



**US Army Corps
of Engineers®**

Portland District

**Department of the Army
Regional General Permit
For**

**U.S. Forest Service and Bureau of Land Management
Aquatic Habitat Restoration Activities
Within the State of Oregon (RGP-4)**

Permit Number: RGP-4, NWP-2007-999/5

Effective Date: April 22, 2022

Expiration Date: April 21, 2027

Permit Title: U.S. Forest Service (USFS) and Bureau of Land Management (BLM)
Aquatic Habitat Restoration Activities within the State of Oregon.

Authority: In accordance with 33 CFR 325.2(e)(2), the U.S. Army Corps of Engineers (Corps) is issuing a regional general permit (RGP) that authorizes certain activities in or affecting waters of the United States, including navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344). Activities subject to Section 404 and Section 10 authorization requirements are hereafter referred to as regulated activities.

Activities that are exempt from Clean Water Act regulation, as described in 33 CFR 323.4 are not subject to this RGP. It is not the intent of this RGP to assert jurisdiction over exempt activities.

Issuing Office: U.S. Army Corps of Engineers (Corps)
Portland District, Regulatory Branch
P.O. Box 2946
Portland, OR 97208-2946

Purpose: The purpose of this RGP is to authorize eleven aquatic restoration activities in waters of the United States designed to maintain, enhance, and restore watershed functions that affect aquatic species within the state of Oregon through projects implemented, funded, or overseen by USFS and/or BLM.

Activities authorized by this RGP: Work authorized by this RGP is limited to the activities described below. This RGP authorizes the following work in or affecting navigable waters of the United States and discharges of dredged or fill material into waters of the United States, provided those activities result in net increases in aquatic resource functions and services.

1. Fish Passage Restoration
 - (a) Stream Simulation Culvert and Bridge Projects
 - (b) Headcut and Grade Stabilization
 - (c) Irrigation Diversion Replacement or Relocation and Screen Installation or Replacement
2. Large Wood (LW), Boulder, and Gravel Placement
 - (a) Large Wood and Boulder Projects
 - (b) Porous Boulder Weirs and Vanes
 - (c) Engineered Log Jams (ELJ)
 - (d) Constructed Riffles
 - (e) Gravel Augmentation
 - (f) Tree Removal for Large Wood (LW) Projects
3. Legacy Structure Removal
4. Off- and Side-Channel Habitat Restoration
5. Streambank Restoration
6. Set-back or Removal of Existing Berms, Dikes, and Levees
7. Reduction/Relocation of Recreation Impacts
8. Livestock Fencing, Stream Crossings, and Off-Channel Livestock Watering
9. Road and Trail Erosion Control and Decommissioning
10. Riparian Vegetative Planting
11. Beaver Habitat Restoration

For all activities identified below, this RGP authorizes work within navigable waters of the U.S. pursuant to Section 10 of the Rivers and Harbors Act and discharges of dredged or fill material in waters of the U.S. under Section 404 of the Clean Water Act.

1. Fish Passage Restoration: activities related to the removal of culverts or bridges, replacement of culverts or bridges with properly sized culverts and bridges, replacement of damaged culverts or bridges, resetting existing culverts that were improperly installed or damaged, stabilizing and providing passage over headcuts, irrigation diversion replacement or relocation, and irrigation intake screen installation or replacement. Such projects will take place where fish passage has been partially blocked or eliminated through road construction, stream degradation, and outdated diversion or screening methods.

(a) Stream Simulation Culverts and Bridges: Activities associated with the replacement of culverts and bridges with properly sized culverts and bridges for aquatic organism passage, or activities associated with the resetting of existing passable culverts or bridges that were improperly installed or damaged. All road-stream crossing structures shall simulate stream channel conditions per *Stream Simulation: An Ecological Approach to Providing Passage for Aquatic Organisms at Road- Stream Crossings (USDA-Forest Service 2008a)*, located at: http://stream.fs.fed.us/fishxing/aop_pdfs.html.

(b) Headcut and Grade Stabilization: Activities associated with armoring headcuts to prevent the continued upstream migration of the headcut. Stabilization efforts should focus on the plunge pool, the headcut, and

immediately upstream of the headcut. Armor headcuts with sufficiently sized and amounts of material to prevent continued upstream migration of the headcut. Materials can include both rock and organic materials which are native to the area and shall not contain gabion baskets, sheet pile, concrete, articulated concrete block, and cable anchors. Discharged material required to armor the headcut may extend into wetlands located beside the tributary and immediately above the headcut. Short-term stabilization efforts, including response to emergency stabilization efforts, may occur without associated fish passage measures where fish passage did not exist prior to the stabilization efforts. However, fish passage must be incorporated into the final headcut stabilization action and be completed during the first subsequent in-water work period.

(c) Irrigation Diversion Replacement or Relocation and Screen Installation or Replacement: The permittees will ensure that the action is individually reviewed and approved by National Marine Fisheries Service (NMFS) for consistency with the criteria found in *Anadromous Salmonid Passage Facility Design* (NMFS 2011e). Activities associated with the replacement or relocation of small irrigation diversion structures that are aquatic species passage barriers, and discharges associated with placement of screens on unscreened or improperly screened irrigation diversion structures. The relocation of existing irrigation diversion structures must allow for more natural stream dynamism and evolution with design considerations to reduce attraction by aquatic species.

2. Large Wood (LW), Boulder, and Gravel Placement: Activities related to LW and boulder placement, porous boulder structures and vanes, ELJ, constructed riffles, gravel augmentation, and tree removal for LW projects. Such activities will occur in areas where channel structure is lacking due to historic removal of large wood, riparian timber harvest, and in areas where gravel supplies are low due to anthropogenic disruptions. These projects will occur in stream channels and adjacent floodplains to increase channel stability, rearing habitat, pool formation, spawning gravel deposition, channel complexity, hiding cover, low velocity areas, and/or floodplain function.

(a) LW and Boulder Projects: LW and boulders shall be placed in areas where they would naturally occur and in a manner that closely mimics natural accumulations for that particular stream type. Boulder placement may not be appropriate in low gradient meadow streams. Structure types shall simulate disturbance events to the greatest degree possible and include, but are not limited to, log jams, debris flows, windthrow, and tree breakage.

(b) Porous Boulder Structures and Vanes: Activities associated with the construction of porous boulder structures and vanes. Included are low-profile structures comprised of boulders that partially span the channel, unless installed in bedrock-dominated channels. These structures and vanes can be utilized to redirect the channel thalweg, control channel alignment, alter and

maintain the width to depth ratio of the channel, and/or concentrate low flow into a deeper, narrower channel thereby improving fish passage in otherwise flat-bottomed channels.

(c) Engineered Log Jams (ELJ): Activities associated with the construction of ELJ. ELJ are a type of LW structure that include an anchoring system, such as rebar pinning, ballast rock, or vertical posts to create an interlocking mass for restoring physical and biological conditions critical to aquatic process and organisms. ELJ shall be designed to provide resistance from expected hydraulic forces. To the extent practical, ELJ should be designed to simulate stable natural log jams and can be either naturally stable due to LW size and/or stream width or anchored in place using rock or piles (driven into a dewatered area or the streambank, but not in water).

NMFS fish passage review and approval: For ELJs that occupy >25% of the bankfull area, the USFS or BLM will ensure that the action is individually reviewed and approved by NMFS for consistency with criteria found in *Anadromous Salmonid Passage Facility Design* (NMFS 2011e). NMFS approval shall be included with project notification to the Corps.

(d) Constructed Riffles: Activities associated with the construction of riffles that can be used as grade control features, improve floodplain connectivity or repair discontinuities in stream gradient. Construction techniques can vary, but typically include an appropriately graded mix of gravels, cobbles with fines washed in to maintain surface flow.

(e) Gravel Augmentation: Activities associated with the placement of gravel into stream channels and at tributary junctions in a manner that mimics natural debris flows and erosion to support spawning habitat for fish. Gravel augmentation typically occurs in areas where natural gravel supply has been limited by past land use practices.

(f) Tree Removal for LW Projects: Activities associated with the removal of trees that would be used for LW projects where trees may be felled and/or pushed/pulled directly into a stream and/or floodplain and may be stockpiled in upland for future instream restoration projects.

3. Legacy Structure Removal: Activities associated with the removal of channel-spanning weirs, legacy habitat structures, earthen embankments, subsurface drainage features, spillway systems, outfalls, pipes, instream flow redirection structures (e.g., drop structure, gabion, groin), or similar devices used to control, discharge, or maintain water levels. Legacy structures may include past projects, such as LW, boulder, rock gabions, and other in-channel and floodplain structures. Removal projects will be implemented to reconnect stream corridors, floodplains, estuaries, reestablish wetlands, improve aquatic organism passage, and/or restore more natural channel and flow conditions. Removal of instream water control

structures that impound contaminated sediment are not authorized by this RGP. Dam removal projects shall be individually reviewed and approved by NMFS for consistency with the criteria found in NMFS (2011e) and shall be individually reviewed by a Restoration Review Team. These approvals shall be provided with pre-construction notification to the Corps.

4. Off- and Side Channel Habitat Restoration: Activities associated with reconnecting historic side channels with floodplains by removing off-channel historic fill and channel plugs. New side channels and alcoves can be constructed in geomorphic settings that will accommodate such features. This activity category typically applies to areas where side channels, alcoves, and other backwater habitats have been filled or blocked from the main channel, disconnecting them from most if not all flow events.

5. Streambank Restoration: Activities associated with bank shaping and installation of coir logs or other soil reinforcements as necessary to support streambank restoration and riparian vegetation. Activities include installing LW, planting trees, shrubs, and herbaceous cover as necessary to restore ecological function in riparian and floodplain habitats, or a combination of these methods. Such actions are intended to restore streambanks that have been altered through road construction, improper grazing, invasive plants, and other anthropogenic activities.

6. Set-Back or Removal of Existing Berms, Dikes, and Levees: Activities designed to reconnect historic fresh-water deltas to inundated stream channels with floodplains, and historic estuaries to tidal influence. Such projects will take place where estuaries and floodplains have been disconnected from adjacent rivers through drainpipes and anthropogenic fill. Individual projects must be reviewed by the U.S. Army Corps of Engineers Portland District's Section 408 Team for potential alterations to Corps Civil Works projects prior to the start of any construction activity. See General Condition 4: Activities Affecting Structures or Works Built by the United States.

7. Reduction/Relocation of Recreation Impacts: Activities intended to close, better control, or relocate recreation infrastructure and use along streams and within riparian areas, where these activities are themselves located in waters of the U.S. to include navigable waters of the U.S. Projects include those activities that result in discharges of dredged or fill into waters of the United States related to the removal, improvement, or relocation of infrastructure associated with designated campgrounds, dispersed camp sites, day-use sites, foot trails, and off-road vehicle (ORV) roads/trails. The primary purpose is to eliminate or reduce recreational impacts to aquatic resources, to restore riparian areas and vegetation, improve streambank stability, and/or reduce sedimentation into adjacent streams.

8. Livestock Fencing, Livestock Stream Crossings, and Off-Channel Livestock Watering: Work in navigable waters of the U.S. and the discharge of dredged or fill material into waters of the U.S. related to the construction of livestock fences and livestock stream crossings to prevent riparian grazing, provide controlled livestock

access in areas where waters of the United States would be impaired by these activities. Such projects promote a balanced approach to livestock use in riparian areas, reducing livestock impacts to streambanks, channel substrates, and water quality.

9. Road and Trail Erosion Control and Decommissioning: Activities associated with hydrologically closing or decommissioning roads and trails, including culvert removal in streams; removing, installing or upgrading cross- drainage culverts; upgrading culverts on non-fish-bearing streams; constructing water bars and dips; reshaping road prisms; vegetating fill and cut slopes; removing and stabilizing of side-cast materials; grading or resurfacing roads that have been improved for aquatic restoration with gravel, bark chips, or other permeable materials; contour-shaping of the road or trail base; removing road fill to native soil levels; soil stabilization; and tilling compacted surfaces to reestablish native vegetation. This category includes road relocation, which can be considered when a road is decommissioned in a floodplain and future vehicle access through the area is still required. In these situations, the road will be relocated as far as practical away from the stream. The relocation will not increase the drainage network and will be constructed to hydrologically disconnect it from the stream network to the extent practical. New cross drains shall discharge to stable areas where the outflow will quickly infiltrate the soil and not develop a channel to a stream. This permit does not allow new road construction (not associated with road relocation) or routine maintenance within riparian areas or wetlands. Individual projects involving culvert removal, installation, or upgrades or actions where work would occur on a levee, must be reviewed by the U.S. Army Corps of Engineers Portland District's Section 408 Team for potential alterations to Corps Civil Works projects prior to the start of any construction activities. See General Condition 4: Activities Affecting Structures or Works Built by the United States.

10. Riparian Vegetative Planting: Activities where there would be discharges of dredged material or fill into waters of the United States associated with the planting of native riparian species that would occur under natural disturbance regimes. In addition, this category includes work in navigable waters of the U.S.

11. Beaver Habitat Restoration: Activities associated with the construction of Beaver Dam Analogs (BDA), Vertical Post Structures (VPS) and Post Assisted Log Structures (PALS). BDA are permeable, channel-spanning structures with a constant crest elevation, constructed with a mixture of woody debris and fill material to form a pond upstream of the structure and mimic a natural beaver dam. PALS and VPS consist of woody materials of various sizes pinned together with untreated wooden posts driven into the substrate to mimic natural wood accumulations.

General Conditions: The permittee is responsible for ensuring that whoever performs, supervises, or oversees any portion of the work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP, including any special conditions included in the written verification letter from the Corps.

The activity must comply with any conditions included in the Oregon Department of Environmental Quality's Section 401 Water Quality Certification; the Endangered Species Act Section 7 Formal Programmatic Conference and Biological Opinions and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation; and the conditions of the Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all terms and conditions of the RGP. Any authorized structure of fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP verification.

Department of the Army authorization under this RGP is subject to the following General Conditions:

1. Pre-Construction Notification.

(a) **Timing.** For each individual project proposed to be implemented under RGP-4, the USFS/BLM shall notify the Corps 60 days prior to the proposed start date. Under certain circumstances approved by the Corps, such as receiving unanticipated funding for an aquatic restoration project near or during a field season, the Pre-Construction Notification (PCN) may be sent closer to the proposed start date. In these cases, notification should be provided at least 30 days from the proposed start date unless otherwise coordinated with the Corps. The USFS and BLM must ensure all other compliance steps have been met prior to sending the notification. The RGP-4 activity may not begin until the Corps verifies that the activity may proceed under RGP-4;

(b) **Contents of Pre-Construction Notification.** The PCN must be in writing and should utilize either the Joint Permit Application (JPA), the Corps Application for a Department of the Army Permit Form ENG 4345, or a letter containing the required information. The PCN must include the following information:

- (1) **Action Identifier.** The same unique identification number shall be used for each project's notification and project completion report;
- (2) **Project Name.** Use the same project name from notification to completion (i.e., Jones Creek, Tillamook Co. OR, culvert replacement);
- (3) **Location.** Area map showing activity location(s), stream name(s), latitude and longitude (in DD.DDDD format). For linear projects, provide latitude and longitude coordinates for start and end points. If multiple activity locations are associated with a single and complete project, enter latitude and longitude coordinates for each activity location;
- (4) **Land Ownership** if not USFS or BLM;
- (5) **Agency and Name.** Agency name and project contact information (name, phone, email);
- (6) **Date** of submittal;

- (7) **Timing.** Project start and end dates;
- (8) **Activity Type.** If multiple activities are part of a single and complete project, list all activity types;
- (9) **Identification of Aquatic Resources.** Aquatic resources must be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.). Wetlands within the project area shall be identified per the 1987 Corps of Engineers Wetlands Delineation Manual and Regional Supplements found at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/ Show pre-existing wetland boundary(s) on project drawings and label approximate area in square feet or acres;
- (10) **Project Description.** Narrative of the project purpose, objectives, and activity components in enough detail to demonstrate how the activity is meeting the General Aquatic Conservation Measures and PDC of the ARBO II biological opinion(s);
- (11) **Extent.** Number of stream miles treated and area of impact for each activity located in an aquatic resource. List area of impact to each aquatic resource separately (i.e. stream impacts separate from wetland impacts);
- (12) **Removal and Fill Volumes.** Estimate of project's removal/fill volumes (e.g. number of logs and volumes of rocks, boulders, and other restoration materials). For multiple locations, provide volumes and area of impact for each location. Impacts to all waters of the U.S. must be reported in acres or square feet. The volume of dredged or fill material that would be permanently and/or temporarily discharged into waters of the U.S. shall be included. A table may be used to convey this information;
- (13) **Sketches, Maps, Drawings, and Plans.** Must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale included, and depict all identified aquatic resources and aquatic resource impact areas, including plan and cross-section profile drawings, and recent aerial photograph;
- (14) **Wyden Amendment Project.** The USFS and BLM propose that aquatic restoration projects occur on non-federal lands when such projects directly assist the USFS and/or BLM in achieving their aquatic restoration goals and are funded in part by the USFS and BLM. The USFS and BLM are permitted to fund such projects under Wyden Amendment authority (16 U.S.C. 1011(a), as amended by Section 136 of PL 105-277). When such projects occur, the USFS and BLM will implement the following process: State in PCN the project is being implemented under the Wyden Amendment. In addition to all other PCN requirements, identify if the project is located in the Oregon Coastal Zone. If so, provide the additional documentation found in Appendix 2 below. Include name and affiliation of person(s) implementing the project to include their mailing address, phone number(s), and email address(s);

- (15) **Tribal Coordination or Consultation.** Provide documentation of tribal coordination, date initiated, concerns raised (if any), and resolution if concerns were raised;
- (16) **Section 106 NHPA Compliance.** Provide appropriate documentation demonstrating Section 106 compliance. For coordination with SHPO, the applicant should document if a Programmatic Agreement applies to the project (e.g., a completed and signed USFS “green sheet”). A copy of the Programmatic Agreement should be provided to the Corps for record keeping but does not need to be provided for each project. If a project specific Memorandum of Agreement or Memorandum of Understanding is developed, a copy of the fully executed agreement must be provided along with the application materials. If a project specific individual coordination is undertaken with SHPO or Tribe(s), the Corps must be provided with information regarding the effects determination made, any responses from SHPO and/or Tribe(s) and the date that the process is concluded. The documentation for the effects determination should be provided to the Corps along with the application materials;
- (17) **Species Affected.** ESA-listed fish and/or wildlife species, Critical Habitat, and/or Essential Fish Habitat (EFH) affected, including the documentation demonstrating compliance with the ESA;
- (18) **Verification.** Verify that all appropriate General Aquatic Conservation Measures and PDC have been thoroughly reviewed and will be incorporated into project design, implementation, and monitoring. Provide sufficient detail in the project description to document all conditions have been met;
- (19) **Section 408.** All projects must be screened for potential impacts to U.S., Army Corps of Engineers federally authorized civil works projects under 33 U.S.C. 408 (“Section 408”). Guidance can be found at <https://www.nwp.usace.army.mil/408>. Include a statement that Section 408 review has occurred. If response was received by the Section 408 team per their review, provide a copy with the PCN;
- (20) **List of Authorizations** required by other federal, state, or local agencies for the work, including all approvals received or denials already made;
- (21) **NMFS/USFWS Fish Passage Review and Approvals:** If fish passage reviews and approval is required per the NMFS and/or USFWS ARBO II biological opinions, provide copies of the NMFS and/or USFWS approval(s). For activities that require Restoration Review Team (RRT) review per the ARBO II biological opinions, provide copies of the approval(s). Projects that require NMFS and/or USFWS fish passage review, and approval include the following:
- a. Dewatering construction sites by pumping at a rate that exceeds 3 cubic feet per second (cfs) will require fish screen review
 - b. Fish passage culverts and bridges that do not meet width standards
 - c. Headcut Stabilization and channel spanning non-porous rock structures that create discrete longitudinal drops > 6”

- d. Fish Ladders
- e. Engineered log jams (ELJs) that occupy >25% of the bankfull area
- f. Irrigation Diversion Replacement/Relocation & Screen Installation/Replacement
- g. Dam removal
- h. Channel Reconstruction/Relocation projects
- i. Off and side channel reconstruction when the proposed side channel will contain >20% of the bankfull flow
- j. Passage that reconnects isolated populations of bull trout to new areas where they may face new exposure to populations of non-native (brook trout, etc.) must be approved by the USFWS Division or Field Office Supervisor;

(22) **Wild and Scenic Rivers:** For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must include written notification from the federal agency with direct management responsibility for that river that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

2. **Project Completion Report.**

No later than November 15 of each year, individual USFS and BLM administrative units/permittees shall provide to the Corps a project completion report summarizing all projects implemented during the previous field season for that unit. The report shall include the same elements used for pre-construction notification with additional completion information.

(a) **Action Identifier:** Same as in pre-construction notification.

(b) **Project Name:** Same as in pre-construction notification.

(c) **Location:** 6th field Hydrologic Unit Code (HUC), stream name, and latitude/longitude (in DD.DDDD format). For linear projects, provide latitude/longitude coordinates for start and end points. If multiple locations occur in a 6th field watershed, enter lat/long coordinates for each location.

(d) **Agency Contact:** Agency and project lead name, address, telephone number and email address.

(e) **Timing:** Actual project start and end dates.

(f) **Activity Type:** Activity categories that apply.

(g) **Project Description:** Brief narrative of the completed project and objectives.

(h) **Extent:** Number of stream miles or acres treated.

(i) **Removal and Fill Volumes:** Provide actual removal/fill volumes (e.g. number of logs and volumes of rocks, boulders, and other restoration materials).

(j) **Wyden Amendment Projects:** If the project was implemented under the Wyden Amendment, were all the permit conditions met? If not, explain.

(k) **Tribal Coordination:** If monitoring was required and/or if inadvertent discoveries were made during construction, provide a report summarizing details and include copies of the inadvertent discovery plan any further coordination with the tribe(s). Same information as pre-construction notification.

(l) **Section 106 NHPA Compliance:** See pre-construction notification. For all actions, documents should have been provided with PCN. If additional consultation and/or reporting was required per the requirements of the permittee's Programmatic Agreement with the Oregon State Historic Preservation Office (SHPO), or if Section 106 compliance was met through a separate consultation with the SHPO or Tribal Historic Preservation Office and included reporting, provide copies.

(m) **Species Affected:** Listed fish and wildlife species, critical habitat, and or EFH, or non-listed fish species affected by the project.

(n) **Post-project Assessment:** Effects not considered and remedial actions taken, including any dates work ceased due to high flows.

(o) **In-water Work Window Extension:** Was the project approved to be implemented outside of the Oregon Department of Fish and Wildlife (ODFW)-recommended in-water work window? If yes, provide ODFW and National Marine Fisheries Service (NMFS)/U.S. Fish & Wildlife Service (USFWS) contact names.

(p) **NMFS/USFWS Fish Passage Review and Approvals:** If NMFS and/or USFWS fish passage review and approval, or if NMFS and/or USFWS Restoration Review Team (RRT) review and approval were required per the NMFS and USFWS ARBO II biological opinions, provide copies of the approval(s) a summary of actions that required additional reviews, which include the project name and location.

3. Navigation.

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or 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 navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocation, or alter the structural work or obstructions caused thereby, without expense to the United States on account of any such removal or alteration.

(c) The permittee shall install and maintain any lights, signals, or other appropriate markers necessary to clearly designate the location of structures or work that might pose a hazard to public safety. USFS and BLM shall abide by U.S. Coast Guard requirements concerning the marking of structures and work in navigable waters of the U.S.

4. Activities Affecting Structures or Works Built by the United States.

A project may require permission from the Corps pursuant to Section 408 because it may alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project. An alteration is defined as any action that builds upon, alters, improves, moves, occupies or otherwise affects the usefulness, or the structural or ecological integrity of a Corps federally authorized project. An activity that requires section 408 permission is not authorized by RGP-4 until the Corps issues the section 408 permission to alter, occupy, or use the Corps' project and the Corps issues a written RGP-4 verification. If you suspect a project may require section 408 permission, you may contact the section 408 team directly at section408nwp@usace.army.mil.

5. Site Inspection.

The permittee shall allow representatives from the Corps to inspect the authorized project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization and any special conditions of the verification.

6. Fish Passage and Aquatic Life Movements.

(a) No regulated activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area.

(b) The proposed project must be designed to provide fish passage over stabilized headcuts through constructed riffles for riffle/pool streams or a series of log or rock weir structures for step/pool channels.

(c) NMFS Hydro Fish Passage Review and Approval: if the structure width is determined to be less than the established width criteria as defined above, a variance may be requested from the Portland office of the NMFS' Habitat Conservation Division for consistency with criteria in *NOAA Fisheries Anadromous Salmonid Passage Facility Design* (NMFS 2011).

7. Endangered Species Act.

(a) No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of threatened or endangered species, or a species proposed for such designation under the ESA, or which will directly or indirectly destroy or modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under this RGP which “may affect” a listed species or critical habitat unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed.

(b) Authorization of an activity by this RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion (BO) with “incidental take” provisions, etc.) from the FWS or the NMFS, the ESA prohibits any person subject to the jurisdiction of the United States to take a listed species. The BO(s) prepared by the NMFS dated April 25, 2013, and the USFWS dated July 1, 2013 contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified “incidental take” in the BO(s) (NMFS reference numbers NWP-2013-9664, and USFWS reference number 01EOFW00-2013-F-0090) (Attachments 1 and 2). The permittee’s authorization under RGP-4 is conditional upon their compliance with all of the mandatory terms and conditions associated with the incidental take provisions of the BO(s). These terms and conditions are incorporated by reference in RGP-4. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and this RGP. The USFWS/NMFS is the appropriate authority to determine compliance with ESA.

(c) The permittee must re-initiate consultation with the appropriate agency, USFWS or NMFS, if critical habitat is designated for a species and the BO(s) must be revised to include the necessary changes prior to construction of a project located in designated critical habitat.

(d) The BO(s) issued to the permittees may be modified, renewed, or updated to incorporate changes in listed species, critical habitat or Terms and Conditions, as deemed necessary by the issuing agency, USFWS or NMFS. Copies of the revised and/or renewed BO(s) must be sent to the U.S. Army Corps of Engineers, Regulatory Branch, within 10 days of the date of the revised BO. The Corps will then modify this permit to require compliance with any modified, renewed, or updated BO.

(e) The BO(s) include General Aquatic Conservation Measures for in-water work timing based on Oregon Department of Fish and Wildlife’s (ODFW) *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources* (June 2008). Variances to the state guidelines shall be

coordinated with the NMFS and/or USFWS and documentation of that approval shall be provided in the PCN to the Corps.

8. Essential Fish Habitat.

The USFS, Pacific Northwest Region 6 has completed EFH consultation pursuant to section 305(b) of the MSA and implementing regulation at 50 CFR Part 600. In this consultation, NMFS concluded that the proposed actions may adversely affect designated EFH for Pacific salmon. NMFS has included conservation recommendations in the BO (NMFS Reference Number NWP-2013-9664), dated April 25, 2013 (Attachment 1), to avoid, minimize or otherwise offset effect to EFH produced by activities authorized by this RGP. The USFS authorization under RGP-4 is conditional upon their compliance with all of the conservation recommendations in the NMFS BO. These conservation measures are incorporated by reference in this permit. Failure to comply with the commitments made in this document constitutes non-compliance with the MSA and this RGP. The NMFS is the appropriate authority to determine compliance with MSA.

9. Historic Properties and Cultural Resources.

(a) No activity is authorized under this RGP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places (NHRP) until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) The USFS and BLM are the designated federal lead agencies for compliance with the National Historic Preservation Act (NHPA) and should follow their own procedures for complying with the requirements of Section 106 of the NHPA. The USFS or BLM must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. If the appropriate documentation is not submitted, then additional consultation under Section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with Section 106.

10. Discovery of Previously Unknown Remains and Artifacts.

If any previously unknown historic, cultural, or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, you must immediately notify the Corps of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The federal permittee will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

11. Tribal Rights.

(a) No activity authorized by this RGP-4 may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

(b) The USFS and BLM will follow their own procedures for tribal coordination. The USFS and BLM must provide the district engineer with the appropriate documentation to demonstrate that coordination with tribes has been completed. If the appropriate documentation is not submitted, then additional coordination may be necessary.

12. Water Quality Certification.

On 21 January 2022 the Oregon Department of Environmental Quality issued to the USFS and BLM the Section 401 Water Quality Certification (WQC) for activities under RGP-4. The USFS and BLM must comply with the conditions specified in the WQC (Attachment 3).

13. Coastal Zone Management Act Consistency Determination.

On August 11, 2021, the Oregon Department of Land Conservation and Development issued a state coastal zone management consistency concurrence under Section 307(c) of the Coastal Zone Management Act of 1972 (CZMA), as amended (16 USC 1456(c)). For any activity that may affect any land or water use or natural resource of the coastal zone, the USFS and BLM must comply with the conditions specified in the CZMA determination (Attachment 4).

14. Wild and Scenic Rivers Act.

No authorized activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

15. Invasive Species.

Vegetation planting as part of proposed project activities or for restoration of temporary impacts shall not include species identified as a noxious weed species by the Oregon Department of Agriculture. To the maximum extent practicable, the permittee shall plant regionally and site appropriate native species. Native seed or plant species should be acquired as close to the project site as possible.

16. Vegetation Protection.

Permittees must clearly mark all construction area boundaries before beginning work and minimize the removal of native vegetation in riparian areas and wetlands to the maximum extent practicable. Areas subject to temporary vegetation removal in wetlands or riparian areas during construction shall be replanted with appropriate native species immediately after the project is complete.

17. Best Management Practices (BMP).

To minimize adverse effects to aquatic resource functions that may occur as a result of the authorized work, appropriate BMP must be implemented and maintained. Appropriate BMP include but are not limited to:

- (a) The permittee shall place heavy equipment working in wetlands on mats or take other appropriate measures to minimize soil disturbance.
- (b) The permittee shall use and maintain appropriate erosion and sediment controls in effective operating condition and permanently stabilize all exposed soil and other fills, including any work below the ordinary high water mark or high tide line, at the earliest practicable date using native vegetation to the maximum extent practicable. The permittee shall remove all installed controls as soon as they are no longer needed to control erosion or sediment.
- (c) Work that disturbs the substrate, bank, or shore of a water of the United States shall occur in the dry whenever practicable.
- (d) In-water work areas shall be isolated from the surrounding waterbody by a properly installed silt screen or a similar sediment containment device whenever practicable. The permittee shall remove the silt screen or other temporary sediment containment devices as soon as they are no longer necessary to protect the surrounding waterbody.
- (e) For authorized work above the OHWM the BMP must remain in place until the affected area is stabilized with vegetation or adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or special aquatic sites must be placed on mats, or other measures must be taken to minimize soil disturbance. All BMP must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.
- (f) Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be re-vegetated with native plants, as appropriate.

18. Maintenance.

Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP-4 conditions, as well as activity-specific conditions imposed by the Corps.

19. Suitable Material.

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Only clean, erosion resistant rock shall be placed into waters of the U.S. Material used for construction or discharged must be free from toxic pollutants in

toxic amounts (see Section 307 of the Clean Water Act). No broken concrete or asphalt may be placed into waters of the U.S. Materials placed into aquatic resources shall be clean and any gravels shall be washed prior to being discharged.

20. Fills Within 100-Year Floodplains.

The activity must comply with applicable Federal Emergency Management Agency approved state or local floodplain management requirements.

21. Limits of Federal Liability.

In issuing this permit, the Federal Government does not assume any liability for damages to the permitted project, persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit (see 33 CFR Appendix A to Part 325).

22. Contractor's Copy of Permit.

The permittee shall provide complete copies of this permit to the contractor. Appropriate General Aquatic Conservation Measures and activity-specific PDC listed in the ARBO II biological opinions shall be incorporated into contract language or force-account implementation plans to ensure that the Terms and Conditions of the NMFS and USFWS biological opinions for the authorized project will be met. Copies of this permit and USFS's and/or BLM's contract must be kept at the project site during construction and be available for inspection at the project site.

23. Operation of Equipment.

Equipment shall be operated from the top of the bank, dry gravel bar, work platform, or similar out-of-water location whenever possible. Equipment shall be operated in a manner that minimizes the suspension of particulates. All equipment used in or around waters shall be clean and inspected daily prior to use to ensure that the equipment has no fluid leaks. Should a leak develop during use, the leaking equipment shall be removed from the site immediately and not used again until it has been adequately repaired. No equipment may be stored or fueled so close to a surface water that the activity could adversely affect the waterbody.

24. Minimization of Environmental Impact.

The permittee shall make every reasonable effort to conduct the authorized activities in a manner that minimizes the adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, shellfish beds, and aquatic resource buffer zones.

25. Property Transfer.

Transfer of Regional General Permit (RGP) Verifications. If the permittee sells the property associated with the RGP verification, the permittee may transfer the RGP verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the RGP verification must be attached to

the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this RGP, including any general conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this RGP and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

26. General Aquatic Conservation Measures and Project Design Criteria.

Unless otherwise specified by the terms and conditions of RGP-4, the USFS and BLM shall ensure individual projects implemented under RGP-4 meet the terms and conditions of the NMFS and/or USFWS ARBO II biological opinions. 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 more restrictive biological opinion shall take precedence.

27. Wyden Amendment Projects.

USFS and BLM shall ensure projects covered under the authority of the Wyden Amendment undergo the same process and compliance as projects occurring on USFS and/or BLM lands.

Annual Review:

1. Annual Program Report: By February 15 of each year, the USFS and BLM shall provide an annual program report to the Corps describing projects implemented under RGP-4 during the previous construction season. The report shall include the following information:

(a) An assessment of overall program activity.

(b) A map showing the location and type of each action carried out under RGP-4.

(c) A list of any actions which USFS and BLM funded or carried out using RGP-4.

(d) A list of actions located in the Oregon coastal zone.

(e) Data or analyses that the USFS and BLM deemed necessary or helpful to assess habitat trends as a result of actions carried out under RGP-4.

(f) Additional data that may be necessary for tracking permit actions and determining compliance.

2. Annual Coordination Meeting: No later than April 30 of each year, the USFS and BLM shall initiate and implement an annual coordination meeting with the Corps to discuss the annual program report and any actions that will improve conservation under RGP-4 or make the program more efficient and/or accountable. While not required by the Corps, representatives from the Oregon Department of State Lands (DSL) and ODFW should be invited to attend this meeting.

3. Annual Training: No later than April 1 of each year, the USFS and BLM shall conduct annual training for their field staff responsible for implementing or reporting aquatic restoration projects under RGP-4. This training will include all essential permit elements to ensure project compliance. Representatives from the Corps, NMFS, and USFWS will be invited to participate, and while not required, recommend DSL and ODFW be invited to attend.

Further Information:

1. Limits of authorization: this permit does not:

(a) Obviate the requirement to obtain all other Federal, State, or local authorizations required by law for the activity authorized herein, including any authorization required from Congress.

(b) Convey any property rights, either in real estate or material, or any exclusive privileges.

(c) Authorize any injury to property, invasion of rights, or any infringement of Federal, State, or local laws or regulations.

(d) Authorize the interference with any existing or proposed Federal project.

2. Limits of Federal Liability: This permit is not an endorsement of the design features of any authorized project or an implication that such project is adequate for the intended purpose; a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. In issuing this RGP, the Corps does not assume any liability for the following:

(a) Design or construction deficiencies associated with the authorized work.

(b) Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes, such as flooding.

(d) Damages to persons, property, or to other permitted or unauthorized activities or structures caused by the activity authorized by this permit.

(c) Damages associated with any future modification, suspension, or revocation of this permit.

(e) The removal, relocation, or alteration of any structure or work in navigable waters of the United States ordered by the Secretary of the Army or his authorized representative.

(f) Damage 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.

3. Reliance on Permittee's Information: In verifying a permittee's authorization under this RGP, the district engineer has relied, in part, on the information provided by the permittee. If this information proves to be false, incomplete, or inaccurate, the permittee's authorization may be modified, suspended, or revoked, in whole or in part.

Reevaluation of this Permit Decision: 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:

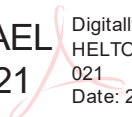
1. USFS and/or BLM (or third-party for Wyden Amendment projects) fails to comply with the terms and conditions of this RGP.
2. The information provided by USFS and/or BLM in support of the RGP application proves to have been false, incomplete, or inaccurate.
3. Significant new information surfaces which 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.

Expiration, Modification, or Revocation of this Permit: 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.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

HELTON.MICHAEL
.DON.1131216021



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HELTON.MICHAEL.DON.1131216
021
Date: 2022.04.22 08:50:53 -07'00'

Michael D. Helton, PMP
Colonel, Corps of Engineers
District Commander

RGP-4 Appendix 1 - Definitions

Aquatic Resources: Aquatic features on the landscape such as wetlands, streams, ponds, lakes, etc.

Bankfull Width: The portion of the channel below the top of the banks, with *top of banks* defined by a break in slope between relatively high-angle banks and relatively flat overbank portions of the valley bottom.

Beaver Dam Analogs: A permeable, channel-spanning structure with a constant crest elevation, constructed with a mixture of woody debris and fill material to form a pond and mimic a natural beaver dam.

Best Management Practices: Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or nonstructural.

Discharge: The term “discharge” means the addition of dredged or fill material into waters of the United States.

Dredged Material: The term “dredged material” means material that is excavated or dredged from waters of the United States.

Essential Fish Habitat: Waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.

Headcut: An erosional feature of streams with an abrupt vertical drop in the stream bed.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent Utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Navigable Waters: Water subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore

established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Pre-construction Notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects.

Post-Assisted Log Structures (PALS) or Vertical Post Structures (VPS): woody material of various sizes pinned together with untreated wooden posts driven into the substrate to mimic natural wood accumulations.

Single and Complete Project: The total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition of “independent utility”). Single and complete projects may not be “piecemealed” to avoid the limits in an RGP authorization.

Tribal Rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Tributary: The definition for a tributary can be found at 33 CFR 328.3.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the United States. Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

Waters of the United States: Waters subject to Section 404 of the Clean Water Act. These waters are defined at 33 CFR part 328.

Wyden Amendment: Authorizes the USFS and BLM to enter into cooperative agreements with willing Federal, tribal, State and local governments, private and nonprofit entities, and landowners for the protection, restoration, and enhancement of fish and wildlife habitat, and other resources on public or private land that benefit those resources within the watershed.

RGP-4 Appendix 2 – Coastal Zone Certification

To be completed for projects located on private land and within the State of Oregon's Coastal Zone, and shall be submitted as part of the PCN:

CITY/COUNTY PLANNING DEPARTMENT LAND USE AFFIDAVIT (TO BE COMPLETED BY LOCAL PLANNING OFFICIAL)

I have reviewed the project described in this application and have determined that:

- ☐ This project is not regulated by the comprehensive plan and land use regulations
- ☐ This project is consistent with the comprehensive plan and land use regulations
- ☐ This project is consistent with the comprehensive plan and land use regulations with the following:
 - ☐ Conditional Use Approval
 - ☐ Development Permit
 - ☐ Other Permit (explain in comment section below)
- ☐ This project is not currently consistent with the comprehensive plan and land use regulations. To be consistent requires:
 - ☐ Plan Amendment
 - ☐ Zone Change
 - ☐ Other Approval or Review (explain in comment section below)

An application or variance request has ☐ has not ☐ been filed for the approvals required above.

Local planning official name (print)	Title	City / County
Signature		Date
Comments:		

COASTAL ZONE CERTIFICATION

If the proposed activity described in your permit application is within the [Oregon Coastal Zone](#), the following certification is required before your application can be processed. For additional information on the Oregon Coastal Zone Management Program and consistency reviews of federally permitted projects, contact DLCD at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301 or call 503-373-0050 or click [here](#).

CERTIFICATION STATEMENT

I certify that, to the best of my knowledge and belief, the proposed activity described in this application complies with the approved Oregon Coastal Zone Management Program and will be completed in a manner consistent with the program.

Print /Type Applicant Name	Title
Applicant Signature	Date

ATTACHMENT 1

RGP-4

GENERAL CONSERVATION MEASURES, PROJECT DESCRIPTIONS, AND PROJECT-SPECIFIC CONSERVATION MEASURES

Please use the current version of the National Marine Fisheries Service (NMFS) Endangered Species Act Section 7 Formal Programmatic Conference and Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Aquatic Restoration Activities in the States of Oregon and Washington (ARBO II) (NMFS Reference Number NWP-2013-9664) to access the general conservation measures, project descriptions, and project-specific conservation measures.

ATTACHMENT 2

RGP-4

GENERAL CONSERVATION MEASURES, PROJECT DESCRIPTIONS, AND PROJECT-SPECIFIC CONSERVATION MEASURES

Please use the current version of the U.S. Fish and Wildlife Service (FWS) Endangered Species Act Section 7 Consultation Programmatic Biological Opinion for Aquatic Restoration Activities in the States of Oregon, Washington and portions of California, Idaho and Nevada (ARBO II) (FWS Reference Number: 01EOW00-2013-F-0090) to access the general conservation measures, project descriptions, and project-specific conservation measures.



Oregon

Kate Brown, Governor

Department of Environmental Quality

Northwest Region

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TTY 711

January 21, 2022

USDI Bureau of Land Management
Oregon Office
Attn: Scott Lightcap
1220 SW 3rd Avenue, PO Box 2965
Portland, OR 97208

USDA Forest Service, Region 6
Pacific Northwest Region
Attn: William Brignon
1220 SW 3rd Avenue, PO Box 3623
Portland, OR 97208

**RE: Updated: 2007-999-5; Regional General Permit 4, Aquatic Habitat Restoration
Activities in Oregon Section 401 Water Quality Certification**

Dear Mr. Lightcap and Mr. Brignon:

On April 28, 2021, the Oregon Department of Environmental Quality (DEQ) received from the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) (jointly, "Applicants") a valid request for a Clean Water Act Section 401 water quality certification (WQC) (33 U.S.C. 1341) pursuant to U.S. Army Corps of Engineers (USACE) permit application to reissue with modifications Regional General Permit 4 ("RGP-4", "Permit") to conduct aquatic habitat restoration activities within the state of Oregon.

Actions authorized by the Permit include 11 categories aquatic restoration projects intended to maintain, enhance, and/or restore watershed functions to benefit fish species, other aquatic organisms, water quality, riparian areas, floodplains, and wetlands. Projects would be located on USFS or BLM administered lands within the state of Oregon. The Permit may also authorize actions on non-federal lands for projects that directly assist the USFS and/or BLM in achieving aquatic restoration, and are funded in part by these agencies, under the Wyden Amendment authority (16 U.S.C. 1011(a), as amended by Section 136 of PL 105-277).

The Permit was originally issued in 2009 and has been reissued twice without significant changes. Applicants propose the addition of three new activities, which are also being reviewed by the Oregon Department of State Lands (DSL) for the reissuance of their General Permit (42104GP).

On July 14, 2021, the USACE issued a joint public notice soliciting public comment on the USACE application and DEQ section 401 water quality certification. Public comments were accepted from July 14, 2021, through August 13, 2021. DEQ received no comments from the

RGP 4; NWP-2007-999/5

public regarding the Applicant's request for WQC.

Attachment 3

On October 27, 2021, DEQ issued the USFS and BLM a conditional WQC. This correspondence revises Conditions 9 and 10 of the WQC to reflect changes in reporting procedures adopted following certification issuance. This WQC reflects those changes and supersedes the October 27, 2021, WQC in its entirety.

Project Description: The Permit would authorize the completion of up to 100 projects annually under the 11 aquatic restoration activity categories identified below. A complete description of the proposed actions is provided in Appendix B, Section E of the permit application, which is incorporated by reference in its entirety. The 11 categories are:

1. Fish Passage Restoration
 - a. Stream Simulation Culvert and Bridge Projects
 - b. Headcut and Grade Stabilization
 - c. Irrigation Diversion Replacement/Relocation & Screen Installation/Replacement
2. Large Wood, Boulder, and Gravel Placement
 - a. Large Wood and Boulder Projects
 - b. Porous Boulder Weirs and Vanes
 - c. Engineered Logjams (ELJ)
 - d. Constructed Riffles
 - e. Gravel Augmentation
 - f. Tree Removal for Large Wood (LW) Projects
3. Legacy Structure Removal
4. Off- and Side-Channel Habitat Restoration
5. Streambank Restoration
6. Set-back or Removal of Existing Berms, Dikes, and Levees
7. Reduction/Relocation of Recreation Impacts
8. Livestock Fencing, Stream Crossings, and Off-Channel Livestock Watering
9. Road and Trail Erosion Control and Decommissioning
10. Riparian Vegetative Planting
11. Beaver Habitat Restoration

Projects authorized by the Permit will rely on standard construction methods which may include the use of excavators, bull dozers, dump trucks, front-end loaders, and other equipment commensurate with the project. The Applicants expect project implementation may cause short-duration adverse impacts consistent with the predictable effects of construction activities in or near waterways. These effects may include increased stream turbidity, disturbance of riparian vegetation, risk of contamination from chemical spills, slight temperature increases for some projects, and impacts to wetlands. To mitigate the effects of actions during project implementation the Applicants will apply the General Aquatic Conservation Measures presented in Appendix B, Section C of the permit application to all aquatic restoration categories.

The Permit was developed to be consistent with the aquatic restoration biological opinions (ARBO II) issued by the National Marine Fisheries Service (NMFS) and the U.S. Fish and

Attachment 3

Wildlife Service (USFWS).¹ The biological opinions found that the proposed restoration actions would yield long-term aquatic habitat benefits and improved watershed conditions including improved floodplain and estuary habitats, fish passage, streambank stabilization, water quality and quantity and reduced sedimentation, temperature and width-depth ratios.

Status of Affected Waters of the State: Project activities may affect any waterways located on USFS or BLM administered lands within the state of Oregon, or on non-federal lands for projects that directly assist the USFS and/or BLM in achieving aquatic restoration and are funded in part by these agencies.

DEQ's assessment program includes three categories that classify waterbodies according to water quality status.

High Quality Waters are waterbodies that meet or exceed water quality standards and provide full support for all designated beneficial uses. These include all waterbodies not listed for any parameters per the Clean Water Act Section 303(d) list of impaired waterbodies.

Water Quality Limited Waters include all waterbodies listed as impaired, including those for which a Total Maximum Daily Load (TMDL) has been developed to address impairments, in DEQ's 2018/2020 Water Quality Assessment Integrated Report or subsequent version approved by EPA.²

The last category designates Outstanding Resource Waters that constitute an outstanding state resource due to their extraordinary water quality or ecological values, or where special protection is needed to maintain critical habitat areas. Waterbodies designated as Outstanding Resources Waters include the North Fork Smith River and its tributaries and associated wetlands in the South Coast Basin, Waldo Lake and its associated wetlands, and Crater Lake.

Water Quality Standards: Oregon's water quality standards were developed to protect, maintain, and enhance existing surface water quality to provide full support for all existing beneficial uses. In general, it is assumed that protecting the most sensitive beneficial use provides support for all other beneficial uses.

Water quality standards include beneficial uses, criteria necessary to support these uses and an antidegradation policy. Designated beneficial uses of Oregon waters are identified on maps found in OAR 340-041-0101 through OAR 340-041-0340.³ Oregon has established numeric and statewide narrative criteria necessary to support these uses. Waterways that do not meet established criteria are identified on the 303(d) list of impaired waterbodies. Actions that may further reduce water quality for 303(d)-listed water quality parameters are prohibited. Actions

¹ NOAA Biological Opinion: Endangered Species Act—Section 7 Programmatic Consultation Conference and Biological Opinion and Magnuson-Stevens Act Essential Fish Habitat Response for Reinitiation of Aquatic Restoration Activities in the States of Oregon and Washington (ARBO II). April 25, 2013.

USFWS Biological Opinion: Endangered Species Act—Section 7 Consultation Programmatic Biological Opinion for Aquatic Restoration Activities in the States of Oregon, Washington, and portions of California, Idaho, and Nevada (ARBO II) July 1, 2013.

² DEQ's 2018/2020 Integrated Report, approved by EPA on Nov. 12, 2020.
<https://www.oregon.gov/deq/wq/Pages/2018-Integrated-Report.aspx>

³ Beneficial Uses of Oregon's Waters: <https://www.oregon.gov/deq/wq/Pages/WQ-Standards-Uses.aspx>

Attachment 3

that reduce water quality in waters that meet or exceed water quality standards are prohibited except as allowed by Oregon's antidegradation policy found in OAR 340-041-0004.

Certification Decision: Based on the information provided by the Applicant and the USACE, DEQ is reasonably assured that completion of the projects authorized by the Permit will be consistent with applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in OAR Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are incorporated into the USACE Permit and adhered to by the applicants.

Attachment 3

CERTIFICATION GENERAL CONDITIONS

Certification Administration

1. **Applicants' Responsibility:** The Applicants are solely responsible for ensuring that all work conducted in accordance with activities authorized by the Permit is performed in a manner that complies with the conditions of this WQC.
2. **Work Authorized:** Actions authorized by this WQC are limited to the 11 categories of aquatic restoration activities described in the public notice issued July 14, 2021. The Applicants must first apply for and receive a separate permit authorization from the USACE and section 401 WQC from DEQ prior to undertaking activities not authorized by the Permit.
3. **Duration of Certification:** This WQC is valid for five years after issuance of the USACE permit unless otherwise authorized by DEQ.
4. **401 WQC on Site:** A copy of this WQC must be kept on the project site for the duration of in-water activities. The Applicants must make the WQC available for reference by the contractors, subcontractors, representatives of DEQ, the USACE, NMFS, Oregon Department of Fish and Wildlife (ODFW) and other government inspectors.
5. **Modification of a Certificate:** DEQ, in accordance with Oregon and Federal law including OAR Chapter 340, Division 48 and, as applicable, 33 USC 1341, may modify this WQC to add, delete, or alter WQC conditions as necessary if:
 - a. The federal license or permit for the activity is revoked or terminated;
 - b. The federal license or permit or the federal licensing or permitting agency allows modification of the activity in a manner inconsistent with the certification;
 - c. The certification application contained false or inaccurate information regarding the activity that affects or might affect compliance with water quality standards and requirements;
 - d. Changes in conditions regarding the activity or affected waterways since the certification was issued affect or might affect compliance with water quality standards and requirements;
 - e. Certification conditions are violated; or
 - f. Water quality standards, applicable federal laws, or other appropriate requirements of state law have changed since the certification was issued.
6. **Access:** The Applicant, upon reasonable notice and subject to applicable safety and security procedures, shall grant DEQ access as necessary to conduct compliance inspections and review monitoring records required by this WQC.
7. **Enforcement:** If DEQ determines the Applicant has engaged or is about to engage in activities that constitute a violation of this WQC, DEQ may initiate proceedings, including but not limited to civil or criminal enforcement provisions, to enforce compliance or to restrain further violations, as authorized by ORS 468.100.

Attachment 3

8. **Land Use Compatibility Statement:** Prior to undertaking any project authorized by the Permit, the Applicants must first obtain a Land Use Compatibility Statement signed by a local land use planning authority representative confirming the activity complies with the local comprehensive plan.⁴
9. **Project Notification:** Applicants will submit to DEQ a pre-construction notification for each project at least 60-days prior to implementation.⁵ . Notification will inform DEQ of proposed projects and provide an opportunity for review and comment.
10. **Project Completion Report:** Prior to December 1 of each year, the project contact will provide DEQ a project completion report summarizing the completed project.⁵ . This report will include relevant project information as described in Appendix B, Section B of the Joint Permit Application.
11. **Annual Program Report:** By February 15 of each year, the Applicants will provide to DEQ an annual program report through Your DEQ Online⁶ describing projects implemented under the Permit. The report will include the following:
 - a. An assessment of overall program activity;
 - b. A list of all completed activities carried out under the Permit;
 - c. A map showing the location and type of each activity carried out under the Permit;
 - d. Additional data or analyses that may be necessary or helpful to assess habitat trends because of activities carried out under the Permit;
 - e. Additional data that may be necessary for tracking permit activities and determining compliance.
12. **Annual Coordination Meeting:** The Applicants shall initiate and implement an annual coordination meeting each year to review and discuss Permit implementation, compliance and other project-related issues. The annual meeting shall be conducted no later than April 30 each year, unless otherwise agreed upon by the applicants and state agency representatives.

Aquatic Conservation and Protection

13. **In-Water Work Period:** The Applicant will perform in-water work according to the 2008 ODFW guidelines for timing of in-water work or as authorized otherwise under a Department of State Lands removal/fill permit.⁶ Exceptions to the timing window must be recommended by Oregon Department of Fish and Wildlife, US Fish and Wildlife Service, and/or the National Marine Fisheries Services, as appropriate.

4 Land Use Compatibility Statement. <https://www.oregon.gov/deq/FilterDocs/lucs.pdf>.

5 Pre-project notification and project completion reports shall be submitted via email to 401applications@deq.oregon.gov unless agreed to otherwise by DEQ.

6 *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*. Oregon Department of Fish and Wildlife, 2008. https://www.dfw.state.or.us/lands/inwater/Oregon_Guidelines_for_Timing_of_InWater_Work2008.pdf

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- 14. Fish Passage:** Actions that prevent or delay the passage of juvenile or adult native migratory fish present or likely present in the project area during construction are prohibited, unless stream isolation and dewatering is required during project implementation or where the stream reach is naturally impassible at the time of construction. Upon completion, projects shall meet or exceed ODFW fish passage design criteria as defined in OAR 635-412-0035.
- 15. Work Area Isolation:** Work areas should be isolated from active flowing waterways to the maximum extent practicable. Methods of isolation include timing work when area is seasonally in the dry or installing temporary isolation features such as silt curtains, cofferdams, inflatable bags, geo blocks and sandbags.
- 16. Fish Salvage:** Applicants must take prudent measures such as installing block nets at up and downstream locations outside to exclude fish from entering the isolated area. Applicants must undertake appropriate fish salvage actions to safely recover and relocate fish from the work isolation area prior to performing in-water work.
- 17. Site Assessment for Contaminants:** The Applicants shall notify DEQ at least 60 days prior to initiating projects in developed or previously developed areas where the presence of contamination is known or may reasonably be expected. DEQ, at its discretion, may require a site assessment prior to ground-disturbing activities to characterize the nature, magnitude and extent of suspected contamination. The scope of such an assessment will be based in part on past or current development of the site. The assessment may include:
 - a. Historical review of land use and industrial activities;
 - b. Site visit including interviews with persons possessing relevant information;
 - c. Visual observations, sample collection and analysis;
 - d. Preparation of a Contaminated Media Management Plan to mitigate potential hazards posed by contaminants.

Water Quality Monitoring

- 18. Turbidity Monitoring:** Applicants must implement all reasonably available technological controls and management practices to meet the standard in rule of no more than a 10% increase in project caused turbidity above background levels. However, if all reasonably available controls and practices are implemented by the applicants, turbidity exceedances of more than 10% above background are allowed for limited times depending on the severity of the increase, as specified in this condition.

Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two-hour intervals each day when in-water work is being conducted. A regularly calibrated turbidimeter is required for all projects. Required monitoring steps include:

- a. **Representative Background Point:** The applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area 100 feet upstream from the in-water disturbance, in order to establish background turbidity levels. The background turbidity, location, date, tidal stage

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(if applicable) and time must be recorded immediately prior to monitoring downstream at the compliance point described below.

- b. **Downstream Compliance Point:** The applicant must establish a downstream compliance point to measure the effects of the disturbance on water quality. The downstream compliance point must be no more than 50 feet downstream of the activity for streams up to 30 feet wide, 100 feet downstream for streams 30 to 100 feet wide, 200 feet downstream for streams 100 to 200 feet wide, 300 feet downstream for streams more than 200 feet wide and the lesser of 100 feet or the maximum surface dimension for lakes, ponds or reservoirs. Turbidity monitoring must be performed at approximately mid-depth, within any visible plume, and at the distance that corresponds to the size of the waterbody where work is taking place as listed in the table below. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.

WETTED STREAM WIDTH	DOWNSTREAM COMPLIANCE DISTANCE
Up to 30 feet	50 feet
>30 feet to 100 feet	100 feet
>100 feet to 200	200 feet
>200 feet	300 feet
LAKE, POND, RESERVOIR	Lesser of 100 feet or maximum surface dimension

- c. **Compliance:** The applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two hour monitoring interval. Short-term increases in downstream turbidity are allowed as followed:

MONITORING WITH A TURBIDIMETER		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1 ST MONITORING INTERVAL	ACTION REQUIRED AT 2 ND MONITORING INTERVAL
0 to 4 NTU above background	Continue to monitor every 2 hours	Continue to monitor every 2 hours
5 to 29 NTU above background	Modify controls & continue to monitor every 2 hours	Stop work after 4 hours at 5-29 NTU above background
30 to 49 NTU above background	Modify controls & continue to monitor every 2 hours	Stop work after 2 confirmed hours at 30-49 NTU above background
50 NTU or more above background	Stop work	Stop work

- d. **Recordkeeping:**

- Record all turbidity monitoring required by subsections (a) and (b) above in daily logs;
- Keep records on file for the duration of the permit cycle;
- Prepare a narrative discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to regulatory agencies including DEQ, USACE, NMFS, USFWS, and ODFW upon request.
- If turbidity monitoring cannot be conducted due to dry conditions, the applicant must provide photo documentation with a date and time stamp.

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Best Management Practices

19. Turbidity, Sediment and Erosion Control Measures: The Applicants shall employ all appropriate best management practices to minimize erosion, sediment mobilization and in-water disturbances that may increase turbidity or suspended material including the following measures, as appropriate:

- a. Schedule – Adjust work schedule to minimize duration of in-water disturbances.
- b. Excavator control - For projects utilizing excavation equipment, employ all practical bucket control techniques to minimize turbidity. These include but are not limited to: not dumping excavated material back into the wetted stream; adjusting the volume and rate of excavation loads; or using a closed-lipped environmental bucket.
- c. Stream crossings - Minimize number and length of stream crossings. Cross streams at right angles to minimize transit length. Select crossing sites at the least sensitive areas. Properly abandon and restore disturbed embankment areas upon completion.
- d. Spawning gravel placement – For projects proposing spawning gravel augmentation, utilize belt-driven conveyored aggregate delivery systems during gravel placement, where appropriate, to maintain setbacks from stream embankments and reduce the need to reposition limited-reach excavation equipment.
- e. Excavated material – Temporarily stockpiled material must be managed to prevent material from reentering waterways. Applicant must properly manage elutriate runoff from stockpiled material to prevent entry to waterways.
- f. Containment measures – Utilize silt curtains, geotextile fabric, and silt fences, as necessary, to minimize in-stream sediment suspension and turbidity.
- g. Work from top of bank – Position heavy equipment at stable locations at the top of embankments to reduce impacts to riparian areas. Where feasible, use long-reach excavation equipment to access work areas and reduce the need to reposition equipment.
- h. Erosion and Sediment Control Plan - The Applicant is required to develop and implement an erosion and sediment control plan. Refer to DEQ's Oregon Sediment and Erosion Control Manual, January, 2013 at:
<https://www.oregon.gov/deq/FilterPermitsDocs/ErosionSedimentControl.pdf>
- i. Construction Stormwater Permit - Any project that disturbs more than one acre may be required to obtain a National Pollutant Discharge Elimination System 1200-C construction stormwater general permit from DEQ. Contact DEQ for more information. Additional information is available at:
<https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Construction.aspx>
- j. Best Management Practices – To reduce turbidity and prevent discharge of sediments to waterways, the Applicant must implement BMPs including, as appropriate, the following:
 - i. Maintain an adequate supply of materials necessary to control erosion at the construction site;

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- ii. Prohibit erosion of stockpiled material. When rain is reasonably expected, tarp all piles of excavated material stockpiled for longer than 48 hours;
- iii. Inspect erosion control measures daily. Maintain erosion control measures as often as necessary to ensure effectiveness. Erosion control measures must remain in place until all exposed soil is stabilized. Remove sediment from sediment control devices once sediment has reached one-third of the control feature's height;
- iv. Use removable pads or mats, as necessary, to prevent soil compaction during construction or staging operations in riparian or wetland areas;
- v. Place clean aggregate at construction entrances to reduce tracking sediment off-site;
- vi. Flag potential wetlands and avoid construction activities or operating machinery within 50 feet of these areas.

20. Pollution Prevention and Response Measures: The Applicant must implement the following pollution control and response measures.

- a. Deleterious waste materials - The placement or discharge of harmful materials and/or construction debris in waters of the state is prohibited. The Applicant should employ good housekeeping practices including, as appropriate, the following BMPs:
 - i. Cure concrete, cement, or grout for at least 24 hours before any contact with flowing waters;
 - ii. Use only clean fill, free of waste and polluted substances;
 - iii. Employ all practicable controls to prevent discharges of spills of harmful materials to surface or groundwater;
 - iv. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to isolate harmful materials from waterways during a runoff-producing rain event;
 - v. Properly manage and dispose of all harmful materials, refuse, and waste from the project area.
- b. Vehicle fueling, staging and storage – The Applicant must stage, maintain and operate motor vehicles and equipment in a manner that prevents the discharge of hazardous materials for the duration of the project. In particular, the Applicant must perform the following:
 - i. Vehicles and equipment operated within 150 feet of waterways must be inspected daily for fluid leaks. Any leaks detected in the vehicle-staging area must be repaired before the vehicle resumes operation.
 - ii. Vehicles and motorized equipment must be staged, cleaned, maintained and refueled a vehicle staging area at least 150 feet from waters of the state. DEQ may approve exceptions if this distance is not feasible because of the following site conditions:

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- Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);
 - Natural resource features would be degraded as a result of this setback;
 - Equal or greater spill containment is provided if staging area is less than 150 feet away from waters of the state.
- c. Maintenance – The Applicant must maintain equipment in a manner that prevents the discharge of hazardous materials into waters of the state.
 - i. Equipment must be cleaned daily and as necessary to remove all visible oil, grease, mud, and other contaminants if the equipment will be used below the OHWM of a waterbody.
 - ii. All stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state must be placed on an absorbent mat to prevent leaks, unless other suitable containment is provided to contain potential spills.
 - iii. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) must be maintained to contain spills at the project site and deployed as necessary.
 - iv. All equipment operated within state waters must use bio-degradable hydraulic fluid.
 - v. A maintenance log documenting equipment maintenance inspections and actions must be kept on-site and available upon request.
- d. Spill Incident and Reporting - In the event that petroleum products, chemicals, or any other harmful materials are discharged into state waters, or onto land with a potential to enter state waters, the applicant must promptly report the discharge to the Oregon Emergency Response System (800-452-0311). The applicant must immediately begin containment and complete cleanup as soon as possible.
- e. Fish Impacts or Mortality - If project-related activities result in distressed or dying fish the Applicant, operator or contractor must cease in-water activities, take appropriate corrective measures, document environmental conditions, collect samples of fish and/or water as appropriate and notify DEQ, ODFW and other appropriate regulatory agencies.

21. Previously Contaminated Soil and Groundwater: If any contaminated soil or groundwater is encountered, it must be handled and disposed of in accordance with the soil and groundwater management plan for the site, as well as local, state and federal regulations. The applicant must notify the Environmental Cleanup Section of DEQ at 800-452-4011 Ex.6258.

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22. Vegetation Protection and Restoration:

- a. Site restoration – Applicant must rehabilitate all disturbed areas in a manner that reflects pre-project conditions. Actions must be performed as necessary to remove project-related waste, regrade and restore slopes and embankments, distribute stockpiled soil, wood, etc.), and undertake revegetation efforts.
- b. Soil Stabilization – The Applicant is responsible for providing short-term stabilization measures to prevent soil erosion and sediment runoff following project completion. Measures may include weed-free certified straw, jute matting, and other similar techniques. Short-term stabilization measures will be maintained until permanent erosion control measures are effective.
- c. Revegetation – For projects resulting in vegetation loss, the Applicants must replant impacted areas at the beginning of the first growing season following construction and must achieve a revegetation rate of at least 70% of pre-project levels within three years.
- d. Soil Decompaction – Upon completion of activities requiring use of heavy equipment, operators must inspect areas for evidence of soil compaction and perform appropriate actions to loosen soils to restore pre-project drainage and infiltration characteristics.

If either of the applicants is dissatisfied with the conditions contained in this certification, a contested case hearing may be requested in accordance with OAR 340-048-0045. Such request must be made in writing to the DEQ Office of Compliance and Enforcement at 700 NE Multnomah Ave, Portland Oregon 97232 within 20 days of the mailing of this certification.

In accordance with the Clean Water Act and subject to state rules, DEQ hereby grants the Applicant water quality certification conditional upon the fulfillment of the conditions provided in this certificate. If you have any questions, please contact Chris Stine at chris.stine@deq.oregon.gov, by phone at 541-686-7810 or at the address on this letterhead.

Sincerely,

Steve Mrazik



Water Quality Manager, Northwest Region

cc: Danielle Erb, USACE
Bethany Harrington, DSL
Deanna Caracciolo, DLCD



Oregon Coastal Management Program
Department of Land Conservation and Development
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Salem, Oregon 97301-2540
Phone (503) 373-0050
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<http://www.oregon.gov/LCD/OCMP>

August 11, 2021

William D. Abadie
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Portland, Or 97208-2946
Authorized Agent: Danielle Erb
Electronic Transmittal: William.D.Abadie@usace.army.mil; danielle.h.erb@usace.army.mil

Action: Reissuance with Modifications to Regional General Permit 4 (RGP-4) and projects authorized under RGP-4. Corps No. NWP-2007-999-5

Action Description: Aquatic habitat restoration activities conducted by U.S. Forest Service and U.S. Bureau of Land Management.

Location: State-wide (Oregon)

DLCD Decision: **Concurrence with Conditions**

Dear Mr. Abadie,

Thank you for contacting the Oregon Coastal Management Program (OCMP-DLCD) regarding the U.S. Army Corps of Engineers (Corps) proposed Regional General Permit #4 (RGP-4, proposed permit) reissuance with modifications and associated consistency determination submitted on June 16, 2021.

The Department of Land Conservation and Development (DLCD) is the state's designated coastal zone management agency, and the Oregon Coastal Management Program (OCMP-DLCD) conducts consistency reviews to ensure that federal activities affecting any coastal use or resource are consistent with the enforceable policies of the coastal program (Program). Federal activities include direct federal actions as well as federal projects that require federal licenses or permits. To be consistent with the enforceable policies of the OCMP, federal activities must be consistent with:

- 1) Oregon's Statewide Planning Goals;
- 2) Applicable acknowledged city or county comprehensive plan; and
- 3) Selected state authorities (e.g., those governing removal-fill, water quality, and fish & wildlife protections).

PROPOSED PROJECT AND FEDERAL CONSISTENCY REVIEW

The DLCD has reviewed the Corps consistency determination and associated materials regarding the 5-year reissuance of RGP-4, with three additional activity categories, authorizing the U.S. Forest Service (USFS) and U.S. Bureau of Land Management (BLM) to conduct aquatic habitat restoration activities within the state of Oregon.

Regional General Permits are a type of Department of Army authorization issued on a regional basis for a category or categories of similar activities which would cause no more than minimal individual RGP 4; NWP-2007-999/5

or cumulative environmental impacts. The Corps issued the current RGP-4 in on June 24, 2009 and

later reissued it with no modifications in 2015 and 2020. The Corps proposal would authorize eleven restoration activities undertaken by the USFS and BLM, in waters of the United States, including wetlands, in the state of Oregon. The eleven proposed activity categories, including the three new activity categories (bolded) include:

1. Fish Passage Restoration
 - a) Stream Simulation Culvert and Bridge Projects
 - b) Headcut and Grade Stabilization
 - c) Irrigation Diversion Replacement/Relocation & Screen Installation/Replacement**
2. Large Wood, Boulder, and Gravel Placement
 - a) Large Wood and Boulder Projects
 - b) Porous Boulder Weirs and Vanes
 - c) Engineered Logjams (ELJ)**
 - d) Constructed Riffles**
 - e) Gravel Augmentation**
 - f) Tree Removal for Large Wood (LW) Projects**
3. Legacy Structure Removal
4. Off- and Side-Channel Habitat Restoration
5. Streambank Restoration
6. Set-back or Removal of Existing Berms, Dikes, and Levees
7. Reduction/Relocation of Recreation Impacts
8. Livestock Fencing, Stream Crossings, and Off-Channel Livestock Watering
9. Road and Trail Erosion Control and Decommissioning
10. Riparian Vegetative Planting
- 11. Beaver Habitat Restoration**

RGP-4 also applies to projects performed by a third-party under the oversight of the USFS or BLM.

REVIEW FINDINGS

The action proposes to reissue with modifications, a general permit for the authorization of USFS and BLM aquatic habitat restoration projects within the state of Oregon. Since DLCD-OCMP reviewed and concurred with conditions to many of the activities applicable under the permit in 2009 (reaffirmed via concurrence in 2015 and 2020), the scope of this review focused primarily on the three new activity categories proposed to be added to the permit.

- Consistency Determination
 - After coordination with DLCD-OCMP staff, the Corps submitted a completed consistency determination for the proposed RGP-4 on June 15, 2021.
 - Although the proposed RGP-4 is applicable to BLM and USFS, the formal federal consistency determination was submitted by the Corps, as the lead permitting agency.
 - The Corps, BLM, and USFS are not asserting any provision of federal law which would prohibit full consistency with the OCMP.
- Public Comment: The 30-day public comment period for this review was initiated on June 24, 2021. One public comment was received in favor of the proposed permit. No other comments were received.
- Coastal Effects: All projects completed under RGP-4 are intended to be beneficial to aquatic and terrestrial resources. Potential effects to coastal resources from these activities may include enhancing floodplain habitat by removal, breaching, or alteration/set-back of a dike; fish passage restoration by removal or replacement of bridges and culverts; alteration of estuary,

stream, and river channels, riparian areas, and wetlands for restoration/reconnection purposes; re-establishment of native vegetation; short term turbidity and water management during construction; surface water diversion during construction; short term effects to resources from construction of temporary roads, crossings, and staging areas; short term effects of noise from construction vehicle use; temporary impacts to fish from using fish screens; localized effects from herbicide and fertilizer use; and tree felling into a stream or floodplain for large wood projects.

- Ongoing State Agency Coordination: DLCD-OCMP recognizes that state-federal coordination is ongoing between the Corps, Oregon Department of Fish and Wildlife, and the Oregon Department of State Lands. The Corps has asserted in the consistency determination that any substantial changes to the proposed permit during this coordination may trigger the requirement for a supplemental federal consistency review (15 C.F.R. §930.46). DLCD-OCMP staff are available to help make this determination.
- Section 401 Water Quality Certification: Although the project has not yet received Section 401 Water Quality Certification, an enforceable policy of the OCMP, the Department of Environmental Quality is actively reviewing the proposed RGP-4 for consistency with the applicable standards and anticipates having a certification decision issued by October 28, 2021. This consistency concurrence does not change the requirement under federal law for the project to receive applicable Section 401 authorization(s). Given limitations from procedural timelines, the Section 401 Water Quality Certification has been included as a condition of this concurrence (see section “Consistency Decision” below).
- Applicant Requirements: The proposed general permit does not obviate the requirement for applicants to obtain all other federal, state, or local authorizations required by law. The Corps has included language highlighting this within the permit.
- Additional Findings Considerations
 - The RGP-4 will expedite the authorization of recurring activities that are similar in nature and have minor individual and cumulative adverse impacts on the aquatic environment.
 - No projects covered under the proposed RGP-4 would occur within the territorial sea.
 - Oregon Department of State Lands anticipates issuing a companion state Removal-Fill General Permit for the proposed activities and provided support for the issuance of the Corps draft permit.
 - Fish passage screen installations and replacement covered under the proposed permit meet the criteria outlined by National Marine Fisheries Service and Oregon Department of Fish and Wildlife.
 - The ARBO II biological opinions applicable to the proposed permit includes General Conservation Measures that the permittees must implement including preferred in-water work window requirements identified by the Oregon Department of Fish and Wildlife.

CONSISTENCY DECISION

OCMP-DLCD concurs with the Corps consistency determination provided the following conditions are met. The conditions of this decision supersede conditions established in previous decisions. The RGP-4, as well as all projects and activities covered under RGP-4 are subject to the below conditions.

1. A Section 401 Water Quality Certification must be obtained from the Oregon Department of Environmental Quality for the proposed RGP-4 prior to verifying any activity under the new permit provisions. A copy of the 401 Certification must be provided to DLCD-OCMP

(coast.PERMITS@dlcd.oregon.gov) once authorized.

2. OCMP's standard conditions in Enclosure A must be attached to all RGP-4 verifications taking place within Oregon's coastal zone¹ and adhered to.
3. Verification letters for projects authorized under RGP-4 within Oregon's coastal zone¹ shall be sent to coast.PERMITS@dlcd.oregon.gov at the time of verification transmittal.

AVAILABILITY OF MEDIATION

In accordance with federal regulations, in the event the Corps has a serious disagreement with the OCMP-DLCD's coastal zone decision, the Corps may request mediation services provided by the Office for Coastal Management or the Secretary of the U.S. Department of Commerce, as provided for in 15 CFR Part 930 Subpart G. The OCMP-DLCD or the Governor of Oregon may also request such mediation services.

If you have any questions about this decision, please contact me at 503-956-8163 or by e-mail at: deanna.caracciolo@dlcd.oregon.gov.

Sincerely,



Deanna Caracciolo,
Coastal State-Federal Relations Coordinator

Cc (via email):

Patty Snow, Oregon Coastal Management Program, Manager

¹ A map of Oregon's federally approved coastal zone can be found here:

<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=1b4a3202b66c4ab79b6907e7b4abf9db>

Enclosure A
Coastal Zone Conditions: Regional General Permit #4
Oregon Department of Land Conservation & Development
Oregon Coastal Management Program

CZ Condition 1. Consistency with Local Comprehensive Plans

(1) Permitted projects must be consistent with or not subject to the applicable local comprehensive plan and implementing land use regulations, including the applicable estuary management plan, or the statewide land use planning goals where applicable. Permittee must obtain required permits or other authorizations from the applicable local government before initiating work under any USACE permit. Permittees are encouraged to provide USACE and the OCMP with verification of the local jurisdiction's approval in the form of a completed block ten (10) of the Joint Permit Application. 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 OCMP coastalzone conditions.

[Enforceable Policy: ORS chapter 197, Comprehensive Land Use Planning Coordination]

CZ Condition 2. Consistency with Removal-Fill Law

(1) Permitted projects must be consistent with or not subject to the state requirements governing removal-fill in waters of the state. Permittee must obtain required permits or other authorizations from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) Projects requiring a DSL Removal-Fill permit must compensate for reasonably expected adverse impacts by complying to the full extent with DSL's compensatory mitigation requirements.

(3) Where DSL finds a project not subject to the Removal/Fill Law, permittee must submit to DSL any changes in project design or implementation that may reasonably be expected to require application of the Removal/Fill Law.

(4) All conditions placed on a Removal-Fill permit by DSL are incorporated by reference into the OCMP coastalzone conditions.

[Enforceable Policy: ORS chapter 196, Removal of Material; Filling]

CZ Condition 3. Leases of State Lands

(1) Permitted projects must be consistent with or not subject to state requirements governing use of state lands. Permittee must obtain any required lease, license, or other authorization for the use of state lands or waters 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 DSL are incorporated by reference into the OCMP coastalzone conditions.

[Enforceable Policy: ORS chapter 274, Submersible and Submerged Lands]

CZ Condition 4. Department of Environmental Quality

(1) Permitted projects must be consistent with or not subject to the state requirements governing water quality. Permittee must obtain certification, if required, from the Oregon Department of Environmental Quality (DEQ) through its 401 Water Quality Certification process before any regulated work may begin.

(2) All conditions placed on a license, permit, or authorization by DEQ are incorporated by reference into the OCMP coastalzone conditions.

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[Enforceable Policy: ORS chapter 468B, Water Quality]

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/passage/>). 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.

[Enforceable Policy: ORS chapter 509, Additional Fishery Requirements]

CZ Condition 6. Ocean Shore

(1) Permitted projects must be consistent with or not subject to state requirements governing use of the ocean shore. Permittee must obtain, if required, an ocean shore permit from the Oregon Parks and Recreation Department (OPRD) before any regulated work may begin.

(2) All conditions placed on an Ocean Shore permit by OPRD are incorporated by reference into the OCMP coastal zone conditions.

[Enforceable Policy: ORS chapter 390, Ocean Shores]

CZ Condition 7. Fish Screening

(1) Where applicable, all authorized projects shall be in conformance with ODFW standards for fish screening and bypass devices. Decisions to abrogate ODFW fish passage standards shall be accompanied by written approval from ODFW.

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

[Enforceable Policy: ORS chapter 498, Fish Screening]