

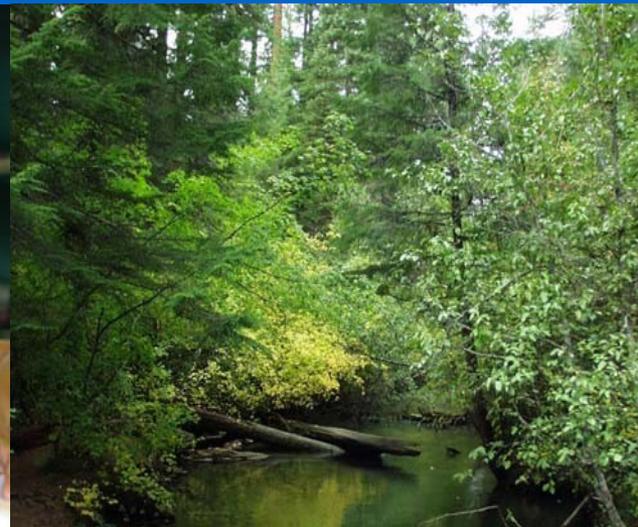
# "Oregon's State Regulatory Program for Wetlands and Waterways Conservation"

Bill Ryan, Assistant Director  
Oregon Department of State Lands  
June 18, 2013



# Oregon Department of State Lands

*Ensuring a legacy for Oregonians and their public schools through sound stewardship of lands, wetlands, waterways, unclaimed property and the Common School Fund*



# Oregon Department of State Lands

Three Divisions:

- Revenue Generation for Common School Fund
  - Land Management Division
  - Finance and Administration Division
- **Regulatory**
  - **Wetlands and Waterways Conservation Division**

# 2012 – 2016 Strategic Goals

Goal 2: Protect Oregon's waters through administration of the state's removal-fill and wetlands conservation laws.

Goal 5: Deliver efficient, professional service to our customers.

# WWCD Programs

Removal-Fill Permit Program

Wetland Conservation and  
Planning

# Removal-Fill Law

- Enacted in 1967 (removal) and 1971 (fill) to protect the functions and values of the state's waterways and wetlands [ORS 196.600-990]
- Requires people who plan to remove or fill material in state waters to get a permit from DSL



**Removal-Fill Guidelines**

# Permit Required to Work in Waterways

- Similar to the US Clean Water Act, administered by the Army Corps of Engineers
- Removal or fill in “Waters of the State”
- Ocean, rivers and streams, lakes, tidal bays and estuaries, and wetlands
- Wetlands Conservation Act  
- 1989



# Regulatory Program Components

- Statutes and Rules
- Removal-fill permits (2,624 in FY 2012)
- Jurisdictional determinations
- Compensatory mitigation
- Compliance monitoring and enforcement
- Program improvement process

# Permit Types



- **Individual Permits**
  - 120 day process
- **General Permits**
  - Similar in nature and have predictable outcomes
  - Streamlined process = expedited timeline
  - Can align with Corps Regional General Permits
- **General Authorizations**
  - Limited to projects with minimal impacts
  - Notice-based (30 days)
- **Emergency Authorizations**

# Exemptions

1. 50 cubic yards only in non-essential anadromous salmonid habitat (ESH)
2. Forest Practice Act
3. Navigational Servitude
4. Transportation Structures Maintenance or Emergency Reconstruction
5. Maintenance and replacement of water control structures
6. Prospecting or non-motorized activities of less than 1 cubic yard
7. Fill for water diversions licensed by OWRD
8. Fish passage and fish screening – up to 50 cubic yards in ESH
9. Certain Voluntary Habitat Restoration Activities

# Compliance Monitoring and Enforcement

Enforcement authority for:

- Unauthorized activities
- Non-compliance with permits
- Many tools for compliance including orders to restore and civil and criminal penalties



# Compliance Monitoring and Enforcement

- Work with Oregon State Police
- Coordination with Army Corps and EPA – strategic enforcement approach
- GIS tools to assist in enforcement investigations and court cases
- Use enforcement data to help target outreach and education needs

# Outreach and Education

- Targeted sectors (e.g. agriculture, gold mining, realtors, environmental consultants)
- State and federal natural resource and land development agencies
- Environmental organizations (e.g. TNC, The Wetlands Conservancy, Trout Unlimited)
- State legislators

# DSL's Wetland Program

An integral part of the  
Removal-Fill Program



# Wetlands Program

- Wetlands Conservation Act - 1989
- Develop statewide wetlands inventory
- Provide technical guidance, outreach and training to the public
- Improve link between land-use planning and state/federal regulations



# Wetlands Team

- Reviews wetland delineation reports for R-F permit applications; issues wetland determinations; and responds to land-use notices (646 in FY 2012)
- Assists local government with wetland planning; approves local wetland inventories
- State's experts on wetland identification, delineation and functional assessment

# Oregon Wetland Program Plan



- Focus wetland protection and restoration work in a strategic way
- Multi-agency effort – increase mutual understanding and collaboration
- Covers 2011-2016 - updated every three years
- Companion document: “Wetland Monitoring and Assessment Strategy for Oregon”
- [http://www.oregon.gov/DSL/WETLAND/Pages/wetland\\_plan\\_approved\\_2012.aspx](http://www.oregon.gov/DSL/WETLAND/Pages/wetland_plan_approved_2012.aspx)

# Developing the Oregon WPP

- Internal Preparation
  - Reviewed DSL's Strategic Plan
  - Identified current coordination efforts with various state/federal agencies and obtained:
    - Key contact names
    - Lists of applicable projects currently in progress or planned for the immediate future
  - Researched the agencies' strategic plans, management directives, and benchmarks

# Developing the Oregon WPP



- External Agency Coordination – “What’s in it for them?”
  - Shared purpose of the WPP and efforts being conducted to involve all applicable agencies
  - Discussed priority resource problems and projects to address resource issues
  - Obtained commitment/consent for “Activity” items that were included in the draft WPP

# Program Improvement & Streamlining Efforts



# In-Lieu-Fee Program Expansion



- In-Lieu-Fee Program (ILF) provides mitigation credits satisfying both DSL and Corps permit requirements
- In areas not serviced by private sector banks
- Expanded by agreement December 2012
- Covers six new watersheds (Clatsop, Coos, Tillamook, Multnomah, Columbia and Douglas counties)
- Allows greater flexibility for advance use of credits

# Oregon Rapid Wetland Assessment Protocol (ORWAP)

- Functions based
  - scores for functions and values
- Used to:
  - inform avoidance and minimization decisions
  - determine mitigation requirements
- Preparing for transition to functions-based mitigation
  - Increasing wetland sample size
  - Normalizing scores

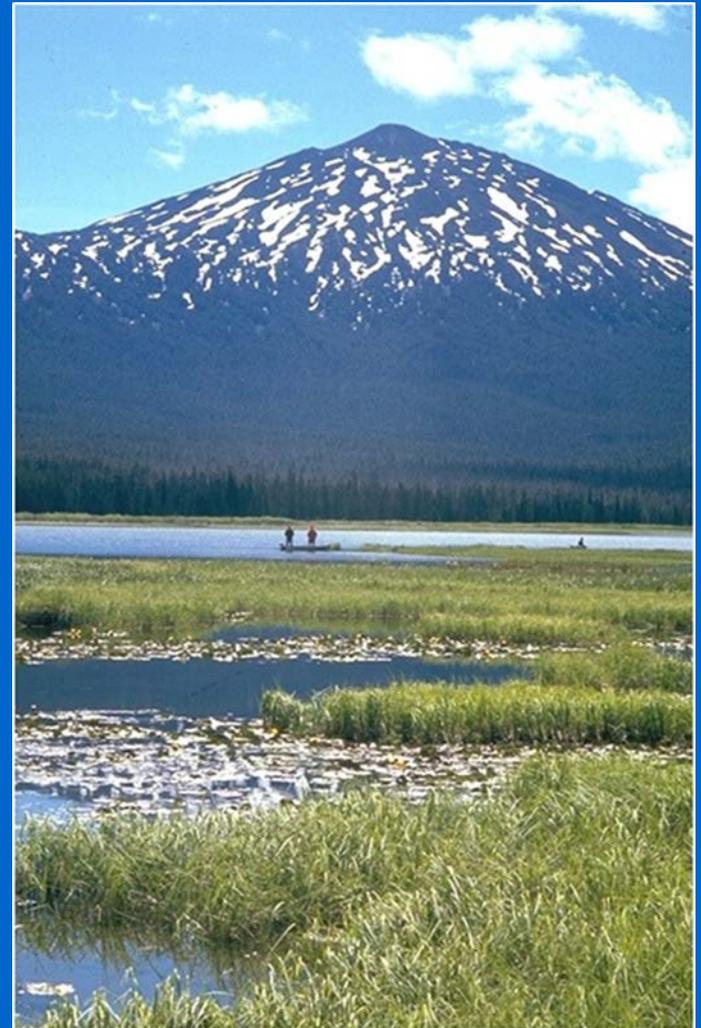
# Coming Soon: Integrated Aquatic Resources Mitigation Strategy

- Combining wetland and stream functional assessments
- Developing a Stream Mitigation Framework
  - Function-based
  - Similar approach to ORWAP



# Regulatory Streamlining

- Increased Efficiency
  - faster
  - less expensive
  - more certainty re scope, schedule and budget
- Maintain Protections for Environmental Resources
  - not “lowering the bar”



# Pathways to Streamlining

- reduce duplication
- increased coordination = parallel processes aligned
  - synch up permits types
  - synch up process steps and timelines
  - align expectations or at least identify where they differ
  - align permit terms and conditions

# Pathways to Streamlining

- Front-Load the Work
  - Early identification of constraints and opportunities
    - State and Local Wetland Inventories
    - Landscape level functional assessments
  - Programmatic approaches – analysis covers multiple projects
    - GA, GP/RGP, WCP
  - Multi-Agency Coordination
    - Economic Recovery Review Team (SB 766)
    - 404/401/Removal-Fill Pre-Application Process
    - Ombudsmen
  - Mitigation
    - Banking
    - In-Lieu Fee Program

# State Assumption of the CWA §404 Program



# What is 404 Assumption?

- Congress provided for the transfer of CWA authorities to approved states through EPA in 1977 Amendments
- Standard is “equivalence”
- Only a state permit would be required in waters subject to 404 jurisdiction = “assumable waters”
- Congress limited the extent of assumable waters - some waters must remain with the Corps = “non-assumable waters”

# Why 404 Assumption?

- Current overlap of Corps and DSL programs – need permits from both
- Makes sense to only have one agency regulating wetlands and waterways
- Less bureaucracy – one permit
- More certainty – timeframes, permit conditions, costs
- More local control and flexibility in assumable waters

# Criteria for Moving Forward

404 Assumption does not make sense without:

- Efficiency gains = streamlined process
- Maintaining environmental protections
- Resources available to implement process (staff, funding and tools)
- Legislative approval = stakeholder support

# 404 Assumption Schedule

- Stakeholder Outreach - Started January 2012
- Federal Agencies – EPA taking lead with Corps, NMFS and USFWS - Started May 2012
- Develop processes and agreements – 2013-2014
- Legislative Approval – 2015
- Assumption Package to EPA for public notice and review – 90 day process – after legislative approval
- 404 Assumption in effect – 2015/2016

# Issues/Challenges

- Identifying Assumable Waters
- ESA coverage
- Cultural resources protection (no NHPA 106)
- Water quality certification (no CWA 401)
- CWA Citizen's Suit Provisions
- Funding stability
- Loss of exemptions e.g. 50 cubic yards

# Questions?



# Contact Information

**Bill Ryan**

Assistant Director

Wetlands and Waterways Conservation  
Program

Oregon Department of State Lands

Phone: (503) 986-5259

Email: [bill.ryan@state.or.us](mailto:bill.ryan@state.or.us)

Thank you!

