

State/Federal Permit Process Streamlining Scenarios

February 17, 2012

OPTION A: Repeal the Removal-Law, Wetland Conservation Planning Law and Applicable Portions of Scenic Waterways Law

(1) Both the regulatory and wetland planning program are terminated

- The state removal-fill and wetland planning program are completely eliminated.
- The state would save \$5,000,000 per biennium.
- The Corps continues to regulate fill only in Section 404 waters formerly regulated by DSL.
- The Corps does not regulate isolated wetlands and streams in hydrologically enclosed basins so these waters go unprotected.
- ODFW's fish passage program and its conservation mission would be adversely affected as DSL removal-fill permits help improve compliance with the ODFW program and help ODFW achieve its mission.
- The Oregon Coastal Zone Management program is adversely affected because the removal-fill program regulatory program is one of the pillars of the coastal program in Oregon.
- The Corps is also experiencing budget reductions and therefore total resource protection statewide will be significantly reduced.
- Wetland planning and conservation activities in the state cease as the Corps has no such program(s).
- For example, the since Department is responsible for developing and maintaining the Statewide Wetlands Inventory (SWI), this function would no longer be performed.
- The SWI includes the National Wetlands Inventory (NWI) and Local Wetlands Inventories (LWI) developed by cities according to standards (rules) set by the Department
- Developing tools such as functional assessments would no longer be a service provided to the public.
- DSL's wetland delineation review service would cease as the Corps does not provide this service unless accompanied by a permit application.
- The burden of wetlands delineation concurrence falls completely on the Corps since DSL is no longer providing this service; this would further impact Corps resources.

(2) Only the regulatory program is terminated; the wetland planning program is left intact.

- The Removal-Fill Law and applicable portions of the Scenic Waterways Law would be repealed, but the Wetland Conservation Planning Law would remain in effect.
- The Department would continue to operate the wetland planning program but the regulatory function would be abolished.
- The Corps would provide the regulatory component of wetland and waterway protection.
- The state would save money because the DSL regulatory program is larger and more expensive to operate than the wetland planning component.

OPTION B: Partial repeal of Removal-Fill Law; state only has jurisdiction where the Corps does not

- DSL could only regulate waters not regulated by the Corps, including isolated wetlands and streams in hydrologically enclosed basins.
- The State Scenic Waterway Act would remain unaffected as it is separate from the Removal Fill Law so DSL would still regulate in SSW's.
- Difficult to determine programmatically how many projects per year will require a Corps permit and therefore difficult to quantify how many fewer permits the state would issue—may have to do this case-by-case by screening permit applications.
- Time spent screening applications would erode efficiencies gained in reducing DSL jurisdiction.
- Option B could result in a substantial net reduction in DSL workload and a substantial reduction in program operating costs.

OPTION C: State assumes Section 404 and continues to regulate in non-assumable waters under the Removal Fill Law (with and without a State Programmatic General Permit (SPGP))

(1) No SPGP

- State administers the 404 program in assumable waters and continues to issue state permits in non-assumable waters.
- Many applicants would qualify for a single permit from the State and not require a permit from the Corps.
- Remaining applicants require two permits (Corps and DSL).

- New workload associated with 404 program administration requirements, such as ESA coordination, are unknown at this time.
- Repeal of the 50 cubic yard exemption would result in more activities being regulated.
- This could have an impact on DSL workload unless mitigated through the issuance of programmatic permits.
- It could cost slightly more to administer the 404 assumption program unless the program was reorganized to handle the 404 program administrative function using existing resources.

(2) With SPGP(s)

- State assumes Section 404 and works with Corps to develop one or more SLOPES-compliant SPGP(s).
- SPGPs would apply to certain categories of activities with minimal impacts in non-assumable waters.
- 404 assumption combined with an SPGP would apply to all wetlands and waters in the state but the SPGP would only cover low impact activities.
- Option C (2) increases the administrative burden on DSL for administering SPGP(s).
- This would have some degree of negative fiscal impact depending upon on the complexity of the SPGP.
- It would be easier for some applicants to get approval for low-impact projects in non-assumable waters.
- If the SPGP only authorized a very limited number of categories of activities and was simple to administer, the fiscal impact would be negligible.

OPTION D: State assumes Section 404 and ceases to regulate in non-assumable waters

- Applicants only need one permit depending on the location of the project, from either the Corps or DSL.
- DSL's permit processing, wetland delineation and enforcement workload would decrease slightly in terms of numbers.
- The actual reduction in workload may be somewhat greater due to the increased complexity of some large coastal projects that would not be permitted by DSL.

- State wetland planning could continue in the non-assumable waters.
- The state would save money since the program is being cut back.

OPTION E: Status Quo–Retain Existing Removal-Fill Program without Assuming Section 404

- The Corps and DSL will continue to have overlapping jurisdiction in most waters.
- DSL will continue to have a 50CY exemption except in ESH.
- DSL will continue to regulate what the Corps considers to be “isolated waters” and streams in enclosed basins and the Corps will not.
- There would be no fiscal impact on DSL.