



OAR 141-089, General Authorizations

RAC Meeting #1 Summary

May 31, 2023; 1:00 – 3:00 p.m.

Overview

The OAR 141-089 Rulemaking Advisory Committee was convened by the Oregon Department of State Lands on May 31, 2023, via Zoom. The purpose of the RAC is to provide input on proposed amendments to the administrative rules governing Division 089, General Authorizations.

RAC Members and Attendance

Name	Affiliation	Present?
Members		
Scott Barrie	Oregon Home Builders Association	
Janelle Booth	Oregon League of Cities	Y
Tommy Cianciolo	Trout Unlimited	Y
Brian Cook	Clean Water Services	Y
Chris Gannon	Network of Oregon Watershed Councils	Y
Dave Hunnicutt	Oregon Property Owners Association	
Andrea Klaas	Oregon Public Ports Association	Y
KC Klosterman	CRH - River Bend Materials (Representing Oregon Business and Industry)	Y
Drew Raby	(alternate)	Y
Brad Livingston	Oregon Department of Transportation	Y
Kathy Majidi	Association of Clean Water Agencies	Y
Lauren Poor	Oregon Farm Bureau	Y
Timothy Sautter	Association of Oregon Counties	Y
Nancy Taylor	Oregon Department of Fish and Wildlife	Y
Joy Vaughn	(alternate)	
John VanStaveren	Wetlands Conservancy	Y
Staff/Advisors		
Danielle Boudreaux	Oregon Department of State Lands	Y
Melinda Butterfield	Oregon Department of State Lands	Y
Dana Hicks	Oregon Department of State Lands	
Kirk Jarvie	Oregon Department of State Lands	Y
Steve Faust	3J Consulting; Facilitator	Y
Interested Parties		

Name	Affiliation	Present?
Kelly Albers	NRCS	
Rich Angstrom	Oregon Concrete and Aggregate Producers Association	
Bill Brignon	USFS	
Steve Brink	Idaho Power	Y
Jeffrey Brittain	Oregon Department of Environmental Quality	
Megan Gerber	Wilbur Island Wetland Mitigation Bank	
Michael Lambert	Confederated Tribes of the Umatilla Indian Reservation (CTUIR)	
Rachele Lyon	Lyons Construction	Y
Michael Martin	Oregon League of Cities	
Ariel Nelson	Oregon League of Cities	
Shawn Priddle	Oregon State Marine Board	
Dirk Renner	USFWS	Y
April Snell	Oregon Water Resources Congress	
Ken Yates	Oregon Water Resources Congress	Y

Welcome and Introductions/Agenda Review and Zoom Protocols

Steve Faust, Facilitator, and Kirk Jarvie, DSL Project Manager welcomed the group and introduced themselves and asked attendees to also introduce themselves to the group. Steve then proceeded to explain the agenda and Zoom protocols for the meeting including utilizing the chat and hand raise function to be called on by the facilitator.

Rulemaking Process and Operating Principles; RAC Role

Danielle Boudreaux, DSL Rules and Records Coordinator, then outlined the rulemaking process and the RAC operating principles and procedures. The expectations for the RAC members being that all members will review all background materials provided to understand the issues for discussion. Participate in all RAC meetings and work collaboratively to achieve consensus and develop recommendations. Members can be represented by alternates, but must provide notice to the rules coordinator, project manager, or facilitator at least 24 hours prior to the meeting that the alternate will attend.

The Department role is to provide technical and administrative support, information, institutional knowledge and expertise, and advice to the RAC. The Department will also be responsible for scheduling meetings, preparing meeting summaries, and maintaining a public record of the RAC process.

The facilitator's role will ensure a safe, welcoming environment where all members can participate. Conduct meetings to foster collaborative decision-making and consensus building. Distribute meeting summaries that outline the topics discussed, the areas where there is agreement, and any remaining issues on which agreement was not reached. Information disclosed in confidence to the facilitator will be kept confidential, though written communications may be subject to public records law.

Finally, the role of interested parties includes individuals with a desire to stay informed about the rulemaking process, Department employees or external stakeholders providing technical feedback, and all are nonvoting advisors that may provide written feedback after the meeting.

All participants are expected to be respectful of others and act in good faith through all aspects of the RAC process. A consensus model will be used to facilitate the decision-making. Consensus is a participatory process where the RAC members strive for recommendations that they can accept, support, live with, or agree not to oppose. When consensus cannot be reached, the facilitator may invite documentation of differing opinions or viewpoints. RAC members should be advised that all rulemaking records, including formal documents, rule drafts, meeting summaries and exhibits, meeting recordings, and communications, are public records and may be released in response to a public records request.

Rulemaking Purpose and Scope

Kirk Jarvie reviewed the following with the RAC:

- A removal-fill authorization is required from DSL when an:
 - Activity is within a Water of This State **AND**
 - Activity is non-exempt (ORS 196.905 and OAR 141-085-0530, -0534, -0535) **AND**
 - Activity exceeds threshold volume (50 cubic yards in most waters; any amount in ESH waters and state scenic waters)
- GAs fit within a continuum of authorization options under the Removal-Fill Law:
 - No state permit required (NSP). This is for applications submitted for review, and they fail one of the 3 part test listed above. DSL would then provide letter stating No State Permit is required from DSL. These are reviewed within 30 days.
 - General Authorization. Uses a simple notification form. DSL has 30 days to determine if the project is eligible.
 - General Permit. Use the more detailed JPA form. DSL has 40 days to determine if the project qualifies for a GP. This includes a public notification.
 - Individual Permit. This is used when projects don't fit under one of the three above. This requires the most amount of information. This timeline is 120 days.
 - Emergency Permit. This is if there's a threat to public health, property, safety and don't have time to apply for a normal process. Rare and only issue about 30-40 per yar.
 - Permit Waiver. This is if there is a DEQ lead remedial action / clean up action.
- Statute (ORS 196.850) allows DSL to establish GAs by adoption of administrative rule (Div. 141-089) for activities that are:
 - Substantially similar in nature **AND**
 - Cause only minimal individual and cumulative environmental impacts **AND**

- Do not result in long-term harm to water resources.
- GAs can only be used for activities specifically described in the Div. 89 administrative rule.
- GAs cannot be used in designated State Scenic Waterways. This is because there are very specific rules that must be followed. There's a map on DSL's website.
- GAs cannot be used in d specified "Aquatic Resources of Special Concern". These are defined in Div 89 rules. More details are on DSL website. There are 12-14 very specific types of waters that are ARSC. There are very rare or sensitive resources that require closer review than GA offers.
- Eligible GA activities are organized into topical groupings (current groups):
 - Minimal Disturbance in ESH. ESH map is available on DSL's website.
 - Piling Placement and Removal in ESH. This allows for 5 or less piles.
 - Temporary Impacts to Non-Tidal Wetlands
 - Waterway Bank Stabilization. This requires non-bank hardening structures.
 - Transportation-Related Activities. For very specific actions.
 - Removing Sediment Behind Tidegates. For very specific targeted actions.
 - Waterway Habitat Restoration. For voluntary waterway improvements.
 - Wetland Ecosystem Restoration. For voluntary wetland improvements.
 - Non-motorized Placer Mining in ESH. Very specific and small audience.
- Each of those GAs follows this administrative rule structure:
 - Purpose.
 - Eligibility Requirements
 - Authorized Activities
 - Activity-specific conditions
- There are also General Conditions applicable to all activities defined in administrative rule. Must meet all General Conditions and activity specific conditions to qualify.
- Many GAs can be combined ("stacked") to cover a single project when the combined activities still result in no more than minimal impact and still meet all conditions.
 - For example, a project proposes bank stabilization and crosses a wetland area. Can combine bank stabilization and temporary wetland GA.
- Authorizations are notification-based:
 - When Div 89 has already issued authorization for all the listed activities.
 - Proponent submits a notification form.
 - DSL has 30 days to concur that the described activity is eligible for the GA applied for

- Outcome: Complete & Eligible; Incomplete; Ineligible
 - No public review period; no local land use compatibility review
 - DSL decision is contestable (contested case hearing in front of an administrative law judge.)
- If DSL does not respond in 30 days, activity is automatically considered eligible. DSL almost never misses this deadline.
 - Fees apply for some GAs, which is established by statute (\$250). This is less than the cost for DSL to issue the GA.
 - Eligibility determinations are good for 3 years. There are no renewals or extensions. IF you want to continue past 3 years, the proponent will have to apply for a new authorization.
 - DSL, ODFW, DEQ and local government have authority (per administrative rule) to elevate a project to Individual Permit status if believed the activity(ies) will fail the statutory test for a GA. For example, if an agency said that project will be more than minimal, then the project will be moved to more detailed process.
 - DSL conducts annual compliance monitoring for selected groups of GAs. Every year staff go into the field to do statistically valid surveys to ensure the work was completed as described. As a result, DSL has high level of confidence that GAs are meeting the statutory test.
 - All other applicable local, state, and federal authorities still apply.

GA rules must be reviewed every five years. DSL can modify, re-issue or rescind GAs during the review.

• **Who Are Our GA Users?**

User Type	General Authorization Type							
	Minimal Disturbance = 81	Piling = 257	Temporary Impact = 22	Bank Stabilization = 43	Transportation = 24	Sediment Behind Tidegates = 4*	Waterway Habitat = 95	Wetland Ecosystem = 32
Private**	51%	98%	18%	44%		75%	18%	9%
City/Co. Govt.	14%	1%	23%	5%	50%		2%	6%
State Govt.	5%			5%	46%		20%	
Fed. Govt.	6%			5%			5%	44%
Port	5%	1%				25%		
Utility	7%		14%	5%	4%		2%	6%
NGO***	5%	<1%	45%	35%			51%	34%
Universities	7%							
Tribe				2%			2%	

May not add up to 100% due to rounding.

(GA Notification submittals for the last 5 years: 4/1/2018 to 4/1/2023; does not include the “Non-motorized Placer Mining GA”)

* None in the last 3 years.

** “Private” includes individuals, companies and consulting firms.

*** “NGO” includes soil & water conservation districts, watershed councils and environmental organizations

- **Objectives for Updating GA Rules**

- Comply with the 5-year review requirement (ORS 196.850(7)). The last big review was in 2011. There was a minor review and changes in 2016.
- Incorporate DSL staff's experience with GAs & compliance monitoring since the last rulemaking. Last year DSL received all staff's input on how we can improve GAs, and tried to incorporate those comments into the current draft GA.
- Incorporate some outcomes from an independent review of the GAs in 2016 by Hatfield Fellow.
- Reduce duplication; re-organize some activities more logically.
- Reflect latest information and protection measures in the activity conditions.
- Expanding the number of eligible activities for most GAs
- Remove activities that are not being used.
- Increase consistency with agency guidance and practice that has evolved since last GA rulemaking. For example, the piling GA. Shortly after this GA came out, ODFW came out with residential dock guidelines. DSL wasn't in a position to reopen rulemakes to address ODFW recommendations, so DSL prepared guidance memos for DSL to use. Now we want to incorporate these applicable guidelines into the GA.
- Fix the "double bind" problem with fish passage law. Do we get fish passage compliance rule before or after GA? This is proposed to be clarified.
- Use a RAC to obtain input on proposed revisions.

- **Division 89 Rulemaking – Proposed Changes Include:**

- Removed the "Certain Transportation Activities" GA. These items would be covered by other GAs.
- Removed the "Sediment Behind Tidegates" GA. No longer used and better pathways forward
- Updated the general conditions that apply to all activities; updated activity-specific conditions for each GA.
- Added more eligible activities to the "Minimal Disturbance" GA and increased allowed volumes for several activities.
- Expanded the "Temporary Impact in Wetlands" GA to include some temporary activities in waterways and include tidal waters.
- Re-oriented the "Piling" GA into an "Overwater Structures" GA. While the driving of piles does affect the waterway, the bigger impact is what's attached to the pile. Now proposing to focus more on the dock itself.
- Added more eligible activities under the "Waterway Habitat" GA
- Added more eligible activities under the "Wetland Habitat" GA

- Edit and clean up language throughout the rule.
- **What Won't We Be Addressing?**
 - The GA for "Non-motorized Placer Mining in ESH". Senate Bill 3 from 2017 that drives this GA. The customer for the GA is a very small and very focused group. If we do GA rulemaking for this, DSL will need a very different advisory and Rulemaking Committee.
 - GA Fees (set by statute)
 - Div. 85: jurisdiction; exemptions; individual R-F permit process; emergency permits; mitigation; wetland banking; R-F enforcement
 - Div. 90: Wetland determinations & delineations
 - Div. 93: General Permits
 - Div. 100: R-F permits in State Scenic Waterways
 - Div. 102: Essential Salmonid Habitat designations.

Summary of Interviews and Next Steps

Steve Faust informed the RAC that member interviews are still being conducted and will provide a summary at the beginning of Meeting 2. Steve then went over the dates and times for the upcoming meetings.

RAC Member Comments

- As we walk through proposed changes, will there be more clarifications on this process?
 - Yes. We will go into the details regarding the proposed changes over the next five meetings.

Interested Party Comments

No comments were made