

DIVISION OF WILDLIFE PROCEDURE
ENVIRONMENTAL WINDOWS WAIVER CRITERIA
Guidance Relative to Granting In-water Work Restriction Waivers

On the recommendation of the Ohio Department of Natural Resources, Division of Wildlife (DOW), the U.S. Army Corps of Engineers (USACE) and Ohio Environmental Protection Agency (OEPA) often includes conditions on their permits restricting in-water work during certain dates in specific areas. These restrictions reduce potential impacts the in-water work may have on indigenous aquatic species in the area. When a permit holder requests a waiver from this condition (Table 1), the USACE generally requests comments from the DOW. This Policy is provided to facilitate consistency and develop standardized guidance for processing waiver requests for permit conditions regarding in-water work.

When a waiver request is received through the USACE project manager, DOW staff reviews the project and completes the *Potential Impact and BMP Credit Score Calculation Form* (Table 2). The resulting score determines if the permit holder is qualified for consideration of a waiver. The DOW will consider and review the application for a waiver using the best information available: including a standardized assessment of potential impacts and Best Management Practices (BMP's) that are being employed to minimize sediment resuspension or other impacts to the area. A waiver is not guaranteed and decisions are made on a case-by-case basis. If granted, the waiver will be based on conditions to be carried out by the permit holder. Waivers are only granted for specific dates and will not be granted for requests of blanket waivers that cover broad time frames. Waivers are only granted within a one-year timeframe, and previous waivers do not guarantee future waivers.

Guidelines for Completing the Potential Impact and BMP Credit Score Matrix

When a permit holder requests the USACE to waive or revise the in-water work condition of their permit, as specified in Table 1, the USACE project manager should submit a written request for a waiver from the applicant to the Environmental Coordinator for the DOW.

The Environmental Coordinator will send the request and project information to the appropriate Fish Management staff for review. A Fish Management staff member will complete the scoring form (Table 2) and make the final determination on whether to recommend granting the waiver, any conditions of the waiver, and the dates of the waiver. Applicants should include the following information in the waiver request:

- Name
- Today's Date
- Permit Holder
- US Army Corps of Engineers Project ID#
- Name of U.S. Army Corps of Engineers Contact Person
- County
- Waterbody
- Why the work cannot be completed during the open environmental window
- Current Restricted Period listed in Permit

- In-Water Work Dates Requested (Approximate dates work will be started and completed)
- Indicate if a waiver has been requested for this permit in previous years, and if so, indicate when and why, and whether the waiver was granted
- Submit a map showing the location of the project/streams that are proposed to be impacted, and the project area
- Project activity description/type of work (e.g. dredging, stream crossing etc.)
- List and describe BMP's to be used to minimize sediment resuspension or impacts including:
 - If dredging project,
 - Type of dredge, such as suction or clamshell
 - Total material to be removed for the project
 - Amount of material that remains to be removed
 - Location of the dredge disposal site
 - If stream crossing project:
 - Type of stream crossing such as trenchless or open trench.
 - BMPs to minimize sediment resuspension employed
 - Monitoring/work plan BMPs employed to minimize sediment resuspension
 - Primary purpose of the project (navigation, habitat restoration etc.)

I. Scoring Criteria for Potential Impacts

Scoring criteria for the potential impacts of the activity are based upon location, activity, habitat affected, BMPs, and purpose.

1. Location: Determine if the proposed activity is in one of the following systems: 1) percid (ex. walleye), 2) salmonid (ex. Steelhead), or 3) other (ex. smallmouth bass) as identified in the current Statewide In-Water Work Restrictions (Figure 1). Percid streams receive a “high” impact value of 10, salmonid streams receive a “moderate-high” impact value of 8, and “other” streams receive an impact value from “low” to “high”, based on habitat type potentially affected in the project’s scope of work. The rationale for selecting these scores is Ohio-specific and several-fold including:

1. Walleye are formally recognized by the Lake Erie Committee (LEC) of the Great Lakes Fishery Commission (GLFC) as a keystone predator. Protection and restoration of walleye spawning habitat is a DOW priority because spawning and nursery habitat is limited (not necessarily limiting the population abundance) in the system.
2. Although steelhead are identified in the GLFC-LEC Fish Community Goals and Objectives specifically associated with riverine and estuarine habitat protection and restoration, establishing a self-sustaining stock of steelhead is not a DOW priority.
3. All other streams are scored based on habitat classification and beneficial use designation as determined by the OEPA and the presence of state listed species.
 - a. Streams where there are known records for State of Ohio Threatened or Endangered Species in the area of the project or streams with Exceptional Warmwater Habitat receive a “high” impact value of 10.
 - b. Streams designated as Cold Water Habitat receive a score of 9.
 - c. Streams designated as Warm Water Habitat receive a score of 8.

- d. Class III primary Headwater receive a score of 7.
- e. Streams designated as Modified Warm Water Habitat receive a score of 4.
- f. Unclassified Streams default to a score of 5.
- g. To determine the defined beneficial use designation for a stream and project segment, refer to: www.epa.state.oh.us/dsw/rules/3745_1.aspx#1use.

2. Activity: The types of activity will have varying impacts to aquatic resources, and projects are divided into dredging and non-dredging projects and if the project is small or large in scale.

Dredging:

- **Large Scale:** Dredging activities moving a total of 10,000 m³ or more of material are assigned a score of 10 because of the potential for dredging activities to affect the egg stage through smothering, physical disruption and/or entrainment; affect the larval stage through silt/physical abrasion to gills, and/or entrainment of larvae; may interfere with predator avoidance; and may affect juveniles and adults through the impact of noise on fish behavior.
- **Small Scale:** Dredging activities moving a total of less than 10,000 m³ of material are assigned a score of 8 based on more localized project impacts.

Non-Dredging:

- **Large Scale:** Projects that affect 20 acres or more or 200 feet or more of shoreline or stream bank are assigned a score of 10 because of the potential for these activities to affect the egg, larval, and adult stages in similar ways as dredging.
- **Small Scale:** Projects affecting less than 20 acres or less than 200 feet of shoreline or stream bank are assigned an impact score of 8, because of the potential for these activities to affect only one life stage or have relatively small-scale localized impacts on multiple life history stages.

3. Habitat Type: Determine if the proposed activity will affect spawning habitat, nursery habitat, or if it will have an impact on fisheries (e.g. interference, etc.). If the activity affects spawning habitat, then a score of 10 is assigned. Spawning habitat is defined as that habitat identified through current and historical sampling. This criterion is similar to that developed in the first criteria because each of the focus streams are identified based upon spawning stocks and locations but it also incorporates potential impacts to fisheries and nursery habitats. If the activity affects nursery habitat then a score of 8 is assigned. If the activity affects fisheries then the activity is assigned a score of 5.

II. Scoring Criteria for Best Management Practices

Incorporating recognized BMPs allows the permit holders to identify practices that will minimize the impacts to fishery resources. Implementing BMPs increases a permit holder's eligibility for waiver consideration, but does not guarantee a waiver. These serve as "Credits" that are used to reduce the "Potential Impacts" score.

1. Dredging Projects: Types of mechanical dredges include conventional clamshell, closed bucket (environmental), and articulated bucket dredges. Types of hydraulic dredges include conventional cutterhead, swinging ladder cutterhead, horizontal auger, plain suction, and

pneumatic dredges. Of these, the plain suction dredges were best at minimizing sediment resuspension, followed by the conventional cutterhead and swinging ladder cutterhead dredges, followed by articulated and enclosed bucket dredges, then horizontal auger and conventional clamshell dredges. Based upon dredge performance, plain suction hydraulic dredges are assigned a BMP credit score of -5, conventional cutterhead and swinging ladder cutterhead hydraulic dredges are assigned a BMP credit score of -2, closed (environmental) bucket and articulated bucketed mechanical dredges are assigned a BMP credit score of -1, and horizontal auger hydraulic dredges and conventional clamshell mechanical dredges are assigned a BMP credit score of 0.

2. Stream Projects: Types of stream crossings will have varying impacts on stream habitat based on techniques used. Trenchless methods do not disturb the bed and banks of the watercourse, consequently these projects are exempt from the in-water work restriction periods (e.g., horizontal bores, horizontal punches and directional drills).

Open trench cuts can be isolated from the main watercourse to prevent construction materials and sediment from entering the watercourse: A dam is placed in the stream channel to prevent the main flow of water from entering the disturbed area (crossing) within the stream channel. A pump is used to move water from the upstream side of the excavation (above the dam) to a point below the construction area, thus bypassing the crossing. This technique receives a BMP credit score of -2.

The open trench cut can also be isolated using a flume where a dam is placed in the stream channel to prevent the main flow of water from entering the disturbed area (crossing) within the stream channel. A pipe (flume) is then placed through the dam to allow flow to move from above the dam to the stream channel downstream of the work area. Other isolation construction methods include a coffer dam, high volume pump, or channel diversion/relocation and these BMPs receive a credit score of -1.

An open trench cut “in the wet” is when the excavation happens without BMPs and receives a BMP credit score of 0 (e.g., plow, wheel ditcher, backhoe, dragline, dredging).

3. Resuspension Procedures: The resuspension BMP credits can apply to all projects including shoreline and stream bank modifications, in-water fill, and dredging projects. These criteria minimize sediment resuspension. Silt curtains or silt screens receive a BMP credit score of -5 due to their effectiveness in minimizing sediment resuspension. Because of negative impacts of open lake disposal of dredge material, projects that dispose dredge material at an approved upland site are assigned a BMP credit score of -3. Air bubble curtains receive a BMP credit score of -2 because of their effectiveness at reducing sediment resuspension in some situations. Other sediment resuspension and distribution BMPs receive a BMP credit score of -1.

4. Monitoring/Work Plan Practices: The third scoring criteria developed for BMP credits apply to monitoring and/or work plan adjustments, and each of these are applied for an individual BMP credit score. Monitoring/work plan BMPs include: operational adjustments, monitoring and work stoppage criteria development, work stoppage with flow exceedance criteria development, shortened work period, contingency plan development for sediment control

during increased flow or precipitation, riparian restoration, in-stream restoration, and sediment and erosion control during construction.

III. Scoring Criteria Credits for Project Purpose

Credit is given for projects where the foremost purpose is to improve the aquatic resource. Examples are contaminant dredging, restoration of stream habitat, and dam removal. Projects developed to improve the aquatic resource receive a credit score of -5.

IV. Calculating Overall Potential Impact Score and Waiver Determination

Sum together the three individual category scores to determine the final impact score. Final impact scores range from 30 (large-scale dredging in percid spawning habitat with no BMPs identified to minimize sediment resuspension) to 7 (small-scale in-water activities in other streams/Lake Erie that employ silt curtains and work plan adjustment BMPs). Waiver determinations are based on these benchmark scores:

- 1) **No Waiver:** If final impact score is ≥ 23 (no or minimal BMPs are employed), no waiver should be granted.
- 2) **Partial Waiver:** If final impact score is 8-22 (high to moderate impact locations/activities and some BMPs employed), a partial waiver may be granted on the front or back end of the window based upon the best biological impact and fisheries information available. The maximum partial waiver will be determined by fisheries staff.
- 3) **Full Waiver:** If final impact scores are < 8 (moderate impact locations/activities and all BMPs employed), a full waiver may be granted. A full waiver will mean a waiver of all the dates requested.

Table 1. In-Water Work Waiver Cover Sheet

Name	
Today's Date	
Permit Holder	
USACE Project ID#	
Name of USACE Contact	
County	
Waterbody	
Type of Work	
Reason Waiver Needed	
Current Restricted Period Listed in Permit	
In-Water Work Dates Requested	
Was Waiver Requested Previously, and if so Was it Approved or Disapproved	

Table 2. Potential Impact & BMP Credit Score Calculation Form

I. Scoring Criteria for Potential Impacts			
1. Project Location (Pick one)	Percid		10
	Salmonid		8
	Other	Streams with state of Ohio Threatened or Endangered species	10
		Exceptional Warm Water Habitat	10
		Cold Water Habitat	9
		Warm Water Habitat	8
		Class III Primary Headwater	7
		Unclassified	5
		Modified Warm Water Habitat or Limited Resource Water or Fish Passage	4
2. Project Activity (Pick one)	Dredging	Dredging $\geq 10,000 \text{ m}^3$ total	10
		Dredging $< 10,000 \text{ m}^3$ total	8
	Non-dredging	Large Scale Project (≥ 20 acres or ≥ 200 feet of shoreline)	10
		Small Scale Project (< 20 acres or < 200 feet of shoreline)	8
3. Type of Habitat Impacted (Pick the highest score that applies)	Spawning		10
	Nursery		8
	Fisheries		5
Potential Impacts Total Score			
II. Scoring Criteria for Best Management Practices			
1. Dredging Project (score either dredging or stream project)		Plain Suction Hydraulic Dredge	-5
		Conventional Cutterhead or Swinging Ladder Cutterhead Hydraulic Dredges	-2
		Closed Bucket (Environmental) or Articulated Bucket Mechanical Dredges	-1
		Conventional Clamshell Mechanical Dredge or Horizontal Auger Hydraulic Dredge	0
2. Stream Project (score either dredging or stream project)		Open Trench/Open Cut - Isolated: Dam/Pump	-2
		Open Trench/Open Cut - Isolated: Flume or other isolation method	-1
		Open Trench/Open - Cut-Wet	0
3. Resuspension Practices		Silt Curtains/Screens	-5
		Upland Dredge Disposal	-3
		Air bubble curtains	-2
		Other	-1

4. Monitoring/Work Plan Practices (Select all that apply)	Operations (no multiple bucket bites, no bottom stockpiling)	Multiply the total # of operational BMPs by -1	-1
	Monitoring and stoppage, if criteria are exceeded		-1
	Work stoppage with flow exceedance criteria		-1
	Request waiver of ≤ 7 days		-1
	In-water work will be completed in < 48 hrs.		-1
	Contingency plan provided to deal with sediment control if increased flow from precipitation, increase in overland runoff, or saturation of work area		-1
	Riparian restoration BMPs (tree planting, re-seeding, set-backs, conservation easement)		-1 for each
	In-stream restoration BMPs (natural channel design, fish passage removal, ford or dam removal, improved culvert for aquatic passage, re-grade banks: restore, stabilize and reclaim banks)		-1 for each
	Install sediment and erosion control structures during construction		-1
BMP Total Score			
III. Scoring Criteria for Project Purpose			
Foremost purpose of the project is habitat restoration			-5
Project Purpose Credits Total Score			
Final Impact Score			

Figure 1. Statewide In-Water Work Restriction Periods and Locations

<u>Location</u>	<u>Restricted Period</u>
Percid streams ¹	3/15 – 6/30
Salmonid streams ²	9/15 – 6/30
Other streams ³	4/15 – 6/30.

1. **Great Miami River** (dam south of New Baltimore to mouth), **Hocking River** (lower section), **Little Miami River** (lower section), **Maumee River** (split dam at Mary Jane Thurston State Park and Providence Park in Grand Rapids to mouth), **Maumee Bay**, **Muskingum River** (Devola Dam No. 2 off S.R. 60 north of Marietta to mouth), **Ohio River** (entire reach), **Portage River** (entire reach), **Sandusky River** (mouth to the first dam), **Sandusky Bay**, **Scioto River** (lower section), **Toussaint River** (entire reach).
2. **Arcola Creek** (entire reach), **Ashtabula River** (Hadlock Rd. to mouth), **Ashtabula Harbor**, **Aurora Branch** of the Chagrin River (RM 0.38 to mouth), **Big Creek** ((Grand River drainage basin) Girdled Road to mouth), **Chagrin River** (Chagrin Falls to mouth), **Cold Creek** (entire reach), **Conneaut Creek** (entire reach), **Conneaut Harbor**, **Corporation Creek** ((Chagrin River RM 0.27) entire reach), **Cowles Creek** (entire reach), **Ellison Creek** ((Grand River drainage basin) entire reach), **Euclid Creek** (entire reach), **Grand River** (dam at Harpersfield Covered Bridge Park (just upstream of the S.R. 534 bridge) to mouth)/**Fairport Harbor**, **Gulley Brook** ((Chagrin River RM 5.54) entire reach), **Indian Creek** (entire reach), **Kellogg Creek** ((Grand River drainage basin) entire reach), **Mill Creek** ((Grand River drainage basin) entire reach), **Paine Creek** ((Grand River drainage basin) from Paine Falls to mouth), **Rocky River** (Cedar Point Rd. (East Branch/West Branch confluence) to mouth), **Smokey Run** ((Conneaut Creek RM 3.5) entire reach), **Turkey Creek** (entire reach), **Vermilion River** (dam at Wakeman upstream of the US 20 & SR 60 bridge to mouth), **Ward Creek** ((Chagrin River RM 1.0) entire reach), **Wheeler Creek** (entire reach), **Whitman Creek** (entire reach).
3. **Class III Primary Headwater streams** (watershed ≤ 1 mi²), **EWH**, **CWH**, **WWH**, or stream reaches **with T&E species**. Includes **Lake Erie & bays** not listed above. Special conditions (such as occurrence of T&E species) may mandate local variation of restrictions.

Note: To determine the defined beneficial use designation for a stream and project segment, refer to: www.epa.state.oh.us/dsw/rules/3745_1.aspx#1use.