



Rulemaking Advisory Committee

Waterway Leases, Licenses, and
Registrations (Division 82)

November 13, 2024





Meeting Agenda

9:00 AM	Introductions
9:20 AM	Rulemaking Process
9:30 AM	Rulemaking Advisory Committee (RAC): Roles and Principles
9:50 AM	Background and Rulemaking Purpose and Scope
10:45 AM	Interested Party Comments
10:55 AM	Next Steps
11:00 AM	<i>Meeting ends</i>

Meeting Goals: Outline everyone's roles, responsibilities, and expectations; understand the need for this rulemaking; and gain base knowledge on DSL programs impacted by the rulemaking.

Zoom Protocols



Each person who wishes to speak will be asked to raise their hand.

- To raise your hand, click the reactions near the bottom of your screen and click “raise hand” or by pressing star 9 if you are on the phone.
- Will seek a balance of speaking time during discussions
- *For technical support, please message us in the chat.*
- Please keep your mic muted unless it is your turn to speak. Use of video is encouraged.
- We ask that all participants be respectful of each other and DSL representatives.

Rulemaking Advisory Committee (RAC): Process and Principles



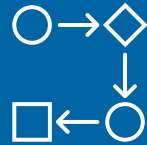
Purpose of the RAC



This RAC is being convened to review and provide input on:

- Proposed lease rates and calculation method
- Proposed changes to application fees
- Proposed rule language
- Potential fiscal impacts

DSL Rulemaking Process



Approval to begin the rulemaking is provided by the DSL Director or State Land Board. DSL staff draft proposed rule language.

**Draft
proposed
rule
language**

In meetings open to the public, rule language and materials are reviewed by an advisory committee that includes partners and those impacted by the rules.

**Convene
Rulemaking
Advisory
Committee**

**Open public
comment
period**

Notice of Proposed Rulemaking is published by the Secretary of State, and a public rule hearing is held midway through the comment period.

Adopt rules

Amendments are made as needed, in response to public comments. Approval to file with the Secretary of State is provided by the DSL Director or State Land Board.

RAC Operating Principles



RAC Member Role

RAC members are responsible for:

- Advising the Department on proposed fees/compensation rates and rule language.
 - Group is an advisory board.
 - Role is to provide advice and frame policy choices.
- Attending and participating in the meetings.
- Considering a range of issues and options to:
 - Address them,
 - Discuss the pros and cons,
 - Seek to develop recommendations.

RAC Operating Principles



RAC Member Role

RAC members are responsible for:

- Reviewing background materials to understand the issues for discussion at the RAC meetings.
- Working collaboratively with one another to explore issues and develop recommendations.
- Considering the perspectives and input of other stakeholders and the public and including them in recommendations as appropriate.

RAC Operating Principles



RAC Member Role and Alternates

RAC membership and term of service is at DSL's discretion.

Membership is intended to represent a diversity of expertise, skillsets, and viewpoints. If a scheduling conflict arises, members may be represented by a designated alternate. Notice must be provided to the facilitator at least 24 hours before the meeting.

RAC Operating Principles



Schedule of Meetings

#	Date	Time	Topic
1	November 13, 2024	9:00 AM	Administrative: Overview
2	December 11, 2024	9:00 AM	Lease rates, application fees and financial assurance requirements
3	January 22, 2025	9:00 AM	General provisions and lease conditions and application review process
4	February 19, 2025	9:00 AM	Abandoned and Derelict Vessels; administrative, formatting, and grammatical changes;
5	March 19, 2025	9:00 AM	Communication plan, fees & formulas sheet, updated application form, updated authorization forms
6	April 16, 2025	9:00 AM	Review materials for the Notice of Proposed Rulemaking

RAC Operating Principles



Rulemaking Team

The facilitator is your primary contact throughout this rulemaking.

Sylvia Ciborowski

Sylvia@mosaicresolutions.com
(832) 877-5249

Department of State Lands staff coordinating the rulemaking and as technical advisors:

- Danielle Boudreaux, Rules Coordinator, danielle.boudreaux@dsl.oregon.gov
- Blake Helm, Proprietary Specialist, blake.helm@dsl.oregon.gov
- Justin Russell, Proprietary Coordinator, justin.russell@dsl.oregon.gov

RAC Operating Principles



Facilitator Role

The facilitator is responsible for:

- Ensuring a safe, welcoming environment where all members can participate.
- Conducting meetings to foster conversations to provide input on the proposed rule language and fees.
- Preparing meeting summaries that outline the topics discussed and any remaining issues which need to be further explored.
- Providing coordination between meetings, serving as the primary communicator between RAC members as well as between the RAC and the Department.

RAC Operating Principles



Facilitator Role

- The facilitator will not act as an advocate on behalf of any issue, interest group, or member.
- While the facilitator may make recommendations regarding the process, they will not make any substantive decisions.
- Information disclosed in confidence will be kept confidential by the facilitator, though written communications may be subject to public records law.
- RAC members are encouraged to approach the facilitator if/when procedural issues arise.

RAC Operating Principles



Department of State Lands Role

DSL staff are responsible for:

- Providing technical and administrative support, information, institutional knowledge and expertise, and advice to the RAC.
- Scheduling meetings, preparing meeting materials, and maintaining a public record of the RAC process.

RAC

Operating Principles



Operating Procedure Protocols

Members agree to:

- Act in good faith through all aspects of the RAC process.
- Attend all meetings.
- Be respectful of other members, interested parties, staff, and members of the public.
- Make every effort to address their concerns with the group.

RAC Operating Principles



Operating Procedure Protocols

Members agree to:

- Provide input on the proposed rule language, compensation rates and fees, and the fiscal impact.
- Those with differing recommendations are responsible for proposing alternative solutions or approaches to resolve differences.
- Meetings will be conducted in a way that fosters collaborative discussion.
- Members will honor decisions made and avoid re-opening issues once resolved.

RAC Operating Principles



Operating Procedure Protocols

Members agree to:

- Ensure any written communications regarding the RAC or rulemaking process are mindful of these procedural ground rules and are respectful, even if highlighting different perspectives.
- Generally, defer to DSL for all media communications related to the group's process and recommendations and represent only their own perspective in interviews unless otherwise discussed with the group or DSL.
- Raise all concerns, especially those being discussed for the first time, at RAC meetings and not in or through the media.

RAC Operating Principles



Public Meetings and Records

RAC meetings are public meetings and are open to the public.

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.

“Communications” refers to all statements and votes made during meetings, memoranda, work projects, emails and correspondence, and documents or materials developed to fulfill the goals of the rulemaking.

RAC Operating Principles



Interested Parties

Interested parties are:

- Invited to observe, but not permitted to participate during RAC member discussion.
- Able to provide a timed comment, as time allows, after RAC members have concluded business.

At a later date, after the RAC process has concluded, DSL will invite public comments on the proposed rules and will hold a public hearing, prior to consideration and adoption.

Background



Proprietary Program Overview



DSL's proprietary program manages roughly 5,000 authorizations across the State of Oregon, from the coast out east to Snake River, and from the Columbia River down south to Klamath Lake.

Authorizations include easements, leases, licenses, access agreements and registrations and are issued under 9 different divisions of administrative rules, covering a wide variety of commercial and non-commercial activity.

Proprietary Program Overview



DSL proprietary staff:

- process new and renewal applications, applications for assignments and transfers, as well as bank and sublease consent agreements
- conduct site visits
- review certificates of insurance for compliance with insurance requirements
- handle compliance issues with authorization holders and when necessary, draft enforcement notices when authorizations are out of compliance
- handle inquiries from the public regarding navigable waterways and ownership questions



Public Facility Licenses

Publicly owned structures and uses such as boat ramps, docks, fishing and swimming platforms, viewing structures, and navigation aids.



Wharf Certification

Commercial structures exclusively used for the loading and unloading of goods and merchandise.



Registrations

Non-commercial uses and smaller structures such as boat docks, or small boat houses (under 2,500 square feet), or floating recreational cabins (under 1,500 square feet), pilings, erosion control structures and voluntary habitat restorations.



Leases

All commercial uses and structures and any recreational structure larger than 2,500 square feet. Uses can be either water or non-water dependent and include, among other uses, commercial docks, work boat and other vessel moorage, sea water desalination and fish processing plants, marinas, restaurants, hotels, warehouses, or other over-water structures.



Photo: Sand Island – Columbia River, by Dan Cary

Number of Authorizations

As of June 30, 2024, number of active authorizations:

- 226 Public facility licenses (PFL)
- 530 Waterway leases (ML)
- 2,936 Waterway registrations (RG)



Revenues and Expenditures

- FY2024 program expenditures \approx \$1.6M
- FY2024 Revenue from application fees alone (new, renewal, amendment, etc.) \approx \$48K all OARs, \$33K for Div. 82 ML & PFL
- For FY2024, proprietary coordinators processed 85 applications (amendments, new, renewals, assignments, bank consent agreements, sublease consent agreements)
- FY2024, revenue from waterway registration fees (new and renewal fees) \approx \$177K
- For FY2024, waterway registration technicians processed 515 applications (new and renewals)



Submerged Lands Enhancement Fund

Created by legislative action in 2013, the Submerged Lands Enhancement Fund (SLEF) is used to help cover costs associated with voluntary waterway stewardship projects in Oregon-owned waterways. Federal and commercial entities are not eligible to receive SLEF funds, nor are projects compensatory mitigation projects.

DSL appropriates money for the SLEF on a biennial basis, and SLEF grants are also awarded on a biennial basis. DSL has set aside \$200K for the SLEF for the last two biennium.

Rulemaking: Overview and Need



Need for Rulemaking



Div. 82 rules were last updated over a decade ago (2013), and a number of high-profile events have highlighted the need to amend rules to help achieve sustainable operations in managing waterway authorizations. DSL has explored several strategies, some did not require rulemaking and have been implemented, such as the use of real market, instead of assessed land values when calculating some lease rates, adding new lease requirements for marinas for vessel reporting, and creating a 3-year schedule for lease site inspections. However, there are additional ways to achieve sustainable operations and ensure lease rates are consistent and fair that require rulemaking.

Overview of Rulemaking



Some of the proposed updates to Oregon Administrative Rules 141-082 include:

- Simplify from three methods to one method for calculating lease rates.
- An initial increase of current application fees adjusted to track with inflation, followed by an annual increase of 5%.
- Add a Submerged Lands Enhancement Fund annual fee for leases.
- Add additional fees for applications requiring review by the Department of Justice and for leases in holdover status (i.e., when leases are not renewed before their expiration date).

Overview of Rulemaking



Some of the proposed updates to Oregon Administrative Rules 141-082 include:

- Set the initial term of a lease to five years.
- Require financial assurance for registrations.
- Use clear and simple language where current rule is confusing or unnecessarily complex.

What We Heard



Early conversations with RAC members and other interested parties highlighted:

- Helping people enjoy the outdoors safely and connect with waterways is a common motivation.
- Environmental responsibility in stewardship of Oregon's waters is a core value across the people we spoke with.
- People want to understand how the proposed changes could impact day-to-day operations and budgets of waterway uses that are authorized.
- Oregon's waters are a public asset. How do authorized uses negatively (or positively) impact our lands and waters? How can there be more accountability?
- Incentivizing waterway leaseholder participation in the "Clean Marina Program" could benefit everyone.
- How do these rule changes contribute to addressing abandoned and derelict boats?

Interested Party Comments

Please raise your hand
to speak.

Please keep comments
limited to 3 minutes.



Interested Party Comments



Use the "Raise Hand" feature to provide community input. Time is limited and we may not be able to hear from all of you today.

- To raise your hand, click the reactions near the bottom of your screen and click "raise hand" or by pressing star 9 if you are on the phone.
- You will be called in the order in which hands are raised.
- Please keep your mic muted unless it is your turn to speak.

When it's your turn to speak:

- When your turn is coming up, the moderator will call on you to begin speaking.
- Please say your name, where you're from, and any organization you're representing.
- Please keep your remarks to **three minutes** and be respectful of each other and agency representatives. We will help track your time.

What's Next?

John Day River / Photo: Dan Cary

- Following this meeting draft rule language and proposed compensation rates and application fees will be sent to the RAC members.
- In the next week, a meeting summary will be sent to RAC members and today's meeting recording will be posted.
- Prior to each meeting, a meeting agenda will be sent.
- All meeting materials will be posted to DSL's Rulemaking website: www.oregon.gov/dsl/Pages/rulemaking.aspx



Thank You!

Facilitator

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Oregon Department of State Lands

Danielle Boudreaux, Rulemaking
Coordinator

Oregon.gov/DSL



John Day River / Photo: Dan Cary