



Rulemaking Advisory Committee

Permitting and Mitigation in
Oregon's Wetlands and Waters
(Division 85)

March 12, 2025





Meeting Agenda

Amazon Prairie – Mitigation Site / Photo: Melody Rudenko, DSL

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.
- Closed captions are available.
- Please use the chat for questions and comments
- 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:

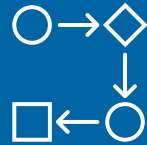
- Proposed changes to rule language covering:
 - Stream compensatory mitigation
 - Supporting mitigation banking options
 - Accurate mapping of Estuaries on Oregon's coast
 - Clarity and minor updates

Administrative Rules



Oregon Administrative Rules (OAR) are any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes statute or policy, or describes the procedure or practice requirements of any agency. (ORS 183.310(9))

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 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



RAC Member Consensus

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



RAC Member Consensus

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



Schedule of Meetings

#	Date	Topic
1	March 12	Administrative Overview: RAC orientation and background
2	April 2	Jurisdiction and accurate mapping of estuaries on Oregon's coast, and minor proposed updates in removal-fill permitting
3	May 21	Background Presentation: Stream compensatory mitigation framework: policies, accounting protocol, and assessment method.
4	June 11	Discuss Rule Language: Stream compensatory mitigation framework: policies, accounting protocol, and assessment method (cont.)
5	July 9	Other mitigation topics (e.g., umbrella banking, in-lieu fee programs)
6	August 6	Wrap-up and review the draft notice materials

RAC Operating Principles



Rulemaking Team

The facilitator is your primary contact throughout this rulemaking.

Madeline Kane

MKane@kearnswest.com

719-209-5138

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

- Danielle Boudreaux, Rules Coordinator, danielle.boudreaux@dsl.oregon.gov
- Melody Rudenko, Mitigation Specialist, melody.rudenko@dsl.oregon.gov
- Grey Wolf, Mitigation Specialist, grey.wolf@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.
- 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 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



Program Overview



The Department's Removal-Fill Program is in place to make sure that

- Impacts to waters of this state are consistent with the protection, preservation, and best use of those resources
- Navigation, fishing, and public recreation are preserved

The laws that establish this program can be found in ORS 196.600 through 196.921 and govern the removal of material from the beds and banks or filling of the waters of this state, which include wetlands.

Program Overview



These goals are accomplished through

- Requiring mitigation for the losses of aquatic resources, including the functions and values
- Permitting removal-fill activities, which include individual and general permits, although some activities are exempt from permits
- Compliance to the removal fill law or permitted activities through enforcement actions

Rules Governing the Removal Fill Program



OAR 141-085, the rules governing removal-fill, covers a wide range of topics:

- Which waters of this state are jurisdictional and require permits
- Actions that are exempt from permitting
- Permitting process, including how the Department makes decisions
- Mitigation requirements
- How the mitigation banking and in-lieu fee programs work
- Advance aquatic resource plans
- Enforcement actions



Aquatic Resource Management - Jurisdiction

DSL determines jurisdiction by

- Type of water of this state
- Volume of material

Waters of this state include

- Wetlands
- Rivers and streams
- Bays and estuaries
- Lakes, reservoirs, large ponds
- Pacific Ocean (to 3 miles offshore)



Aquatic Resource Management - Permitting

Work in waters of this state require authorization from DSL such as

- General permit
- General authorizations
- Permit exemption
- Individual permit

These projects must avoid and minimize negative impacts. Mitigation is required for resource losses, including replacement of the functions and values of the aquatic resource.



Individual Permits

Projects that need an individual permit include:

- Residential subdivisions
- Commercial development
- New culverts, roads, or other infrastructure
- Habitat improvement projects that don't qualify for a general authorization or exemption



Aquatic Resource Management – Mitigation

The goal of mitigation is to work toward a zero net loss of Oregon's aquatic resources while protecting their long-term environmental and social benefits.



*Photo: Amazon Prairie – Mitigation Site /
Melody Rudenko, DSL*

The Mitigation Process

- Avoidance
- Minimization/Rectification
- **Compensatory Mitigation**



Compensatory Mitigation Options

- Permittee Responsible Mitigation (PRM)
- Mitigation Bank – credit purchase
- In-Lieu Fee (ILF) - credit purchase
- Payment in Lieu (PIL)



Stream Mitigation

Unlike mitigation for wetland impacts, when an activity impacts a river or stream there is currently not a set method for determining how much mitigation needs to be provided.

This results in stream compensatory mitigation being determined on a case-by-case basis.

Rulemaking: Overview and Need



Need for Rulemaking



- Clarity, efficiency, and transparency of regulatory process
- Stream compensatory mitigation framework that is predictable and effective
- Address gaps in guidance for umbrella mitigation banks, and in-lieu fee programs

Need for Rulemaking



- Attainment of “no net loss” goal of program
- Limitations of which projects are considered habitat restoration
- Mapping coastal of waters and wetlands improvements

Overview of Rulemaking



Some of the proposed updates OAR 141-085 include:

- Expand permitting exemptions for voluntary habitat improvements and allow DSL to waive certain application requirements.
- Introduce an additional scientifically recognized method to determine the extent of tidal areas.
- Improve rule clarity based on staff and stakeholder feedback.

Rulemaking Scope



This rulemaking has a targeted goal that mainly focuses on amending rules related to mitigation. Proposed changes to the rules will be reviewed and discussed by the RAC, and members are encouraged to improve upon DSL's proposed changes.

If recommended changes that are beyond the scope of this rulemaking arise during discussion, DSL will make note of those changes for future rulemaking projects.

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.



Poll: Preferred Meeting Time

Morning

- Begin at 9:00

Afternoon

- Begin at 1:00



What's Next?

Middle Fork – Willamette River / Photo: Dan Cary, DSL

- Following this meeting Department staff will set up office hours for 10 a.m. on the Monday before each RAC meeting to answer technical and programmatic questions for RAC members. These hours are subject to change based on staff availability.
- In the next week, a meeting summary will be sent to RAC members along with a reminder to set up a 30-minute interview with our facilitator, 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

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