

DEPARTMENT OF STATE LANDS

Public Comments Received May 1, 2012 through June 29, 2012

For Divisions 85, 89, and 93

September 27, 2012

Division 85 Comments

Date Comment Received: June 28, 2012

Rule number: 141-085-0510(1) Definition of applicant

Person Making Comment: Douglas J. Docker

Agency/ Affiliation: Idaho Power Company

Contact Information: ddockter@idahopower.com

Comment: Change definition to new statutory definition language under 196.825(12)(a)

[Agency Response 1: The comment was incorporated.](#)

Date Comment Received: June 28, 2012

Rule number: 141-085-0510(48) Definition of linear facility

Person Making Comment: Douglas J. Docker

Agency/ Affiliation: Idaho Power Company

Contact Information: ddockter@idahopower.com

Comment: DSL's proposed definition is consistent with the statute and Idaho Power supports this proposed addition to the rules

[Agency Response 2: Comment noted.](#)

Date Comment Received: 6/29/2012

Rule number: 141-085-0510(79) Definition of reconstruction

Person Making Comment: Joe Sheahan

Agency/ Affiliation: ODFW

Contact Information: ph: 503-947-6091 email: joseph.e.sheahan@state.or.us

Comment: ODFW is concerned that increasing the footprint of a structure by twenty percent could have a negative effect on fish, wildlife, and habitat resources. For example, extending the length of a riprap bank by twenty percent could reduce the available riparian habitat or direct the force of the water to a location where a stream bank is less stable. ODFW recommends that DSL keep the existing definition of reconstruction to rebuild or replace the existing structure in-kind.

Agency Response 3: DSL is conforming the standard for maintenance, which is widening structures by no more than twenty percent, to be consistent with its interpretation of “reconstruction.” The exemptions for maintenance or reconstruction of water control structures at OAR 141-085-0530(4) contain the caveat at (d) that the maintenance or reconstruction will 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 making such a determination, DSL would seek the advice and counsel of ODFW field biologists if an issue arises as to possible adverse effects that may exceed this threshold.

Date Comment Received: June 29, 2012

Rule number: 141-085-0510(79) Definition of reconstruction

Person Making Comment: Brendan McCarthy

Agency/ Affiliation: Portland General Electric

Contact Information: Brendan.McCarthy@pgn.com

Comment: PGE assumes the department seeks to limit the term “in-kind,” however, because “includes” is used, even with the “by no more than” limitation, under the suggested language, a structure being widened by no more than twenty percent is reconstruction, but so is one by 30%. PGE also believes that the definition would be improved if the term “widened” was changed to “expanded” and some sort of measurement was added, such as square feet.

Agency Response 4: As a practical matter in administering the “widening by no more than twenty percent” standard, DSL has been able to successfully explain to applicants the applicability of this standard to their projects. Perhaps the utility community would find our roadway maintenance fact sheet helpful because it illustrates of how the agency applies these standards. A link for this document can be found here and the link can also be found on the Removal-Fill homepage under “Permit Resources.”

http://cms.oregon.gov/dsl/PERMITS/docs/removal_fill_transp_fact_sheet_print.pdf

Date Comment Received: June 29, 2012

Rule number: 141-085-0530(8) Exemption for changing point of diversion

Person Making Comment: Joe Sheahan

Agency/ Affiliation: ODFW

Contact Information: ph: 503-947-6091 email: joseph.e.sheahan@state.or.us

Comment: ODFW is also concerned that a change in the point of diversion for surface water be exempt from the fill and removal permit process, because this activity could have a significant impact to fish, wildlife, and habitat resources. The footprint of the new structure would move to a new location and could be sited or constructed in a manner that negatively affects fish, wildlife, and habitat resources. There could also be ancillary in-stream structures or the associated pipe or canal associated with the new point of diversion that may affect fish, wildlife, and habitat resources or adjoining wetlands. ODFW is concerned that removal of this type of project from the DSL permitting process could have a significant impact on fish, wildlife, and habitat resources throughout Oregon. Therefore, ODFW recommends not exempting the change of a point of diversion from the Removal-Fill permit process.

Agency Response 5: The Removal-Fill Law was recently amended by HB 2189 during the 2011 Legislative Session which added this exemption. The provision in rule is consistent with ORS 196.905 (13).

Date Comment Received: June 29, 2012

Rule number: 141-085-0550(5)(b)

Person Making Comment: Brendan McCarthy

Agency/ Affiliation: Portland General Electric

Contact Information: Brendan.McCarthy@pgn.com

Comment: PGE is not certain where an applicant would necessarily obtain the information required by this paragraph, especially phone numbers and email addresses of landowners. We think that name and mailing address is sufficient. We also believe that the department should clarify that the landowner information should be only for lands located within Oregon. On a grammar note, we suggest fixing the dangling modifier “for the land” in line 11, page 27, as we think it is unlikely that the land itself would have an email address.

Agency Response 6: The requirement for phone number and e-mail address has been removed. The suggested grammatical change was made. The “within Oregon” qualifier applies to the Removal-Fill Law in its entirety, not just this subsection, so this comment was not incorporated.

Date Comment Received: June 29, 2012

Rule number: 141-085-0550(5)(b)(A)

Person Making Comment: Brendan McCarthy

Agency/ Affiliation: Portland General Electric

Contact Information: Brendan.McCarthy@pgn.com

Comment: PGE finds the use of the phrase “within the alignment of the new linear facility” to not be consistent with terminology used in other siting contexts. As such, we have concerns as to how “alignment” may be defined, and suggest the insertion of “, as indicated in the application,” after “facility” in line 16, page 27 of the public review draft dated 5/15/2012. We reiterate that the department should clarify that the landowner information be submitted for only those landowners in Oregon.

Agency Response 7: We clarified this section along the lines suggested by the commenter by removing the term “alignment.”

Date Comment Received: June 29, 2012

Rule number: 141-085-0550(5)(q)(A)

Person Making Comment: Brendan McCarthy

Agency/ Affiliation: Portland General Electric

Contact Information: Brendan.McCarthy@pgn.com

Comment: PGE believes that the new requirement specified in this rule is unnecessary and burdensome. PGE understands providing the names and addresses of adjacent landowners to removal-fill sites as those landowners may see some effects from removal fill activities, as found in paragraph (5)(q). However, a linear facility which covers hundreds of miles will likely have hundreds, if not thousands of landowners within the project corridor and adjacent to the project corridor. Many of those landowners will not be affected by removal fill activities. In many cases, project developers will not have information on adjacent landowners. And, since adjacent is not defined, this requirement could be truly impossible to comply with. Providing the landowner information as required in subparagraph (5)(q)(A) will not benefit the department or the general public.

Agency Response 8: The Removal-Fill Law was recently amended by HB 2700 during the 2011 Legislative Session which added this notice requirement. The requirement to notify adjacent landowners that is set forth in the proposed rule is consistent with ORS 196.825 (6)(c).

Date Comment Received: June 28, 2012

Rule number: 141-085-0550(5)(q)(A) adjacent land owner information for new linear

Person Making Comment: Douglas J. Docker

Agency/ Affiliation: Idaho Power Company

Contact Information: ddockter@idahopower.com

Comment: delete “construction” and add “all landowners whose land is adjacent to the land identified for removal – fill or mitigation activity”.

Agency Response 9: “Construction” was deleted. DSL’s interpretation of ORS 196.825 (6)(c) is that notice should not be limited to only those sites with removal-fill impacts.

Date Comment Received: June 28, 2012

Rule number: 141-085-0550(5)(q)(x) adjacent land owner information for new linear

Person Making Comment: Douglas J. Docker

Agency/ Affiliation: Idaho Power Company

Contact Information: ddockter@idahopower.com

Comment: Add NEW paragraph “ (C) Nothing in this rule is intended to expand the scope of the Department’s notice to landowners beyond what is provided for in ORS 196.825(6)”. If both landowners and adjacent landowners are listed in the application, the statute can be interpreted to notice the adjacent to the adjacent ones listed. Just want to have clarification of the agency implementation of the statute

Agency Response 10: The proposed rule only uses the term “adjacent” once and does not suggest or require notice to landowners that are adjacent to adjacent landowners. This agency response will serve as a record of this interpretation.

Date Comment Received: June 29, 2012

Rule number: 141-085-0550(5)(u)

Person Making Comment: Brendan McCarthy

Agency/ Affiliation: Portland General Electric

Contact Information: Brendan.McCarthy@pgn.com

Comment: PGE notes the internal contradiction between the requirements in paragraph (5)(u) and the exemption in subparagraph (5)(u)(A) and suggests that the department insert “Except as provided in (5)(u)(A),...” at the beginning of the paragraph for clarity.

Agency Response 11: The suggested qualifier has been added for clarity.

Date Comment Received: June 28, 2012

Rule number: 141-085-0550(5)(u) landowner signature

Person Making Comment: Douglas J. Docker

Agency/ Affiliation: Idaho Power Company

Contact Information: ddockter@idahopower.com

Comment: DSL's proposed subsection is consistent with the statute and Idaho Power supports this proposed addition to the rules

Agency Response 12: Comment noted.

Date Comment Received: June 29, 2012

Rule number: 141-085-0550(5)(v)

Person Making Comment: Brendan McCarthy

Agency/ Affiliation: Portland General Electric

Contact Information: Brendan.McCarthy@pgn.com

Comment: PGE is not certain whether the language in this new paragraph applies to applicants for linear facilities or not. Seemingly, the exemption found in (5)(u)(A) would apply to mitigation sites as well. We also raise a more fundamental concern on timing. We are uncertain whether an applicant, at the time of application, would necessarily have mitigation sites established. The application itself and the process of department review will likely result in mitigation determination. As a final note, PGE believes that the use of the term "owner" in line 3, page 31, is confusing and needs clarity. Does the "owner" in that instance refer to the owner of the land for mitigation or the land on which the removal fill activity will occur?

Agency Response 13: ORS 196.825 (6)(c) does not provide an exemption for mitigation site landowner signatures. Landowners of potential mitigation sites must be made aware that their property is proposed for long-term encumbrance as a mitigation site.

Date Comment Received: June 28, 2012

Rule number: 141-085-0560(1) landowner signature

Person Making Comment: Douglas J. Docker

Agency/ Affiliation: Idaho Power Company

Contact Information: ddockter@idahopower.com

Comment: Delete "identified in the application" insert "of land where removal fill or mitigation activity will occur, and landowners of land adjacent to land where any removal fill or mitigation activity will occur " If the Dept notifies both landowners and adjacent

landowners as listed in the application, the statute can be interpreted to notice the adjacent to the adjacent ones listed. Just want to have clarification of the agency implementation of the statute.

Agency Response 14: See Agency Response10.

Date Comment Received: 6/26/2012

Rule number: 141-085-0560 (1) Public Review- Circulation

Person Making Comment: Bob Barker

Agency/ Affiliation:

Contact Information: 2724 Old Ferry road, Shady Cove OR 97539 Ph 541-878-5371

Comment: Add Language “A copy of the application shall be made available at the public library closest to the proposed removal-fill activity in each county and city in which said removal-fill activity for a linear project is proposed.”

Agency Response 15: We have added the provision that upon request the Department may make a copy of the application available at the public library closest to the proposed project.

Date Comment Received: 6/26/2012

Rule number: 141-085-0560 (2) Public Review –Copies of application by request

Person Making Comment: Bob Barker

Agency/ Affiliation:

Contact Information: 2724 Old Ferry road, Shady Cove OR 97539 Ph 541-878-5371

Comment: Add Language “For linear facilities, the Department will furnish an electronic copy of the application free of charge within three business days of any request by a landowner identified in the application.”

Agency Response 16: The Department will respond to a public records request in a timely manner based upon available staff resources at the time of the request. Applications are also available on-line on the Department’s website while the project is undergoing review:

<http://www.statelandsonline.com/index.cfm?fuseaction=Comments.SelectCounty>

Date Comment Received: 6/26/2012

Rule number: 141-085-0560 (3) Public Review- Submitting Comments

Person Making Comment: Bob Barker

Agency/ Affiliation:

Contact Information: 2724 Old Ferry road, Shady Cove OR 97539 Ph 541-878-5371

Comment: Delete Language "...the period established by the Department, but not more than"....

Agency Response 17: The Department puts sideboards on when comments must be submitted because the applicant needs to address any concerns expressed in a timely manner.

Date Comment Received: 6/26/2012

Rule number: 141-085-0560 (5)(a)Public Review- Applicant Response

Person Making Comment: Bob Barker

Agency/ Affiliation:

Contact Information: 2724 Old Ferry road, Shady Cove OR 97539 Ph 541-878-5371

Comment: Add Language "...and for linear projects, to any affected landowner who has submitted comments or made a written request to receive such comments."

Agency Response 18: DSL will continue to forward the comments to the applicant. Comments submitted electronically may be viewed on-line. Members of the public may submit a public records request to receive a full set of comments from DSL.

Date Comment Received: 6/26/2012

Rule number: 141-085-0560 (5)(b) Public Review- Applicant Response

Person Making Comment: Bob Barker

Agency/ Affiliation:

Contact Information: 2724 Old Ferry road, Shady Cove OR 97539 Ph 541-878-5371

Comment: Add Language "For linear projects, any landowner identified in the application who has submitted comments or made a written request to receive such comments shall receive a written or electronic copy (as specified by the landowner) of any such response by the applicant."

Agency Response 19: This practice is not necessary in all cases since most projects are not controversial. When there is heightened public interest in a project members of the public may submit a public records request for a full set of public comments from DSL. See also Agency Response 20.

Date Comment Received: 6/26/2012

Rule number: 141-085-0560 (6)(b) Final Review- Extending decision deadline

Person Making Comment: Bob Barker

Agency/ Affiliation:

Contact Information: 2724 Old Ferry road, Shady Cove OR 97539 Ph 541-878-5371

Comment: Add Language -The permit decision deadline may be extended beyond 90 calendar days if requested by the applicant “or the landowner identified in the application for linear projects”, and approved by the Department.

Agency Response 20: Pursuant to ORS 196.825 (8)(b)(B) the applicant and DSL must agree to a longer time period for an extension to be granted.

Date Comment Received: 6/26/2012

Rule number: 141-085-0575 Permit Appeals

Person Making Comment: Bob Barker

Agency/ Affiliation:

Contact Information: 2724 Old Ferry road, Shady Cove OR 97539 Ph 541-878-5371

Comment: Add New Paragraph Language “(x) **Landowner Appeal for Linear Properties within 21 Calendar Days.** Any Landowner identified in the application may request a contested case hearing if they object to a permit decision or permit condition imposed by the Department. The request must include the reasons for the request for hearing.”

Agency Response 21: Any person who is aggrieved or adversely affected by the Department’s final decision may request a hearing (OAR 141-085-0575(2)). Pursuant to ORS 196.835, DSL may not suspend the permit unless the person aggrieved or adversely affected by grant of permit makes a showing before DSL by clear and convincing evidence that commencement or continuation of the fill would cause irremediable damage and would be inconsistent with ORS 196.600 to 196.905.

Date Comment Received: 6/26/2012

Rule number: 141-085-0575 (3)(a) Permit Appeals- Standing in Contested Case

Person Making Comment: Bob Barker

Agency/ Affiliation:

Contact Information: 2724 Old Ferry road, Shady Cove OR 97539 Ph 541-878-5371

Comment: Add New Language “For linear projects, any landowner identified in the application shall be considered to have a legally protected interest.”

Agency Response 22: See Agency Response 21.

Date Comment Received: 6/29/2012

Rule number: 141-085-0765(3)

Person Making Comment: Joe Sheahan

Agency/ Affiliation: ODFW

Contact Information: ph: 503-947-6091 email: joseph.e.sheahan@state.or.us

Comment: ODFW would like to acknowledge the steps DSL has taken under 141-085-0765 (3) to address Compensatory Non-Wetland Mitigation to address the functions and values to the impacts on streams. ODFW looks forward to working with DSL on addressing hydrologic, geomorphic, biological, chemical, and nutrient mitigation for unavoidable impacts as a result of an action covered under these rules.

Agency Response 23: Comment noted.

Date Comment Received: June 29, 2012

Rule number: 141-085-0775(2)(a)(E)

Person Making Comment: Brendan McCarthy

Agency/ Affiliation: Portland General Electric

Contact Information: Brendan.McCarthy@pgn.com

Comment: The department proposes language allowing the department to determine the type of compensatory mitigation. PGE has concerns that there is no language guiding the department regarding which form of mitigation to choose to require. Some mitigation options could be costly versus other options and some could be more efficacious than others. While the additional clarity seems useful here, it also seems to argue for even more clarity.

Agency Response 24: In order to successfully resolve enforcement cases, DSL needs to have a certain amount of discretion. For this reason, DSL considers the terms of enforcement actions on a case by case basis depending upon the specific facts in each enforcement case.

DEPARTMENT OF STATE LANDS

Public Comments Received May 1, 2012 through June 29, 2012

August 2, 2012

Division 89 Comments

Date Comment Received: 6/8/2012

Rule number: 141-089-0650(10) General Conditions

Person Making Comment: Tom Quintal

Agency/ Affiliation:

Contact Information: quintal@gmail.com

Comment: Revise general condition for refueling distance for recreational placer mining to be in line with DEQ's 25 foot buffer for storage of fuel and refueling conditions under the 700 pm. Not practical to carry a dredge 150 feet away from a stream to refuel and carry back to a stream

Agency Response 1: [DSL removed the general condition for refueling under recreational placer mining and added activity-specific refueling condition for recreational placer mining that is consistent with language in the 700PM](#)

Date Comment Received: 6/29/2012

Rule number: 141-089-0650(10) General Conditions

Person Making Comment: Glenn Zimmerman

Agency/ Affiliation: Willamette Valley Miners Association

Contact Information: gmzimmerman@hotmail.com

Comment: Revise general condition for refueling distance for recreational placer mining to be in line with DEQ's 25 foot buffer for storage of fuel and managing fuel under the 700 pm.

Agency Response 2: [See Agency Response 1.](#)

Date Comment Received: 5/30/2012

Rule number: 141-089-0670 (4) Maintenance of Water Intake and Outfall Structures

Person Making Comment: Rosemary Johnson, Planner

Agency/ Affiliation: City of Astoria

Contact Information: 1095 Duane Street, Astoria OR 97103

503-338-5183 phone 503-338-6538 fax rjohnson@astoria.or.us email

Comment: Should these sections both include “outfall” as well as intakes?

Agency Response 3: Yes, both intake and outfall structures are included.

Date Comment Received: 6/29/2012

Rule number: 141-089-0715(2)

Person Making Comment: Joe Sheahan

Agency/ Affiliation: ODFW

Contact Information: ph: 503-947-6091 email: joseph.e.sheahan@state.or.us

Comment: *Timing of Temporary Impact Rectification. Re-establishment of pre-construction contours and planting to re-vegetate temporarily disturbed areas must be completed within 24 months of the initial impacts. However, if the temporary impact requires only one construction season, site rectification must be completed immediately following project completion and within the same construction season as the temporary impact. Planting must include species of sufficient number, spacing, and diversity to replace affected aquatic functions.*

The 24 month timeline for re-establishment of the contours and vegetation outlined in this section of the OAR increases the risk for invasive species to become established, which may reduce the biological potential for the site. ODFW recommends that planting be completed by the end of the first planting season following project completion. However, if the contouring will not be completed during the first year, the exposed soil should be covered or planted to minimize the risk of establishing invasive species .

Agency Response 5: DSL’s expectation is that the applicant will be in full compliance with this requirement within 24 months at the very latest. Following ODFW’s advice to cover exposed soil may help applicants to be more successful in achieving this objective. Sites that are not graded and re-vegetated within 24 months would be out of compliance. DSL intends to pursue this issue further with ODFW outside of this rulemaking process and may consider future rule revisions.

Date Comment Received: 6/29/2012

Rule number: 141-089-0820

Person Making Comment: Joe Sheahan

Agency/ Affiliation: ODFW

Contact Information: ph: 503-947-6091 email: joseph.e.sheahan@state.or.us

Comment: ODFW has concerns that the language in this section of the General Authorization will not adequately address the fish passage ORS and OARs. As written it states:

*(5) **Minimization of Impounded Water.** The activity may impound only the minimal area of impounded water necessary to operate the dredge under the following conditions:*

- (a) The temporary dam does not extend across the entire waterway;*
- (b) The structure allows unobstructed flow of water in an amount sufficient to enable fish to travel unimpeded up and down stream; and*
- (c) The impoundment structure is removed immediately upon completion of the mining activity.*

The term “across the entire waterway” is open for interpretation, and a minor gap may not allow fish at all life stages to move away from or past the permitted activity. By using the term “wetted perimeter” instead of “across the entire waterway” it becomes consistent with 141-089-0835 (2) and addresses the fish passage concerns. ODFW must be able to review designs to ensure that fish passage requirements are being met. Therefore, ODFW recommends the following modification:

*(5) **Minimization of Impounded Water.** The activity may impound only the minimal area of water necessary to operate the dredge under the following conditions:*

- (a) The temporary dam does not extend across more than 75% of the wetted perimeter;*

or

The designs for the temporary dam have been reviewed and approved by ODFW prior to installation consistent with ORS 509.580 through 509.901 and OAR 635-412-0005 through 635-412-0040

- (b) All in-water work is performed during the recommended ODFW in-water work window;*
- (c) The impoundment structure is removed immediately upon completion of the mining activity.*

Agency Response 6: The suggested revisions were incorporated except that applicants will be responsible for assuring that they are in compliance with the applicable ORS's and OAR's.

DEPARTMENT OF STATE LANDS

Public Comments Received May 1, 2012 through June 29, 2012

August 2, 2012

Division 93 Rule Comments

Date Comment Received: 6/29/2012

Rule number: 141-093-0103(3) Processes for establishing General Permits

Person Making Comment: Joe Sheahan

Agency/ Affiliation: ODFW

Contact Information: ph: 503-947-6091 email: joseph.e.sheahan@state.or.us

Comment: ODFW is concerned that activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes may have more than minimal adverse environmental effects. For example, annually removing sediment from a channelized fish bearing stream and thinly spreading the sediment in the adjoining floodplain has predictable effects and outcomes, but decreases the functional value of the stream habitat and the plant communities associated with the floodplain. The removal of the current language allows for more than minimal effects. For the agency process and standards for establishing General Permits, ODFW recommends retaining the following language:

The Department will adopt GPs by rule, and will condition each GP to minimize adverse environmental effects.

Agency Response 1: DSL has restored the language which was inadvertently deleted.

Date Comment Received: 6/29/2012

Rule number: 141-093-0135(14) General Conditions

Person Making Comment: Joe Sheahan

Agency/ Affiliation: ODFW

Contact Information: ph: 503-947-6091 email: joseph.e.sheahan@state.or.us

Comment: (14) ~~Work Area Isolation. The work area must be isolated from the water during construction. All structures and materials used to isolate the work area must be removed immediately following construction and water flow returned to pre-construction~~

~~conditions. All fish must be salvaged from the isolated area in accordance with Oregon Department of Fish and Wildlife requirements.~~

The proposed elimination of the worksite isolation condition decreases the predictability of sediment leaving the work area and could affect water quality. If the applicant is not required to isolate the worksite there could be unpredictable impacts to fish, wildlife, and habitat resources, including Federally Threatened and Endangered Species. While this condition is inserted into some sections of the permit it is not included in all sections of the permit. Therefore, ODFW recommends not striking the worksite isolation language from this section.

Agency Response 2: The work area isolation condition was moved, not deleted. Activity-specific conditions are established during rulemaking to minimize adverse environmental effects, but since not all conditions apply to all GPs, this condition was removed from the general conditions and added to the applicable GPs.

Date Comment Received: 6/29/2012

Rule number: 141-093-0220 General Permit for maintaining AG Drainage-Purpose

Person Making Comment: Margaret C. Magruder

Agency/ Affiliation: Magruder Farms

Contact Information: 12589 Hwy 30, Clatskanie, OR 97016 ph 503-728-2945

Comment: The limit of 100 cy is too low. It does not take into account the extent of the area to be addressed.

Agency Response 3: The threshold volumes for this GP were established by the Oregon Legislature in 2011 (ORS 196.816).

Date Comment Received: 6/29/2012

Rule number: 141-093-0220 General Permit for maintaining AG Drainage-Purpose

Person Making Comment: Joe Sheahan

Agency/ Affiliation: ODFW

Contact Information: ph: 503-947-6091 email: joseph.e.sheahan@state.or.us

Comment: ODFW recommends clarifying whether all waters of the state that drain agricultural lands are eligible under this GP. Across Oregon, many streams on agricultural land have been channelized, so the impacts of this GP could have an effect on fish, wildlife, and their habitats. ODFW recommends that the GP exclude channelized streams where food fish are present. ODFW recommends that 141-093-0220 only include ditches and that the following definitions be added:

“**Ditch**” means a manmade water conveyance channel. Channels that are manipulated streams are not considered ditches.

“**Intermittent Stream**” means any stream which flows during a portion of every year and which may provide spawning, rearing or food-producing areas for food and game fish.

These changes would make this section consistent with the proposed 141-093-0103 (5).

The proposed rule would allow removal of 100 cubic yards of material and 100 cubic yards of fill. If the rules do not restrict the General Permit to ditches and excludes intermittent streams, then there could be:

- Filling of deeper wetlands and shifting plant species from facultative wetlands to facultative species.
- Creation of significant adverse impacts to wetlands, streams, and estuarine habitats by altering (removing/filling) natural hydrologic functions of stream channels and floodplains.
- Reduction of winter refuge habitat for some salmonid species.
- Alteration of spawning beds and rearing habitat for native fish.
- Reduction of spawning and rearing habitat for some frog species.
- Over time, the potential for creating berms along streams that could affect the hydraulics of the waterway.

If the site does not have a current wetland delineation to document the existing condition, it will be very difficult to measure the small incremental changes that occur over a decade. This change could allow for the gradual shifting from a wetland to site conditions that favor upland plants. ODFW recommends that the applicant submit a report on the disposal location and depth of material deposited to document the fill whenever the applicant performs the activity. If DSL chooses not to make this recommended change, ODFW recommends that DSL include language outlining how those changes will be documented or monitored to be compliant with 141-093-0103 (5) of the General Permit.

Agency Response 4: DSL will conduct a full review of all projects authorized under this permit during the 2012 construction season and it may consider possible revisions at that time. We recognize that there is some potential for adverse effect but we require specific information to quantify that adverse effect and make changes in the GP, if needed.

Date Comment Received: 6/29/2012

Rule number: 141-093-0240- General conditions Ag Drainage GP

Person Making Comment: Joe Sheahan

Agency/ Affiliation: ODFW

Contact Information: ph: 503-947-6091 email: joseph.e.sheahan@state.or.us

Comment: ODFW recommends that if worksite isolation is not included in 141-093-0135 (14) that it be inserted into this section as:

(2) Work Area Isolation. *The work area must be isolated from the water during construction. All structures and materials used to isolate the work area must be removed immediately following construction and water flow returned to pre-construction conditions. All fish must be salvaged from the isolated area in accordance with Oregon Department of Fish and Wildlife requirements.*

Agency Response 5: See Agency Response 4.

Date Comment Received: 6/29/2012

Rule number: 141-093-0240(7)

Person Making Comment: Joe Sheahan

Agency/ Affiliation: ODFW

Contact Information: ph: 503-947-6091 email: joseph.e.sheahan@state.or.us

Comment: To reduce the risk of sediment entering the stream, ODFW recommends including the following language in 141-093-0240 (7):

Seed the exposed soil with native or commonly used pasture seed mix on disturbed soils to reduce erosion.

Agency Response 6: See Agency Response 4.
