act / Essential Fish Habitat	No effect	Effects addressed via use of the current BPA HIP Biological Opinion	Effects addressed via a current non-BPA/non-Corps programmatic consultation or an individual consultation	Effects addressed via a programmatic consultation for which the Corps is the lead agency (e.g., SLOPES)
Cultural Resources	No effect	Documentation of completed § 106 consultation provided with RGP Notification Form		§ 106 consultation has <u>not</u> been completed
Wild and Scenic Rivers (WSR) Act	No effect	Documentation of completed § 7(a) determination is provided with RGP Notification Form (if applicable)		Affects a WSR corridor, and § 7(a) determination has not been completed
Coastal Zone Management Act	Not within coastal zone	Meets standard CZM conditions (if applicable)		Occurs in a state's coastal zone and does <u>not</u> meet the standard CZM conditions; or advance concurrence is not available
Land Use Compatibility	Has local land use approval, and is <u>not</u> within Columbia River Gorge National Scenic Area.	Has local land use approval, including Columbia River Gorge National Scenic Area approval (if applicable)		Does not have local land use approval(s)
Section 401 Water Quality Certification	Meets conditions of applicable Water Quality Certification (WQC; issued by Oregon Dept. of Environmental Quality)			No applicable WQC, or does not meet conditions of applicable WQC
Pollution Cleanup Areas	Does not occur within an "area of interest" of the Environmental Protection Agency (EPA) and the Oregon Department of Environmental Quality (DEQ)			Occurs within an "area of interest"



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Northwest Region Portland Office

2020 SW 4th Avenue, Suite 400

Portland, OR 97201-4987

(503) 229-5263

Fax: (503) 229-6945

TTY: (800) 736-2900

June 2, 2011

Ms. Michelle Schmidt
U.S. Army Corps of Engineers
ATTN: CENWP-OD-GP
P.O. Box 2946
Portland, Oregon 97208-2946

RE: Regional General Permit for Actions Funded by Bonneville Power Administration for Aquatic Habitat Restoration – USACE #2011-00127

Dear Ms. Schmidt:

The Department of Environmental Quality (DEQ) has reviewed US Army Corps of Engineers (USACE) public notice materials on the above note proposal, submitted for evaluation for 401 Water Quality Certification (WQC), and received on March 31, 2011. Project proponents will be funded by Bonneville Power Administration (BPA) to undertake recurring actions, with minor individual and cumulative impacts to waters of the state, that are designed to maintain, enhance, create, or restore watershed functions to benefit fish, aquatic organisms, water quality, riparian areas, floodplains, and wetlands in the Columbia River Basin of Oregon.

Project Description: Authorized habitat restoration actions have been categorized as follows:

1. Surveying, Construction, Operation, and Maintenance Activities: Surveying, Construction, Operation, and Maintenance Activities: including but not limited to surveying, minor vegetation clearing, flagging placement, construction staging and stockpiling areas, moving heavy equipment, site restoration and cleanup, ongoing operation and maintenance access and activities.
2. Planning and Habitat Protection Actions: including but not limited to the installation of measuring devices, measuring existing facilities, fish and wildlife species and habitat inventories, excavating cultural resource test pits, and conducting road inventories, and streambank protection using bioengineering.
3. In-stream Habitat Actions: including but not limited to: the installation of large wood and rock, gravel augmentation, improving secondary channel habitats, riparian and wetland creation, rehabilitation and enhancement, and improving fish passage.
4. Livestock Impact Reduction: including but not limited to: constructing fencing for grazing control, installing off-channel watering facilities, and livestock stream crossing improvements.
5. Irrigation and Water Delivery or Management Actions: Including but not limited to: the conversion of open ditch water conveyance to pipeline, removal of in stream diversions, installation of new or upgraded fish screens, consolidation or replacement of existing irrigation diversions, and the installation or replacement of return flow cooling systems and water siphons.



Individual project proposals will be further categorized into one of four levels based on potential environmental consequences. Each project level will have specific notification requirements to initiate USACE review and varying requirements related to endangered species protection based on the terms and conditions of an existing programmatic or individual biological opinion. Further conditions may be placed on a project due to requirements of Section 106 of the National Historic Preservation Act.

Status of Affected Waters of the State: The streams of the Columbia River Basin and the Willamette River Subbasin are not Outstanding or High Quality waters. Rather, they are classified as Water Quality Limited under the federal Clean Water Act (CWA). US Environmental Protection Agency (EPA) approved Total Maximum Daily Loads (TMDLs) have been developed for some parameters and many streams remain on the CWA Section 303(d) list of impaired waterbodies or have parameters of potential concern, as detailed below:

For the main stem Columbia River, TMDLs have been developed by DEQ and approved by EPA for the parameters of Dioxin and Total Dissolved Gas. EPA has not yet completed development of a TMDL for the parameter of Temperature, and DEQ has not yet completed TMDLs for the parameters of Arsenic; DDE; Fecal Coliform; PCBs; pH; and PAHs. Therefore the mainstem Columbia River remains on the CWA 303(d) list for the parameters of: Arsenic; DDE (DDT metabolite); Fecal Coliform; PCB; pH; Polynuclear Aromatic Hydrocarbons (PAHs); and Temperature; and with potential concern for the parameters of: Cadmium; Copper; Iron; Lead; Mercury; Nickel; Silver; Tributyltin; Zinc; Aldrin; Alkalinity; Alpha-BNC; Benzo(a)anthracene; Benzo(g, h, i)perylene; Bhc; Chlordane; Chrysene; Cyanide; DDD; DDT; Dieldrin; Endrin; Hexavalent Chromium; Manganese; Mercury; Phenol; Phosphorus; Pyrene; and Radionuclides.

For the Lower Columbia/Young's River and the Lower Columbia/Clatskanie River Subbasins, DEQ has developed TMDLs for the parameters of Temperature and Bacteria. The streams of these subbasins remain on the CWA 303(d) list for the parameters of: Dissolved Oxygen; Biocriteria, and Aquatic Weeds or Algae.

For the main stem Willamette River, TMDLs have been developed for the parameters of Bacteria, Dioxin and Temperature and the main stem remains on Section 303(d) list of impaired waterbodies for the parameters of Mercury, Dissolved Oxygen, Iron, DDT, DDE (DDT metabolite), PCBs, Arsenic, Aldrin, Dieldrin, PAHs, Manganese, Pentachlorophenol, and Biological Criteria. Other parameters listed for potential concern include: Hexavalent Chromium, Lead, Copper, Nickel, Zinc, Parathion, Malathion, Fluoranthene, Chrysene, DDD, Benzo(A)pyrene, and Benzo(A)anthracene.

The Portland Harbor Superfund Site has been designated by EPA, initiating an assessment and remediation process to address widespread legacy contamination present in the lower reaches of the Willamette River. Areas targeted for cleanup span from approximately river mile 0 to 12, with areas of interest continuing to approximately river mile 14.

The Lower Willamette River to the confluence with the Columbia River is highly urbanized and industrialized with significant channelization and nearly all banks have been hardened. Flows are regulated by 11 multipurpose dam/reservoir structures upstream of the project area above Oregon City.

For the Lower Willamette Subbasin, TMDLs have been developed for the parameters of Dissolved Oxygen, E Coli, Fecal Coliform, Phosphorus, and Temperature.

Beneficial Use Designations: In the Columbia River and the Willamette River, these include: Water Supply (Public, Private, Industrial); Livestock Watering; Irrigation; Fish and Aquatic Life (salmonid rearing; anadromous fish passage; resident fish and aquatic life); Wildlife and Hunting; Fishing; Boating; Water Contact Recreation; Aesthetic Quality; and Commercial Navigation & Transportation, and all but Commercial Navigation & Transportation also apply to the other streams within the subbasins.

The Lower Columbia River and its side channels are designated by DEQ as salmon and steelhead migration corridors from the mouth at the Pacific Ocean to river mile 309, with regard to application of the water quality standard for Temperature. Areas above river mile 140 are also designated as salmon and steelhead spawning and shad and sturgeon spawning and rearing fish uses. Other streams within the subbasin are designated for salmon and trout rearing and migration.

The Lower Willamette River is designated as a salmon and steelhead migration corridor and other streams within the subbasin are designated for salmon and trout rearing and migration.

Certification Decision: Based on information provided by BPA and USACE, DEQ is reasonably assured that implementation of the proposed restoration actions will be consistent with applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal CWA, state water quality standards set forth in Oregon Administrative Rules (OAR) Chapter 340 Division 41, and other appropriate requirements of state law, provided the applicant strictly adheres to the procedures, conditions and best management practices as described in the public notice and subsequent materials and the following conditions are made part of the federal permit and strictly adhered to by the project proponents.

CONDITIONS

1. **Duration of Certificate:** This 401 WQC is valid for five years from the date of issuance of the USACE 404 permit. A new 401 WQC must be obtained prior to any substantial modification of the USACE 404 permit.
2. **Land Use Compatibility Statement:** Per the notification requirements by level as specified in the RGP protocols, each project must submit findings prepared by the local land use jurisdiction that demonstrates the activity's compliance with the local comprehensive plan, in accordance with OAR 340-048-0020(2)(i). Such findings can be in the following forms:
 - a. Block 7 of the USACE & Department of State Lands Joint Permit Application, signed by the appropriate local official and indicating:
 - i. "This project is consistent with the comprehensive plan and land use regulations;" or,
 - ii. "This project will be consistent with the comprehensive plan and land use regulations when the following local approvals are obtained," accompanied by the obtained local approvals.
 - b. DEQ's Land Use Compatibility Statement form (available at: <http://www.deq.state.or.us/pubs/permithandbook/lucs.htm>), signed by the appropriate local official and indicating one of the four "yes" responses, with accompanying local findings and approvals, as warranted.

3. Spill & Incident Reporting:

- a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the discharge must be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311). Containment and cleanup must begin immediately and be completed as soon as possible.
 - b. If the project operations cause a water quality problem which results in distressed or dying fish, the operator must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW, NMFS and USFWS as appropriate.
4. DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, in the event of protocol deviations or new information indicating that the project activities are having a significant adverse impact on state water quality or beneficial uses.
 5. This 401 WQC is invalid if the project is operated in a manner not consistent with the procedures, conditions and best management practices as described in the public notice and subsequent materials.
 6. The project proponents and their contractors must allow DEQ site access at reasonable times as necessary to monitor compliance with these 401 WQC conditions.

If USACE or BPA is dissatisfied with the conditions contained in this certification, a hearing may be requested. Such request must be made in writing to DEQ's Office of Compliance and Enforcement at 811SW 6th Avenue, Portland Oregon 97204, within 20 days of the mailing of this certification.

If you have any questions, please contact Alexandra Liverman at (503) 229-6030, or by email at: liverman.alex@deq.state.or.us.

Sincerely,



Greg Geist
Water Quality Manager
Northwest Region

T:AL.certschm.11-127.BPA RGP

cc: Timmie Mandish, BPA
Juna Hickner, DLCD



Oregon

John A. Kitzhaber, MD, Governor

Oregon Coastal Management Program

Department of Land Conservation and Development

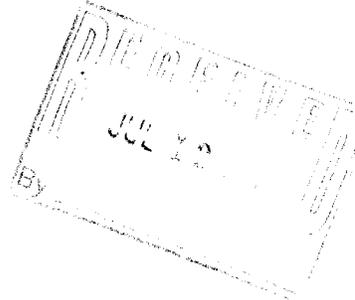
635 Capitol Street, Suite 150

Salem, Oregon 97301-2540

Phone (503) 373-0050

FAX (503) 378-6033

www.oregon.gov/LCD/OCMP



July 6, 2011

Mr. Kevin Moynahan
Chief, Regulatory Branch
Portland District, US Army Corps of Engineers
PO Box 2946
Portland, OR 97208-2946

Project: Regional General Permit for BPA-funded habitat improvement projects
Agency: US Army Corps of Engineers
Location: Columbia River Basin, Oregon

Dear Mr. Moynahan:

The Oregon Department of Land Conservation and Development (DLCD) has reviewed the U.S. Army Corps of Engineers (Corps) *Regional General Permit (RGP) for Bonneville Power Administration funded habitat improvement projects within the Columbia River Basin* for consistency with Oregon's Coastal Management Program (OCMP). DLCD has reviewed the proposed RGP pursuant to Section 307(c)(1) of the Coastal Zone Management Act (CZMA) and attendant regulations of 15 CFR Part 930.

The proposed RGP authorizes project proponents to implement Bonneville Power Administration (BPA) funded habitat restoration projects that are designed to maintain, enhance, create, and/or restore watershed functions to benefit fish species, other aquatic organisms, water quality, riparian areas, floodplains, and wetlands. The RGP will expedite the authorization of recurring activities that are similar in nature and have minor individual and cumulative adverse impacts on the aquatic environment. While the proposed RGP covers restoration projects throughout the Columbia River basin, DLCD's federal consistency concurrence is necessary only for those projects occurring in Oregon's coastal zone and those projects that affect coastal uses or resources in Oregon.

The proposed RGP categorizes projects into four levels according to potential environmental consequences and the applicability of programmatic evaluations. With regards to the coastal zone, Level 1 projects are those that do not occur in a state's coastal zone. Level 2 and 3 projects are those that occur in the coastal zone, but are able to meet the applicable standard coastal zone conditions attached to this concurrence. Level 4 projects likewise occur in the coastal zone, but do not meet the standard conditions.

DLCD Federal Consistency Review

The CZMA requires federal agency activities affecting any coastal use or resource within a state's coastal zone to be consistent to the maximum extent practicable with the enforceable policies of the state's federally approved coastal management program.

Oregon's federally approved program is a "networked" coastal management program that integrates authorities of local governments and other state agencies as the "enforceable policies" of the OCMP. As such, the enforceable policies of the OCMP include: 1) the statewide planning goals; 2) the applicable acknowledged city or county comprehensive plan and land use regulations; and 3) selected state agency authorities (e.g. those governing removal-fill, proprietary leasing, water quality, and fish & wildlife protections).

Consistency Findings:

- The statewide planning goals do not apply directly. Where the Land Conservation and Development Commission has approved, or "acknowledged," a local comprehensive land use plan, the local government applies the goals through the comprehensive plan and land use regulations. DLCD relies on the applicable local jurisdiction to issue any required authorizations to ensure goal compliance.
- The RGP requires level 2 and level 3 projects to receive local land use approval; level 4 projects may not have local land use approval. Level 2 and level 3 projects are consistent with the enforceable policies requiring compliance with the statewide planning goals and local comprehensive plan; level 4 projects as applied for may not be consistent with the enforceable policies.
- State agencies with authorities relevant to this RGP include the Oregon Departments of Environmental Quality, State Lands, and Fish and Wildlife.
- The Oregon Department of Environmental Quality (DEQ) issued a § 401 water quality certification on June 2, 2011, subject to six conditions. The RGP requires level 2 and 3 projects to meet the conditions of DEQ's water quality certification; projects that are inconsistent with or not covered by the water quality certification fall into level 4.
- As noted in the consistency determination, the Oregon Department of State Lands (DSL) has indicated that most of the activities proposed under the RGP would be exempt from removal-fill permitting or qualify for a General Authorization. Project proponents will be required to obtain a DSL permit or be exempt in order to receive funding and implement the project.
- As part of the DSL review, all projects will be required to meet relevant requirements of the Oregon Department of Fish and Wildlife.

Public Notice

DLCD did not receive any comments in response to the public notice issued March 31, 2011.

Consistency Decision

The activities considered under Levels 2 and 3 of this RGP are consistent with the enforceable policies of the OCMP, as demonstrated by the requirements for local land use approval, compliance with DEQ's water quality certification, and DSL authorization. **With the incorporation of the attached coastal zone conditions, DLCDC conditionally concurs with the Corps' determination that the projects proposed under levels 2 and 3 of the *Regional General Permit (RGP) for Bonneville Power Administration funded habitat improvement projects within the Columbia River Basin* are consistent to the maximum extent practicable with the enforceable policies of the OCMP.**

DLCDC's advance concurrence is not valid for projects that fail to meet the attached coastal zone conditions. Those projects will instead require an individual consistency review, during which DLCDC will work with the applicant and the relevant local planning department and/or state agency in an attempt to modify the project to meet the relevant conditions.

Availability of Mediation

In accordance with federal regulations, DLCDC hereby provides notification that should the Corps object to the attached conditions, the Department's decision shall be treated as an objection pursuant to 15 CFR § 930, Subpart C. The Corps shall immediately notify DLCDC if the conditions are not acceptable.

In the event the Corps has a serious disagreement with DLCDC's coastal zone decision, the Corps may request mediation services provided by the Office of Ocean and Coastal Resource Management and the Secretary of the U.S. Department of Commerce, as provided for in 15 CFR § 930 Subpart G. DLCDC or the Governor of Oregon may also request such mediation services.¹

If you have any questions or comments regarding this consistency decision or the consistency review process, please contact me at 503-373-0050 ext. 253 or by e-mail at:

juna.hickner@state.or.us

Sincerely,



Juna Hickner
Coastal State-Federal Relations Coordinator

cc: Mr. Steve Gagnon, US Army Corps of Engineers

¹ In addition, the federal agency and other parties as defined in ORS 183.310(7) may request review of this coastal zone decision by the Land Conservation and Development Commission pursuant to OAR 660-035-0040(11) and 660-035-0080(1). LCDC review of a petition does not preclude the Corps, DLCDC, or the Governor from seeking Secretarial mediation under 15 CFR 930 Subpart G. A petition for LCDC review must be filed within fifteen (15) days of the Department's consistency decision.

Coastal Zone (CZ) Conditions

CZ Condition 1. Consistency with Local Comprehensive Plans.

(1) Authorization for projects in Oregon's coastal zone under the subject RGP is valid only if the proposed project is consistent with or not subject to the applicable local comprehensive plan and implementing land use regulations, or to the statewide land use planning goals where applicable. Permits or other authorizations must be obtained, when required, from the applicable local government before work is initiated under the subject RGP. Verification of the local jurisdiction's decision must be given to the Corps of Engineers in the form of a completed block seven (7) of the Joint Permit Application, or a Land Use Compatibility Statement or planning affidavit signed by a local planner or other local official indicating that the project is consistent with the applicable local comprehensive plan and implementing land use regulations. All appeals of the local jurisdiction's decision(s) must be resolved before any regulated work may begin.

(2) All conditions placed on an authorization or permit by the local government are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

CZ Condition 2. Consistency with Removal-Fill Law.

(1) Authorization for projects in Oregon's coastal zone under the subject RGP is valid only if the proposed project is consistent with or not subject to the state statutes for state lands and removal-fill in waters of the state. Permits or other authorizations must be obtained when required from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) For projects found not subject to the Removal/Fill Law by DSL, any changes in project design or implementation which may reasonably be expected to require application of the Removal/Fill Law shall be submitted to DSL for review.

(3) All conditions placed on a Removal-Fill permit by the Oregon Department of State Lands are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

CZ Condition 2a. Leases of State Lands.

(1) Authorization for projects in Oregon's coastal zone under the subject RGP is valid only if the proposed project has obtained any required lease or other license required for the use of state lands or waters. Permits or other authorizations must be obtained when required from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) All conditions placed on a lease, license, or authorization by the Oregon Department of State Lands are incorporated by reference into the conditions for consistency concurrence by the

Oregon Coastal Management Program.

CZ Condition 3. Department of Environmental Quality.

(1) Authorization for a project in Oregon's coastal zone under the subject RGP is valid only if the proposed project has been certified or does not require certification by the Oregon Department of Environmental Quality (DEQ) through its 401 Water Quality Certification process.

(2) All conditions placed on a DA license, permit, or authorization by the Oregon Department of Environmental Quality are incorporated by reference into the conditions for consistency concurrence by the Oregon Coastal Management Program.

CZ Condition 4. In-Water Work.

(1) All in-water work, including temporary fills or structures, shall occur within the ODFW recommended period for in-water work for the affected water body. Exceptions to the recommended time periods require specific approval from the Corps, and:

(i) The Corps shall coordinate exceptions to work windows with ODFW and NMFS (NOAA Fisheries). Decisions to not apply ODFW or NMFS work windows shall be accompanied by written approval from ODFW;

(ii) On tribal lands, the Corps shall coordinate exceptions with the EPA.

(2) No work shall be authorized within or directly impacting areas identified by the Oregon Department of Fish and Wildlife (ODFW) as used by or susceptible for use by spawning fish, unless approved by ODFW. This restriction shall apply year-round, and is not limited by spawning season or by the presence or absence of fish at any given time.

CZ Condition 5. Fish and Aquatic Life Passage.

(1) Where applicable, all authorized projects shall be in conformance with ODFW standards for fish passage (<http://www.dfw.state.or.us/fish/passages/>). Decisions to abrogate ODFW fish passage standards shall be accompanied by written approval from ODFW.

(2) No work shall be authorized that does not provide for adequate passage of "aquatic life." Aquatic life shall be interpreted to include amphibians, reptiles, and mammals whose natural habitat includes waters of this state and which are generally present in or around, or pass through the project site.

(3) This condition is effective only where ODFW regulations apply.

CZ Condition 6. Heavy Equipment Use

(1) Heavy equipment shall be operated from the bank, and not placed in a stream unless specifically authorized. In-stream work may be authorized by the Corps of Engineers if necessary in the interest of safety or due to site conditions prohibiting work from the bank.

(2) Heavy equipment in wetlands or on soft soils must be placed on mats or other similar devices to minimize damage to natural resources.

(i) If the period of use of heavy equipment on the wetland area will exceed 14 (fourteen) calendar days from start to finish, the applicant/permittee shall notify the Corps prior to starting the work. The Corps shall assess if the longer work period is necessary, and what additional protective measures may be required to minimize or mitigate the impacts.

(ii) All mats or other protective measures shall be removed at the end of each workday unless the Corps determines that to do so would cause greater harm to the resource.

(3) Irrespective of measures taken to limit unintended impacts from heavy equipment, any damage done to vegetation, land, or waterways within or impacting waters of the state beyond the scope of the permit shall be mitigated.

(4) This condition is effective only in situations where the Removal-Fill Law applies.

CZ Condition 7. Collateral Damage

(1) Permittees shall be required to repair, restore, or mitigate for any and all impacts within or impacting waters of the state which occur in the course of the work, including those beyond the scope of the permitted work, whether intentional or unintentional, including those impacts due to accident, misinterpretation, or misunderstanding.

(2) This condition is effective only in situations where the Removal-Fill Law applies.

Attachment 5: Federally Recognized Tribes with Interest in the Geographic Range of this RGP

(Current as of October 2011)

<u>TRIBE</u>	<u>COUNTY</u>	<u>CONTACT</u>	<u>EMAIL</u>	<u>PHONE</u>
Confederated Tribes of the Warm Springs Reservation of Oregon	Multnomah, Hood River, Sherman, Gilliam, Wasco, Lake, Klamath, Crook, Wheeler, Morrow, Umatilla, Grant, Harney, Malheur, Baker, Union, Benton, Polk, Washington, Columiba, Deschutes, Lane, Linn	Brigette Whipple	bwhipple@wstribes.org	(541) 553-1897
		Sally Bird	sbird@wstribes.org	(541) 553-3555
Confederated Tribes of the Umatilla Reservation, Oregon	Mainstem Columbia, Sherma, Gilliam, Jefferson, Wheeler, Grant, Malheur, Harney, Baker, Union, Wallowa, Umatilla, Morrow.	Carey Miller	careymiller@ctuir.com	(541) 276-3629
		Teara Farrow	tearafarrow@ctuir.com	(541) 276-3629
		Eric Quaempts	ericquaempts@ctuir.com	(541) 276-3447
Nez Perce Tribe	Mainstem Columbia, Multnomah, Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Union, Wallowa, Columbia River Gorge National Scenic Area.	Vera Sonneck Patrick Baird	veras@nezperce.org keithb@nezperce.org	(208) 843-7313 (208) 621-3851
Yakama Indian Nation	Mainstem Columbia, Umatilla, Morrow, Gilliam, Sherman, Hood River	Casey Barney Johnson Meninick Phil Rigdon	crp3@yakama.com Johnson@yakama.com prigdon@yakama.com	(509) 865-5121 xtn 4378 (509) 865-5121 xtn 737 (509) 865-5121 xtn 4655
Cowlitz Indian Tribe	Mainstem Columbia, Clatsop, Columbia, Washington, Multnomah, Hood River, Wasco and Sherman.	Dave Burlingame Ed Arthur	culture@cowlitz.org earthur@cowlitz.org permitreview@cowlitz.org	(360) 577-6962 (360) 508-6369
Confederated Tribes of Grand Ronde Community of Oregon	Clatsop, Columbia, Washington, Tillamook, Yamhill, Polk, Lincoln, Benton, Lane, Douglas, Josephine, Jackson, Linn	Eirik Thorsgard	eirik.thorsgard@grandronde.org	(503) 879-1630
		Michael Karnosh	michael.karnosh@grandronde.org	(503) 879-2383

Attachment 5: Federally Recognized Tribes with Interest in the Geographic Range of this RGP

(Current as of October 2011)

<u>TRIBE</u>	<u>COUNTY</u>	<u>CONTACT</u>	<u>EMAIL</u>	<u>PHONE</u>
Confederated Tribes of the Siletz Reservation, Oregon	Wasco, Hood River, Multnomah, Columbia, Clatsop, Washington, Clackamas, Tillamook, Yamill, Marion, Polk, Lincoln, Benton, Linn, Lane, Douglas, Josephine, Jackson, Coos, Curry	Robert Kentta	rkentta@ctsi.nsn.us	(541) 351-0148
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon	Malheur, Harney, Lake, Klamath, Deschutes, Crook, Jefferson, Wasco, Wheeler, Sherman, Gilliam, Morrow and Grant.	Theresa Peck	theresa.peck@burnspaiute-nsn.gov	(541) 573-1375
Cow Creek Band of Umpqua Tribe of Indians	Douglas, Curry, Josephine, Coos, Lane, Deschutes, Klamath	Amy Amoroso	aamoroso@cowcreek.com	(541) 677-5575 xtn 5516
Klamath Tribes, Oregon	Malheur, Harney, Lake, Crook, Deschutes, Klamath	Perry Chocktoot	perry.chocktoot@klamathtribes.com	(541) 783-2210 xtn 178
Confederated Tribes of Coos, Lower Umpqua, & Siuslaw Indians of Oregon	Coos, Douglas, Lane, Benton	Agnes Castronuevo	acastronuevo@ctclusi.org	(541) 888-9577
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California	Klamath, Lake, Harney, Malheur	John Vass	johnvass@citlink.net	(530) 279-6310
		Wilson Wewa	wwewa@wstribes.org	(541) 553-3313