



OAR 141-089, General Authorizations

RAC Meeting #2 Summary

June 22, 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 June 22, 2023, via Zoom and in-person. 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	Y
Andrea Klaas	Oregon Public Ports Association	Y
KC Klosterman	CRH - River Bend Materials (Representing Oregon Business and Industry)	
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	Y
Kirk Jarvie	Oregon Department of State Lands	Y
Steve Faust	3J Consulting; Facilitator	Y

Interested Parties		
Kelly Albers	NRCS	Y
Rich Angstrom	Oregon Concrete and Aggregate Producers Association	
Bill Brignon	USFS	
Steve Brink	Idaho Power	
Jeffrey Brittain	Oregon Department of Environmental Quality	
Jeff Burrington	Oregon Department of Land Conservation	Y
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	Y
Dirk Renner	USFWS	
April Snell	Oregon Water Resources Congress	
Ken Yates	Oregon Water Resources Congress	

Welcome and Introductions/Meeting Protocols

Steve Faust introduced himself and the DSL staff members before briefly going over meeting protocols.

Summary of Interviews

Steve identified four common questions/concerns, which Kirk Jarvie addressed.

1. What process was used to identify the proposed rule changes?

There were five processes used to identify the proposed rule changes.

- DSL staff who administer the rules provided input about GA activities that are commonly used and those that are not, as well as feedback about the process.
- In 2016, DSL hired a Hatfield Fellow (graduate student from PSU) to review the rules. The fellow contacted GA users from the previous 10 years to solicit information about the experience and completed activities.
- Kirk, as a previous GA manager, reviewed the rules.
- Danielle Boudreaux, as rules coordinator, reviewed the proposed changes for grammar, style, clarity, and consistency.
- Staff from the Oregon Department of Fish and Wildlife provided the Department with a technical review.

2. Describe the impetus for proposed rule changes.

Per statute, the GA rules must be reviewed every five years. There have not been any substantive changes since 2011/2012.

3. Concern about cutting entire sections of the rules.

Reasoning for the proposed repeals was provided later in the meeting during discussion, at which time Kirk did address concerns from the RAC.

4. Will the RAC or DSL consider any rule changes not currently proposed by DSL?

Kirk asked that if RAC members had recommended changes to any rule sections that they send them directly to Kirk or Danielle for review first before bring it to the RAC.

Introductory sections (089-0620 – 089-0656)

141-089-0620

No discussion.

141-089-0625

No discussion.

141-089-0630

No discussion.

141-089-0635

No discussion

141-089-0640

Tim Sautter asked if the proposed changes made any changes to the current process as they currently need to get fish passage approval from ODFW. Kirk explained that the changes put a better process in place by letting all users know that they should have their activities approved by ODFW before submitting their request to DSL.

Dave Hunnicutt asked a clarifying question about (1)(a)(B).

Brian Cook raised a question/concern about the potential increase work for ODFW with the requirement for ODFW approval before submitting to DSL. Nancy Taylor of ODFW said that they would prefer to have the opportunity to review before.

Brian brought up that in-water work period guidelines in jurisdictional areas; it was noted that ODFW's use of the term "in-water" is different than how DSL uses and applies this condition.

Chris Gannon asked a clarifying question about terminology (“spud piles”).

Nancy Taylor requested the addition of “or other documentation” to (1)(b) per ODFW staff. No objections from RAC members.

141-089-0650

Brian Cook inquired about the deletion of the word “line” in (7). He asked if “ordinary high water” modified “elevation” or did not modify anything. After brief discussion it was determined that “line” should be added back in and for consistency among the rules in Division 89, as well as Divisions 85 and 90, that the term “ordinary high water line” would be used throughout the rules.

Chris Gannon asked about a definition of “spoil material,” which could identify what is not a spoil material. He also asked what “aquatic organism” in (15) meant as the term is relatively broad. Kirk stated that he would work with ODFW staff to determine if it needs to be specified.

Proposed GAs for deletion:

Transportation Related Activities GA (089-0740 – 089-0755) *Reference Transportation GA Crosswalk, which breaks the GA activities into 4 categories and alternate coverage of the activities.*

1. Removal of garbage, trash, and rubble: No discussion.
2. Large wood relocation: No discussion
3. Investigative drilling:

Brad Livingston commented on the coverage under the Minimal Disturbance GA, requesting that DSL consider a sliding threshold based on the size of the river.

4. Culvert replacement for fish passage:

Tim Sautter commented about the coverage stating that 50 cubic yards is often not enough for the replacement of culverts due to the size of the new culvert. Additional concerns focused on the restrictions in place from the US Army Corps of Engineers.

Kirk let Tim know that if the culvert replacement exceeded 50 cubic yards of removal/fill then the project would qualify under the Habitat Improvement GA.

Removing Sediment Behind Tidegates GA (089-0760 – 089-0775) *Reference Sediment Behind Tidegates Crosswalk, which includes one activity and the four sections of rules for alternate coverage; only 4 applications have been received in the past 10 years and none in the past 3 years.*

- Exemption: Maintenance of Water Control Structures (OAR 141-085-0530(4)): No discussion

- Exemption: Agricultural Drainage Ditch Maintenance (141-085-0535(7)): No discussion
- General Permit: Maintenance Drainage (OAR 141-093-0220, *et seq.*): No discussion
- Oregon Department of Agriculture: Agricultural Drainage Channel Maintenance (OAR 603-095-4000, *et seq.*): *this is a new program that is currently being rolled out statewide in stages*

Lauren Poor raised a concern about relying on this if the program does not work. Kirk stated that he would check with ODA and provide additional information to the RAC.

Chris Gannon asked why the concern about activities not occurring in essential salmonid habitats (ESH) streams. Kirk explained that when looking at the ESH map it is clear that some ESH streams were straightened at one point in time to create drainage.

Lauren Poor stated that she may need more time to consult with OFB constituents regarding the proposed repeal of this GA.

Meeting Summary

- Additional comments/questions from RAC members should be sent to Steve.
- The remaining meeting invites will be sent all at once.
- A new track changes document, meeting summary, and recording will be sent out as soon as available.

Interested Party Comments

No comments.