

SUMMARY OF PROPOSED CHANGES TO RULE LANGUAGE

OAR 141-089: Oregon Administrative Rules Governing the Issuance and Enforcement of General Authorizations Within the Waters of this State

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In 2023 the Department of State Lands began rulemaking to amend language in OAR 141-089. These administrative rules guide how General Authorizations are issued and enforced in Oregon's wetlands, rivers, streams, lakes, or other waters.

Pursuant to Oregon Revised Statutes (ORS) 196.850(7), the Department is required to review each General Authorization adopted by rule every five years, modifying, reissuing, or rescinding them as needed.

During its most recent review, the Department determined that revisions were necessary to promote habitat improvement, reflect current scientific research; increase usability for both staff and applicants; and align with current Department guidance and practices that have evolved since the last rulemaking effort in 2016.

This resulted in substantive changes through proposed amendments to rule language, including:

- updating conditions of General Authorizations to ensure protection of the ecological and societal benefits, also known as the functions and values, of waters of this state;
- adding qualifying activities that have minimal or no adverse effect to waters of this state;
- removing two General Authorization types that are no longer being used and/or are duplicative of other regulatory tools for their authorization; and,
- generally, improving the consistency, readability, and organization of the rule language.

These amendments were informed by the experiences and recommendations of Department staff who administer General Authorizations and conduct compliance monitoring. The Department held extensive consultation with the Oregon Department of Fish and Wildlife (ODFW) and the Rulemaking Advisory Committee of stakeholders to shape the proposed rule language. Committee meeting recordings and materials, the proposed rule language, and other resources can be found at:

<https://www.oregon.gov/dsl/Laws/Pages/Rulemaking.aspx>

Below is a summary of General Authorization (GA) activities that have proposed substantive changes and how the Department believes they address the staff findings from the 5-year rule review.

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

- New activity proposed to be added: “Beaver Pond Leveler and Exclusion Devices” – up to 2 cubic yards per site and 5 cubic yards cumulatively (unless otherwise approved by the Department) in waters of this state designated as Essential Salmonid Habitat (ESH).
 - **Are substantially similar in nature:** This activity is conducted in a substantially similar manner, either by placing a flexible pipe on either side of a beaver dam with protective fencing around the inlet and outlet; or by placing fencing material around a culvert inlet to deter damming activity.
 - **Would cause only minimal individual and cumulative environmental impacts:** To ensure no more than minimal effects, the activity is limited to no more than 2 c.y. for a site and involves minimal intrusion into the bed or banks of a waterway. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0675) would apply and ODFW fish passage approval is required.
 - **Would not result in long-term harm to water resources of the state:** The proposed rule stipulates that at such time that a device is no longer required due to beaver abandonment or removal, or the adverse effects of damming activity have otherwise been resolved, the device must be removed from the waterway. In this way, the risk of long-term harm is minimized.

- “Maintenance of Water Intake and Outfall Structures” is proposed to be modified to “Maintenance and Reconstruction of In-Water Structures” – up to 10 c.y. total in waters of this state designated as ESH.
 - **Are substantially similar in nature:** This expanded activity is conducted in a similar manner typically including removing accumulated materials around the structure or maintaining or reconstructing a failing element of an existing structure. Activities may or may not include work area isolation depending on their location within a waterway.
 - **Would cause only minimal individual and cumulative environmental impacts:** To ensure no more than minimal effects, the activity is limited to no more than 10 c.y. for a project; new structures are not authorized by this GA; existing structure work is limited to the definitions of maintenance and reconstruction per OAR 141-086-0510; all protective general conditions (141-089-0650) and activity-specific conditions (141-089-0675) would apply; ODFW fish passage approval is required.
 - **Would not result in long-term harm to water resources of the state:** Proposed activity-specific conditions include the requirement that maintenance or reconstruction (by definition) would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures. In this way, the risk of long-term harm is minimized.

- The existing activity “Investigative Drilling” is proposed to be increased from a maximum of 4 c.y. to 10 c.y. in waters of this state designated as ESH.
 - **Are substantially similar in nature:** This activity is conducted in a similar manner typically using a drill rig to remove a core sample (typically 4”-6” diameter with variable depth) followed by backfilling of the hole.

- **Would cause only minimal individual and cumulative environmental impacts:** To ensure no more than minimal effects, the activity is limited to no more than 10 c.y. total for a project; holes must be refilled and site restored upon completion; all protective general conditions (141-089-0650) and activity-specific conditions (141-089-0675) would apply.
- **Would not result in long-term harm to water resources of the state:** Because the activity requires backfilling of holes (to Department of Water Resources specifications, where applicable) and restoration of any associated temporary impacts, the risk of long-term harm to water resources is minimized.

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

The GA proposes to allow five activity types associated with over-water (tidal and non-tidal) structures.

- Placement, modification, relocation, and removal of residential docks.
 - **Are substantially similar in nature:** Residential docks are generally placed, modified, and removed in the same manner including the placement of piling or other form of anchor to hold the dock in-place; attachment, modification, or removal of decking material and floats; and placement, modification, or removal of a gangway to access the dock from shore.
 - **Would cause only minimal individual and cumulative environmental impacts:** To ensure no more than minimal adverse impact, docks must be compliant with ODFW Residential Dock Guidelines (including size and materials limitations) to minimize effects to salmonids and native aquatic vegetation. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0695) would apply. ODFW fish passage approval is required.
 - **Would not result in long-term harm to water resources of the state:** The size and material type restrictions proposed for this activity are intended to minimize the risk of long-term harm to salmonids and to aquatic vegetation by minimizing shading and by facilitating safe fish movements beneath docks.

- Piling or anchor replacement for existing non-residential docks and other over-water structures.
 - **Are substantially similar in nature:** This activity is conducted in a similar manner typically involving the removal of compromised pilings and replacement with new pilings. The GA describes the allowed method for both removal and placement.
 - **Would cause only minimal individual and cumulative environmental impacts:** To ensure no more than minimal adverse impact, the activity is limited to replacement of no more than 10 piling per project and allows for no expansion of the dock's over-water footprint. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0695) would apply. ODFW fish passage approval is required.
 - **Would not result in long-term harm to water resources of the state:** Because the activity authorizes no net increase in the number of pilings in the waterway nor any increase in the dock footprint, the risk of long-term harm to the water resource is minimized.

- Seasonal placement and removal of certain public recreation structures.
 - **Are substantially similar in nature:** This activity is conducted in a similar manner involving the placement of one or several small anchors on the waterway bottom that are tethered to a floating recreational structure (term defined in the proposed rule).
 - **Would cause only minimal individual and cumulative environmental impacts:** To ensure no more than minimal adverse impact, the total size of anchoring is limited to 4 c.y., placement of new piling is specifically disallowed, and the floating structure must be removed at the end of each recreational season. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0695) would apply. ODFW fish passage approval is required.
 - **Would not result in long-term harm to water resources of the state:** The risk of long-term harm comes primarily from the potential for proliferation of such structures on a waterway. To minimize this risk, the proposed rule limits structures to only those for a benefit to the general public (i.e., not privately owned or commercially operated).

- Placement and removal of navigational aids.
 - **Are substantially similar in nature:** This activity is conducted in a similar manner involving the placement of an anchor to tether a floating buoy or other navigational marker, or placement of a “dolphin” (several pilings bound together as a single unit) as either a navigational marker or to assist in vessel mooring or turning.
 - **Would cause only minimal individual and cumulative environmental impacts:** To ensure no more than minimal adverse impact, the activity is limited to placement and removal of no more than 10 piling per project. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0695) would apply. ODFW fish passage approval is required.
 - **Would not result in long-term harm to water resources of the state:** The risk of long-term harm comes primarily from the potential for proliferation of such structures on a waterway. However, because navigational aids are only used within marinas/docking facilities and along designated navigation channels, the risk of proliferation and long-term harm is minimized.

- Derelict piling removal.
 - **Are substantially similar in nature:** This activity is conducted in a similar manner involving the removal of old piling from a waterway by vibrating and pulling the piles from the sediment.
 - **Would cause only minimal individual and cumulative environmental impacts:** This activity is conducted for the purpose of waterway condition improvement, thus a positive effect individually and cumulatively. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0695) would apply.
 - **Would not result in long-term harm to water resources of the state:** This activity is conducted for the purpose of waterway condition improvement with intended long-term benefit to water resources by restoring natural conditions.

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

- The existing temporary impact to non-tidal wetlands limitation proposed to be increased from 0.2 acres to 0.5 acres.
 - **Are substantially similar in nature:** This expanded activity is conducted in a similar manner typically including the placement of a barrier layer then fill material within the wetland followed by removal of the fill and barrier layer within 12 months, and revegetation of the disturbed area. If trenching, the activity typically involves removal and side cast of the material followed by replacement of the material in the same order removed and revegetation.
 - **Would cause only minimal individual and cumulative environmental impacts:** The GA limits both the area (0.5 acres) and duration (up to 12 months) of impact. The GA additionally requires revegetation of the site and a report documenting successful restoration ensuring that adverse effects remain minimal. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0715) would apply and ODFW fish passage approval is required (for temporary impacts to wetlands below ordinary high water).
 - **Would not result in long-term harm to water resources of the state:** Because the impact is temporary (limited in the to no more than 12 months), the risk of long-term harm to the resource is minimized.

- Temporary impact to tidal wetlands allowance proposed to be added up to 0.2 acres.
 - **Are substantially similar in nature:** This new activity is conducted in a similar manner typically including the placement of a barrier layer then fill material within the wetland followed by removal of the fill and barrier layer within 12 months, and revegetation of the disturbed area. The activity may additionally include temporary placement of an isolation berm to ensure that tide water does not enter the temporary work area. If trenching, the activity typically involves removal and side cast of the material followed by replacement of the material in the same order removed and revegetation.
 - **Would cause only minimal individual and cumulative environmental impacts:** The GA limits both the area (0.2 acres) and duration (up to 12 months) of impact. The GA additionally requires revegetation of the site and a report documenting successful restoration ensuring that adverse effects remain minimal. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0715) would apply and ODFW fish passage approval is required (for temporary impacts to wetlands below highest measured tide).
 - **Would not result in long-term harm to water resources of the state:** Because the impact is temporary (limited in the to no more than 12 months), the risk of long-term harm to the resource is minimized.

- Tidal and non-tidal waterway temporary impacts proposed to be added for two activities: placement and removal of structures necessary to isolate a work area from the waterway; and, temporary placement of piling to anchor over-water work platforms.
 - **Are substantially similar in nature:** This new activity typically involves the placement of a waterway isolation structure or “coffer dam” (for example, visqueen wrapped hay

bales, water-filled bladders) within the water to isolate the work area from the flowing stream, followed by fish salvage. The activity may also include pumping to keep the isolated work area dry. All materials are removed at project completion. For over-water work platforms, the activity typically involves the temporary placement of one to several piling in the water to hold the work platform in-place. Piling are removed at project completion.

- **Would cause only minimal individual and cumulative environmental impacts:** The GA limits both the area (up to 100 linear feet) and duration (removal required immediately upon project completion) of impact. The GA additionally requires revegetation of the site and a report documenting successful restoration ensuring that adverse effects remain minimal. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0715) would apply and ODFW fish passage approval is required for work area isolation.
- **Would not result in long-term harm to water resources of the state:** Because the impact is temporary (all structures must be removed immediately upon project completion), the risk of long-term harm to the resource is minimized.

141-089-720 et seq. Waterway Bank Stabilization GA

- The GA proposes no new activities. Existing activities are modified to allow their use in tidal waterways in addition to non-tidal waterways.
 - **Are substantially similar in nature:** Whether conducted in non-tidal or tidal waterways, the existing activities are conducted in a similar manner involving contouring of the waterway bank and placement of certain specified materials on the bank to reduce erosional forces on the bank.
 - **Would cause only minimal individual and cumulative environmental impacts:** Whether conducted in non-tidal or tidal waterways, the activities specifically dis-allow bank hardening activities and require the incorporation of natural materials (“bioengineering”) into the design. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0715) would apply.
 - **Would not result in long-term harm to water resources of the state:** Whether conducted in non-tidal or tidal waterways, the activities are designed to use bank contouring and natural materials thereby creating habitat structure and minimizing any risk of long-term harm to water resources.

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

- Proposed to be repealed.

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

- Proposed to be repealed.

141-089-0780 et seq. Waterway Habitat Improvement

- New activity proposed to be added: Habitat Logs, Beaver Dam Analogs, and Post-Assisted Log Structures.
 - **Are substantially similar in nature:** This new activity typically involves the low-profile setting of wood poles within a waterway (and may include weaving of branches between poles) in a manner designed to mimic the hydrological, geomorphological, and ecological functions of natural beaver dams or otherwise mimic natural wood accumulations.
 - **Would cause only minimal individual and cumulative environmental impacts:** This activity is for the purpose of waterway habitat improvement, thus a positive effect individually and cumulatively. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0795) would apply and ODFW fish passage approval is required.
 - **Would not result in long-term harm to water resources of the state:** This activity is for the purpose of waterway habitat improvement with intended long-term benefit to water resources.

- New activity proposed to be added: “Maintenance and Reconstruction of In-stream Habitat Structures”.
 - **Are substantially similar in nature:** This activity is limited to maintenance or reconstruction of existing structures in-kind thus making the activity substantially similar to its original installation.
 - **Would cause only minimal individual and cumulative environmental impacts:** This activity is for the purpose of waterway habitat improvement, thus a positive effect individually and cumulatively. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0795) would apply and ODFW fish passage approval is required.
 - **Would not result in long-term harm to water resources of the state:** This activity is for the purpose of waterway habitat improvement with intended long-term benefit to water resources.

141-089-0800 et seq. Wetland Ecosystem Improvement

- Proposed modification to existing “removal of structures” activity: the term “small (three feet high or less)” is proposed to be deleted.
 - **Are substantially similar in nature:** This activity typically involves the removal of structures and material that function to artificially manipulate input or output of water to/from wetlands. The activity may include site grading and revegetation to restore natural elevations and vegetation.
 - **Would cause only minimal individual and cumulative environmental impacts:** This activity is for the purpose of wetland ecosystem improvement, thus a positive effect

individually and cumulatively. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0815) would apply and ODFW fish passage approval is required (for removals below ordinary high water or highest measured tide).

- **Would not result in long-term harm to water resources of the state:** This activity is for the purpose of wetland ecosystem improvement with intended long-term benefit to water resources by restoring natural conditions.

- New activity proposed to be added: “Placement of Temporary Exclusion Fencing in Wetlands”.
 - **Are substantially similar in nature:** This activity is limited to placement of temporary fencing materials (typically wire fence with metal or wooden stakes/posts) around new plantings until browsing can be tolerated. Materials are then removed from the site.
 - **Would cause only minimal individual and cumulative environmental impacts:** This activity is for the purpose of wetland ecosystem improvement, thus a positive effect individually and cumulatively. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0815) would apply.
 - **Would not result in long-term harm to water resources of the state:** Fencing must only be temporary and requires removal thus limiting any potential for long-term harm.

- New activity proposed to be added: “Maintenance and Reconstruction of Wetland Ecosystem Improvement Structures”.
 - **Are substantially similar in nature:** This activity is limited to maintenance or reconstruction of existing structures in-kind thus making the activity substantially similar to its original installation.
 - **Would cause only minimal individual and cumulative environmental impacts:** This activity is for the purpose of wetland ecosystem improvement, thus a positive effect individually and cumulatively. All protective general conditions (141-089-0650) and activity-specific conditions (141-089-0815) would apply and ODFW fish passage approval is required (for maintenance and reconstruction below ordinary high water or highest measured tide).
 - **Would not result in long-term harm to water resources of the state:** This activity is for the purpose of wetland ecosystem improvement with intended long-term benefit to water resources.