

Interpretation of Federal Regulations and Information For Culvert Maintenance

United States Army Corps of Engineers, Portland District

In the past there has been some uncertainty regarding Federal jurisdiction for activities related to culvert maintenance, including replacement and enhancement modifications for fishery habitat improvement. This regulatory information is being issued by the Portland District United States Army Corps of Engineers (Corps) to identify maintenance activities that are not prohibited by, or otherwise subject to, regulation under Section 404 of the Clean Water Act.

A. Discharges Which Do Not Require Permits

33 CFR part 323.4 (Discharges Not Requiring Permits), states:

(a) “...*(A)ny discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under Section 404:*

(a)(2) ***Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.***”

1. Clarification of Terms of 33 CFR part 323.4 (a)(2):

- a. ***Maintenance:*** The Portland District has determined that replacing an existing culvert in accordance with the *ODFW Standards and Criteria for Stream Crossings* is considered a maintenance activity.
- b. ***Currently Serviceable:*** The road where the culvert is located must have been either (1) constructed before September 1976, (2) a forest or farm road also exempt from Section 404 permit requirements or (3) constructed under a Department of the Army permit. To be currently serviceable the road must be useable as is, or with some minor repair, but not so degraded to essentially require reconstruction.

- c. *Transportation Structures:* Roadways are considered “transportation structures”. Appurtenant structures include culverts; embankments and revetments within the design prism of the roadway; subgrade and roadway finish; and submerged roadway crossings (stream fords, etc.)
- d. *Character, scope or size of the original fill design:* These terms relate to the fill associated with the roadway. A culvert is a structure and not considered fill in Section 404 waters. An increase in a culvert’s cross section size (diameter) would not, in itself, constitute a modification that increases the size of the fill associated with the roadway. If the larger culvert necessitates a broader roadway prism, i.e. wider base, in waters of the U.S. then a permit is required for the additional fill material. Modifications within the culvert, or type of replacement culvert (arched, bottomless, keyed, pre-cast concrete box, etc.) would also not constitute a change in character of scope of the fill. Therefore, replacing an existing culvert with one that is larger in diameter or one that has a different shape, i.e. arched vs. round, is considered a maintenance activity that does not change the character, scope or size of the original fill design unless additional fill is required.

2. Appurtenant Activities, which are also exempt

Other work associated with replacement of culverts, and which does not require a Section 404 permit, includes: re-vegetation of disturbed streambanks; approach and exit erosion control features immediately adjacent to the culvert; habitat enhancement features located within the culvert, i.e. baffles; and temporary diversion of stream flow during construction. Fill material placed temporarily in the waterway for the purpose of diverting stream flow during construction must be removed within 60 days of placement, and the work site must be restored to pre-construction conditions. Portland District will consider requests for exceptions to this timing restriction when sufficient justification is provided.

B. Discharges Which Do Require Permits

If culvert replacement incorporates one or more of the following activities, a permit under Section 404 of the Clean Water Act is required for the project.

- a. *Relocations.* Realignment of culverts that displace or otherwise require channelization of the upstream and downstream approach.
- b. *Extensions.* Modifications, such as:
 - a roadway widening, that result in additional fill in waters of the United States.
 - armoring a roadway or adjacent stream embankments where riprap did not originally exist.
 - placing fill within the channel where erosion, i.e. scouring, has occurred.

c. *Channel Modifications.* Modifications extending beyond the immediate vicinity of the replacement culvert including:

- boulder weirs
- streambank stabilization
- groins
- stilling basins or other similar structures

C. Other Federal Laws

The Portland District recognizes that exempt activities described in Part 323.4 (Discharges Not Requiring Permits), do not require notification to the Corps prior to commencement of work. It is further recognized that these activities, such as replacement of a culvert, may be regulated by other Federal laws including, but not limited to, the Endangered Species Act, Wild and Scenic Rivers Act, and the National Historic Preservation Act. Before proceeding, the public is encouraged to contact the appropriate U.S. Fish and Wildlife Service office and/or National Marine Fisheries Service office to determine that the proposed activity is in compliance with the Endangered Species Act.