



**Department of State Lands  
Rulemaking Advisory Committee  
AGENDA**

**Chapter 142 Division 10  
August 20, 2019  
9:00 am – 12:00 pm**

**South Slough Interpretive Center  
61907 Seven Devils Road  
Charleston, Oregon 97420**

<b>Schedule</b>	<b>Topic</b>	<b>Presenter</b>
9:00 am	Introductions	Anne Friend, DSL
9:05	Agenda Review & Operating Principles	Anne Friend, DSL
9:10	Project Purpose & Scope	Bree Yednock, DSL
9:25	Rulemaking Process & Steps	Anne Friend, DSL
9:30	Review Rule Language & FIS	Bree Yednock, DSL
	Q/A & Discussion	RAC Members
10:15	10-minute break (if needed)	
10:25	Finalize rule language & FIS	Bree Yednock, DSL
	Other Issues/Concerns	RAC Members (if any)
11:00	Summary & Next Steps	Anne Friend & Bree Yednock, DSL
11:30 am	Adjourn	

**Notes**

- Public Record: Meetings are audio recorded and represent the official public record of the RAC meeting. Other public comments received at the RAC meetings will be included in the meeting record but not considered formal public comment. Formal public comment will be accepted during the public comment period in the coming months.



## Rule Advisory Committee (RAC) Roster

OAR 142-10 RULES GOVERNING RESTRICTED ACTIVITIES AT THE  
SOUTH SLOUGH NATIONAL ESTUARINE RESEARCH RESERVE RULEMAKING

Name	Affiliation	Phone	E-Mail
<b>MEMBERS</b>			
Margaret Barber	External Affairs Manager, Oregon International Port of Coos Bay	541.266.3713	<a href="mailto:mbarber@portofcoosbay.com">mbarber@portofcoosbay.com</a>
Laura Dorbuck	Neighboring landowner/member of public	541.888.6762	<a href="mailto:ldorbuck@gmail.com">ldorbuck@gmail.com</a>
Marty Giles	Owner, Wavecrest Discoveries	541.267.4027	<a href="mailto:mgiles@wavecrestdiscoveries.com">mgiles@wavecrestdiscoveries.com</a>
Jess Hampel	Owner, Coos Bay Oyster Company	541.888.9440	<a href="mailto:jesshampelcooyster@gmail.com">jesshampelcooyster@gmail.com</a>
Dave Lacey	Owner, South Coast Tours	541.373.0487	<a href="mailto:dave@southcoasttours.net">dave@southcoasttours.net</a>
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<b>STAFF/ADVISORS</b>			
Anne Friend	Rules Coordinator, OR Dep. of State Lands (DSL)	503.986.5245	<a href="mailto:anne.m.friend@state.or.us">anne.m.friend@state.or.us</a>
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Bree Yednock	Manager, South Slough Reserve/ OR Dept. of State Lands (DSL)	541.888.8270 ext. 302	<a href="mailto:bree.yednock@state.or.us">bree.yednock@state.or.us</a>
Robert Kentta	Confederated Tribes of Siletz Indians	541.444.8203	<a href="mailto:rkentta@ctsi.nsn.us">rkentta@ctsi.nsn.us</a>
Kassandra Rippee	Coquille Indian Tribe	541.756.0904 ext. 1216	<a href="mailto:kassandraripee@coquilletribe.org">kassandraripee@coquilletribe.org</a>
Stacy Scott	Confederated Tribes of Coos, Lower, Umpqua and Siuslaw Indians	541.888.7513	<a href="mailto:sscott@ctclusi.org">sscott@ctclusi.org</a>
<b>INTERESTED PARTIES</b>			
Meliah Masiba	Senior Policy & Legislative Analyst, OR Dept. State Lands (DSL)	503.986.5308	<a href="mailto:meliah.m.masiba@state.or.us">meliah.m.masiba@state.or.us</a>
Vicki Walker	Director, DSL	503-986-5224	<a href="mailto:vicki.walker@state.or.us">vicki.walker@state.or.us</a>
Rep. Caddy McKeown	Area Representative for Coos Bay	541-808-7596	<a href="http://Rep.caddymckeown@oregonlegislature.gov">Rep.caddymckeown@oregonlegislature.gov</a>

[South Slough National Estuarine Research Reserve - Chapter 142](#)

[Division 10](#)

[PUBLIC USES OF THE SOUTH SLOUGH NATIONAL ESTUARINE RESEARCH RESERVE](#)

**142-010-0020**

**Restricted Activities**

The following ~~public, noncommercial~~ uses of the Reserve are permitted with restrictions, subject to applicable fees under OAR 142, division 15 and to action taken by the Commission under rules 142-010-0025, 142-010-0030 and other appropriate governmental agency regulations:

- (1) Picking of forest greenery for personal use is permitted only upon written approval by the Manager. The amount gathered should be no more than 10 pounds per day unless otherwise stated in the permit.
- (2) Overnight use of the Reserve is allowed only with written permission of the Manager.
- (3) Chemical fertilizers, herbicides, or pesticides will be used within the Reserve only if necessary to assure sound management of the ecosystem. Any allowed application of such chemicals shall be approved in writing by the Commission, after consultation with the Advisory Group, in accordance with best management practices so as to prevent direct application or discharge to the estuary waters. It is the intent of the Commission to preferentially utilize nonchemical management techniques of pest control. Chemicals will be utilized for pest or weed control only after it has been determined that the nature and integrity of the ecosystem is endangered by the pest or weed.
- (4) Digging for artifacts is not permitted except as pursuant to ORS 273 .705 et seq. and with the written permission of the Commission.
- (5) Open fires are allowed only upon approval of the Reserve Manager.
- (6) Hunting is allowed only during authorized waterfowl and game hunting seasons, subject to Department of Fish and Wildlife regulations, except in specific areas where the Commission may prohibit hunting for the protection of the health, safety, and welfare of the public. Areas closed to hunting will be posted.
- (7) Hunting and Observation Blinds are allowed within the boundaries of the Reserve, but a blind must be taken down and removed from the Reserve at the end of each day.
- (8) Motorized boating is permitted except in special protection zones: areas excepted for public health, safety, and welfare, educational uses, and scientific research. Motorized boating will be at reduced speed that will limit the wake to less than a one-foot wave height in order to prevent disturbance to the tidelands and wildlife habitats.
- (9) Construction of boat launch and tie-up facilities is permitted only as necessary for health, safety, research, or education.
- (10) Oyster culture is limited to the 100 acres as provided in the OCZM grant. The Commission shall recommend appropriate action on each oyster culture application or changes to existing plats within the Reserve to the Reserve of Agriculture.

(11) Tree removal from Reserve lands may occur only with the approval of the Commission, after consultation with the Advisory Group, and only for the following reasons:

- (a) Salvage of windthrow, dead, and dying trees;
- (b) High risk to invasion of forest insects and diseases;
- (c) Hazards to visiting public and scientists;
- (d) Experimental and scientific projects;
- (e) To maintain adequate clear space for existing powerline corridors;
- (f) Thinning to maintain a healthy forest stand.

(12) Firewood cutting for personal use requires a permit from the Reserve Manager.

(13) Pets are permitted only if on a leash or under the direct control of the owner.

(14) Recreational mineral gathering requires a permit from the Manager.

(15) Horseback riding is permitted except in designated areas and not within any watercourse. Information about designated areas may be obtained at Reserve Headquarters.

(16) Picnicking is permitted except in designated areas.

(17) Recreational mushroom gathering, up to a maximum of one gallon per day, is permitted except in designated areas.

(18) Recreational berry picking is permitted except in designated areas.

(19) Recreational bait gathering is permitted except in designated areas subject to Oregon Reserve of Fish and Wildlife regulations.

(20) Recreational clamming is permitted except in designated areas.

(21) No dredging, filling or altering the natural environment except upon the approval of the proposed activities by the Commission.

(22) Motorized off-road vehicles are prohibited except on designated county-maintained roads or driveways approved by the Commission.

(23) Construction of roads is not allowed except by special permit issued by the Commission.

(24) No deliberate introduction of a non-native species (or subspecies) within the Research Reserve's administrative boundaries without the prior approval of the Commission

(25) Trapping within the Reserve's administrative boundaries is prohibited, except for research or management purposes, and then only with the approval of the Manager.

(26) Commercial guiding within the Reserve is prohibited unless authorized under a Permit issued by the Reserve Manager and in compliance with any conditions imposed by that Permit

(~~2627~~) New or increased commercial and noncommercial activities which are not existing as of the creation of the Reserve in June 1974 must be authorized by the Reserve Manager after consultation and approved approval by the Commission.

**Statutory/Other Authority:** ORS 273

**Statutes/Other Implemented:** ORS 273

**History:**

SSNER 1-2008, f. & cert. ef. 4-14-08

SSNER 1-1998, f. & cert. ef. 7-15-98

SSES 2-1982, f. & cert. ef. 3-2-82

SSES 2-1980, f. & cert. ef. 12-23-80

**NOTICE OF PROPOSED RULEMAKING FILING  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

*For internal agency use only.*

Department of State Lands

OAR 142-10

Rules Coordinator:

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**FILING CAPTION**

**In the Matter of OAR Chapter 142, Division 010, revisions to the Public Uses of the South Slough National Estuarine Research Reserve (SSNERR), Restricted Activities**

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Last Date and Time for Public Comment: [September 30, 2019, 5 pm]

Monday, September 23, 2019	4:30-6:30 pm	61907 Seven Devils Road, Charleston, OR 97420	Anne Friend
Hearing Date	Time	Address	Hearings Officer
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Hearing Date	Time	Address	Hearings Officer
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Hearing Date	Time	Address	Hearings Officer

**RULEMAKING ACTION**

*List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.*

**ADOPT:**

**AMEND:**  
141-010-0020

**REPEAL:**

**RULE SUMMARY:**

*Include a summary for each rule included in this filing.*

142-010-0020 changing the language that specifies restricted activities at the South Slough National Estuarine Research Reserve (SSNERR).

## STATEMENT OF NEED AND FISCAL IMPACT.

Need for Rule(s):

OAR 142-010-0020(26) states that any new or increased commercial activities which are not existing as of the creation of the SSNERR in June 1974 must be approved by the South Slough National Estuarine Research Reserve Management Commission (Commission). Commercial guiding is not currently an existing or allowable use in the SSNERR.

On November 29, 2018, at the 152nd Regular Meeting of the SSNERR Management Commission, the Commission asked reserve staff to develop a permitting process to allow commercial guiding in the SSNERR. This decision was made to meet the need of interested commercial guide vendors whose activities can contribute to the reserve's goals of managing the estuary for long-term education, research, and stewardship.

Fiscal and Economic Impact:

This rulemaking is unlikely to pose significant fiscal and economic impacts. The rule will implement a special use permitting process by which SSNERR will regulate commercial guiding, which is currently not permitted. Fees associated with the permit will cover costs of staff time in reviewing the application, training permitted guides, and monitoring potential impacts of the activity.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

### *1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):*

Agencies: The state agencies that are most likely to be economically affected by the rule include: SSNERR/Department of State Lands (DSL), but there is not expected to be any economic impact to this state agency. SSNERR will implement the proposed rules. The proposed changes will include implementing fees to cover the costs of the new permit process incurred by SSNERR/DSL

Local Governments: City and county local governments may be economically affected by the rule in a positive way. The proposed rule change will create the opportunity for expanded recreation opportunities that could increase the number of tourists visiting the area and/or extend the length of time tourists stay in the area, which would increase revenues from the local Transient Lodging Tax.

Public: The members of the public are unlikely to be economically affected by the rule.

### *2. Cost of compliance effect on small business (ORS 183.336):*

*a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:*

Small businesses: Currently, commercial guiding companies are not permitted to operate in

the SSNERR. Under the proposed rule, guiding companies would only experience a financial impact if they apply for a fee-based permit. The fee-based permit would enable these companies to expand their operations into the SSNERR, which could ultimately result in a positive economic impact to them. SSNERR estimates that there are fewer than 5 guiding companies and organizations that operate locally.

Other small businesses, including restaurants, stores, and lodging, may be positively economically impacted through increased spending by tourists participating in permitted activities allowed by the proposed rule.

*b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:*

The proposed rule will establish a permitting process that includes a requirement that permit holders provide an annual report stating the number of days in which the permitted activity was conducted, and the number of clients served. This obligation will not require the assistance of professional services.

*c. Equipment, supplies, labor and increased administration required for compliance:*

The proposed rule change will require guiding companies who choose to apply for a permit to meet requirements described in the permit application, which include safety and guiding certifications, minimum standards for insurance coverage, and participation in a reserve-led training. There may be administrative and labor costs of compliance by the permit holder. No additional equipment or supplies are required of small businesses to comply with the rule.

Describe how small businesses were involved in the development of these rule(s)?

Persons representing small businesses are part of the Rules Advisory Committee. These include commercial guiding companies and oyster growers that operate in the South Slough. Efforts were made to include additional businesses from the local area in the Resource Advisory Committee. SSNERR will expand outreach to local small businesses to encourage participation during the public comment period.

Documents Relied Upon, and where they are available:

The South Slough Reserve Manager conducted a survey of the other 28 reserves in the National Estuarine Research Reserve System to determine which reserves allow commercial guiding and how the activities are regulated, monitored, and managed. Information from that survey and the following documents were used to develop the South Slough Reserve's permitting process and outline a need for enforcing a permit obligation through rulemaking:

United States Forest Service Special Use Permit Application:

<https://www.fs.fed.us/r2/recreation/special-use/forms/new-forms/fs-2700-4i.pdf>

Bureau of Land Management Special Use Permit Application:

[https://www.blm.gov/sites/blm.gov/files/recreation\\_specialrecreationform.pdf](https://www.blm.gov/sites/blm.gov/files/recreation_specialrecreationform.pdf)

The Oregon State Marine Board Guiding Certification program:



<https://www.oregon.gov/osmb/Pages/Guides-Charters.aspx>

A draft permit for commercial activities from the Oregon Parks and Recreation Department (OPRD) was also used and is available from the Safety and Risk Manager at OPRD.

The Department of Administrative Services (DAS) Risk Assessment Toolkit and consultation with a DAS risk consultant were also helpful in evaluating the risk of commercial guiding and developing permit requirements. The Risk Assessment Toolkit can be accessed here:

<https://www.oregon.gov/das/Risk/Pages/Toolkitra.aspx>

The minutes from meetings of the South Slough National Estuarine Research Reserve Management Commission document the progress towards establishing commercial guiding as a restricted use in the South Slough Reserve. Materials for the Commission's regular meetings are posted online and include the minutes from the previous regular meeting:

<https://www.oregon.gov/dsl/SS/Pages/ManagementCommission.aspx>. Below are details on meetings relevant to this topic:

July 19, 2018 (151st Regular Meeting): The issue of commercial guiding in the reserve was presented to the Commission. They asked that more information be provided by reserve staff at the next regular meeting.

November 29, 2018 (152nd Regular Meeting): Recommendations were presented to the Commission for a permitting process and operating requirements for commercial guides using the reserve. The Commission voted for reserve staff to create an Advisory Group to assist with the development of a permitting process.

March 21, 2019 (153rd Regular Meeting): An update was provided to the Commission on the status of the commercial permit development, including the presentation of a draft permit application and monitoring plan to assess impacts of commercial guiding activities. The Commission voted to proceed with completing the permit application with input from the Advisory Group and after legal review by the Department of Justice.

May 13, 2019 (Special Meeting): An updated draft (reviewed by the Advisory Group and Department of Justice) of the commercial permit application was discussed by the Commission. The Commission provided edits to improve language and asked for more information on the insurance requirements. The Commission voted to pursue temporary rulemaking to amend the existing rule to include commercial guiding as a restricted use and for permanent rulemaking to take place before the temporary rule expires in December 2019.

Was an Administrative Rule Advisory Committee consulted? Yes or No?

If not, why not?

Yes. A Rule Advisory Committee meeting will be held in Charleston, Oregon, on August 20, 2019