

# Rulemaking Advisory Committee

## OAR Division 141-089

Meeting #1  
Oregon Department of State Lands  
May 31, 2023



# Welcome and Introductions

Kirk Jarvie  
and  
Steve Faust



# Agenda

## Zoom Protocols

Steve Faust



# Agenda

- Welcome and Introductions
- Agenda Review and Zoom Protocols
- Rulemaking Process
- RAC Operating Procedures and Role
- Rulemaking Purpose and Scope
- Summary and Next Steps

# Zoom Protocols

- Raise your hand to provide a comment:
  - Click the Reactions icon near the bottom of your screen and click “raise hand”
  - Press “star-9” if you are on the phone.
- Members will be called in the order in which hands are raised.
- Keep your mic muted unless it is your turn to speak.
- Be respectful of each other and DSL representatives.

*For technical support, please message us in the chat.*





# Rulemaking Process

Danielle Boudreaux



# Rulemaking Process

- The need for rule revisions is established and proposed changes are drafted.
- The Department convenes a Rulemaking Advisory Committee.
  - The draft rules are reviewed and approved.
  - The draft “Need for the Rules,” “Fiscal Impact Statement,” and “Racial Equity Statement” are reviewed and approved.
- A Notice of Proposed Rulemaking is published by the Secretary of State in the Oregon Bulletin.

# Rulemaking Process

- A public comment period is open for 30 days following the publication of the Notice.
- A public rule hearing is held approximately 15 days after the Notice is published.
- The proposed rules are presented to either the State Land Board or the Department's Executive Director for final approval.
- The approved rules are filed with the Secretary of State.



# RAC Operating Principles and Procedures

Danielle Boudreaux



# RAC Operating Principles: Purpose and Roles

## Duties and Responsibilities of RAC Members

- Advise the Department on rule amendments to OAR 141-089.
  - Group is an advisory board.
  - Role is to provide advice and frame policy choices.
- Attend and participate in meetings.
- Study available information and provide input.
- Consider a range of issues and options in order to:
  - Address them,
  - Discuss the pros and cons,
  - Seek to develop recommendations.

# RAC Operating Principles: Responsibilities

Members are responsible for:

- Reviewing background materials to understand the issues for discussion at 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 those in recommendations as appropriate.

# RAC Operating Principles: Membership and Term of Service

- Group membership and term of service is at DSL's discretion.
- Membership is intended to represent a diversity of expertise, skillsets, and viewpoints.
- Members may be represented by alternates, and must provide notice to the rules coordinator, rules writer, or facilitator at least 24 hours before the meeting.

# RAC Operating Principles: Schedule of Meetings

## Meeting 1: May 31, 2023

Review the RAC role and purpose, the rulemaking process, any background information, and the project purpose and scope.

## Meeting 2: June 22, 2023

Discuss introductory sections (089-0620 thru 089-0656) and proposed GAs for deletion (Transportation Related Activities GA (089-0740 thru 089-0755) and Removing Sediment Behind Tidegates GA (089-0760 thru 089-0775))

## Meeting 3: July 20, 2023

Discuss Temporary Impacts to Wetlands and Waterways for Certain Activities GA (089-0700 thru 089-0715) and Minimal Disturbance within ESH GA (089-0660 thru 089-0675)



# RAC Operating Principles: Schedule of Meetings

## Meeting 4: August 17, 2023

Discuss Certain Over-water Structures Placement and Removal Within ESH GA (089-0680 thru 089-0695) and Waterway Bank Stabilization Using Bio-Engineering GA (089-0720 thru 089-0735)

## Meeting 5: September 14, 2023

Discuss Waterway Habitat Improvement GA (089-0780 thru 089-0795) and Wetland Ecosystem Improvement GA (089-0800 thru 089-0815)

## Meeting 6: October 19, 2023

Tying up loose ends; draft Fiscal Impact Statement review; draft Racial Equity Statement review; next steps





# RAC Operating Principles: Department Role

- Provide technical and administrative support, information, institutional knowledge and expertise, and advice to the RAC.
- Responsible for scheduling meetings, preparing meeting summaries, and maintaining a public record of the RAC process.

# RAC Operating Principles: Facilitator Role

It is the responsibility of the facilitator to:

- 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.

# 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.
- The facilitator will provide coordination between meetings, serving as the primary communicator between RAC members and between the RAC and the Department.

# RAC Operating Principles: Facilitator Role

- 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: Interested Parties

Interested parties are:

- Nonvoting meeting attendees.
- 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.



# RAC Operating Principles: Operating Procedure Protocols

Members agree to:

- Act in good faith through all aspects of the RAC process.
- Attend all meetings to extent possible or recommend an alternate member.
- Direct any requests for information made outside of meetings to the designated contacts.
- 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:

- 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: Operating Procedures

- A consensus model will be used to facilitate decision-making and ensure the RAC benefits from the individual views, experiences, background, training, and expertise of the members.
- Consensus is a participatory process where the RAC members strive for recommendations that they can accept, support, live with, or agree not to oppose.

# RAC Operating Principles: Operating Procedures

Expectations for the decision-making process include:

- Members agree on the value of consensus; the group should strive to achieve it. As such, recommendations will be made by consensus of all present members.
- Members agree to compromise and work together to find workable solutions in the commitment to achieving consensus.
- 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 decision-making and consensus building.
- Members will honor decisions made and avoid re-opening issues once resolved.
- When consensus cannot be reached, the facilitator may invite documentation of differing opinions or viewpoints.



# RAC Operating Principles: Public Meetings and Records

- RAC meetings are considered public meetings and are open to the public.
- 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.
  - “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 rulemaking.

# Rulemaking Purpose and Scope

Kirk Jarvie



# What Is a General Authorization (GA)?

Please refer to:

- General Authorization Fact Sheet
- Who Are Our GA Users? Fact Sheet



# Objectives for Updating GA Rules

- Comply with the 5-year review requirement (ORS 196.850(7))
- Incorporate DSL staff's experience with GAs & compliance monitoring since the last rulemaking
- 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

# Objectives for Updating GA Rules

- Expand 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
- Fix the “double bind” problem with fish passage law
- Use a RAC to obtain input on proposed revisions

## Division 89 Rulemaking – Proposed Changes Include:

- Removed the “Certain Transportation Activities” GA
- Removed the “Sediment Behind Tidegates” GA
- 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

## Division 89 Rulemaking – Proposed Changes Include:

- 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
- 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”
- 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 Next Steps

Steve Faust



# Future Meeting Dates

## Meeting #2:

Thurs. June 22 1:00-3:00PM

## Meeting #3:

Thurs. July 20 1:00-3:00PM

## Meeting #4:

Thurs. August 17 1:00-3:00PM

## Meeting #5:

Thurs. Sept. 14 1:00-3:00PM

## Meeting #6:

Thurs. Oct. 19 1:00-3:00PM



# Adjourn

