

## Summary of Substantive Changes to Administrative Rules for General Authorizations (OAR 141-089)

**EFFECTIVE JULY 1, 2024**

The Oregon Department of State Lands [conducted a rulemaking process](#) during 2023-24 to update OAR 141-089, the rules guiding how general authorizations are issued and enforced in Oregon's waters. The updated rules go into effect July 1, 2024.

The full updated rules [are available here](#). Substantive changes are outlined by specific chapter, division, and rule below.

### **141-098-0630 Project Applicability**

- No General Authorizations (GA) allowed in Willamette River between river miles 1.9 – 11.8 (Portland Harbor Superfund Site).
- Any GA can be combined with any other GA for a single project – except the Minimal Disturbance GA which can only be combined with the Temporary Impact GA.
- Any GA can be combined with a Notification for Exempt Voluntary Habitat Restoration.

### **141-089-0635 Fees**

- The only GAs that will have a fee are the Over-water Structures GA and the Temporary Impact GA, and even then, only if more than 50 cy of removal and fill.

### **141-089- 0640 Pre-Construction Notification**

- A complete Notification must include a copy of fish passage plan authorization or no jurisdiction determination from ODFW, except for those activities listed in 141-089-0640.
- A complete Notification must include documentation of fish screen approval or other documentation from ODFW for proposed projects including installation, maintenance or replacement of fish screening structures under the Waterway Habitat Improvement GA and for maintenance and reconstruction of water intake structures under the Minimal Disturbance within ESH GA.
- New allowance for revisions to an issued GA: A person holding a valid notification may request revisions to the notification. Requires a revised notification form. DSL will review and make a new eligibility determination within 30 days. The same GA authorization number is kept.

**141-089-0650 General Conditions**

- New General Conditions added:
  - Local Government Approval Required Before Beginning Work. Prior to the start of work, the responsible party must obtain local government land use approval, where applicable.
  - Lower Willamette River Management Plan (LWRMP or Plan; OAR 141-080) Consistency. For proposed projects within the purview of the LWRMP, the project must comply with the LWRMP without the need for a minor exception (unless preapproved by the Director) or major exception as described in the Plan.
  - For the erosion control methods condition, the following is added: (h) All erosion control structures must be removed when the project is complete, and soils stabilized and vegetated. If necessary, removal of erosion control structures may be performed after expiration of the GA eligibility verification.
  - Construction Corridor. There must be no removal of vegetation or heavy equipment operating or traversing outside the designated construction corridor or footprint.
  - Condition for operation of equipment in the water added: Heavy equipment may be positioned on or traverse the project area below ordinary high water line or highest measured tide line only when the project area is free of flowing or standing water or if the area is isolated from the waterway and aquatic organism salvage is completed. For the purposes of this general condition, “aquatic organism” means all fish species (including lamprey), freshwater mussels, clams, and crayfish; and any other species as may be identified in a Rescue/Salvage Permit.

All machinery operated below ordinary high water line or highest measured tide line must use biodegradable hydraulic fluids, be steam cleaned and inspected for leaks prior to each use, and be diapered to prevent leakage of fuels, oils, or other fluids below ordinary high water line or highest measured tide line. Any equipment found to be leaking fluids must be immediately removed from and kept above the ordinary high water line or highest measured tide line until repaired.

- Temporary ground disturbance condition was re-written for clarity.

**141-089-0660 et seq. Minimal Disturbance in Essential Salmonid Habitat (ESH)**

- New activity added: “Beaver Pond Leveler and Exclusion Devices – up to 2 c.y. per site and 5 c.y. cumulatively (unless otherwise approved by DSL).
- “Maintenance of Water Intake and Outfall Structures” is changed to “Maintenance and Reconstruction of In-Water Structures” – up to 10 cy.

- “Investigative Drilling” increased to up to 10 cy.
- The Division 141-085-0510 definitions and for “maintenance” and “reconstruction” are incorporated into this GA. However, “reconstruction” does not have to be in-kind when replacing deleterious materials with environmentally preferable materials.
- For scientific measurement devices, removal of devices may occur after expiration of a notification without further authorization requirement from DSL.
- “Beaver Pond Levelers and Exclusion Devices” must be removed when no longer needed and can be done with no further authorization requirement from DSL.

**141-089- 0680 et seq. Over-Water Structures Fill and Removal**

- This is the former “Piling Placement and Removal in ESH” GA and has been substantially re-written. It incorporates both piling (and other forms of anchor) and the things attached to piling (or anchors).
- The GA is no longer limited to ESH waterways.
- Includes regulation of floating residential docks anchored above or below OHW.
- The GA can now be used in tidal waterways.
- Five activities allowed:
  - Placement, modification, relocation, and removal of residential docks – Must be ODFW Residential Dock Guidelines compliant; no limit on number of piling (but must be the minimum number necessary).
  - Piling or anchor replacement for existing non-residential docks and other over-water structures – No expansion of over-water footprint; up to 10 piling allowed.
  - Seasonal placement and removal of public recreation structures – No new piling; up to 4 cy. for anchors; structure must be seasonally removed (anchors do not require seasonal removal). “Public recreation structure” is defined.
  - Placement and removal of navigational aids – Up to 10 piling or anchors.
  - Derelict piling removal – Up to 50 piling.
- Pile placement and removal conditions are modified:
  - Expanded to include conditions for anchors placement and removal.

## OREGON DEPARTMENT OF STATE LANDS

- Backfilling holes is required when removing piling.
- Temporary placement of containment booms, where needed, is authorized in the GA.

### **141-089-0700 et seq., Temporary Impacts to Wetlands and Waterways GA**

- Non-tidal wetlands limitation increased to 0.5 acres.
- Tidal wetlands allowance added up to 0.2 acres.
- Tidal and non-tidal waterway temporary impacts added but only for the following activities:
  - Placement and removal of structures necessary to isolate a work area from the waterway and conduct fish and wildlife salvage not to exceed 100 linear feet.
  - The temporary placement of piling to anchor work platforms.
- New conditions added for work area isolation and for work platform placement.
- Rectification of temporary wetland impact must occur within 12 months or before or expiration of the eligibility verification, whichever comes first.
- Rectification of temporary waterway impacts must occur immediately upon construction completion or before or expiration of the eligibility verification.
- Rectification report content requirements are elaborated upon. DSL staff has authority to waive the report requirements for certain project types.

### **141-089-0720 et seq. Waterway Bank Stabilization GA**

- Can now be used in tidal waterways.
- Use of geogrids deleted (petroleum-based).
- Qualitative guidance provided for required re-planting associated with bank sloping activity.
- Irrigation requirements modified.
- Qualitative guidance provided for rootwad, trunk, and tree length sizing. Wire deleted as a fastening option.
- Guidance provided for wood types (i.e., must be native to the local riparian zone).
- Engineered log jams deleted from this GA and moved to Waterway Habitat Improvement GA.

## OREGON DEPARTMENT OF STATE LANDS

- Porous weirs deleted as an activity from this GA (but still included in the Waterway Habitat Improvement GA).
- Rip-rap and rock toes are specifically dis-allowed.
- Use of non-native material is expressly allowed only for temporary erosion control (e.g., silt fences, straw bales, etc.).
- Condition added: Cannot create new uplands nor re-establish lost uplands except incidentally to achieve the bio-engineered stabilization.

### **141-089-0740 et seq. Transportation-Related Activities**

- Deleted entirely. See attached crosswalk for other regulatory options.

### **141-089-0760 et seq. Removal of Sediment Behind Tidegates**

- Deleted entirely. See attached crosswalk for other regulatory options.

### **141-089-0780 et seq. Waterway Habitat Improvement**

- GA title changed from “Restoration” to “Improvement”.
- Purpose of the GA is restated from: “...the purpose of waterway habitat improvement” to: “...the effect of waterway habitat improvement”.
- Eligibility criteria added: Compatible with Management Plans; Nonnative Species; Consistent with ODFW Habitat Incentive Agreements; Compensatory Mitigation (activity cannot be for compensatory mitigation purposes).
- The reconnecting alcove or side-channel habitat activity was deleted and merged with the “barrier removal” activity. Condition added dis-allowing re-direction or capture of mainstem flow.
- For grade control activity, a “V” or “U” shape is specified.
- For fish and wildlife passage activity:
  - Clarified to include replacing, improving, or relocating water diversion structures for the purpose of improving or restoring fish passage.

## OREGON DEPARTMENT OF STATE LANDS

- ODFW notification requirement and design standards deleted since ODFW fish passage approval will be required before a person can apply for this GA.
- For fish screening activity, screens pre-approval by ODFW is required before applying for this GA.
- Culvert and tidegate replacement activity:
  - Expanded to include (non-exempt) modification, repair and removal that will create or improve fish passage.
  - Activity can include simulated stream bed material and shadow rock placement inside/beyond the culvert.
  - Any new rock to stabilize inlet/outlet requires native woody planting.
- New activity added: “Habitat Logs, Beaver Dam Analogs and Post-Assisted Log Structures” including conditions and limitations.
- Engineered log jams” moved from the Streambank Stabilization GA and into this Waterway Habitat Improvement GA. Same conditions/limitations apply.
- New activity added: “Maintenance and Reconstruction of In-stream Habitat Structures”.
- Condition for use of “natural” materials changed to “native materials” with certain specified exceptions.

### **141-089-0800 et seq. Wetland Ecosystem Improvement**

- GA title changed from “Restoration” to “Improvement”.
- New eligibility criterion added: “Consistent with ODFW Habitat Incentive Agreements”.
- For the removal of structures activity, the term “small (three feet high or less)” is deleted.
- New activity added: “Placement of Temporary Exclusion Fencing in Wetlands”.
- New activity added: “Maintenance and Reconstruction of Wetland Ecosystem Improvement Structures”.

### **141-089-0820 et seq. Non-Motorized Placer Mining in ESH**

- No changes – outside the scope of this rulemaking.

## Transportation-Related Activities GA Crosswalk

Deleted: Transportation-Related Activities GA in Current Div. 89 Rule	Alternative “Coverage” for Deleted GA
<p><b>1. Removal of garbage, trash and rubble</b> from in and around transportation structures.                      Limitations:</p> <ul style="list-style-type: none"> <li>• Cannot adversely affect woody vegetation, wetlands or waters</li> <li>• Material must be disposed of at a licensed facility</li> <li>• No stockpiling of material in wetlands or waters.</li> </ul>	<p>Up to 50 cubic yards of removal per year in many waters is not regulated by DSL.</p> <p>Removal of trash, garbage, and rubble greater than 50 cubic yards or in ESH waterways is already exempt as a voluntary habitat restoration activity per OAR 141-085-0534 (9) with the same limitations.</p>
<p><b>2. Large wood relocation</b> from in and around transportation structures. Limitation:</p> <ul style="list-style-type: none"> <li>• Material may be relocated elsewhere below ordinary high water line, highest measured tide line or in wetlands.</li> </ul>	<p>Up to 50 cubic yards of removal per year and up to 50 cubic yards of fill (placement of wood) in many waters is not regulated by DSL.</p> <p>Removal of large wood greater than 50 cubic yards or in ESH waterways that poses a risk to transportation structures is already exempt per OAR 141-085-0530 (9).</p> <p>Placement of large wood over 50 cubic yards or in ESH waters is already exempt per OAR 141-085-0534 (7). (Must be consistent with ODFW placement guidelines and a notice to DSL is required).</p>
<p><b>3. Investigative drilling</b> (test holes and borings) for planning and designing transportation structures.</p>	<p>Up to 50 cubic yards of removal and fill in many waters is not regulated by DSL.</p> <p>Investigative drilling in ESH waterways is covered in the “Minimal Disturbance” GA. (Currently limited to 4 cubic yards; increased to 10 cubic yards.)</p>
<p><b>4. Culvert replacement for fish passage</b></p>	<p>Up to 50 cubic yards of removal and fill in many waters is not regulated by DSL.</p> <p>Maintenance or reconstruction of any culvert over 50 cubic yards or in ESH (up to 20% increase in footprint) is exempt per OAR 141-085-0530 (4).</p> <p>If the replacement exceeds the exempt “maintenance” allowance (i.e., footprint increasing by more than 20%), then the activity is covered under the Waterway Habitat GA.</p>

## Removing Sediment Behind Tidegates GA Crosswalk

Deleted: Removing Sediment Behind Tidegates <sup>1</sup> GA in Current Div. 89 Rule	Alternative “Coverage” for Deleted GA
<p>Allows removal and disposal of sediment behind tidegates under certain conditions.</p> <p>For naturally(?) and artificially created drainage ditches<sup>2</sup>.</p> <p>Ditches must be within “hydraulically closed”<sup>3</sup> perimeters.</p> <p>Sand and silt only. Can’t remove gravel.</p> <p>Amount of removal is limited to “minimum amount necessary” to remove “recently deposited” material.</p> <p>Allows thin layer disposal of sediment in adjacent farmed wetlands<sup>4</sup>.</p> <p>Notice-based approval.</p>	<p><b>Exemption: Maintenance of Water Control Structures</b> (OAR 141-085-0530 (4)):</p> <ul style="list-style-type: none"> <li>• Includes tidegates.</li> <li>• Includes maintenance of drainage and irrigation ditches behind tidegates w/o the “hydraulically closed” requirement.</li> <li>• Does not include natural waterways that have been manipulated (e.g., “ditched”).</li> </ul>
	<p><b>Exemption: Agricultural Drainage Ditch Maintenance</b> (141-085-0535 (7)):</p> <ul style="list-style-type: none"> <li>• Augments the water control structure exemption above by allowing disposal of sediment in “converted” wetlands.<sup>5</sup></li> </ul>
	<p><b>General Permit: Maintenance Drainage</b> (OAR 141-093-0220, <i>et seq.</i>):</p> <ul style="list-style-type: none"> <li>• Up to 100 cubic yards removal per year.</li> <li>• Removal may be from ditch or a stream (including designated ESH).</li> <li>• Allows disposal in converted wetlands.</li> </ul>
	<p><b>ODA: Agricultural Drainage Channel Maintenance</b> (OAR 603-095-4000 <i>et seq.</i>):</p> <ul style="list-style-type: none"> <li>• Created by HB 2437 (2019); administered by ODA, not DSL.</li> <li>• For the maintenance of channels (ditches or streams) used for agricultural drainage.</li> <li>• Channels must be routinely maintained to facilitate draining related to agriculture and could provide drainage in the last five years.</li> <li>• Channels must be dry at the time of work (legislation requires development of separate process for work “in the wet”).</li> <li>• Not allowed in designated ESH streams.</li> <li>• Allows up to 3,000 cubic yards removal per linear mile over the 5-year approval period.</li> <li>• Notice-based approval.</li> <li>• Program phased in across Oregon over 4 years.</li> </ul>



## OREGON DEPARTMENT OF STATE LANDS

**1 “Tidegate”** means a hinged door on the end of a culvert that is used to control the flow of water between a tidewater area and a diked-off, drained area. It typically allows outward flow of water from the diked lands into the tidewater, but limits the amount of tidewater that can enter the diked lands.

**2 “Drainage ditch”** means a manmade water conveyance channel used to remove water from land. A manipulated stream (i.e., straightened, deepened, etc.) is not a ditch.

**3 “Hydraulically closed perimeter”** means all water flow to the surrounding watershed is controlled by pumps.

**4 “Farmed wetland”** is an undefined term in administrative rule. It is assumed to mean an area of land in some form of agricultural use that still meets the definition of a “wetland”.

**5 “Converted wetland”** means wetlands that were brought into agricultural management before June 30, 1989.