



FY 2023

# *Managing Oregon's Waters and Wetlands*

*Annual Report of the Aquatic Resource Management Program*

**OREGON DEPARTMENT OF STATE LANDS**



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# ARM PROGRAM OVERVIEW

The Department's Aquatic Resource Management (ARM) program protects Oregon waters and wetlands by administering the state's removal-fill and wetlands conservation laws and protecting public use and enjoyment of Oregon-owned waterways. Some uses of Oregon-owned waterways benefit the Common School Fund and support local Oregon economies.

## Removal-Fill And Wetlands Conservation

Oregonians take wetland and waterway protection seriously because these areas maintain water quality, protect fish and wildlife habitat, and minimize flooding. Due to the large number of wetlands and waters that have been lost, and interest in conserving what remains, the legislature enacted various laws to regulate further development.

Specific to DSL, the Removal-Fill Law was first enacted in 1967 (removal) and then in 1971 (fill). This law applies to all landowners, whether private or public entities, and requires those who plan to remove or fill material in wetlands and waterways to obtain a permit from the Department. In 1989, legislation enlarged DSL's role in protecting and managing wetlands, requiring a statewide wetlands inventory, coordinated land use notices with local governments, and wetland conservation planning.

The Removal-Fill and Wetlands Conservation function of the ARM Program:

**Provides information about the presence of wetlands and waterways.** DSL maintains a [Statewide Wetlands Inventory](#) to help communities and the public screen for potential wetlands and waterways. City and county planners check the Statewide Wetlands Inventory when reviewing a land use application and, if a project area is near mapped wetlands, waters, or on certain soils, the planner sends DSL a Wetland Land Use Notice. Landowners may also request information about the likely presence of wetlands. DSL responses help local governments and landowners understand next steps if these resources are to be developed. This helps prevent unintentional violations of the Removal-Fill Law and is provided at no cost.

**Ensures wetlands and waterway boundaries are correctly identified.** DSL staff review reports from consultants hired by property owners looking to work in wetlands or waterways. These reports are reviewed by the Department for a fee, and they establish the boundaries of wetlands and waterways and provide other information needed for permitting.

**Supports local governments in wetland and waterway conservation planning.** An Aquatic Resource Planner provides technical assistance to local governments that are completing inventory and protection for wetlands and waterways under Oregon's land use planning goals. This includes review of Local Wetlands Inventories and local ordinances implementing wetlands and waterway protections. This position also supports local governments and communities with wetland conservation planning through Advance Aquatic Resource Plans. Local Wetlands Inventories are reviewed for a fee but there is no cost established in rule for review of local ordinances or Advance Aquatic Resource Plans.



**Ensures wetlands and waterways are responsibly managed for the benefits they provide.** Permitting removal and fill activities seeks to balance conservation of wetlands and waterways for the benefits they provide Oregonians with responsible, sustainable economic development and private property interests. Permitting seeks to authorize the minimum amount of impact to wetlands and waterways possible while still meeting the project purpose and need.

**Supports replacement of wetlands and waterways that are developed.** Losses from development may need to be replaced through an action called compensatory mitigation, which involves activities to create, restore, enhance, or preserve other wetlands and waterways. DSL supports the development of third-party projects called mitigation banks that generate salable “credits” for purchase by developers, accepts payments that are consolidated within an area and funds compensatory mitigation projects, and provides plan review and monitoring when developers want to perform their own compensatory mitigation.

There are five DSL staff positions that provide information about the presence of wetlands or waterways and review reports from on-site investigations of their boundaries. Another ten staff review permit applications, monitor permit compliance, and handle enforcement. These staff are assigned to specific counties. Other positions include a liaison with Oregon Department of Transportation who works on transportation-related projects statewide, an Aquatic Resource Planner who assists local and regional governments in wetland conservation planning, and one staff who works on compliance. There are also four technical and policy specialists in the fields of jurisdiction, removal-fill, and mitigation that support the work of these staff, interpret relevant policies, and promote strategic improvements in their program areas.



DSL helps Oregonians determine if they have a wetland by sampling vegetation, soil, and hydrology. This service is free to proactively prevent violations of the Removal-Fill Law, however, with just five staff to perform these determinations throughout the state, there is an unmet backlog.



## Oregon-Owned Waterways

Upon becoming a state, Oregon assumed ownership of lands underlying waterways that were used for purposes of travel or trade. Since statehood, other water bodies have been determined to be Oregon-owned through legislative, judicial, or administrative proceedings. These waterbodies include rivers, lakes, and waters on Oregon's coast, including bays, estuaries, portions of waterways subject to the ebb and flow of tides, and the Pacific Ocean to three miles offshore (i.e., Oregon's territorial sea). For more information, including a current list of Oregon-owned waterways, please visit [Use of Oregon-Owned Waterways](#).

The State Land Board holds these waterways in trust for all Oregonians, and the Department is responsible for managing and authorizing uses of these Oregon-owned waterways through the proprietary program. The public has the right to use the beds and banks of Oregon-owned waterways for boating, fishing, swimming, and any other legal activity. For uses outside of light recreation, staff at the Department of State Lands works with Oregonians in getting the right authorization for the desired use.

The Oregon-Owned Waterways function of the ARM Program:

**Manages waterways to benefit current and future school kids.** Authorizations for use of Oregon-owned waterways seek to maximize revenue generation for the Common School Fund while protecting waterways for fishing, navigation, recreation, and commerce.

**Ensures waterways continue to thrive.** Projects that enhance, improve, or protect Oregon-owned waterways require a vision – and they require funding. DSL provides grants through the Submerged Lands Enhancement Fund to eligible organizations to take actions on Oregon-owned beds and banks such as removing structures like docks and boats in disrepair and undertaking projects that improve water quality and fish and wildlife habitat. The fund is financed on a biennial basis by up to 20 percent of the revenue generated by waterway authorizations.

**Develops management strategies that reduce risk.** Unauthorized uses of Oregon-owned lands -- including long-term camping that results in the accumulation of trash, debris, and human waste -- and removal of large and small boats that have either sunk or are at risk of sinking can release hazardous material and pose a danger to others. Even authorized uses may pose risks to the health of Oregon-owned waterways that need to be covered through appropriate risk-management tools. Broad management strategies are guided by DSL's Strategic Plan for 2022-2027, as well as legislation during the 2023 session.

**Collaborates with other agencies and organizations in managing Oregon's waterways.** DSL has extended agreements with Metro Regional Government, Multnomah County Sheriff's Office, the Oregon Parks and Recreation Department, and the City of Eugene to help manage Oregon-owned lands. We continue to coordinate with the Oregon State Marine Board (OSMB) and the Metro Abandoned and Derelict Vessel working group to address abandoned boats and boats in poor condition being used as shelter. The Department also continues to engage with public partners and other stakeholders on various aspects of the Portland Harbor Superfund Site on the Willamette River.

# WETLAND AND WATERWAY

## DEVELOPMENT PERMITTING

Wetland and waterway permitting involves early identification of wetlands and waterways on a project site, identifying the practicable alternative with the least impact to wetlands or waterways, and planning for compensatory mitigation to replace the functions and values that will be lost because of the removal-fill activity.

Identifying wetlands and waterways is primarily accomplished through the following processes.

**Wetland Land Use Notices:** All counties and cities are required to notify the Department of certain development activities proposed in wetlands or waters that are mapped on the Statewide Wetlands Inventory. Local governments provide information in an online submittal form and DSL is required by statute to review the notice and provide a written response within 30 days to the applicant and local government as to whether the proposed action is likely to require a removal-fill permit and/or a more precise wetland boundary location, known as wetland delineation. The objective of the notification process is to provide coordination between local city or county development approvals and state wetland regulations. Overall, the wetland land use notice process has proven to be an effective “early warning” mechanism for landowners and developers that a state permit may be required in addition to the local approval.

Wetland delineation conducted in Klamath County



**Determinations:** Determination reports identify if potentially jurisdictional wetlands or other waters such as streams and ponds are present. Department staff helps by conducting free wetland determinations for the public including property owners and other interested parties. The service is usually conducted offsite by staff at their desks using available information, but occasionally they may conduct an onsite visit as part of the process.

**Delineation Report Reviews:** If wetlands or waters are present, a delineation report by a wetland consultant may be needed. These reports create detailed mapping and document the size, location, and other qualities of the wetlands and waters. Staff review the delineation reports submitted to the Department within 120 days and require a fee for review, per statute. Landowners, developers, and local governments use the approved delineation report and maps to avoid or minimize impacts to wetlands and waters of the state, or to determine the impacts that will require a state permit.



Identifying the number of these three types of requests (wetland land use notices, determinations, and delineation report reviews) and average response times is important for DSL to understand workload. As Table 1 shows in outlining the processes completed in FY23, work on these three request types continues to be challenging for the six staff assigned to this work. Refer to [Appendix A](#) for a five-year trend on both response time to wetland land use notices and total count of jurisdictional report reviews.

Staff prioritize delineation report reviews, as these are often needed early in project planning and require payment, followed by wetland land use notices and determinations as time allows. Wetland land use notices and determinations do not have fees established in statute or rule. Staff let inquiring customers know about this prioritization and likely wait times; some customers decide to hire a consultant rather than wait.

Table 1

TYPE OF REVIEW	NUMBER REVIEWED, FY 2023	AVERAGE RESPONSE TIME
Wetland Land Use Notices	1,004	24 days
Determinations	242	N/A
Delineation Report Reviews	360	93 days

There are four types of permits available to conduct work in wetlands and waterways.

**Individual Permits (IP):** Permits that generally have more than minimal adverse effects to waterways or wetlands, are more complicated, often involve more than one removal-fill activity, or involve a substantial mitigation obligation. These projects do not qualify for General Permits or General Authorizations. Per statutory requirement, the processing timeline is up to 120 days.

**General Permits (GP):** A streamlined permit covering activities that are substantially similar in nature, recurring or ongoing, and have predictable effects and outcomes. The processing timeline is up to 40 days for most GPs. General permits may be by order or established through rulemaking. Notably, the U.S. Forest Service and Bureau of Land Management have a general permit by order for certain restoration activities on public lands and partnering private lands in Oregon. While this counts as only one permit, many projects occur under it.

**General Authorizations (GA):** A streamlined permit for nine specific types of removal-fill activities that have minimal adverse effects on wetlands and waterways. General Authorizations are preapproved but require a 30-day notice to the Department prior to the removal-fill activity.



This fish channel improvement at Oaks Bottom Wildlife Refuge in Portland utilized an Individual Permit (IP).



**Emergency Permits (EP):** Authorizations for emergencies that pose a direct threat to human health, safety or substantial property, and where prompt removal-fill action is required to address the threat. Approval is given as quickly as possible in emergency situations. Work must be limited to the minimum necessary to alleviate the threat.

**No State Permit:** Applications that are determined to be exempt from needing a DSL permit are provided an official “no state permit required” letter by the Department. Landowners may need this letter for various reasons. These decisions do not require an application fee but still require staff time to review and are an official decision.

Oregon provides greater protection for streams and associated wetlands that provide critical habitat for Chinook salmon, steelhead trout, and other sensitive, threatened, or endangered fish species. These areas, called Essential Salmonid Habitat (ESH), require special reporting under ORS 196.885. DSL creates a [map detailing all known ESH designations for Oregon’s waterways](#) using data provided by the Oregon Department of Fish and Wildlife. There are currently 23,021 miles of ESH designated streams statewide. This map is updated annually based on new information.



Sites like the Metolius River in the Deschutes National Forest are designated Essential Salmonid Habitat (ESH) using scientific data from the Oregon Department of Fish and Wildlife.

A permit is required to remove or place any amount of material into an ESH. Types of projects that we might be asked to permit include everything from building a dock to adding large rocks that prevent bank erosion.



Identifying the numbers of applications received—and DSL’s decision—demonstrates workload and identifies where there may need to be changes, such as if a high number of denials are issued. Table 2 shows permit applications received in FY23 as well as permit decisions made during FY23. Applications received during a fiscal year may not have a final decision from the Department in the same fiscal year, either because an application was incomplete and the Department is waiting on more information or because there the permit was received later in the fiscal year. No permits were denied during FY23; staff and applicants typically work throughout the permit process on any changes needed so that the Department can reach a favorable decision. Table 3 shows removal and fill volumes authorized, and [Appendix B](#) indicates the locations of authorized activity for FY23. Refer to [Appendix A](#) for a five-year trend on removal-fill authorizations by type.

Table 2

PERMIT TYPE	APPLICATIONS RECEIVED	APPLICATIONS APPROVED	APPLICATIONS DENIED	TOTAL DECISIONS	APPROVED IN ESH (OF TOTAL)
Individual Permit	185	416	0	416	175
General Authorizations	96	94	0	94	66
General Permit	47	98	0	98	34
Emergency Permit	18	14	0	14	7
No State Permit	64	64	0	64	25
<b>Totals</b>	<b>410</b>	<b>686</b>	<b>0</b>	<b>686</b>	<b>307</b>

*Applications received and agency decisions are not aligned. Some applications received were still under review as of June 30, and some agency decisions were for applications received later in FY22.*

Table 3

PERMIT TYPE	WETLAND ACRES GAINED	WETLAND ACRES LOST	NET WETLAND ACRES
Individual Permit	110.58	50.99	59.59
General Authorization	2.7	0.00	2.7
General Permit	0.00	1.97	-1.97
Emergency Permit	0.00	0.00	0.00
Mitigation Bank	87.57	0.00	87.57
<b>Totals</b>	<b>113.28</b>	<b>52.96</b>	<b>60.32</b>



Wetlands and waterways play a vital role in maintaining human and ecosystem health in Oregon such as providing clean water, and habitat for fish, birds, mammals, amphibians, reptiles, and insects. To make sure these vital functions are not lost, the Oregon legislature requires the offset of losses of functions and values when they are impacted (ORS 196.825) and seeks to maintain a stable resource base of wetlands through the adoption of mitigation standards used by federal agencies (196.672). Wetlands can be removed from the landscape entirely, whereas streams can be improved or degraded, but they generally are not removed from the landscape. DSL tracks and reports wetland area gains and losses but does not yet have a way to track function gains or losses, although improvements may be available in 2025 through DSL's work on a modern permitting and information system.

No net loss of wetland areas means that wetland acres gained through the creation or restoration of wetlands (but not enhancement or preservation of existing wetlands) should equal wetland acres lost through permitted impacts. Wetland creation involves developing wetlands at a location where there is no evidence a wetland existed historically, while wetland restoration is re-establishing a former wetland.

Table 4 shows the number of acres gained and lost in FY23 by permit type to see whether no net loss in wetland acreage goals was achieved. There was a net gain of 60.32 acres of wetlands from authorized activities. Wetland gains and losses are highly variable year to year. While wetland losses are compensated in each removal-fill authorization, this is often achieved through the purchase of credits from mitigation banks or payment to the Department through our in-lieu fee programs. Gains from mitigation banks and other Department-funded mitigation projects are recorded in the fiscal year that they are approved. In FY23, one new mitigation bank was approved for a gain of just over 87 wetland acres. This is a site that can compensate for future losses of wetlands. *See the [Compensatory Mitigation Opportunities](#) for more information on mitigation banking and in-lieu fee programs.*

Table 4

PERMIT TYPE	WETLAND ACRES GAINED	WETLAND ACRES LOST	NET WETLAND ACRES
Individual Permit	110.58	50.99	59.59
General Authorization	2.7	0.00	2.7
General Permit	0.00	1.97	-1.97
Emergency Permit	0.00	0.00	0.00
<b>Totals</b>	<b>113.28</b>	<b>52.96</b>	<b>60.32</b>



Increasing or preserving wetland functions somewhere else is also important. These methods of protection or increasing wetland functions are called wetland enhancement and preservation.

**Wetland enhancement** occurs when a wetland that has been altered by ditching or other drainage, berms or dikes, or additional water inputs is repaired through a mitigation project or voluntary habitat project.

**Wetland preservation** permanently protects high functioning wetlands under threat of development by restricting development through a conservation easement.

Enhancement and preservation projects do not result in acreage gains, so they are not included in Table 4. In FY23, the Department recorded 686 acres of wetland enhancement gains mostly from voluntary projects approved through general authorization notices. No wetland preservation projects occurred.

### Monitoring

Once permits are issued, the Department monitors for compliance with the type of permit issued and conditions described in the permit. Compliance is important because it highlights potential issues with certain permit types that may require changes or additional guidance. Table 5 shows there was a 90% overall compliance rate for permits monitored in FY23; however, only 71% of individual permits were compliant. Some reasons for non-compliance include failure to provide required reports by the deadline, not providing an access easement to the Department, working outside of the in-water work window, and not meeting all performance standards for mitigation. DSL worked with permittees to resolve these issues.

Table 5

PERMIT TYPE	NUMBER MONITORED	COMPLIANT	NON-COMPLIANT
Individual Permits	14	10 (71%)	4 (29%)
General Authorizations	20	19 (95%)	1 (5%)
General Permits	35	34 (97%)	1 (3%)
Emergency Permits	14	12 (86%)	2 (14%)
<b>TOTAL</b>	<b>83</b>	<b>75 (90%)</b>	<b>8 (10%)</b>



Sand Island in the Willamette River



Staff also monitor permits that have a site restoration requirement (e.g., temporary impacts that will be restored, such as replanting vegetation) or have a compensatory mitigation site that will be monitored for success. Monitoring duration varies but is for a minimum of five years for compensatory mitigation. The Department is actively monitoring 577 projects (Table 6). The Department's goal is to keep pace by closing as many files as are opened; however, this varies from year to year. Reviewing monitoring reports is challenging for staff to accomplish because the priority for their time is issuing and renewing permits needed for development projects to move forward to construction.

Table 6

WATERWAY TYPE	NUMBER OF PERMITS WITH MONITORING REQUIREMENTS	OPENED FY23	CLOSED FY23
Wetland	273	24	31
Stream	304	49	36
<b>Totals</b>	<b>577</b>	<b>73</b>	<b>67</b>

## Enforcement

DSL uses enforcement to deter and correct unauthorized impacts to wetlands and waterways using fair, transparent, and consistent methods to achieve compliance and program integrity. Types of violations that may require enforcement are:

**Unauthorized removal-fill:** Removal-fill activity undertaken without a permit where a permit was required.

**Non-compliance with a removal-fill permit:** Failure to comply with one or more substantive conditions of a removal-fill permit. Typical examples include impacts to wetlands or waterways greater than authorized; failure to comply with other substantive condition(s) of the removal-fill permit; and failure to implement, maintain, or monitor required compensatory mitigation in part or whole. Such situations may be handled inside or outside of an enforcement process depending on the scope of the non-compliance and the cooperation of the permittee in addressing the point(s) of non-compliance.

**Failure to comply with a final order of the agency:** This includes, but is not limited to, failure to comply with a term or condition of a Cease and Desist Order, Notice of Violation, Final Consent Order, Final Restoration Order, or an order approving a General Permit, Wetland Conservation Plan or Advance Aquatic Resource Plan.

**Misrepresentation:** Obtaining a permit or reporting conditions of a permit by misrepresentation or by failure to disclose known material facts.

Compliance and enforcement are important because they allow staff to explain the purpose of the Removal-Fill Law and why a permit or permit condition is required, work with the landowner on changes needed for compliance, and, ideally, provide for compensation for any permanent impacts to wetlands and waterways. Investigating complaints and compliance issues can be time-consuming because they often require site visits, research, and ongoing conversations to reach resolution.

Table 7 shows compliance and enforcement activities in FY23. It is a testament to the relationship formed between staff and permittees during the permitting process that out of 1,067 active permits, only four enforcements were opened for projects due to non-compliance with a removal-fill permit. Only one of these enforcements involved removal or fill in ESH designated waterways. In contrast, there were 42 enforcements opened for unauthorized removal-fill and 23 of them occurred in ESH.

Compliance checks, enforcement, civil penalties, and final orders do not typically occur in the same year. For example, civil penalties may be collected for enforcements in prior years, and the amount of civil penalties initially assessed may be higher or lower than the amount collected.

Table 7

	NUMBER OF COMPLIANCE CHECKS	ENFORCEMENT FILES OPENED	ENFORCEMENT FILES CLOSED	CIVIL PENALTIES ASSESSED	CIVIL PENALTIES COLLECTED	FINAL ORDERS
Non-compliance with permit	95	3	8	\$8,000	\$8,000	3
Non-compliance with permit in ESH (of total)	41	1	0	\$5,000	\$5,000	1
Unauthorized removal-fill	134	42	70	\$127,015	\$136,457	18
Unauthorized removal-fill in ESH (of total)	63	23	29	\$47,957	\$26,907	9

*In FY 2023, staff conducted 11 on-site project compliance checks under the USFS/BLM General Permit.*

Most enforcements are resolved through voluntary compliance (Consent Agreements and other orders) or are closed by the Department if further investigation reveals no violation occurred or there was insufficient evidence to confirm a violation.

Enforcement orders, as well as permit decisions, may be contested (appealed) and go through administrative hearings and judicial enforcement proceedings to be resolved. When this occurs, staff can spend over 100 hours on each contested case, which means staff that would normally be working on permits or monitoring cannot do so. Contested cases must also involve Department of Justice attorneys, which increases overall costs.

There were two new contested cases requested in FY23 for removal-fill, one related to a permit decision and one related to unpermitted removal-fill. The contested case regarding a permit decision was withdrawn. The contested case for unpermitted removal-fill was requested in October 2022 and the administrative hearing has been delayed until September 2023 at the defendant’s request.

Of the contested case hearings requested in previous fiscal years, three progressed in FY23. Two now have draft Proposed Final Orders and a second has been closed.



# APPENDIX B

