

# Ocean Policy Related Updates for the Department of Land Conservation and Development



OREGON

Coastal Management Program  
DEPARTMENT OF LAND CONSERVATION & DEVELOPMENT

DLCD is reviewing US Army Corps of Engineers proposed nationwide permits for federal consistency. Of special interest to OPAC are three nationwide permits addressing aquaculture. DLCD anticipates requesting that projects utilizing any of the three aquaculture nationwide permits will require an individual consistency review (ICR). The permits and the rationale for the individual consistency reviews are listed below.

In addition, DLCD is working with the Governor's office on a letter of response to a Notice by the National Oceanic and Atmospheric Administration on 10/23/2020, regarding Executive Order (E.O.) on Promoting American Seafood Competitiveness and Economic Growth. The public input provided in response to this request for information (RFI) will inform NOAA as it works with Federal agencies, appropriate Regional Fishery Management Councils, and in coordination with appropriate State and tribal governments to identify AOAs. Comments are due December 22, 2020.

Federal Register Notice: (<https://www.federalregister.gov/documents/2020/10/23/2020-23487/aquaculture-opportunity-areas>)

## NWP 48 (Commercial Shellfish Aquaculture Activities)

Any project that utilizes Nationwide Permit 48 (Commercial Shellfish Aquaculture Activities) or incorporates multi-trophic finfish mariculture taking place in state waters (estuarine and marine) and adjacent Federal waters of the Coastal Zone.

Rationale: Projects utilizing NWP 48 can result in a wide array of ecological effects to estuarine resources in the Pacific Northwest region, as well as impact other shellfish users, degrade estuary habitat unintentionally, or disrupt/impact other aquaculture activities including other native shellfish beds. Additionally, the wide diversity of commercial shellfish mariculture practices affirms the need to evaluate proposed projects on a case-by-case basis through ICR.

## NWP A – Anticipated NWP #55 (Seaweed Mariculture)

Any project that utilizes Nationwide Permit 48 (Commercial Shellfish Aquaculture Activities), NWP A (Seaweed Mariculture Activities), and NWP B (Finfish Mariculture Activities), or incorporates multi-trophic finfish mariculture taking place in state waters (estuarine and marine) and adjacent Federal waters of the Coastal Zone.

Rational: There is currently no precedent for seaweed or finfish mariculture activities in Oregon's coastal zone or adjacent federal waters. Due to the wide diversity of potential effects, based on technology, spatial uses, ocean conditions, and sensitive natural resources, all mariculture projects utilizing NWP A, NWP B, or multi-trophic aquaculture must be evaluated on a case-by-case basis, and undergo ICR.

## NWP B – Anticipated NWP #56 (Finfish Mariculture)

Any project that utilizes NWP B (Finfish Mariculture Activities), or incorporates multi-trophic finfish mariculture taking place in state waters (estuarine and marine) and adjacent Federal waters of the Coastal Zone.

Rational: Coordination with the state’s Marine Resources Program at the Oregon Department of Fish and Wildlife (ODFW) is essential to accurately assess coastal effects and apply enforceable policies of the OCMP to shellfish aquaculture activities, seaweed mariculture activities, and finfish/finfish multi-trophic aquaculture activities, thus DLCD requires an ICR.

## Vessel Incidental Discharge Act (VIDA) rulemaking

EPA has proposed Vessel Incidental Discharge Act (VIDA) rulemaking. The rules would establish national standards for incidental vessel discharges. The Vessel Incidental Discharge Act directs EPA to integrate the requirements of the 2013 EPA Vessel General Permit and the US Coast Guard ballast water discharge standard into a unified standard. DLCD is reviewing the proposed rules for consistency with Oregon’s Coastal Management Program including state water quality standards. Comments are due to EPA by January 19, 2021.

## Ocean Policy Related Updates for the Department of State Lands

### PacWave (wave energy testing facility and grid connected project)

The Department has been working with PacWave on the required authorizations and permits for two project sites (North & South) since 2013.

PacWave North is a non-grid connected wave energy testing site that was originally issued a license in 2013. That license expired in 2016. In 2018, DSL received a lease application for the site. That application is currently on hold pending the submission of additional information from the applicant.

PacWave South is a separate wave energy test site that is located outside of the territorial sea. This site applied for both an easement and the required removal-fill permit to run five cables connecting the test site to the energy grid. DSL received the applications from PacWave for its grid connected location in September of 2019.

The application for an easement in the territorial sea was issued on June 19, 2020, following public comment and approval by the State Land Board. The removal-fill permit was issued on March 2, 2020. As a condition of the permit, the Department required PacWave to develop and submit a contingency plan as a safeguard to prevent impacts to waters of the state. PacWave has submitted the contingency plan. DSL is currently reviewing the plan in coordination with other state agencies.

## South Slough National Estuarine Research Reserve (SSNERR) - DSL will remain the Reserve's state partner

The question of whether a different state partner would be a better fit for the South Slough National Estuarine Research Reserve (SSNERR) has come up many times over the years.

In early 2018, Director Walker was asked to complete the ongoing work to evaluate alternative management options for the SSNERR. At the October 13, 2020 Land Board meeting, Director Walker delivered a report summarizing a two-year effort evaluating alternative management options for the SSNERR. A summary and the full report can be found in the Land Board packet [here](#).

The report highlighted how the SSNERR's work aligned with the Department's mission and its value to Oregon. The report concluded with a recommendation to the Land Board that DSL continue to serve as the Reserve's state partner.

There were no objections from the Land Board. DSL will continue to be the state partner for the SSNERR.

## Edge Cable Holdings (easements in the territorial sea)

On June 17, 2020 DSL was notified by Edge Cable that on April 28, 2020 they had violated the terms of their easement when a drill pipe snapped and equipment was abandoned in the territorial sea.

Upon being notified of the incident, DSL worked to evaluate whether the abandoned equipment presented immediate safety or health risks. An initial assessment determined there to be no immediate environmental, health, or safety impacts due to the presence of the equipment. Edge Cable was required to submit an environmental assessment, which has been received.

Under the terms of the existing easement agreement, Edge Cable must be provided with the opportunity to come into compliance. DSL and Edge Cable have agreed on an amendment to the original easement agreement. Edge Cable has submitted plans for drill break avoidance and response, fulfilling a condition of the original easement agreement. Edge Cable has also applied for an encroachment easement to come into compliance.

The encroachment easement is in the technical review phase. During this phase, DSL reviews comments that were submitted during the 30-day public comment period, which closed on November 5, 2020. Comments were provided to the applicant for response. The deadline for applicant response to public comment was December 15, 2020. DSL

has received the applicant's responses and has begun its review.

Additional information, including the easement amendment, cable construction plan, plans for drill break avoidance and response, and the hazard analysis are available for download via [Dropbox here](#).

## HB 2436 (2019) Partial 404 Assumption – Legislative Update

In Oregon, most projects that involve earthmoving or discharge of material in wetlands, rivers, and lakes require permits from the US Army Corps of Engineers (Corps) to comply with Section 404 of the Clean Water Act (CWA) and from the Oregon Department of State Lands (DSL) under Oregon's Removal Fill Law. This dual permitting process has been identified as costly and inefficient by applicants. Section 404(g) of the Clean Water Act gives states and Tribes the option of assuming the permitting responsibility and administration of the Section 404 permit program for certain waters. An assumed program must be consistent with and no less stringent than the requirements of the Clean Water Act and associated regulations.

Through the enactment of HB 2436 (Chapter 652, Oregon Laws 2019) the Legislature directed DSL to submit recommendations, including draft statutory language, for consideration in advance of the 2020 session of the Oregon Legislature. Recommendations including draft statutory language are currently not possible due to pending federal rule changes.

From October 2019 to December 2020, DSL convened a working group to help inform the process. During the working group process, DSL heard a number of concerns that would result from the loss of a federal nexus in a state only permitting process, including how 404 assumption may interact with the federal Coastal Zone Management Act and Oregon's Coastal Management Program. These and other issues remain unresolved but have been identified should the Department be directed to continue work on 404 assumption.

DSL will be submitting the final report and presenting 404 efforts to the House Agricultural and Land Use Committee on December 18, 2020. Additional information is also available on our website [here](#).

## State Designated Essential Salmon Habitat Rulemaking

By rule, DSL is required to coordinate with the Oregon Department of Fish and Wildlife (ODFW) to update our GIS maps of Essential Salmon Habitat (ESH) areas. DSL is currently working with ODFW to update the GIS layers for the ESH map within Oregon, and revise the process for future map updates. View the [draft 2021 ESH Map here](#).

The Department held four rule advisory committee (RAC) meetings, and is

currently finalizing the rule draft before filing the notice of proposed rulemaking with the Secretary of State. We hope to have a draft rule for review and comment in early 2021.