



**US Army Corps
of Engineers**
Portland District

DEPARTMENT OF THE ARMY PERMIT

REGIONAL GENERAL PERMIT FOR

Maintenance Activities along the South Coast of Oregon (RGP-9)

PERMIT NO. NWP-2015-402

EFFECTIVE DATE: This permit becomes effective when signed by the Federal official designated to act for the Secretary of the Army.

EXPIRATION DATE: This permit expires five years from the effective date.

ISSUING OFFICE: U.S. Army Corps of Engineers, Portland District, Regulatory Branch (Corps)

1. AUTHORITY. This Regional General Permit (RGP) authorizes certain maintenance activities in waters of the United States (U.S.) within Douglas, Coos, and Curry Counties. Individual actions authorized under this RGP must cause no more than minimal adverse environmental effects (individually and cumulatively) and are subject to the terms and conditions contained herein. This RGP 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 (CWA, 33 U.S.C. 1344) and section 10 of the Rivers and Harbors Act of 1899.

This RGP contains provisions intended to protect the environment, endangered species, and historic properties and to ensure activities authorized by this RGP will cause no more than minimal individual and cumulative environmental impacts. The terms and conditions contained within this permit apply to this RGP only. Work that does not comply with these provisions is not authorized by this RGP and may require Department of the Army authorization by other available permit tools. Moreover, compliance with the provisions of this RGP does not itself guarantee that the work would be authorized under this RGP.

2. PROJECT LOCATION. Along the South Coast of Oregon from the Umpqua River in Douglas County to the California border and within the limits of Oregon's designated coastal zone. The coastal zone is bound on the west by the extent of the state's territorial sea (generally 3 nautical miles offshore) and to the east by the crest of the Coast Range. Within this region, there are two exceptions to the eastern boundary: the Umpqua River, where the coastal zone extends to Scottsburg (approximate River Mile 28); and the Rogue River, where the coastal zone extends to Agness (River Mile 27.1).

To determine if a specific action is located within Oregon's Coastal Zone, a 'Coastal Zone Finder' tool can be found on the Oregon Department of Land Conservation and Development (DLCD) website at http://www.oregon.gov/LCD/OCMP/Pages/FederalConsistency.aspx#Where_Does_Federal_Consistency_Apply.

3. ACTIVITIES AUTHORIZED BY THIS RGP. This RGP authorizes the following activities at Port, public, and private facilities.

a. Maintenance dredging of existing marina basins; access channels to marinas or boat slips; boat slips; launch ramps; travel lifts; and ship berths associated with port, public, and private facilities. The dredging must not alter the character, scope, size, or location of the project area or previously authorized dredge prism (width, length, and depth).

(1) To qualify as maintenance dredging, the project area must have previously been dredged within 15 years of the date of the application for authorization under this RGP.

(2) Dredging shall occur by hydraulic suction dredge and pipeline, to include submersible pump, or mechanical clamshell dredge, unless otherwise authorized by the Corps. Prop-wash dredging is not authorized by this RGP.

b. Disposal of dredged material associated with maintenance dredging. Dredged material proposed for unconfined, aquatic disposal must be determined to be suitable by the interagency Portland Sediment Evaluation Team (PSET). The PSET uses the *Sediment Evaluation Framework for the Pacific Northwest* (SEF) to evaluate dredged material suitability per CWA sediment testing regulations. The SEF is available on-line at: <http://www.nwp.usace.army.mil/Missions/Environment/DMM.aspx>. The following dredged material disposal options are covered by this permit:

(1) Disposal of dredged material into upland sites (confined or with return flows). This RGP does not authorize the removal of material from an upland disposal site and subsequent placement into waters of the U.S.;

(2) Dredged material placement in existing/designated flowlane sites in coastal river channels, non-dispersive/semi-dispersive in-bay sites (includes in-bay/river and ocean sites), and nearshore placement sites; and

(3) Aquatic placement of dredged material for the purpose of beach nourishment with the following restrictions:

(a) The grain size distribution of the material to be placed on a specific site is of a similar composition as the material existing at the receiving location;

(b) There is a demonstrated need for beach nourishment at the general placement area; and

(c) The placement height of the material does not exceed high tide.

c. Maintenance of currently serviceable structures or fill provided the structure or fill is not put to a different use and the maintenance activity does not change the character, scope, or size of the original design. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized.

Authorized activities include, but are not limited to, piling replacement, dock repair, repair of existing riprap revetments, and replacement of structures within and spanning or protruding over navigable waters.

d. Sediment sampling using conventional sampling methods (includes a wide range of grab samplers and core samplers) for the purposes of characterizing dredged material per the SEF. Prior to sample collection, the proposed sediment sampling methods and locations must be approved by the interagency PSET.

4. PROCEDURES FOR USE OF THIS RGP. To use RGP-9, a prospective permittee must first notify the Corps by submitting a pre-construction notification (PCN) and may not proceed with the proposed work until the District Engineer or his designee issues written notification that the proposed project meets the requirements of this RGP and is authorized. Proposed projects which do not meet the eligibility requirements of this RGP will be processed by the Corps using other appropriate permit tools.

a. Contents of Pre-Construction Notification: The PCN may be made by means of the Department of the Army standard application form (ENG Form 4345) or the Corps/Department of State Lands Joint Permit Application form and must include the following information:

(1) Name, address, and telephone number(s) and point of contact/agent;

(2) Location of the proposed project;

(3) Purpose and need for the proposed activity;

(4) A complete description of the proposed project/activity. All activities the applicant plans to undertake, which are reasonably related to the same project and for which a Department of the Army permit would be required, must be included in the notification.

(5) Project drawings including a vicinity map, and section and plan views. Drawings must be completed in black and white, or reproducible in black and white, on 8 ½ by 11-inch paper.

(a) The drawings must include a scale and elevations reported in a consistent and standard datum (e.g., MLLW [preferred] or NAVD 88).

(i) For vicinity maps – show and label the location of the project area (e.g. outline the perimeter, use an arrow, etc.) with clear boundaries; list latitude, longitude, section, township, and range; and show and label all waterways.

(ii) For plan views – indicate where waters, including wetlands and other features, extend across property boundaries; show dimensions of the proposed project and the location and dimensions of existing adjacent structures (e.g. piers, floats); indicate location, quantity, and type of fill and excavation (area and volume).

(iii) For elevation or section views – label shorelines and show the plane of MHW, the HTL or OHW line, and/or wetland boundary, as appropriate; show original and proposed elevations, water depths, and dimensions of proposed structures or fills (use the same vertical and horizontal scale).

(b) Drawings for projects involving dredging and/or the disposal of dredged material must include the most recent hydrographic surveys depicting the area(s) to be dredged (width, length, and depth) and the proposed disposal site(s):

(i) For in-water disposal site(s) show boundaries and coordinates for each corner of the site.

(ii) For upland/beach nourishment disposal site(s) show coordinates and boundaries.

(iii) Identify the types (dispersive or non-dispersive) of in-water disposal site.

(iv) If disposing by pipeline, show the pipeline route from the dredge site to the disposal site. Identify portions that are floating or submerged.

(6) For maintenance dredging actions:

(a) A description of project staging, stockpiling, and access routes to allow the Corps to evaluate the potential effects on federally authorized projects.

(b) Where unconfined, aquatic disposal is proposed, the proponent must receive a positive dredged material suitability determination memorandum from the PSET. The sediment evaluation process can take as little as 3 months or take up to 18 months, depending on the complexity of the project and the experience of the proponent and their contractors. Pre-application sediment evaluation is strongly encouraged. The PSET will make the following evaluations using the SEF guidance:

(i) The PSET will determine if sediment testing is required.

(ii) If sediment physical and/or chemical analysis is required, the proponent must prepare a sediment sampling and analysis plan (SAP). Prior to sediment sampling, the PSET must approve the proponent's SAP.

(iii) If sediment testing is required, the proponent must summarize the physical and/or chemical analytical results in a sediment characterization report (SCR). The PSET will compare the analytical results to the 2015 Northwest Regional benthic toxicity screening levels (SLs) to determine if the dredged material is suitable for unconfined, aquatic disposal.

(iv) If chemical concentrations exceed the SLs, the proponent may opt to run biological tests on the project sediments. The PSET will compare the results of these biological tests to the benthic interpretive guidelines published in the SEF to determine if the dredged material is suitable for unconfined, aquatic disposal.

(c) The total volume of material proposed to be removed and the duration of the proposed dredging event (one-time event or multi-year events). If the material will be placed in multiple disposal sites, indicate the volume to be placed in each site and the location of each site.

(d) Documented evidence the project area has been previously dredged within the width, length, and depth requested including the year in which dredging last occurred.

(e) Information regarding the method of transportation to and disposal of the dredged material at the selected disposal site.

(f) If requesting authorization to remove material by means other than a hydraulic suction dredge and pipeline or clamshell dredge, provide evidence the activity will not result in significant suspension of material.

(7) For flowlane disposal. Provide the evaluation used to determine sufficiency of flow to adequately disperse the material.

(8) For maintenance of currently serviceable structures or fill. If minor deviations to the structures original design are proposed, provide an explanation as to the reason for the deviation.

(9) For beach nourishment provide sufficient documentation to show compliance with the restrictions in 3.b(3).

(10) Submerged aquatic vegetation surveys. Indicate whether submerged aquatic vegetation (SAV) is known to presently occur or has historically occurred in the project area. If surveys have been conducted in the project area they should be provided as part of the PCN package.

(11) If cultural resource surveys have been completed for the project, including disposal sites, reports documenting the results of the surveys shall be submitted with the PCN to facilitate coordination with the State Historic Preservation Officer (SHPO) and appropriate Native American Indian Tribes. As part of the permit evaluation process, the Corps must coordinate with the SHPO and Tribes as indicated in 4.b and 4.c.

b. Coordination with the State Historic Preservation Officer (SHPO). All requests for Department of the Army authorizations under this RGP will be reviewed by the Corps Regulatory Branch archeologist to make an initial section 106 effects determination. If there is not enough information available in the project file to make a determination, the applicant will be requested to provide additional information. SHPO notification will be executed according to current Regulatory Branch protocols and agreements based on the project-specific effects determination.

c. Notification of Native American Indian Tribes. Notification will be made electronically by the Corps to Native American Indian Tribes with an interest in the area in which the proposed action would occur. The Tribes will have 30 calendar days to respond to the Corps Regulatory Project Manager indicating whether the proposed project would impact such aspects as cultural resources, treaty fishing access sites, usual and accustomed areas, burial sites, or Traditional Cultural Properties.

d. Endangered Species. Proposed activities that may affect a federally listed species will be required to comply with the terms and conditions of an existing programmatic or previously issued biological opinion, or will need to go through a project-specific consultation if the first two options do not apply. The Corps may request additional information to determine compliance with a programmatic/previously issued opinion or to assist in initiating project-specific consultation.

e. Other Information Requirements. Other agencies may have review requirements separate from the Corps evaluation process. Applicants should contact these agencies directly to answer any questions.

(1) Oregon Department of Environmental Quality (DEQ) Requirements: Information required to be submitted to DEQ by the applicant to meet Oregon Administrative Rules (OAR 340-048-0020):

(a) Land Use Compatibility Statement (LUCS) that demonstrates the activity complies with the local comprehensive plan and,

(b) Stormwater Management Plan (SWMP): For any project resulting in new, an increase in, or the redevelopment of impervious surfaces (including gravel surfaces), the applicant must submit a post-construction SWMP to DEQ for review and approval prior to the start of construction. Submittal of the plan to DEQ at the same time the PCN is submitted to the Corps will streamline the project review. DEQ provides information on preparing a SWMP at: <http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidelines.pdf>. DEQ requires applicants to first consider low impact development options; if these options can't be implemented a narrative must be provided explaining why.

(2) Oregon Department of State Lands (DSL): The placement of state-owned material on uplands is subject to a License from DSL. Any beneficial use of state-owned material may be subject to royalty payments to DSL.

5. REVIEWS UNDER 33 USC 408 – REQUESTS TO ALTER U.S. ARMY CORPS OF ENGINEERS CIVIL WORKS PROJECTS. Section 14 of the Rivers and Harbors Act of 1899 (found at 33 U.S.C. 408 and referred to as section 408) authorizes the Secretary of the Army to grant permission for the alteration or occupation or use of a Corps civil works project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. A requester has the responsibility to acquire all other permissions or authorizations required by federal, state, and local laws or regulations, including any required permits from the Corps' Regulatory Program (section 10/404/103 permits). Where reviews under section 408 are required, authorization to work under this RGP will not be granted until the section 408 approval is received. An approval under section 408 does not grant any property rights or exclusive privileges.

The following are examples of actions that may require review under section 408:

- a. Temporary occupation of dredge pipelines or booster pumps placed on or across jetties; or the installation/removal of pipes/cables/etc. through levees.
- b. Temporary occupation of federal navigation channels by dredging scows, tugs, or other equipment.
- c. Placing dredged material at an upland site adjacent to and possibly abutting a jetty.
- d. Dredging the Federal Navigation Channel (FNC) in whole or part due to access issues or dredging up to the boundaries of a FNC.
- e. Placement of material in a flowlane disposal site within or near a federal navigation channel.

6. ACTIONS OCCURRING ON CORPS LAND OR WITHIN CORPS EASEMENTS. Where proposed actions will occur on Corps land or within a Corps easement, the applicant must obtain all necessary permissions or property rights from the Portland District Real Estate Division prior to conducting the work.

7. GENERAL CONDITIONS.

- a. Prior to starting the authorized activities, you shall notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch. Notification shall be provided by e-mail to PortlandRegulatory@usace.army.mil and the email subject line shall include: Corps project number and the project location by county.
- b. The following special condition is a part of all Department of the Army permits that provide authorization under section 10 of the Rivers and Harbors Act, regardless whether the permit provides such authorization under section 10 alone, or in combination with authorization under other laws:

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or 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 U.S Army 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.

c. Cultural Resources and Human Burials-Inadvertent Discovery Plan: Permittees shall immediately cease all ground disturbing activities and notify the Portland District Regulatory Branch 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 Protection and Repatriation Act, are discovered and/or may be affected. The Permittee shall follow the procedures outlined below:

(1) Immediately cease all ground disturbing activities.

(2) Notify the Portland District Regulatory Branch. Notification shall be made as soon as possible following discovery but in no case later than 24 hours. The notification shall clearly specify the purpose is to report a cultural resource discovery and may be made electronically (to cenwp.notify@usace.army.mil) or by fax (503-808-4375). Follow up the notification by contacting the Corps representative (by email and telephone) identified in the verification letter.

(3) Notify the Oregon State Historic Preservation Office by telephone at (503-986-0674).

Failure to stop work immediately and until such time as the Corps has coordinated with all appropriate agencies and complied with the provisions of 33 CFR 325, Appendix C, the National Historic Preservation Act, Native American Graves Protection and Repatriation Act and other pertinent regulations, could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.

d. In-Water Work: All in-water work will be performed, to the maximum extent practicable, within the approved Oregon Department of Fish and Wildlife (ODFW) in-water work periods to minimize impacts to aquatic species. Exceptions to these time periods require specific approval from the Corps.

e. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

f. Endangered Species: This RGP does not authorize you to take an endangered or threatened species. In order to legally take a listed species, permittees must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA section 10 permit, or a biological opinion (BiOp) under ESA section 7, with "incidental take" provisions with which the permittee must comply). Authorization under this RGP is conditional upon compliance with all of the mandatory terms and conditions associated with incidental take, which are incorporated by reference in this RGP. Failure to comply with the terms and conditions associated with

incidental take of the BiOp, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with the RGP.

g. Water Quality: All activities authorized under this RGP that result in a discharge of dredged or fill material must comply with a Water Quality Certification issued by the Oregon Department of Environmental Quality.

h. Coastal Zone: All activities authorized under this RGP that have a reasonably foreseeable effect on land uses, water uses, or natural resources of the coastal zone, must comply with the conditions of a Coastal Zone Management Act consistency determination.

i. Hydraulic Pipeline Dredge: When using a hydraulic dredge, Permittee shall operate the dredge intake at or below the surface of the material being removed. The intake may be raised a maximum of three (3) feet above the dredge surface for brief periods of purging or flushing. At no time should the dredge be operated at a level higher than three (3) feet above the dredge surface.

j. Inspection of the Project Site: The permittee shall allow representatives of the Corps to inspect the authorized activity to confirm compliance with the general permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the agency representative making the inspection.

k. Activities Conducted on Corps Property or Easements: Where the authorized activity occurs on Corps property or within a Corps easement, the permittee shall obtain necessary permissions or property rights from the Portland District Real Estate Division prior to conducting any work under this RGP.

l. Activities Affecting Structures or Works Built by the United States: RGP activities that may alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), will not be given authorization to work under this RGP until the prospective permittee receives written permissions from the Portland District Corps under section 408 to alter, occupy, or use the USACE project.

8. 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.

9. 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 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.

10. REEVALUATION OF PERMIT DECISION. The District Engineer may reevaluate this general permit at any time, and, if appropriate, suspend, modify, or revoke this permit as provided in 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.

a. The District Engineer may assert discretionary authority by modifying, suspending, or revoking RGP authorization for a specific activity whenever he determines sufficient concerns for the environment or any other factor of the public interest so requires. Whenever the District Engineer determines a proposed specific activity would have more than minimal individual or cumulative adverse effects on the environment or otherwise may be contrary to the public interest, he must either modify the RGP authorization to reduce or eliminate the adverse impacts or notify the prospective permittee that the proposed activity is not authorized by the RGP and provide instructions on how to seek authorization under an individual permit.

b. The Corps will annually review the projects authorized by this general permit to determine whether they result in no more than minimal effects, both individually and cumulatively, and to ensure that the terms and conditions of this permit are being observed. The District Engineer will invite the participation of other interested federal and state agencies in this review. If this review concludes that changes in permit terms 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.

c. Activities authorized under this general permit that are under construction or under contract for construction in reliance upon this authorization will remain authorized provided 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.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Jose L. Aguilar
Colonel, Corps of Engineers
District Commander

(Date)