US Army Corps of Engineers
Seattle District

US Army Corps of Engineers
Portland District

Public Notice

Proposal to Issue a Regional General Permit

Seattle District, Regulatory Branch
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Public Notice Date: December 14, 2004
Public Notice Expiration Date: January 14, 2005
Reference: CENWS-OD-RG-RGP-8
and CENWP-OP-G, RGP#200300529
Name: U.S. Forest Service Fish Passage Program

Interested parties are hereby notified that, in accordance with 33 CFR 325.3(b), the Seattle District and Portland District of the U.S. Army Corps of Engineers (Corps) is proposing to issue regional general permits (RGP) that would authorize the work described herein, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).

PERMIT NUMBERS – RG-RGP-8 (Seattle District) and RGP#200300529 (Portland District)

PERMIT TITLES – U.S. Forest Service Fish Passage Program within the State of Washington and U.S. Forest Service Fish Passage Program within the State of Oregon

ISSUING OFFICES – U.S. Army Corps of Engineers, Seattle District
Regulatory Branch, CENWS-OD-RG
Post Office Box 3755
Seattle, Washington 98124-3755

And

U.S. Army Corps of Engineers, Portland District
Regulatory Branch, CENWP-OP-G
Post Office Box 2946
Portland, Oregon 97208-2946

LOCATION OF AUTHORIZED ACTIVITIES – The proposed RGPs would be applicable in all waters of the United States (U.S.), including navigable waters of the U.S., within the states of Washington and Oregon.

WORK – The activities that would be eligible for authorization under the proposed RGPs are described in the enclosed draft RGPs for U.S Forest Service Fish Passage Program within the states of Washington and Oregon.

PURPOSE – The purpose of these RGPs is to expedite the authorization of recurring activities that are similar in nature and have minor individual and cumulative adverse impact on the aquatic environment. Use of these RGPs would reduce the amount of paperwork and time required to authorize qualifying projects by making available for use an already issued Department of Army (DA) general permit that includes a concluded Endangered Species Act Section 7 consultation and Essential Fish Habitat consultation and will likely include a State water quality certification, and coastal zone management consistency concurrence.

Both proposed RGPs contain provisions intended to protect the environment, endangered species, and cultural resources. Work that would not comply with the provisions of both RGPs would not be authorized by this permit and may require DA authorization by a standard individual permit. Moreover, compliance with the provisions of both RGPs would not in itself guarantee that the work is authorized by both RGPs. Activities that appear to comply with the provisions of both RGPs but would have an unacceptable adverse impact on the public interest would not be authorized by this permit.

ENDANGERED SPECIES – The Endangered Species Act of 1973 (ESA), as amended, requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS)/ National Oceanic Atmospheric Administration (NOAA) and/or U.S. Fish and Wildlife Service (USFWS), pursuant to Section 7 of the ESA, on any action, or proposed action, permitted, funded, or undertaken by the agency that may affect a species listed as threatened or endangered under the ESA, or its designated critical habitat. The U.S. Forest Service has determined that activities that would be authorized by these RGPs may affect federally listed species and, therefore, has completed consultation with the NMFS and USFWS. For the state of Washington - NMFS (NMFS reference number 2003/006760) issued a Biological Opinion (BO) on September 2, 2003, and USFWS (USFWS reference numbers 1-3-03-1482 WA and 1-3-03-PF-1243 WA) issued BOs on January 21, 2004, for the proposed activities covered under Seattle District RGP 8. For the state of Oregon - NOAA (NOAA reference number 2002/01254, 2002/01880, 2003/00676) issued multiple BOs on October 18, 2002, with a revision on May 21, 2003; February 25, 2003; September 2, 2003; and USFWS (USFWS reference numbers 1-7-03-F-20, 1-7-04-F-1113, 1-7-03-I-0395, 1-3-03-PF-1243 and 1-7-03-F-0379, 1-7-04-F-0184, 1-15-04-F-0328) issued multiple BOs on April 11, 2003, in January 2004, January 21, 2004, March 1, 2004, April 2004 and June 17, 2004, for the proposed activities covered under the Portland District RGP No. 200300529.

The U.S. Forest Service will implement the terms and conditions stated in all the BOs.

ESSENTIAL FISH HABITAT – The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). The U.S. Forest Service has determined that activities authorized by both RGPs may adversely affect EFH for federally managed fisheries in Washington and Oregon waters. The U.S. Forest Service has completed consultation with the NMFS. In this consultation, the NMFS concluded that the proposed activities that would be authorized by both RGPs might adversely affect designated EFH for Pacific salmon. The NMFS has included conservation recommendations as terms and conditions of the BOs, issued by NMFS on September 3, 2003, for activities in Washington and on October 18, 2002, (with the May 21, 2003, modification to pages 26, and 27), February 25, 2003 and September 2, 2003, for activities in Oregon. These recommendations are designed to avoid, minimize or otherwise offset affects to designated EFH produced by the activities authorized by both RGPs. These terms and conditions are incorporated into both RGPs either by reference or special conditions.

CULTURAL RESOURCES – U.S. Forest Service, Pacific Northwest Region 6, is the Federal lead for National Historic Preservation Act. Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest. The locations of activities that might be authorized by both proposed RGPs are not known and, therefore, the U.S Forest Service or the District Engineer (DE) cannot determine at

this time whether any of the activities that would be authorized by both proposed RGPs may affect an historic property listed, or eligible for listing, in the National Register of Historic Places (NRHP). However, if issued, both proposed RGPs would not authorize any activity that may affect historic properties listed, or eligible for listing, in the NRHP until the provisions of 33 CFR 325, Appendix C, have been satisfied. The U.S. Forest Service would be required to notify the DE if the proposed activity may affect an historic property that is listed, eligible for listing, or may be eligible for listing in the NRHP, and would not begin the activity until the requirements of the National Historic Preservation Act have been satisfied by providing documentation, including a concurrence letter from State Historic Preservation Office (SHPO) and/or from an affected Native American Nation or tribal government to the DE. The DE invites responses to this public notice from Federal, State, and local agencies, historical and archeological societies, Indian tribes, and other parties with knowledge of, or concerns with, historic properties.

PUBLIC HEARING – Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

EVALUATION – The decision whether to issue the proposed permit will be based on an evaluation of the probable impact, including cumulative impacts of the authorized activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Native American Nations or tribal governments and other interested parties in order to consider and evaluate the impacts of this proposal. Any comments received will be considered by the Corps in determining whether or not to issue the proposed permit. Comments are used to help the Corps assess likely impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and the overall public interest of the activity.

The evaluation of the likely impact of the proposed on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act. This evaluation will include an alternatives analysis.

ADDITIONAL EVALUATION – The Washington Department of Ecology (Ecology) and Oregon Department of Environmental Quality (DEQ) will determine, pursuant to Section 401 of the CWA and State Laws, Chapters 173-225 of the Washington Administrative Code (WAC) and Oregon Administrative Rules (OAR) 340-41-0004, Antidegradation Policy for Surface Waters and the Environmental Protection Agency, pursuant to Section 401 of the CWA will determine, whether the activities that would be authorized by both proposed RGPs and for which the agency is responsible will comply with established water quality standards.

The Ecology and the Department of Land Conservation and Development (DLCD) will also determine, pursuant to the requirements of the U.S. Coastal Zone Management Act (16 U.S.C. 1452 et seq.) and its implementing regulations (15 CFR 923-930), whether the activities that would be authorized by the proposed RGPs and for which Ecology and DLCD are responsible will be consistent with the Washington and Oregon States Coastal Zone Management program.

COMMENT AND REVIEW PERIOD – Comments on this proposal will be accepted and made part of the record and will be considered in determining whether it would be in the best public interest to issue the proposed permit. In order to be accepted, email comments must originate from the author's email account and must include on the subject line of the email message the RPG name and reference number as shown below. All email comments should be sent to Olivia.H.Romano@usace.army.mil for U.S. Forest Service Fish Passage Program within Washington State and corrie.veenstra@usace.army.mil for U.S. Forest Service Fish Passage Program within Oregon State. Conventional mail comments should be sent to issuing offices names and addresses shown on the first page of this public notice. Both conventional mail or email comments must include the RGP name and reference number, as shown below, and the commentor's name, address, and phone number. All comments whether conventional mail or email must reach issuing offices, no later than the expiration date of this public notice to ensure consideration.

U.S. Forest Service Fish Passage Program within Washington State
CENWS-OD-RG-RGP-8

And/or

U.S. Forest Service Fish Passage Program within Oregon State
CENWP-OP-G, RGP#200300529

Encl
Draft CENWS-OD-RG-RGP-8
Draft CENWP-OP-G, RGP#200300529

US Army Corps of Engineers
Seattle District

Department of the Army Regional General Permit

PROPOSED
RGP-8
U.S. Forest Service Fish Passage Program Within the State of Washington

Effective Date: XXXX **Expiration Date**: XXXX, 2009

Permit Number: CENWS-OD-RG-RGP-8

Permit Title: U.S. Forest Service Fish Passage Program

Authority: In accordance with 33 CFR 325.2(e)(2), the U.S. Army Corps of Engineers (Corps) is proposing a regional general permit (RGP) that would authorize certain activities in or affecting waters of the United States, including navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

Issuing Office: U.S. Army Corps of Engineers, Seattle District
Regulatory Branch, CENWS-OD-RG
Post Office Box 3755
Seattle, Washington 98124-3755
Telephone: (206) 764-3495

Purpose: The purpose of this RGP is to expedite the authorization of culvert replacement or removal projects which enhance fish passage and have minor individual and cumulative adverse impact on the aquatic environment.

To use this RGP, the U.S. Forest Service, Region 6, Pacific Northwest Region (Forest Service), as the permittee, is responsible for ensuring that the authorized activities comply with all applicable provisions of this RGP. Failure to abide by the requirements of this RGP may constitute a violation of the Clean Water Act and/or Rivers and Harbors Act. For purposes of this RGP, the term "permittee" shall include all successors in interest.

This RGP contains provisions intended to protect the environment, endangered species, and cultural resources. Work that will not comply with these provisions is not authorized by this RGP and may require Department of the Army authorization by a standard individual permit. Moreover, compliance with the provisions of this RGP does not itself guarantee that the work would be authorized under this RGP. Activities that appear to comply with the provisions of this RGP, but would have an unacceptable adverse impact on the public interest are not authorized.

Activities authorized by this RGP: Work authorized by this RGP is limited to the activities described below. This RGP authorizes the following work in or affecting navigable waters of the United States and discharges of dredged or fill material into waters of the United States.

Three proposed culvert treatments will be covered by this RGP. They are as follows:

1) Culvert/Road fill removal and restoration of stream channels and associated floodplains upstream, within, and downstream of the existing culvert and road fill. This includes the placement of fill, large wood and boulders below or waterward of the ordinary high water or mean higher high water mark.

2) Culvert replacement with a larger culvert or open-bottom arch culvert. New flow relief culverts may be installed in the existing road prism in developed floodplains.

3) Culvert replacement with a bridge and reconstruction of the stream channels and associated floodplains upstream, within, and downstream of the existing culvert and road fill. This includes the placement of fill, large wood and boulders below or waterward of the ordinary high water or mean higher high water mark. New flow relief culverts may be installed in the existing road prism in developed floodplains.

Definitions:

Mean higher high water (MHHW) MHHW refers to tidal waters (ocean waters, bays, estuaries, and certain rivers) on the West Coast of the U.S. where there are two high tides, and indicates the elevation of the highest of these tides (averaged as under MHW).

Mean high water (MHW) The elevation on the shore of tidal waters (ocean waters, bays, estuaries, and certain rivers) "reached by the plane of the mean (average) high water. Where precise location of the actual line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years." There are set tide gauges throughout Washington State. The MHW for these tide gauges may be obtained by checking the following website: http://www.nws.usace.army.mil/hh/tides/tides.htm

Ordinary high water mark. The line on the shore of non-tidal streams and lakes "established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of the soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas." It is the line of jurisdiction in freshwaters for the Corps of Engineers regulatory program. For tidally influenced waterbodies, OHW correlates to the line of Mean Higher High Water (MHHW).

Location of Authorized Activities: This RGP is applicable in all waters of the United States, including navigable waters of the United States, located within lands administered by National Forest units within the State of Washington. National Forests located solely in Washington include the Colville, Gifford Pinchot, Mt. Baker Snoqualime, Okanogan-Wenatchee, and the Olympic National Forest. National Forest system lands that extend into both Oregon and Washington include Umatilla National Forest and the Columbia River Gorge National Scenic Area. Within the aforementioned National Forest units, the proposed activities will be restricted to road crossings at streams (navigable waters). Road crossing project on Non-federal lands can be authorized when such project improve fish passage into National Forest lands.

Annual Reporting Requirements:

The Forest Service will submit an annual report to U.S. Army Corps of Engineers, Seattle District, Regulatory Branch (Corps), the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife

Service (FWS) and the Washington Department of Ecology (Ecology) summarizing the completed fish passage culvert projects. This report is due no later than January 30 of each year.

Reporting. Reports will include the following elements:

Project Identification #,
Project Name,
Location,
Date of construction,
Identification as either a culvert removal or replacement project,
Width and slope of impassable culvert
Fish species/ESU (and life history stages) above and below the impassable culvert,
Bankfull width (from the ordinary high water mark) and slope of stream channel,
Designation of channel substrate,
New structure type,
Width and slope of new structure,
Miles of stream opened to fish passage,
Number of injuries/mortalities to ESA-listed species as a result of construction

Annual Review. In addition to the annual reports, the Forest Service will coordinate an annual review meeting with the Corps and Ecology to discuss the annual monitoring report, conduct site visits, and collectively determine if RGP objectives are being met.

Water Quality Certification: The Corps will request pursuant to Section 401 of the CWA and Chapters 173-225 of the Washington Administrative Code (WAC), certify that those activities authorized by this RGP for which Ecology is responsible will not violate established State water quality standards. Any requirement that Ecology requires as a condition of water quality certification will be included in this RGP, when issued.

Coastal Zone Management Consistency: Section 307(c) of the Coastal Zone Management Act of 1972 (CZMA), as amended (16 U.S.C. 1456 c)), requires federal agencies conducting activities, including development projects, affecting a state's coastal zone, to comply to the maximum extent practicable with an approved state coastal zone management program. The Forest Service will comply with requirements of the State of CZMA for the activities authorized by this RGP.

Endangered Species: The Endangered Species Act of 1973 (ESA), as amended, requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service (FWS), pursuant to Section 7 of the ESA, on any action, or proposed action, permitted, funded, or undertaken by the agency that may affect a species listed as threatened or endangered under the ESA, or its designated critical habitat. The U.S. Forest Service has determined that activities that would be authorized by this RGP would affect federally listed species and, therefore, have completed consultation with the NMFS and FWS. NMFS (NMFS reference number 2003/006760) issued a Biological Opinion (BO) on September 2, 2003, and FWS (FWS reference numbers 1-3-03-1482 WA and 1-3-03-PF-1243 WA) issued Biological Opinion (BO) on January 21, 2004, for the proposed activities covered under this RGP. The U.S. Forest Service will implement the Terms and Conditions stated in the both biological opinions.

Essential Fish Habitat: The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may

adversely affect Essential Fish Habitat (EFH). The Forest Service has determined that activities authorized by this RGP may adversely affect EFH for federally managed fisheries in Washington waters. The U.S. Forest Service has completed consultation with the NMFS. In this consultation, the NMFS concluded that the proposed activities that would be authorized by this RGP may adversely affect designated EFH for Pacific salmon. The NMFS has included conservation recommendations as terms and conditions of the Biological Opinion (BO), issued by NMFS on September 3, 2003, to avoid, minimize, or otherwise offset affects to designated EFH produced by the activities authorized by this RGP. These Terms and Conditions are incorporated into the RGP by reference.

Permit Conditions: Department of the Army authorization under this RGP is subject to the following special and general conditions:

SPECIAL CONDITIONS

1. Work Windows. Work that disturbs the substrate, bank, or shore of a water of the United States that contains fish life shall be conducted only during the work period for that waterbody as indicated in the most recent Washington Department Fish and Wildlife (WDFW) Allowable Work Periods for Hydraulic Projects in Freshwater for the project area. Other timing will be allowed on a site-specific bases if the Forest Service fish biologist and the WDFW Area Habitat Biologist agree that implementing the activity outside the normal period would be unlikely to cause negative impacts to fish. Any agreements to modify the work period for specific projects or specific sites will be documented by WDFW. Upon request from Corps, The Forest Service must provide a list of specific project or specific sites where work periods were modified through agreement with WDFW.

Those portions of the project work that occur outside or above (waterward of) the ordinary high water channel (above the Corps jurisdictional line) are not subject to the work periods described above. Examples of such work include the replacement of bridge decking, construction of bridge superstructure after footings are in place, and the placement of fill over a culvert following culvert placement.

2. Compliance with Terms and Conditions. Projects authorized by this RGP shall comply with all terms and conditions herein and any conditions added by the National Marine Fisheries and the U.S. Fish and Wildlife Services as a result of their Biological Opinions (BOs), and the Washington State Department of Ecology as a result of a water quality certification. Failure to abide by these terms and conditions invalidates this authorization and may result in a violation of Federal law, which may require that the permittee restore the site or take other remedial action. Activities requiring Department of the Army authorization that are not specifically authorized by this RGP are prohibited unless authorized by another Department of the Army permit.

3. Endangered Species. This RGP does not authorize you to take a threatened or endangered species, in particular the Columbia River chinook, Upper Columbia River spring-run chinook, Puget Sound chinook, Snake River fall-run chinook, Snake River spring/summer-run chinook, Columbia River chum, Hood Canal summer-run chum, Lower Columbia River steelhead, Middle Columbia River steelhead, Upper Columbia River steelhead, Snake River Basin steelhead, Columbia River bull trout, Coastal/Puget Sound bull trout, gray wolf, woodland caribou, Lost River sucker, Wenatchee Mountains checker-mallow, marsh sandwort, showy stickseed, grizzly bear, Canada lynx, bald eagle, Warner sucker, MacFarlan's four-o'clock, Howell's spectacular thelypody, Spalding's catchfly, Ute's ladies'-tresses, water howellia, marbled murrelet, northern spotted owl, and or adversely modify designated critical habitat. In order to legally take a listed species, you must have a separate

authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permits, or ESA Section 7 consultation Biological Opinion with non-discretionary "incidental take" provisions with which you must comply). The BOs prepared by the National Marine Fisheries Service (NMFS) dated September 3, 2003, and the U.S. Fish and Wildlife Service (USFWS) dated January 21, 2004, contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified "incidental take" in the BOs (USFWS Reference Numbers 1-3-03-1482 WA and 1-3-03-PF-1243 WA, NMFS Reference Number 2003/006760). Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the BOs. These terms and conditions are incorporated by reference in this permit. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and this RGP. The USFWS/NMFS is the appropriate authority to determine compliance with ESA.

4. Essential Fish Habitat. The U.S. Forest Service, Pacific Northwest Region 6 has completed EFH pursuant to section 305(b) of the MSA and implementing regulation at 50 CFR Part 600. In this consultation, NMFS concluded that the proposed actions may adversely affect designated EFH for Pacific salmon. NMFS has included conservation recommendations in the Biological Opinion (NMFS Reference Number 2003/006760), dated September 2, 2003 to avoid, minimize or otherwise offset affect to designated EFH produced by activities authorized by this RGP. Your authorization under this Corps permit is conditional upon your compliance with all of the conservation recommendations in the NMFS Biological Opinion. These conservation measures are incorporated by reference in this permit. Failure to comply with the commitments made in this document constitutes non-compliance with the MSA and this RGP. The NMFS is the appropriate authority to determine compliance with MSA.

5. Historic Properties. U.S. Forest Service, Pacific Northwest Region 6, is the federal lead for National Historic Preservation Act. Activities authorized by this RGP that may affect historic properties listed or eligible for listing, in the National Register of Historic Places (NRHP) under the provisions of 33 CFR 325, Appendix C, must be satisfied prior to construction. Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest. The Forest Service must notify the Corps if the proposed activity may affect an historic property that is listed, eligible for listing, or may be eligible for listing in the NRHP, and shall not begin the activity until the requirements of the National Historic Preservation Act have been satisfied by providing documentation, including a concurrence letter from State Historic Preservation Office (SHPO) and/or from an affected Indian Tribe(s) to the Corps. If a previously unknown historic property is encountered during work authorized by this RGP, the permittee shall immediately cease all ground activities in the immediate area, notify the SHPO, any affected Indian Tribe(s) and Corps within 1 business day of discovery. The permittee shall perform any work required by SHPO, tribes or the Corps in accordance with Section 106 of the National Historic Preservation Act and Corps regulations and avoid any further impact to the property until the requirements of 33 CFR Part 325, Appendix C, have been satisfied.

6. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status unless the appropriate Federal agency (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, FWS), that has direct management responsibility for such rivers has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. The U.S. Forest Service, Pacific Northwest Region 6 is one of the responsible Federal agencies for National Wild and Scenic River System. The permittee will provide documentation in the annual report that the activities

authorized by the RGP did not adversely affectany Wild and Scenic River designation or study status. The permittee must provide documentation from the responsible federal agency (National Park Service, Bureau of Land Management or FWS) that any proposed activity will not adversely affect the Wild and Scenic River designation or study status for any project within the National Wild and Scenic River System for which the Forest Service is not the responsible agency.

GENERAL CONDITIONS

1. Reliance on Permittee's Information. In verifying a permittee's authorization under this RGP, the Department of the Army has relied, in part, on the information provided by the permittee. If this information proves to be false, incomplete, or inaccurate, the permittee's authorization may be modified, suspended, or revoked, in whole or in part.

2. Contractor's Copy of Permit. The permittee shall provide complete copies of this permit to the contractor. Best Management Practices (BMPs) to ensure that the Terms and Conditions of the NMFS and FWS biological opinions for the authorized project will be met, shall be incorporated into the contract provisions for each project. Copies of this permit and Forest Service's contract (including the BMPs) must be keep at the project site during construction and be available for inspection at the project site.

3. Work in the Dry. Work that disturbs the substrate, bank, or shore of a water of the United States shall occur in the dry whenever practicable.

4. Operation of Equipment. Equipment shall be operated from the top of the bank, dry gravel bar, work platform, or similar out-of-water location whenever possible. Equipment shall be operated in a manner that minimizes the suspension of particulates. All equipment used in or around waters shall be clean and inspected daily prior to use to ensure that the equipment has no fluid leaks. Should a leak develop during use, the leaking equipment shall be removed from the site immediately and not used again until it has been adequately repaired. No equipment may be stored or fueled so close to a surface water that the activity could adversely affect the waterbody.

5. Disturbance of Vegetation. Disturbance of bank vegetation shall be limited to the minimum amount necessary to accomplish the project. Disturbed bank vegetation shall be replaced with native, locally adapted species appropriate for the site whenever practicable.

6. Isolation of Work Area. In-water work areas shall be isolated from the surrounding waterbody by a properly installed silt screen or a similar sediment containment device whenever practicable. The permittee shall remove the silt screen or other temporary sediment containment devices as soon as they are no longer necessary to protect the surrounding waterbody.

7. Permanent Discharges. The discharge of dredged or fill material into waters of the United States to dispose of the material or to create dryland is not authorized.

8. Access for Inspection. The permittee shall allow the District Engineer or his authorized representative to inspect the project whenever deemed necessary by the Corps, to ensure that the activity is in compliance with the terms and conditions prescribed herein.

9. Limits of Authorization. This permit does *not*:

a. Obviate the requirement to obtain all other Federal, State, or local authorizations required by law for the activity authorized herein, including any authorization required from Congress.

b. Convey any property rights, either in real estate or material, or any exclusive privileges.

c. Authorize any injury to property, invasion of rights, or any infringement of Federal, State, or local laws or regulations.

d. Authorize the interference with any existing or proposed Federal project.

10. Limits of Federal Liability. This permit is not an approval of the design features of any authorized project or an implication that such project is adequate for the intended purpose; a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. In issuing this RGP, the Federal Government does not assume any liability for the following:

a. Design or construction deficiencies associated with the authorized work.

b. Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes, such as flooding.

c. Damages to persons, property, or to other permitted or unauthorized activities or structures caused by the activity authorized by this permit.

d. Damages associated with any future modification, suspension, or revocation of this permit.

e. The removal, relocation, or alteration of any structure or work in navigable waters of the United States ordered by the Secretary of the Army or his authorized representative.

f. Damage to the permitted project or uses thereof as a result of current or future activities undertaken by, or on behalf of, the United States in the public interest.

11. Tribal Rights. No activity may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

12. Corps Coordination. The permittee shall coordinate with the appropriate office of the Corps prior to commencing any construction activity in a federally maintained channel and/or waterway. (Section 10)

13. Obstruction of Navigation. The permittee understand and agree that, if future operations by the United States require the removal, relocation, or other alteration of the work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work unreasonably obstructs the full and free use of navigable waters of the United States, the permittee shall, upon due notice from the Corps, remove, relocate, or alter the obstructions caused thereby, without expense to the United States. If the permittee fails to comply with the direction of the Corps, the District Engineer may restore the navigable capacity of the waterway, by contract or otherwise, and recover the cost thereof from the permittee. (Section 10)

14. Stability. The permittee shall design projects to be stable against the forces of flowing water, wave action, and the wake of passing vessels.

15. Maintenance. The permittee shall properly maintain all authorized structures and fills, including maintenance necessary to ensure public safety.

16. Marking Structures. The permittee shall install and maintain any lights, signals, or other appropriate markers necessary to clearly designate the location of structures or work that might pose a hazard to public safety. Permittees shall abide by U.S. Coast Guard requirements concerning the marking of structures and work in navigable waters of the United States. (Section 10)

17. Water Quality Standards. All activities authorized herein that involve a discharge of dredged or fill material into waters of the United States shall, at all times, remain consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards, and management practices established pursuant to the Clean Water Act (P.L. 92-500; 86 Stat. 816) or pursuant to applicable State and local law. (Section 404)

18. Minimization of Environmental Impact. The permittee shall make every reasonable effort to conduct the authorized activities in a manner that minimizes the adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, shellfish beds, and aquatic resource buffer zones.

19. Soil Erosion and Sediment Controls. The permittee shall use and maintain appropriate erosion and sediment controls in effective operating condition and permanently stabilize all exposed soil and other fills, including any work below the ordinary high water mark or high tide line, at the earliest practicable date using native vegetation to the maximum extent practicable. The permittee shall remove all installed controls as soon as they are no longer needed to control erosion or sediment.

20. Equipment. The permittee shall place heavy equipment working in wetlands on mats, or take other appropriate measures to minimize soil disturbance.

21. Aquatic Life Movements. The permittee shall not substantially disrupt the necessary life-cycle movement of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the primary purpose of the activity is to temporarily impound water.

22. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain downstream flow conditions. Furthermore, the activity shall not permanently restrict or impede the passage of normal or expected high flows unless the primary purpose of the fill is to temporarily impound water. The permittee should limit the work conducted in waters of the United States to low- or no-flow periods.

23. Water Supply Intakes. The permittee shall ensure that activities authorized by this RGP have no more than a minimal adverse impact on public water supply intakes.

24. Practicable Alternatives. Activities authorized by this RGP shall be designed and constructed to avoid and minimize adverse impacts to waters of the United States to the extent practicable through the use of practicable alternatives. Alternatives that shall be considered include those that minimize the number and extent of discharges of dredged or fill material into waters of the United States.

25. Suitable Material. Any material or structure placed in waters of the United States, whether temporary or permanent, shall be free of toxic pollutants in toxic amounts. (Section 404)

26. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected area returned to pre-construction contours. (Section 404)

27. Disposal of Excess Material. All construction debris and any other material not authorized by the Corps for permanent placement into waters of the United States shall be disposed of in an upland location in a manner that precludes it from entering waters of the United States. (Section 404)

Modification, suspension, or revocation of the RGP: This RGP may be modified, suspended, or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. Any such modification, suspension, or revocation shall become effective 30 days after the issuance of a public notice announcing such action. The final decision whether to modify, suspend, or revoke this permit, in whole or in part, shall be made pursuant to procedures prescribed by the Chief of Engineers. Following such revocation, any future activities heretofore authorized by this RGP will require alternate Department of the Army authorization.

The authorization of an individual project under this RGP may also be summarily modified, suspended, or revoked, in whole or in part, if the permittee either fails to abide by the terms and conditions of this permit or provides information that proves to be false, incomplete, or inaccurate, or, upon a finding by the District Engineer, that such action would be in the public interest. If a permittee's authorization is revoked, the permittee shall, upon notice of such revocation, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former condition. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

Expiration of the RGP: This permit shall become effective on the date of the signature of the District Engineer or his authorized representative and will automatically expire 5 years from that date unless the permit is modified, revoked, or extended prior to that date. Activities that have commenced (e.g., are under construction) or are under contract to commence in reliance upon this permit will remain authorized provided that the activity is completed within 1 year of the date of this permit's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

_____ _____

Date

DEBRA M. LEWIS
Colonel, Corps of Engineers
District Engineer

DEPARTMENT OF THE ARMY PERMIT

REGIONAL GENERAL PERMIT
FOR
U.S. Forest Service Fish Passage Program
Within the State of Oregon

PERMIT NO.: 200300529

EFFECTIVE DATE: XXXXX

EXPIRATION DATE: XXXX, 2009

ISSUING OFFICE: U.S. Army Corps of Engineers, Portland District

This regional general permit (RGP) authorizes the placement of fill material in waters of the United States within the State of Oregon subject to the terms and conditions contained herein for the purpose of expediting the authorization of culvert replacement or removal projects which enhance fish passage and have minor individual and cumulative adverse impact on the aquatic environment. This general permit is issued upon the recommendation of the Chief of Engineers as provided by 33 CFR 325.2(e)(2), pursuant to Section 404 of the Clean Water Act (P.L. 95-217) and Section 10 of the River and Harbor Act of 1899.

ACTIVITIES AUTHORIZED BY THIS GENERAL PERMIT

The RGP authorizes removal and replacement projects to restore fish passage on National Forest System Lands located in Oregon. This general permit authorizes the following work in waters of the United States within the state of Oregon on National Forest System Lands for the purpose of enhancing fish passage:

1) Culvert/road-fill removal and restoration of stream channels and associated floodplains upstream, within, and downstream of the existing culvert and road fill. This includes the placement of fill, large wood and boulders below the ordinary high water mark.
2) Culvert replacement with a larger culvert or open-bottom arch culvert. New flow relief culverts may be installed in the existing road prism in developed floodplains.
3) Culvert replacement with a bridge and reconstruction of the stream channels and associated floodplains upstream, within, and downstream of the existing culvert and road fill. This includes the placement of fill, large wood and boulders below the ordinary high water mark. New flow relief culverts may be installed in the existing road prism in developed floodplains.

The maximum fill impact area below the ordinary high water is 0.8 acre for each project. Fill may include minimal amounts of riprap to stabilize the road fill because little, if any, will be required below the ordinary high water mark. Fill will be limited to the following:

1) For all projects between 1 and 3 cubic yards of fill (clean sediment) may be introduced into the stream from normal construction practices related to culvert removals and

replacements. On occasion, up to 5 cubic yards may be introduced into the stream on larger and more complex projects.

2) For culvert replacement projects, additional substrate will be imported to embed culverts or open-bottom arches. Fill will simulate natural channel substrate and may reach up to 400 cubic yards for the largest open-bottom arches (30 ft wide x 100 ft long). The majority of projects will fall below this upper limit.
3) For projects that include channel and floodplain reconstruction, large wood and boulders may be placed into the stream channel, side channels, and floodplain. Such fill material may reach up to 600 cubic yards, depending on the size of the fill area and the densities of large wood and boulders that would naturally occur in a particular location.

PROCEDURES FOR AUTHORIZATION OF INDIVIDUAL ACTIVITIES

1. Permittee Review of Permit Requirements. A prospective permittee considering the use of this General Permit must compare the proposed project's features with the requirements and conditions of this permit. Proposed actions, which meet the terms and conditions stated in this general permit may proceed without prior notification to the District Engineer. Permittees are responsible for consulting with the appropriate local government agencies to ensure that any requirements of local comprehensive plans and their associated implementing regulations are met. Approvals or permits from Oregon Department of State Lands may also be required.

2. Post-completion Reporting. The Forest Service will submit an annual report to U.S. Army Corps of Engineers, Portland District, Regulatory Branch (Corps), the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA), the U.S. Fish and Wildlife Service (USFWS) and the Oregon Department of Environmental Quality (DEQ) summarizing the completed fish passage culvert projects. The report will be submitted by January 31 of each year.

Report will include the following elements:

Project Identification
Project Name
Location
Date of construction
Identification as either a culvert removal or replacement project
Width and slope of impassable culvert
Fish species/ESU (and life history stages) above and below the impassable culvert
Bankfull width (from the ordinary high water mark) and slope of stream channel
Designation of channel substrate
New structure type
Width and slope of new structure
Miles of stream opened to fish passage
Number of injuries/mortalities to ESA-listed species as a result of construction

3. Annual Review. In addition to the annual reports, the Forest Service will coordinate an annual review meeting with the Corps to discuss the annual monitoring report, conduct site visits, and collectively determine if RGP objectives are being met.

CONDITIONS

1. **IN-WATER WORK PERIODS**. All in-water work, including temporary fills or structures, shall occur within the time periods recommended by Oregon Department of Fish and Wildlife in the most current version of *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*. Exceptions must receive NOAA Fisheries' and/or USFWS's concurrence in writing prior to work being performed.

   a. Upon request from Corps, The Forest Service must provide a list of specific project or specific sites where work periods were modified through agreement with ODFW and NOAA Fisheries or USFWS.
   b. Incorporate the most recent ODFW run-timing data located at (http://oregonstate.edu/dept/nrimp/information/timing/TimingData.htm) and modify project in-water work timing as appropriate.
   c. Not initiate or continue in-water work in any project area where adult SR Chinook are spawning, where spawning is eminent, or where redds are active and in-water work will displace spawning or pre-spawning adults from spawning areas, or shere disruption or dewatering of active redds is likely as determined by an experienced fisheries biologist.

2. **AQUATIC LIFE MOVEMENTS**. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species, which normally migrate through the area. Unobstructed fish passage must be provided at all times during any restoration activity.

3. **SPAWNING AREAS**. The placement of large wood and boulders in salmonid spawning areas during spawning seasons is not allowed under this permit, except under the following conditions:

   a. no equipment is operated within the stream, and
   b. a survey of the stream reach for spawning adults and redds is completed by a qualified surveyor no more than ten days prior to placement, and locations of adults observed in spawning behavior and locations of redds are flagged;
   c. placement occurs a distance of at least two active channel widths away from any adults observed in spawning behavior or redds;
   d. a fish biologist is present at the time placement occurs; and
   e. the terms of condition 1 (in-water work periods) are met.

If placement occurs after the spawning season is complete but before the juvenile emergence of a listed species, a redd survey will be completed by a qualified surveyor prior to placement. Placement will be restricted to a distance of at least two active channel widths away from any redds.

4. **FILL MATERIAL QUALITY**. Only clean fill, free of waste and polluted substances, shall be used when it is authorized as part of the permitted work.

5. **RIPARIAN VEGETATION PROTECTION & RESTORATION**. Riparian, wetland, and shoreline vegetation in the project area shall be protected from disturbance to the maximum extent possible, and should be restored and enhanced when unavoidably disturbed due to activities associated with the authorized work. Damaged or destroyed vegetation should be replaced with native plant materials.

6. **TURBIDITY**. Oregon Department of Environmental Quality may issue a water quality certification with turbidity conditions.

7. **EROSION CONTROLS**. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during and after construction, until all exposed soil and other fills are permanently stabilized.

8. **EQUIPMENT**. Operation of heavy equipment in the streambed is not allowed except under the following circumstances:

a. the streambed consists of bedrock, and no compaction will occur in the streambed and only minimal compaction will occur in the floodplain; or
b. there is no surface flow in the channel; or
c. equipment cannot safely reach the channel work site due to steep and/or rugged terrain; or
d. where it is necessary to cross the stream to avoid springs; or
e. to avoid or minimize disturbance of valuable riparian vegetation.

Heavy equipment working in wetlands must be placed on mats, or other appropriate measures must be implemented to minimize soil disturbance.

Project staging shall be done in a way that minimizes the actual time that machinery is operated in the stream. Instream equipment operation shall only occur within the Oregon Department of Fish and Wildlife (ODFW) approved work windows unless otherwise approved by ODFW. Exceptions must receive NOAA Fisheries' concurrence in writing prior to work being performed.

Equipment that is used for instream work will be cleaned prior to entering the two-year floodplain. External oil and grease will be removed, along with dirt and mud. Untreated wash and rinse water will not be discharged into streams and rivers without adequate treatment.

Machinery refueling is to occur off site or in a confined, designated area to prevent spillage into waterways and wetlands.

The permittee is responsible for containment and removal of any toxicants released. Spills shall be immediately reported to Oregon Department of Environmental Quality and Oregon Department of Fish and Wildlife.

The Terms and Conditions of the Reasonable and Prudent Measures listed in the Biological Opinions issued by NOAA Fisheries on October 18, 2002 (with the May 21, 2003 modification to pages 26 and 27), February 25, 2003, and September 2, 2003 give specific details about equipment use for various types of activities. The Terms and Conditions for each Reasonable and Prudent Measure are Conditions of this Regional General Permit.

9. **OBSTRUCTION OF HIGH FLOWS**. Discharges must not permanently restrict or impede the passage of normal or expected high flows.

10. **NAVIGATION**. Placement of large wood or boulders that may impede safe navigation in any waterway that regularly supports navigation, including motorized and non-motorized craft, is not allowed under this general permit.

11. **WATER SUPPLY INTAKES**. Water suppliers must be notified in advance of proposed work, which may affect their water intakes.

12. **HAZARDOUS, TOXIC, & WASTE MATERIALS.** Petroleum products, chemicals, fresh cement, construction debris, or other deleterious waste materials shall not be allowed to enter waterways or wetlands.

13. **ACCESS ROADS AND STAGING AREAS.** Access roads and staging areas within 150 feet of the two-year floodplain shall be constructed so as to minimize erosion. Temporary access roads and other disturbed riparian areas shall be restored with native vegetation after construction is completed.

14. Endangered and Threatened Species, Essential Fish Habitat (EFH), and Marine Mammals. The Endangered Species Act of 1973 (ESA), as amended, requires all Federal agencies to consult with the National Oceanic and Atmospheric Administration -National Marine Fisheries Service (NOAA) and/or the U.S. Fish and Wildlife Service (USFWS), pursuant to Section 7 of the ESA, on any action, or proposed action, permitted, funded, or undertaken by the agency that may affect a species listed as threatened or endangered under the ESA, or its designated critical habitat. The U.S. Forest Service has determined that activities that would be authorized by this RGP would affect federally listed species and, therefore, have completed consultation with the NOAA and USFWS. NOAA (NOAA reference number 2002/01254, 2002/01880, 2003/00676) issued multiple Biological Opinion's (BO) on October 18, 2002 with a revision on May 21, 2003; February 25, 2003; September 2, 2003; and USFWS (USFWS reference numbers 1-7-03-F-20, 1-7-04-F-1113, 1-7-03-I-0395, 1-3-03-PF-1243 and 1-7-03-F-0379, 1-7-04-F-0184, 1-15-04-F-0328) issued multiple Biological Opinion's (BO) on April 11, 2003, in January 2004, January 21, 2004, March 1, 2004, April 2004, June 17, 2004, for the proposed activities covered under this RGP. The U.S. Forest Service will implement the Terms and Conditions stated in all biological opinions.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NOAA on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). The Forest Service has determined that activities authorized by this RGP may adversely affect EFH for federally managed fisheries in Oregon waters. The U.S. Forest Service has completed consultation with the NOAA. In this consultation, the NMFS concluded that the proposed activities that would be authorized by this RGP may adversely affect designated EFH for Pacific salmon, coastal pelagic species, and west coast groundfish. The NOAA has included conservation recommendations as terms and conditions of the Biological Opinion's (BO), issued by NOAA on October 18, 2002 (with the May 21, 2003 modification to pages 26 and 27), February 25, 2003, and September 2, 2003, to avoid, minimize, or otherwise offset affects to designated EFH produced by the activities authorized by this RGP. These Terms and Conditions are incorporated into the RGP by reference.

Terms and Conditions applicable to Eastern Oregon USFS Lands:

a) Shortnose Sucker:
    1. Use erosion control measures such as brush wattling, log terracing, benching, log crib walls, erosion control matting, hydromulching, and/or use of bonded fiber matrix mulch on fill slopes when 1) disturbed streambanks and slideslopes greater than 20 feet in height contain especially unstable soils or seeps or locally saturated soils, or 2) finished slopes are steeper than 2 horizontal to 1 vertical distance (USDA 1996).

2. Because juvenile suckers are difficult to distinguish from Klamath large scale and Lost River suckers, treat all juvenile suckers as though they are short nose suckers in their care and handling.
3. The FS shall use sanctuary dip nets to capture bull trout at all culvert sites during capture and relocation procedures.
4. Provide to the Service a monitoring form that includes the amount of incidental take resulting from each culvert replacement project. The included information should include the project location, the number of shortnose suckers relocated during the fish exclusion process, an accounting of any shortnose sucker mortalities that occurred, and any data regarding shortnose sucker spawning activity collected during the implementation of the project.

b) Marbled Murrelet:
1. Delay, to the extent feasible, any projects that may harass murrelets as late in the nesting season as possible to minimize the potential impacts to juvenile murrelets.
2. Provide to the Service a monitoring form that includes the amount of incidental take resulting from each culvert replacement project. The information should include the project location, the acres of murrelet habitat where harassment potentially occurred, a summary of how those acres were computed, any data regarding murrelet sightings collected during the implementation of the project.
3. No primary consituent element of marbled murrelet critical habitat will be removed. The definition of a primary constituent element is found in the USFWS January 21, 2004 concurrence letter.

c) Northern Spotted Owl:
1. Delay, to the extent feasible, any projects that may harass spotted owls to as late in the nesting season as possible.
2. Provide to the Service a monitoring form that includes the amount of spotted owl incidental take resulting from each culvert replacement project. The information should include the project location, the acres of spotted owl habitat where harassment potentially occurred, a summary of how those acres were computed, and any data regarding spotted owl sightings collected during the implementation of the project. Include the acres of potential spotted owl harassment by land-use allocation, administrative unit (including Ranger District), and critical habitat unit.
3. No more than 1 acre of suitable or dispersal habitat may be degraded, per project, within spotted owl critical habitat.

d) Bald Eagle:
1. No known bald eagle nest trees, perch trees, or roost trees will be felled or modified.
2. Suitable bald eagle habitat will not be removed within 0.25 miles (approximately 400 meters) of nest or roost sites.
3. Potential bald eagle perches (large snags, dead top trees or other suitable sites) within 0.5 miles (800 meters) of nests or roosts will not be felled.
4. Work activities will not take place within 0.25 miles (approximately 400 meters) of active nests/roosts or within 0.5 miles (approximately 800 meters) line-of-sight from nests/roosts during periods of bald eagle use, unless surveys demonstrate that the nest or roost is not being used. *If blasting or pile driving is required, it will not occur within 1 mile of an active nest during the critical nesting period.* Critical nesting periods generally fall between 1 January and 31 August.

5. Key wintering areas will be protected from disturbance from approximately 15 November to 15 March in Oregon.
6. Meet direction in Forest or District draft or final site management plans for bald eagle nest or roost sites.

e) Gray Wolf:
1. Projects will not be located within 1.5 miles of active den or rendezvous sites or pack activity.

f) Woodland Caribou:
1. Project activities that generate noise above ambient levels will not occur during October 15 to January 15 in the woodland caribou recovery area.
2. No more than 1.0 acre of forested areas within the woodland caribou recovery area will be removed per year per site.
3. Projects will not result in increased off-road vehicle access to caribou habitat.

g) Grizzly Bear:
1. Projects generating noise above ambient levels within 0.25 mile (1 mile for blasting or pile driving) of any known grizzly bear den site will not occur from October 15 through May 15.
2. Projects generating noise above ambient levels and located within 0.25 mile (1 mile for blasting) of early season grizzly bear foraging areas (e.g., low elevation grass/forb habitat, deciduous forest, riparian forest, shrub fields, montane meadows, avalanche chutes) will not occur from March 15 to July 15 if the activity will last for more than one day.
3. Projects generating noise above ambient levels and located within 0.25 mile (1 mile for blasting) of late season grizzly bear foraging areas [e.g., high elevation berry fields, shrub fields, fruit/nut sources, wet forest openings, alpine and subalpine meadows, montane meadows (moist, cool, upland slopes dominated by coniferous trees)] will not occur from July 16 to November 15 if the activity will last for more than one day.
4. *Projects will not result in a net increase in non-motorized trails or total and/or open motorized access route density; or result in a net decrease in the amount of core habitat in any bear management unit. Only temporary (less than 500 feet) access routes are proposed, with all temporary roads completely restored upon completion of the project.*
5. All attractants associated with the proposed action, including food and garbage, will be stored in a manner unavailable to wildlife at all times.

h) Threatened and Endangered Plants:
1. If, after a pre-project field review, a botanist determines 1) a known site of a listed plant is within 0.25 miles of the project area, or 2) suitable or potential habitat may be affected by project activities, the project site will be evaluated through a site visit and vegetation survey conducted by a botanist. This visit and survey will be conducted at the appropriate time of year to identify the species and determine whether individual listed plants or potential habitat are present, and may be adversely affected by project activities.
2. If one or more listed plant species are present and may be affected by the project, the project is not covered by the BA and consultation with the Service under section 7 of the Endangered Species Act must be initiated.
3. Due to soil disturbance that will occur and use of heavy equipment that could carry seeds and plant parts into project areas, all appropriate measures (equipment washing) will be incorporated into the contract or equipment rental agreements to avoid introduction of invasive plants and noxious weeds into project areas.

Terms and Conditions applicable to Umpqua National Forest USFS Lands:

a) The standards common to all actions (described on pages 17-18) were designed by the action agencies to minimize incidental take for listed species. These standards are incorporated herin as terms and conditions. Based on the implementation of these standards for the programmatic areas specifically defined in Table 1 (of the June 17, 2004 USFWS Biological Opinion), the Service believes that incidental take for listed species has been minimized to the extent that additional terms and conditions are not required.

Terms and Conditions applicable to the Willamette and a portion of the Deschutes Provinces of USFS and BLM Lands:

a) Bull Trout:
   1. Each action agency must fully implement all Project Design Criteria for each of the activity categories specified in Table 2 of the USFWS Biological Opinion dated April 11, 2003.
      i. Delineate riparian areas in accordance with the description of riparian reserve widths provided on pages C-30 and C-31 of Northwest Forest Plan Standards and Guidelines.
      ii. Several activity categories contain PDC that specifically excluded activities from occurring in bull trout spawning areas between September 1 and April 30.
      iii. The agencies must provide training, as necessary, to ensure that all maintenance personnel and others involved on-the-ground are familiar with these criteria and understand the importance of their implementation.
   2. Each action agency must perform road maintenance activities for all roads within riparian areas of known bull trout spawning, rearing, and migratory habitat to reduce the potential for sediment and other road-related impacts at a level consistent with annual Congressional appropriations. Where current and projected out-year funding is lacking, each action agency should hydrologically close or stormproof those road segments.
   3. Minimize effects to bull trout during in-water work-site isolation activites and minimize work that inhibits the passage of any adult or juvenile bull trout throughout the construction period.
      i. Handle bull trout with extreme care, keeping fish in water to the maximum extent possible during transfer procedures. The transfer of bull trout must be conducted using a net or other device that holds water during transfer, whenever necessary to prevent added stress of an out-of-water transfer.
      ii. Seined or transferred listed fish must be released as near as possible to capture sites.
      iii. Documentation of all capture and release efforts must be filed with the associated project records within 30 days and be submitted to the Service with the annual report. Documentation must include, at a minimum:
         1. a written description summarizing the seine, transfer, or release effort;
         2. the name and address of the supervisory fish biologist;

3. the methods used to isolate the work area, including duration of isolation;
4. the means of fish removal;
5. the estimated number of fish removed by species; and
6. any incidence of observed stress, abnormal behavior, injury or mortality.

4. Reporting Requirements
   i. Each action agency must monitor all actions addressed in the Biological Opinion that are likely to adversely affect bull trout, and file an annual monitoring report with the Service, using the incidental take monitoring form in Appendix 5 of the USFWS Biological Opinion dated April 11, 2003. The monitoring report documents the number of projects implemented as part of this consultation. Monitoring reports must be completed for each fiscal year (October 1-September 30) and are due the following January.
   ii. Each annual report must also include a list of all projects completed as part of this consultation, and it's discretion, allow the Service to review Federal Analysis of Effects and Determination Forms. This monitoring report will document the specific actions implemented as part of this consultation. Monitoring will ensure that the actual levels of incidental take that result from the implementation of the proposed action will not exceed the anticipated levels of incidental take authorized in the Incidental Take Statement.

Terms and Conditions applicable to the Mt. Hood National Forest, Willamette National Forest, and Columbia River Gorge National Scenic Area on USFS Lands:

a) Northern Spotted Owls
   1. Implementation and monitoring forms need to be completed and submitted with a cover letter from the applicable Forest Supervisor (Forest Service), or District Manager (BLM) to formally verify all harassment has been reported. These reports are to be submitted yearly by November 30.
   2. Disturbance activities in occupied or unsurveyed suitable spotted owl habitat between March 1 and July 16 should be scheduled as late in the spotted owl nesting season as in operationally feasible.

Terms and Conditions applicable on USFS Lands within the North Coast Province:

a) Northern Spotted Owl and Marbled Murrelet
   1. Implementation and monitoring forms need to be completed and submitted with a cover letter from the applicable forest Supervisor (Forest Service), or District Manager (BLM) to formally verify all harassment has been reported. These reports are to be submitted yearly by November 3.
   2. Disturbance activities in occupied or unsurveyed suitable spotted owl habitat between March 1 and July 7 should be scheduled as late in the spotted owl nesting season as is operationally feasible.
   3. Disturbance activities in occupied or unsurveyed suitable murrelet habitat between April 1 and August 5 should be scheduled as late in the murrelet nesting season as is operationally feasible.

Terms and Conditions applicable on USFS Lands in Northwestern Oregon:

a) Threatened and Endangered Anadromous Fish:
   1. All the Terms and Conditions for the Reasonable and Prudent Measures listed in the February 25, 2003 Biological Opinion from NOAA Fisheries are conditions of this Regional General Permit.

Terms and Conditions applicable within Southwest Oregon Province Lands administered by Umpqua, Siskiyou, Rogue River, and Siuslaw National Forests (USFS); Medford, Coos Bay, Roseburg, and Eugene Bureau of Land Management Districts (BLM); and the BIA/Coquille Indian Tribe (CIT) as well as Federal Actions occurring on adjacent non-federal lands in Oregon:

a) Threatened and Endangered Anadromous Fish:
   1. All the Terms and Conditions for the Reasonable and Prudent Measures listed in section 2.3 of the October 18, 2002 (with the May 21, 2003 modification to pages 26 and 27) Biological Opinion from NOAA Fisheries are conditions of this Regional General Permit.

15. **CULTURAL RESOURCES AND HISTORIC PROPERTIES.** No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the District Engineer has complied with the provisions of Appendix C of 33 CFR 325. The applicant must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the applicant has reason to believe may be eligible for listing, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized.

If any previously unknown historic or archeological remains are discovered while accomplishing an activity authorized by this general permit, the permittee must immediately notify the District Engineer and report what was found. The Corps will initiate the federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of historic Places.

16. **WILD AND SCENIC RIVERS ACT.** Proposed projects are located within a reach of river designated as a Federal Wild and Scenic River or on a reach of river officially designated by Congress as a "study river" while the river is in an official study status are not authorized by this general permit.

17. **TRIBAL RIGHTS.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. **COMPLIANCE INSPECTIONS.** Compliance inspections may be conducted to ensure that work performed under this general permit is in compliance with its terms and conditions. The District Engineer or his authorized representative will request permission from the property owner for access to the work site. A request for access will be specific as to the date and time of access, and opportunity will be provided for the property owner or his representative to be onsite during the inspection.

19. **ACCURACY OF INFORMATION.** If an activity is authorized by this general permit based on false, incomplete or inaccurate information provided by the applicant, the authorization shall not be valid and the Government may institute appropriate legal proceedings.

20. EXPIRATION, MODIFICATION OR REVOCATION OF THIS PERMIT. Activities authorized under this general permit that are under construction or under contract for construction in reliance upon this authorization will remain authorized provided the activity is completed within 12 months of the date of this general permit's expiration, modification or revocation, unless the District Engineer has exercised his discretionary authority to modify, suspend, or revoke the authorization of a specific project in accordance with Corps regulations.

LIMITS OF THIS AUTHORIZATION

a. This general permit does not obviate the need to obtain other Federal, state or local authorizations required by law.

b. This general permit does not grant any property rights or exclusive privileges.

c. This general permit does not authorize any injury to the property or rights of others.

d. This general permit does not authorize interference with any existing or proposed Federal project.

LIMITS OF FEDERAL LIABILITY

In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

REEVALUATION OF PERMIT DECISION

The District Engineer may reevaluate this general permit at any time, and, if appropriate, suspend, modify, or revoke this permit as provided in 33 CFR 325.7. The District Engineer may also suspend, modify, or revoke authorization under this general permit for any specific geographic area, class of activities, or class of waters within the state of Oregon.

This general permit will be reviewed within one year of its effective date to determine whether the projects authorized by this general permit result in no more than minimal effects, both individually and cumulatively, and to ensure that the terms and conditions of this permit are being observed. The District Engineer will invite the participation of other interested federal and state agencies in this review. If this review concludes that changes in permit terms or conditions are warranted, modification of the permit will be proposed as provided in 33 CFR 325.7, including public notice and opportunity for comment.

EXPIRATION OF THIS AUTHORITY

This general permit will expire five years from the date on which it becomes effective, unless it is extended prior to that date.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

_____ _____

Donald Borda
Acting Chief, Regulatory Branch

(Date)

Figure 1 - Region 6 National Forest Units Covered by Fish Passage Regional General Permit

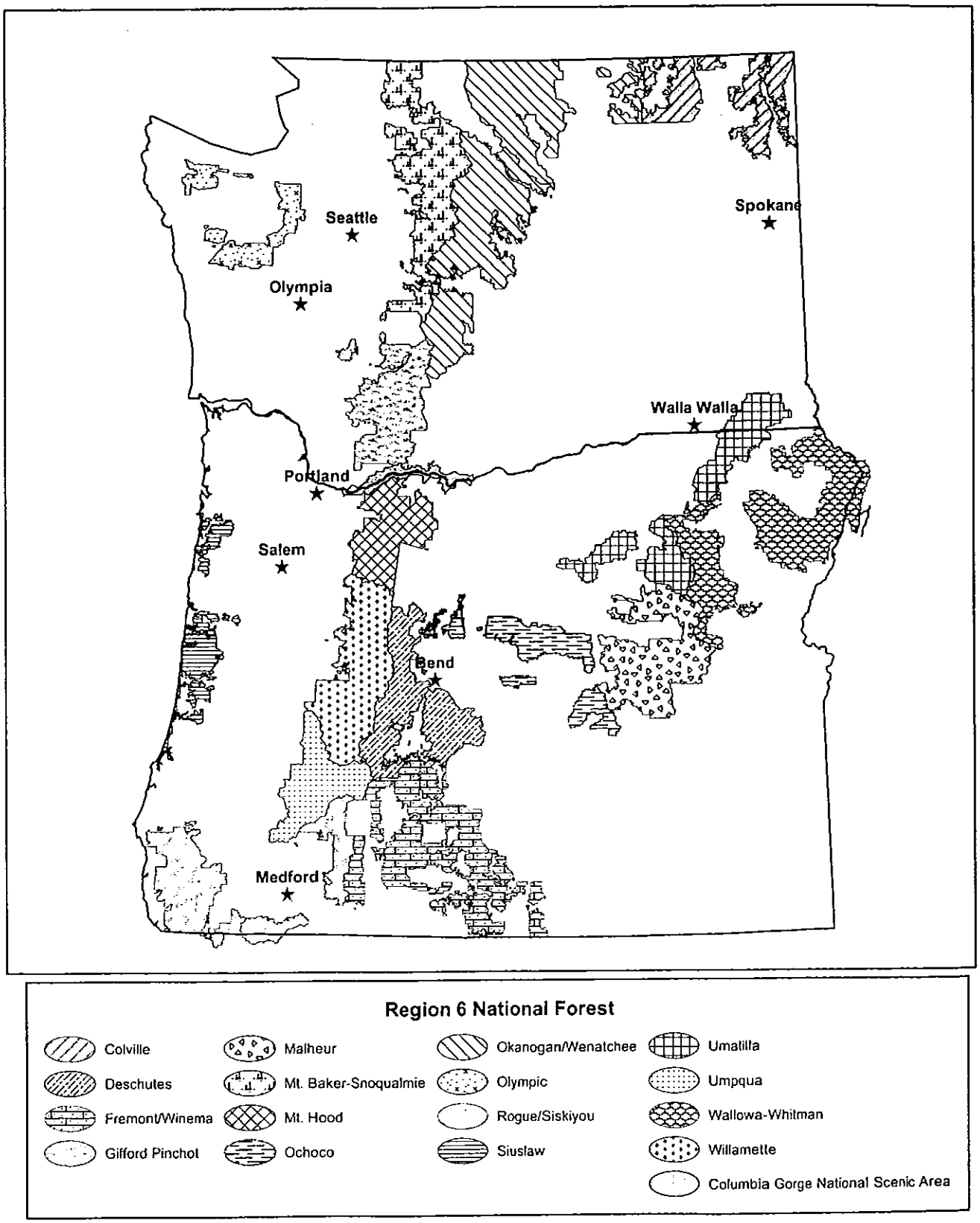


Figure 2 – Typical Cross Section and Overview of Culvert Barriers

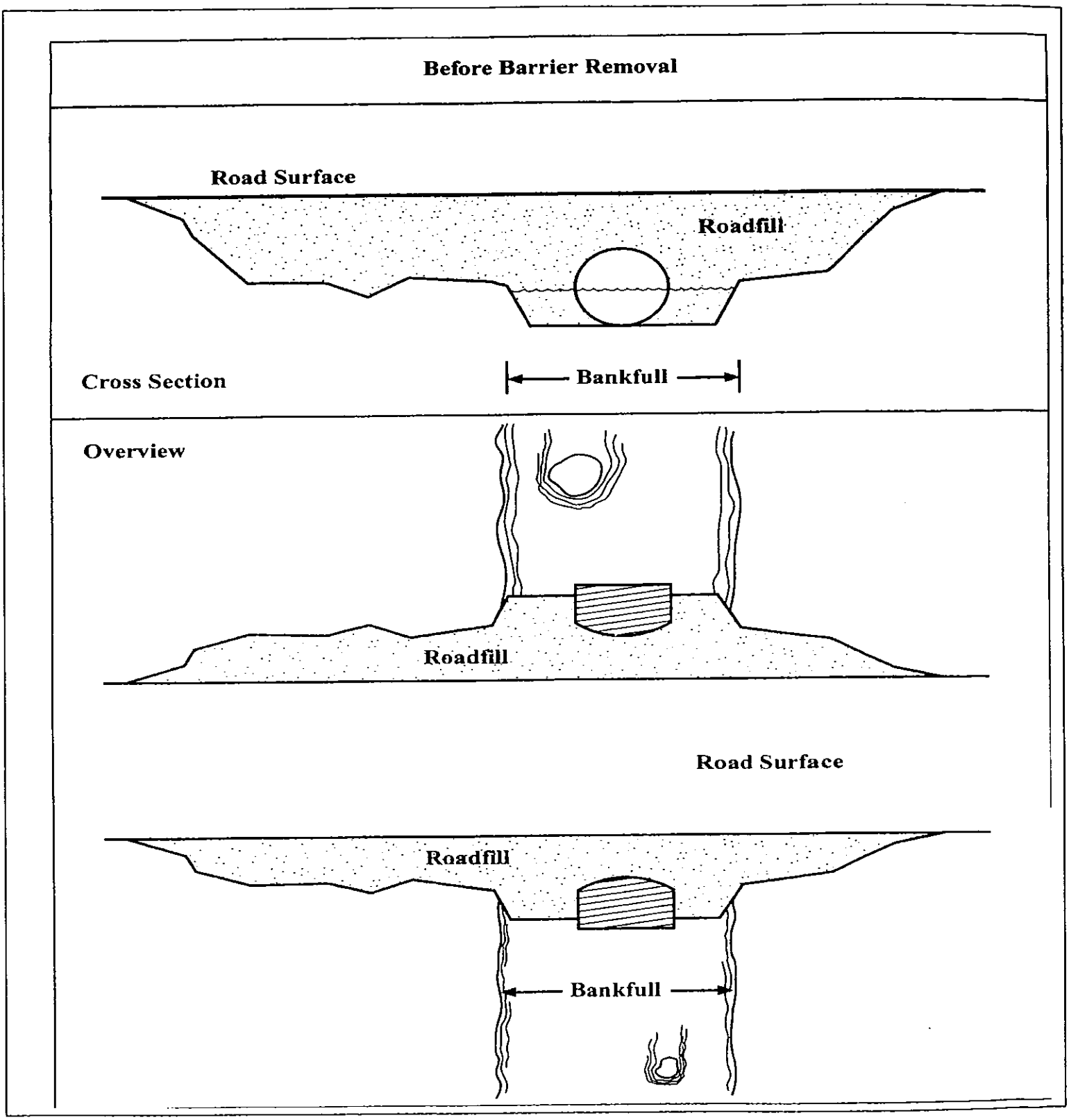


Figure 3 – Typical Cross Section and Overview of Culvert Removals and Channel and Floodplain Restoration

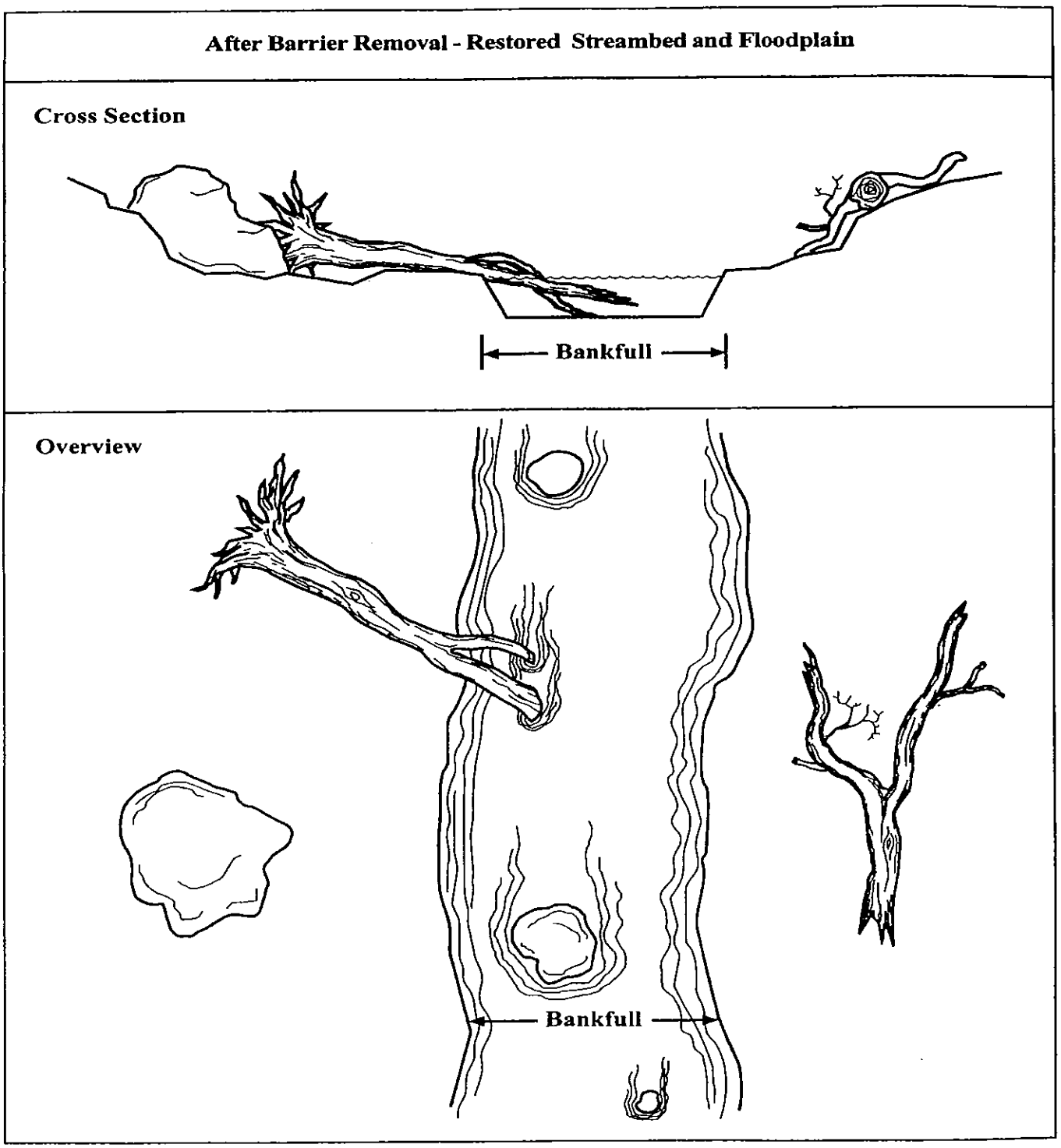


Figure 4 – Typical Cross Section and Overview of Culvert Replacement with a Bankfull Culvert

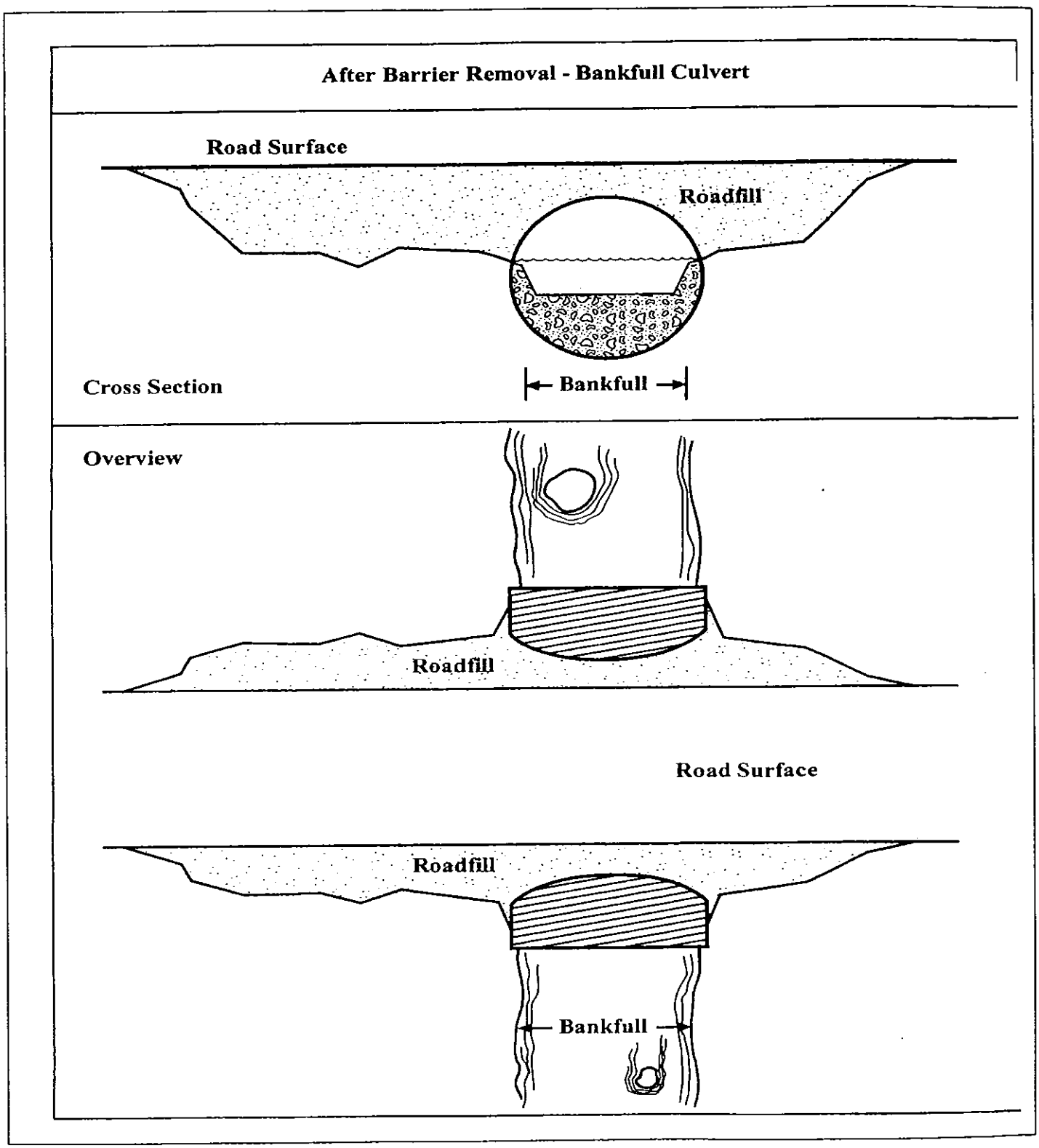
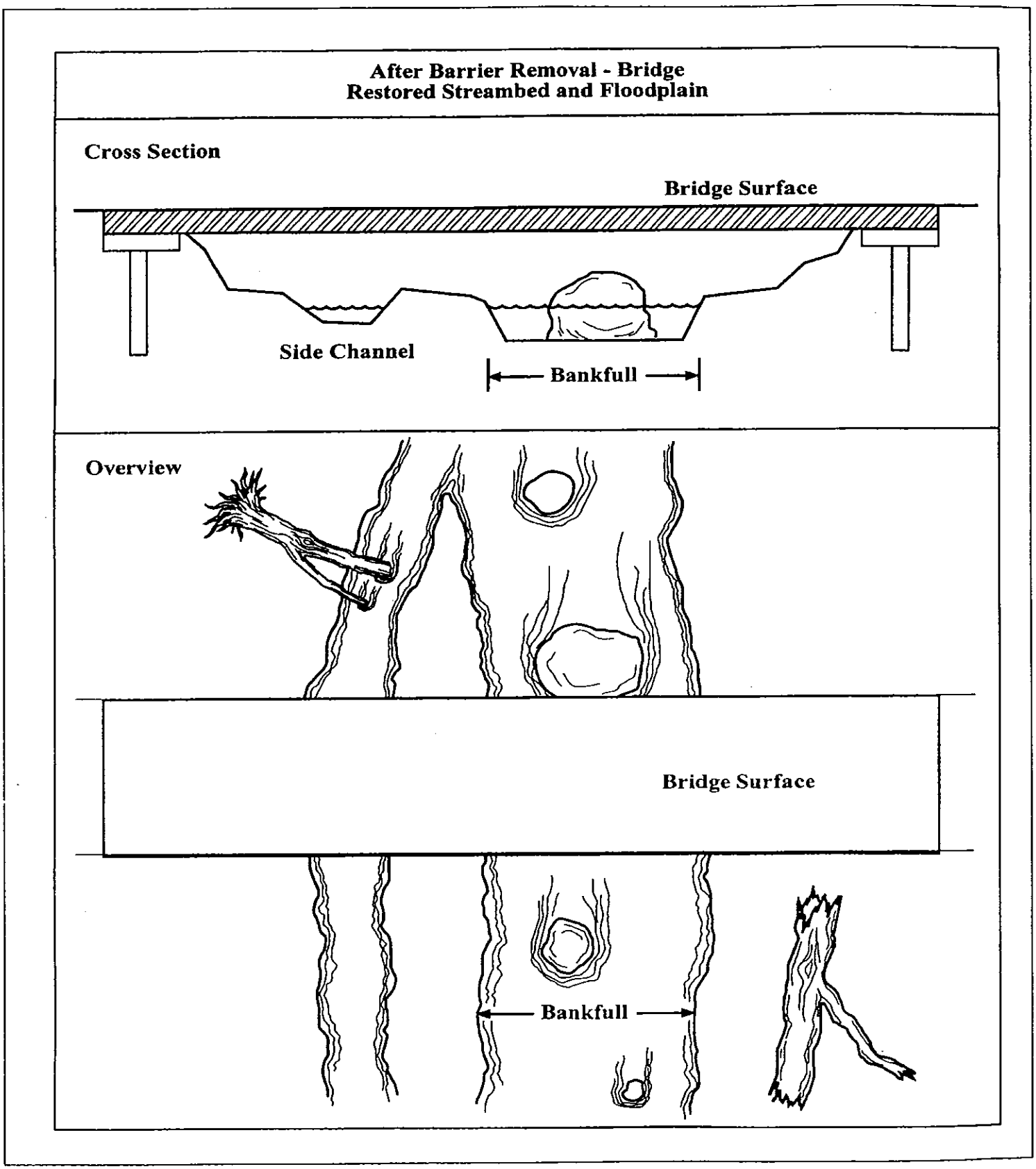


Figure 5 – Typical Cross Section and Overview of Culvert Replacement with a Bridge



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Notice of Application for
Water Quality Certification
and for
Certification of Consistency with the
Washington Coastal Zone Management Program

Date: December 14, 2004

Notice is herby given that a request has been filed with the Department of Ecology, pursuant to the requirements of Section 401 of the federal Clean Water Act of 1977 (PL 95-217), to certify that the project described in the U.S. Army Corps of Engineers Public Notice No. RGP-8 (Seattle District)/RGP #200300529 (Portland District) will comply with the Sections 301, 302, 303, 306, and 307 of the Act, and with applicable provisions of State and Federal water pollution control laws.

Notice is herby given that a request has been filed with the Department of Ecology, pursuant to the requirements of Section 307© of the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451), to certify that the above referenced project will comply with the Washington State Coastal Zone Management Program and that the project will be conducted in a manner consistent with that program.

Any person desiring to present views on the project pertaining to the project on either or both (1) compliance with water pollution control laws or (2) the project's compliance or consistency with the Washington State Coastal Zone Management Program may do so by providing written comments within 30 days of the above publication date to:

Federal Permit Coordinator
Department of Ecology
SEA Program
Post Office Box 47600
Olympia, Washington 98504-7600

PUBLIC NOTICE
Oregon Department of Environmental Quality
Water Quality 401 Certification

Corps of Engineers Action ID Number: 200300529

Notice Issued: December 13, 2004
Written Comments Due: January 12, 2005

LOCATION OF CERTIFICATION ACTIVITY: Waters of the United States within the state of Oregon.

WHAT IS PROPOSED: Oregon Statewide Programmatic General Permit

NEED FOR CERTIFICATION: Section 401 of the Federal Clean Water Act requires applicants for Federal permits or licenses to provide the Federal agency a water quality certification from the State of Oregon if the proposed activity may result in a discharge to surface waters.

DESCRIPTION OF DISCHARGES: See attached U.S. Army Corps of Engineers public notice on the proposed project

WHERE TO FIND DOCUMENTS: Documents and related material are available for examination and copying at Oregon Department of Environmental Quality, Water Quality Division, 811 S.W. 6th Avenue, Portland, Oregon 97204. While not required, scheduling an appointment will ensure documents are readily accessible during your visit. To schedule an appointment please call Alice Kavajecz at (503) 229-6962. Any questions on the proposed certification may be addressed to the 401 Program Coordinator at (503) 229-5845.

PUBLIC PARTICIPATION:
Public Hearing: Oregon Administrative Rule (OAR) 340-48-0020 (6) states that "The Director shall provide an opportunity for the applicant, any affected state, or any interested agency, person, or group of persons to request or petition for a public hearing with respect to certification applications. If the Director determines that new information may be produced thereby, a public hearing will be held prior to the Director's final determination. Instances of doubt shall be resolved in favor of holding the hearing. There shall be public notice of such a hearing."
Written comments:
Written comments on the proposed certification must be received at the Oregon Department of Environmental Quality by 5 p.m. on (full date). Written comments should be mailed to Oregon Department of Environmental Quality, Attn: 401 Program Coordinator, 811 S.W. 6th Avenue, Portland, Oregon 97204. ***People wishing to send written comments via e-mail should be aware that if there is a delay between servers or if a server is not functioning properly, e-mails may not be received prior to the close of the public comment period.*** People wishing to send comments via e-mail should send them in Microsoft Word (through version 7.0), WordPerfect (through version 6.x) or plain text format to 401publiccomments@deq.state.or.us. Otherwise, due to conversion difficulties, DEQ recommends that comments be sent in hard copy.

WHAT HAPPENS NEXT: DEQ will review and consider all comments received during the public comment period. Following this review, the permit may be issued as proposed, modified, or denied. You will be notified of DEQ's final decision if you present either oral or written comments during the comment period. Otherwise, if you wish to receive notification, please call or write DEQ at the above address.

ACCESSIBILITY INFORMATION: This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Office of Communications and Outreach at (503) 229-5317 or toll free within Oregon at 1-800-452-4011 to request an alternate format. People with a hearing impairment can receive help by calling DEQ's TTY at (503) 229-6993.

Oregon
Theodore R. Kulongoski, Governor

Ocean and Coastal Management Program
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540
Phone (503) 373-0050
FAX (503) 378-6033
www.lcd.state.or.us/coastal/html

Public Notice

Oregon Coastal Management Program
Consistency Determination

A consistency determination has been filed with the Department of Land Conservation and Development (DLCD), as provided in Section 307(c) of the Coastal Zone Management Act. The consistency determination states that the activities described in the attached federal notice would comply with and be conducted in a manner consistent to the maximum extent practicable with the Oregon Coastal Management Program. The determination and supporting information can be made available for inspection at DLCD's Salem office.

DLCD is hereby beginning its coastal zone review of the proposed federal action and is soliciting public comments on project consistency with the Oregon Coastal Management Program. Written comments may be submitted to DLCD, 635 Capitol St. NE, Suite 201, Salem, OR - attention consistency review specialist. **Any comments must be received by DLCD by the comment date indicated on the attached federal notice**. For further information, you may call DLCD at (503)-373-0050 Ext. 260.

REVIEW CRITERIA

Comments should address consistency with the applicable elements of the Oregon Coastal Management Program. These elements include:

- Acknowledged Local Comprehensive Plans & Implementing Ordinances
- Statewide Planning Goals
- Applicable State Authorities (e.g. Removal-Fill Law and Oregon Water Quality Standards)

INCONSISTENT?

If you believe this project is inconsistent with the Oregon Coastal Management Program, your comments to DLCD should explain why you believe the project is inconsistent and should identify the Oregon Coastal Management Program element(s) in question. You should also describe how the project could be modified, if possible, to make it consistent with the Oregon Coastal Management Program.