



Oregon

Kate Brown, Governor

Department of State Lands

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Oregon Ocean Science Trust Rulemaking

July 10, 2020

Agenda Item

SUBJECT

Request for approval to permanently amend and adopt rules under Chapter 141, Division 141, Rules Governing the Oregon Ocean Science Trust.

ISSUE

The proposed rule changes under OAR 141-141 are necessary to provide the OOST with direction on how to exercise its new statutory authority under 2019 SB 753 (ORS 196.570) for entering into agreements with private, non-profit organizations for fundraising purposes, and distributing the funds received.

AUTHORITY

ORS 196.565(6)

BACKGROUND

Since the OOST's creation in 2013, it has not received legislative appropriations to carry out its mission of supporting ocean science research. Recent conversations aimed to find alternate ways for the Trust to carry out its mission, resulting in Senate Bill 753 (2019). Broadly, SB 753, codified as ORS 196.576, allows the OOST executive director to enter into formal agreements with non-profit organizations, under which the non-profit shall solicit gifts, grants, and donations in support of the Trust's work. It is important to note that these funds are separate and distinct from the funds available to the OOST in the Oregon Ocean Science Fund (ORS 196.567) within the treasury. These rules are necessary to clarify the OOST executive director's authority and the parameters for entering into such agreements.

The Department of State Lands, in conjunction with the OOST, filed a temporary rule effective March 1, 2020. The temporary rule expires on August 27, 2020. DSL and the OOST initiated rulemaking in April 2020.

PUBLIC INVOLVEMENT

Rules Advisory Committee (RAC)

The Department held two RAC meetings on April 23 and May 8 to review and comment on the proposed rule language and the fiscal impact statement. The meetings were facilitated by Laura Anderson, OOST Executive Director, and the following individuals served as RAC members:

- Bob Bailey, Retired – Department of Land Conservation & Development, Coastal Program
- Jena Carter, The Nature Conservancy
- Heather Chase Alexander, National Fish & Wildlife Foundation
- Sarah Kolesar, Oregon State University – Oregon Sea Grant
- Scott McMullen, Oregon Fishermen’s Cable Committee
- Laura Tesler, Oregon Department of Fish & Wildlife
- Shelby Walker, Oregon State University – Oregon Sea Grant, OOST Member

Public Notice

After the RAC meetings concluded and the Notice of Proposed Rulemaking was filed, the Department sent a news release and MailChimp notice to interested parties and stakeholders.

Legislators were also noticed under ORS 183.335(15), which included the sponsors of SB 753 (2019) and the chairs and co-chairs of the committees which heard the bill.

- Senator Roblan, Chief Sponsor of SB 753 (2019)
- Representative Gomberg, Sponsor of SB 753 (2019)
- Representative McKeown, Sponsor of SB 753 (2019)
- Senator Dembrow, Chair, Senate Committee on the Environment and Natural Resources
- Senator Olsen, Co-chair, Senate Committee on the Environment and Natural Resources
- Representative Witt, Chair, House Committee on Natural Resources
- Representative Gorsek, Co-chair, House Committee on Natural Resources
- Representative Sprenger, Co-chair, House Committee on Natural Resources

Public Hearings

The Department held one public hearing on the proposed rules on June 16, 2020. The hearing was held remotely over Zoom to comply with Governor Brown's "Stay Home, Save Lives" executive order. One person attended the hearing and provided testimony in support of the rule change.

In total, the Department received three comments on the proposed rule, which are shown in detail in Appendix C.

Besides voicing support for the new rules, public comment suggested that the OOST consider extending funding eligibility to tribal governments.

Decision Point

The OOST should discuss the public comment regarding tribal eligibility.

Possible revised language put forward by DSL legal council to extend funding eligibility to tribal governments.

(1) The OST may make direct, noncompetitive grants to public entities, a public body as defined in ORS 174.019, a public university listed in ORS 352.002, or any federally recognized Indian tribe in Oregon, ~~including but not limited to state agencies, county agencies, local agencies, or public universities,~~ for projects that advance the strategic priorities of the OOST.

Action Item

Approval of the proposed changes to OAR 141-141, allowing the OOST to partner with private, non-profit organizations for fundraising purposes, and possibly, extending funding eligibility to tribal governments.

Next Steps

If adopted, the rule will go into effect on August 13, 2020, two weeks before the temporary rules expire.

APPENDICES

A. Final Rules

- B. Notice of Proposed Rulemaking including the Statement of Need, Fiscal Impact Statement, and Draft Rules
- C. Public Comments
- D. Temporary Rule Filing

Chapter 141, Division 141

RULES GOVERNING THE OREGON OCEAN SCIENCE TRUST ~~COMPETITIVE GRANTS PROGRAM~~

141-141-0100

Purpose and Applicability

These rules govern the Oregon Ocean Science Trust (OOST) ~~competitive grants program, subject to available funding.~~

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565–196.57069

History: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0110

Policies

(1) The OOST shall promote peer-reviewed, competitive research and monitoring that leads to increased knowledge and understanding of Oregon’s ocean and coastal resources.

(2) The OOST shall promote innovative, collaborative, community-oriented, multi-institutional approaches to research, monitoring and data management related to Oregon’s ocean and coastal resources.

~~The OOST shall identify funding priorities periodically through a public process.~~

(3) The OOST shall enhance this state’s capacity for peer-reviewed scientific ocean and coastal research; and

~~(3)–(4) The OOST shall, subject to available funding, establish and execute a competitive grant program to conduct research and monitoring related to Oregon’s ocean and coastal resources. [2013 c.776 §2]~~

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565–196.57069

History: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0120

Definitions

(1) “Oregon Ocean Science Trust (OOST)” has the meaning provided in ORS 196.565.

(2) "Oregon's Ocean and Coastal Resources" means the ocean and coast resources under the jurisdiction of the state of Oregon and adjacent waters.

(3) "Period of Performance" means the period between the project start and end dates as specified in the executed grant agreement.

(4) "Person" means any individual or entity.

(5) "Science and Technical Advisory Committee (STAC)" has the meaning provided in ORS 196.451.

~~(6) "Technical Review" means a review of the proposed projects requested by the OST and performed by individuals qualified by their experience to evaluate proposed activities.~~

(6) "Peer Review" means scrutiny of work or ideas by colleagues (peers) who are qualified to provide scientific merit-based review.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565–196.570~~69~~

History: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0130

Competitive Grants Process

(1) The OOST shall oversee a competitive grants process that will carry out funding priorities established by the OOST.

(2) The OOST, or a third party administrator selected by the OOST, shall solicit and review proposals to address the funding priorities.

~~(2)-(3) The OOST may use a portion of funds available to support the administrative costs of the OOST or the costs of a third party administrator selected by the OOST.~~

~~(3)-(4) The competitive grants process shall consist of the following:~~

(a) Development of a request for proposals (RFP).

(A) The OOST shall develop an RFP for each grant cycle.

(B) Pre-proposals may be requested depending on the scope of the RFP. Requirements of any pre-proposals will be described in the RFP.

(b) Issuance and notification of the RFP.

(A) Any person may submit a proposal to the competitive grant program in accordance with the eligibility requirements outlined in the RFP.

(B) Details of proposal length and scope will be specified in the RFP and shall include information necessary for objective evaluation of the submission such as but not limited to:

(i) Qualifications of investigators to complete the work;

- (ii) Alignment of proposed activities with [OOST](#) funding priorities;
- (iii) Potential partners and their anticipated involvement;
- (iv) Identification of a fiscal agent;
- (v) Planned outcomes;
- (vi) Realistic project timeline;
- (vii) Budget and budget justification, including sources and amount of cash and in-kind matching funds;
- (viii) Peer review process; and
- (ix) Data management plan.

(c) ~~Peer/Technical~~ review of all proposals received in response to the RFP.

(A) Written evaluation of each project based on established criteria shall be provided by ~~technical-peer~~ reviewers to the [OOST](#) along with funding recommendations. Review criteria may include but are not limited to:

- (i) Projects that are cost-effective, innovative, collaborative and multi-institutional; and
- (ii) Include involvement by, or address issues relevant to, community stakeholders with interests in Oregon's ocean and coastal resources.

(B) Actual and perceived conflicts of interest shall be avoided in the review process.

(d) Selection of proposals to be funded, contingent upon availability of funds.

(A) In the event a third party administrator is selected by the [OOST](#) to manage the competitive grants process, the third party shall provide recommendations to the [OOST](#) based on the ~~peertechinical~~ review process. The [OOST](#) is the final decision authority in selection of proposals to be funded, unless such authority is inconsistent with the terms of any agreement reached under OAR 141-141-01870.

(B) The [OOST](#)'s funding decision shall take into account overall programmatic considerations such as but not limited to:

- (i) The balance of priorities addressed;
- (ii) Geographic regions and communities represented; and
- (iii) The diversity of participants within the portfolio of proposals being considered.

(C) Notification of supported projects shall be publicly disseminated.

(e) Development and execution of grant agreements with selected proposals and their applicants.

(A) Each successful applicant shall enter into a grant agreement with the [OOST](#) or its administrator.

(B) All grant agreements will be on a form provided by the [OOST](#) that has been approved by the Oregon Department of Justice.

(C) No grant expenditures may be incurred outside of the period of performance.

(D) The grant agreement describes requirements as determined by the OOST, which may include but are not limited to those related to:

- (i) Schedule and submission of deliverables;
- (ii) Project management;
- (iii) Allowable administrative costs;
- (iv) Insurance requirements;
- (v) Schedule for the release of grant payments;
- (vi) Requirements for release of funds;
- (vii) Data accessibility;
- (viii) Compliance with local, state, federal and other applicable regulations; and
- (ix) Programmatic and financial reporting.

(f) Engagement and management of interactions with applicants during proposal development and review, and project and grant execution including but not limited to technical and fiscal oversight.

(A) The OOST, or third party administrator, will serve as the point-of-contact for management and questions regarding all aspects of the grant program.

(B) The OOST reserves the right to negotiate and/or adjust the final grant amount and work plan prior to the award as appropriate and consistent with OOST policy and funds available.

(g) Management of grant reporting requirements.

(A) Programmatic and financial reporting requirements will be outlined in the grant agreement.

(B) Continued support of grants is subject to compliance with grant agreements and approval of required reports.

(C) Future funding is contingent on successful completion and reporting of existing grants.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565–196.570~~69~~

History: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0140

Management of data reporting and data management requirements

(1) Data and information collected or created under OOST grants must be publicly visible and accessible in a timely manner at no cost, with the exception of reproduction costs, in a format which is machine-readable and based on open standards along with the metadata necessary to find and properly use the data.

(2) The grant agreement shall stipulate when data access must be provided. The data access deadline shall be no later than two years after the performance period end except where limited by law, regulation, policy or by security requirements.

(3) The RFP shall stipulate requirements for proposals to include data management and accessibility plans.

(4) Applicants who fail to share data as required in the grant agreement may be subject to a number of sanctions including but not limited to denial of future awards, freezing of funds in any current awards or repayment of the award.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565–196.57069

History: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0150

Request for Qualifications (RFQ)

(1) The OOST may request qualifications in order to support a project or activity that has not been proposed for funding through the competitive grants process but may be necessary for the OOST to address one or more funding priorities.

(2) Proposals submitted by qualified applicants shall be managed in the same manner as outlined in OAR 141-141-0130 and 141-141-0140 above.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565–196.57069

History: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0160

Competitive Grants Program Evaluation

(1) The OOST shall request that the competitive grants program be evaluated at regular intervals by the STAC based on evaluation criteria developed by the STAC in consultation with the OOST.

(2) Results of the evaluation will be communicated to the Oregon State Legislature, the State Land Board and the public.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565–196.57069

History: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0170

Grants to Public Entities

(1) The OOST may make direct, noncompetitive grants to public entities, including but not limited to state agencies, county agencies, local agencies, or public universities, for projects that advance the strategic priorities of the OOST.

(2) The grant making authority in subsection (1) is in addition to the authority in ORS 196.568 to reimburse the State Treasurer, the Department of State Lands, or other agencies for the costs of administering the fund or supporting the trust.

(3) The OOST may use a portion of funds received to support the administrative costs of the OOST.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565–196.57069

History:

141-141-01870

Agreement with Private, Nonprofit Organizations

(1) Under the direction of the OOST, the executive director of the OOST may enter into an agreement with a private, nonprofit organization under which the organization shall solicit gifts, grants and donations in support of the work of the trust.

(2) The agreement may allow for the private, nonprofit organization to:

(a) Distribute the funds received to any person who submits a proposal for an activity that advances the strategic priorities of the OOST, consistent with the policies and procedures established by the private, nonprofit organization, and the statutes, rules, policies and procedures under which OOST operates, or

(b) Transfer the funds received to the OOST for deposit into the Oregon Ocean Science Fund to be used as provided for in ORS 196.567.

~~(a)~~(c) Acknowledge that the OOST may use a portion of the funds received to support the administrative costs of the OOST.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565–196.57069

History:

Commented [WK1]: Proposed language: “(1) The OOST may make direct, noncompetitive grants to a public body as defined in ORS 174.019, a public university listed in ORS 352.002, or any federally recognized Indian tribe in Oregon for projects that advance the strategic priorities of the OOST.”

OFFICE OF THE SECRETARY OF STATE
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SECRETARY OF STATE

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INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 141
DEPARTMENT OF STATE LANDS

FILED
05/29/2020 9:23 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend/Adopt 141-141, Rules Governing the Oregon Ocean Science Trust

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/01/2020 4:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Kaitlyn Wiggins
503-986-5279
kaitlyn.r.wiggins@state.or.us

775 Summer St NE
#100
Salem, OR 97301

Filed By:
Kaitlyn Wiggins
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/16/2020

TIME: 4:30 PM - 5:30 PM

OFFICER: Kaitlyn Wiggins

ADDRESS: Zoom Meeting

Request Zoom link by email or online.

Salem, OR 97301

SPECIAL INSTRUCTIONS:

To request Zoom link, go to DSL's
webpage under Laws & Rules, or email
Rules Coordinator at
kaitlyn.r.wiggins@state.or.us.

NEED FOR THE RULE(S):

The amendments and new rules included in this notice are needed to provide the OOST with direction on how to exercise its new statutory authority under 2019 SB 753 (ORS 196.570) for entering into agreements with private, nonprofit organizations for fundraising, and distributing those funds. Since the OOST's creation in 2013, it has not received legislative appropriations to carry out its mission of supporting ocean science research. The new authority granted to the OOST in 2019, allows the OOST's executive director to enter into a formal agreement with a non-profit, under which the non-profit organization shall solicit gifts, grants, and donations in support of the work of the trust. Funds solicited are separate and distinct from funds available to the OOST in the Oregon Ocean Science Fund (ORS 196.567), within the treasury. This rule is needed to clarify the OOST Executive Director's authority and the parameters for entering into such an agreement.

In addition, these amendments and new rules outline the OOST's competitive grant program, ability to award noncompetitive grants to public entities, ability to pay administrative fees, and clarify definitions for peer-review and

competitive research and competitive grants.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 2829 (2019), Oregon State Legislature

SB 753 (2019), Oregon State Legislature

ORS 196.570, Oregon State Legislature

FISCAL AND ECONOMIC IMPACT:

It is believed that there will be no significant fiscal or economic impacts to small businesses as a result of this rulemaking.

The Department of State Lands (DSL) is directed to provide administrative support to the Oregon Ocean Science Trust (OOST). The fiscal impacts of this administrative rule will be dependent on the success of the OOST in their ability to secure funding. Administration of a competitive grant program and other duties supported by DSL in the proposed rulemaking will be dependent on if the OOST chooses to use a third party to administer the grant program. If so, this rule change may only have a minimal fiscal impact to the agency. If not, further analysis will be needed.

While the OOST has the ability to contract administration of the grant program to a third party, any funds raised by the OOST would be appropriated to DSL for deposit in the Oregon Ocean Science Fund. Appropriated funds could then be spent over multiple biennia subject to authorization by the Legislature.

Since the OOST is not a state agency, they do not have the authority to authorize warrants upon money held in the State Treasury. As such, DSL will require additional expenditure limitation in order to disburse these appropriated funds as grants. Further analysis is needed to determine the correct level of additional Other Funds expenditure limitation in the 2021- 23 biennia related to these funds. It is unclear how quickly these funds will be disbursed as grants, and how much funding will be used from this account in each biennium.

Statutorily, up to 5% of funds in the Oregon Ocean Science Fund can be allocated to DSL for administrative support of the OOST. Further analysis is needed to determine staffing needs related to this rule change, however, that is funding dependent, which is not known at this time.

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) The OOST may make direct, noncompetitive grants to public entities, including but not limited to state agencies, county agencies, local agencies, or public universities, for projects that advance the strategic priorities of the OOST. The OOST also receives administrative support directly from the Oregon Department of State Lands. Additional activity of the OOST will require additional support from the agency.

(2) Small businesses may not be affected by this rule change. Small businesses could apply for competitive grant funding and may be awarded those funds. A small business could also be hired to support the OOST as the third-party administrator of the grant program. These effects would all be voluntary participation in the OOST program and would not be considered compliance costs.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Local small businesses were represented in this rulemaking through the participation of Oregon Fishermen's Cable Committee as a member of the Rules Advisory Committee. The Oregon Fishermen's Cable Committee is a coastal non-profit representing Oregon's commercial fishermen. Fishermen and commercial vessels can be used in research and monitoring efforts but are not required to participate in OOST projects or programs through the adoption of these rules. Participation is voluntary and will not directly impact small businesses.

Additionally, a coastal restaurant small business owner is supporting the RAC as the current executive director of the OOST. While not a member of the public, her participation will add insight and can offer additional small business perspective.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

141-141-0100, 141-141-0110, 141-141-0120, 141-141-0130, 141-141-0140, 141-141-0150, 141-141-0160, 141-141-0170, 141-141-0180

AMEND: 141-141-0100

RULE SUMMARY: 141-141-0100 is amended to recognize the broader scope of the rule division, update statutes implemented to align with legislation adopted in 2019, and to change the acronym "OST" to "OOST".

CHANGES TO RULE:

141-141-0100

Purpose and Applicability ¶¶

These rules govern the Oregon Ocean Science Trust (OOST) ~~competitive grants program, subject to available funding.~~

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0110

RULE SUMMARY: 141-141-0110 is amended to more closely align with the statutory direction of the Trust, to update statutes implemented to align with legislation adopted in 2019, and to change the acronym "OST" to "OOST".

CHANGES TO RULE:

141-141-0110

Policies ¶

(1) The QOOST shall promote peer-reviewed, competitive research and monitoring that leads to increased knowledge and understanding of Oregon's ocean and coastal resources. ¶

(2) The QOOST shall promote innovative, collaborative, community-oriented, multi-institutional approaches to research, monitoring and data management related to Oregon's ocean and coastal resources. ¶

(3) The QOOST shall ~~identify funding priorities periodically through a public process~~ enhance this state's capacity for peer-reviewed scientific ocean and coastal research; and ¶

(4) The OOOST shall, subject to available funding, establish and execute a competitive grant program to conduct research and monitoring related to Oregon's ocean and coastal resources. [2013 c.776 ¶2]

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0120

RULE SUMMARY: 141-141-0120 is amended to define "peer review," remove the definition of "technical review," update statutes implemented to align with legislation adopted in 2019, and change the acronym "OST" to "OOST" for consistency.

CHANGES TO RULE:

141-141-0120

Definitions ¶¶

- (1) "Oregon Ocean Science Trust (OOST)" has the meaning provided in ORS 196.565.¶¶
- (2) "Oregon's Ocean and Coastal Resources" means the ocean and coast resources under the jurisdiction of the state of Oregon and adjacent waters.¶¶
- (3) "Period of Performance" means the period between the project start and end dates as specified in the executed grant agreement.¶¶
- (4) "Person" means any individual or entity.¶¶
- (5) "Science and Technical Advisory Committee (STAC)" has the meaning provided in ORS 196.451.¶¶
- (6) "~~Technical~~Peer Review" means ~~a review of the proposed projects requested by the OST and performed by individuals qualified by their experience to evaluate proposed activities~~scrutiny of work or ideas by colleagues (peers) who are qualified to provide scientific merit-based review.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0130

RULE SUMMARY: 141-141-0130 is amended to clarify that the Oregon Ocean Science Trust may pay for administrative costs and to allow third party administrators the ability to make funding decisions, consistent with the new authority in SB 753 (2019), codified in ORS 196.570. The acronym "OST" is also changed to "OOST," statutes implemented is updated to align with legislation adopted in 2019, and the term "technical review" is replaced with "peer review."

CHANGES TO RULE:

141-141-0130

Competitive Grants Process ¶¶

(1) The QOOST shall oversee a competitive grants process that will carry out funding priorities established by the QOOST.¶¶

(2) The QOOST, or a third party administrator selected by the QOOST, shall solicit and review proposals to address the funding priorities.¶¶

(3) The OOST may use a portion of funds available to support the administrative costs of the OOST or the costs of a third party administrator selected by the OOST.¶¶

(4) The competitive grants process shall consist of the following:¶¶

(a) Development of a request for proposals (RFP).¶¶

(A) The QOOST shall develop an RFP for each grant cycle.¶¶

(B) Pre-proposals may be requested depending on the scope of the RFP. Requirements of any pre-proposals will be described in the RFP.¶¶

(b) Issuance and notification of the RFP.¶¶

(A) Any person may submit a proposal to the competitive grant program in accordance with the eligibility requirements outlined in the RFP.¶¶

(B) Details of proposal length and scope will be specified in the RFP and shall include information necessary for objective evaluation of the submission such as but not limited to:¶¶

(i) Qualifications of investigators to complete the work;¶¶

(ii) Alignment of proposed activities with QOOST funding priorities;¶¶

(iii) Potential partners and their anticipated involvement;¶¶

(iv) Identification of a fiscal agent;¶¶

(v) Planned outcomes;¶¶

(vi) Realistic project timeline;¶¶

(vii) Budget and budget justification, including sources and amount of cash and in-kind matching funds;¶¶

(viii) Peer review process; and¶¶

(ix) Data management plan.¶¶

(c) ~~Technical~~Peer review of all proposals received in response to the RFP.¶¶

(A) Written evaluation of each project based on established criteria shall be provided by ~~technical~~peer reviewers to the QOOST along with funding recommendations. Review criteria may include but are not limited to:¶¶

(i) Projects that are cost-effective, innovative, collaborative and multi-institutional; and¶¶

(ii) Include involvement by, or address issues relevant to, community stakeholders with interests in Oregon's ocean and coastal resources.¶¶

(B) Actual and perceived conflicts of interest shall be avoided in the review process.¶¶

(d) Selection of proposals to be funded, contingent upon availability of funds.¶¶

(A) In the event a third party administrator is selected by the QOOST to manage the competitive grants process, the third party shall provide recommendations to the QOOST based on the ~~technical~~peer review process. The QOOST is the final decision authority in selection of proposals to be funded, unless such authority is inconsistent with the terms of any agreement reached under OAR 141-141-0180.¶¶

(B) The QOOST's funding decision shall take into account overall programmatic considerations such as but not

limited to:¶¶

(i) The balance of priorities addressed;¶¶

(ii) Geographic regions and communities represented; and¶¶

(iii) The diversity of participants within the portfolio of proposals being considered.¶¶

(C) Notification of supported projects shall be publicly disseminated.¶¶

(e) Development and execution of grant agreements with selected proposals and their applicants.¶¶

(A) Each successful applicant shall enter into a grant agreement with the QOST or its administrator.¶¶

(B) All grant agreements will be on a form provided by the QOST that has been approved by the Oregon Department of Justice.¶¶

(C) No grant expenditures may be incurred outside of the period of performance.¶¶

(D) The grant agreement describes requirements as determined by the QOST, which may include but are not limited to those related to:¶¶

(i) Schedule and submission of deliverables;¶¶

(ii) Project management;¶¶

(iii) Allowable administrative costs;¶¶

(iv) Insurance requirements;¶¶

(v) Schedule for the release of grant payments;¶¶

(vi) Requirements for release of funds;¶¶

(vii) Data accessibility;¶¶

(viii) Compliance with local, state, federal and other applicable regulations; and¶¶

(ix) Programmatic and financial reporting.¶¶

(f) Engagement and management of interactions with applicants during proposal development and review, and project and grant execution including but not limited to technical and fiscal oversight.¶¶

(A) The QOST, or third party administrator, will serve as the point-of-contact for management and questions regarding all aspects of the grant program.¶¶

(B) The QOST reserves the right to negotiate and/or adjust the final grant amount and work plan prior to the award as appropriate and consistent with QOST policy and funds available.¶¶

(g) Management of grant reporting requirements.¶¶

(A) Programmatic and financial reporting requirements will be outlined in the grant agreement.¶¶

(B) Continued support of grants is subject to compliance with grant agreements and approval of required reports.¶¶

(C) Future funding is contingent on successful completion and reporting of existing grants.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0140

RULE SUMMARY: 141-141-0140 is amended to change the acronym "OST" to "OOST" and update statutes implemented to align with legislation adopted in 2019

CHANGES TO RULE:

141-141-0140

Management of data reporting and data management requirements ¶

(1) Data and information collected or created under OOST grants must be publicly visible and accessible in a timely manner at no cost, with the exception of reproduction costs, in a format which is machine-readable and based on open standards along with the metadata necessary to find and properly use the data.¶

(2) The grant agreement shall stipulate when data access must be provided. The data access deadline shall be no later than two years after the performance period end except where limited by law, regulation, policy or by security requirements.¶

(3) The RFP shall stipulate requirements for proposals to include data management and accessibility plans.¶

(4) Applicants who fail to share data as required in the grant agreement may be subject to a number of sanctions including but not limited to denial of future awards, freezing of funds in any current awards or repayment of the award.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0150

RULE SUMMARY: Updating statutes implemented to align with legislation adopted in 2019, and to change the acronym "OST" to "OOST".

CHANGES TO RULE:

141-141-0150

Request for Qualifications (RFQ) ¶

(1) The QOOST may request qualifications in order to support a project or activity that has not been proposed for funding through the competitive grants process but may be necessary for the QOOST to address one or more funding priorities.¶

(2) Proposals submitted by qualified applicants shall be managed in the same manner as outlined in OAR 141-141-0130 and 141-141-0140 above.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0160

RULE SUMMARY: 141-141-0160 is amended to change the acronym "OST" to "OOST," and to update statutes implemented to align with legislation adopted in 2019.

CHANGES TO RULE:

141-141-0160

Competitive Grants Program Evaluation ¶

(1) The QOOST shall request that the competitive grants program be evaluated at regular intervals by the STAC based on evaluation criteria developed by the STAC in consultation with the QOOST.¶

(2) Results of the evaluation will be communicated to the Oregon State Legislature, the State Land Board and the public.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

ADOPT: 141-141-0170

RULE SUMMARY: 141-141-0170 is adopted to explain Oregon Ocean Science Trust's authority to make noncompetitive grants to public entities.

CHANGES TO RULE:

141-141-0170

Grants to Public Entities

(1) The OOST may make direct, noncompetitive grants to public entities, including but not limited to state agencies, county agencies, local agencies, or public universities, for projects that advance the strategic priorities of the OOST. ¶

(2) The grant making authority in subsection (1) is in addition to the authority in ORS 196.568 to reimburse the State Treasurer, the Department of State Lands, or other agencies for the costs of administering the fund or supporting the trust. ¶

(3) The OOST may use a portion of funds received to support the administrative costs of the OOST.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565 - 196.570

ADOPT: 141-141-0180

RULE SUMMARY: 141-141-0180 is adopted to explain the Oregon Ocean Science Trust's ability to enter into agreements with private, nonprofit organizations for fundraising and grant distributions. This new authority is based on 2019 SB 753, codified in ORS 196.570.

CHANGES TO RULE:

141-141-0180

Agreement with Private, Nonprofit Organizations

(1) Under the direction of the OOST, the executive director of the OOST may enter into an agreement with a private, nonprofit organization under which the organization shall solicit gifts, grants and donations in support of the work of the trust.¶

(2) The agreement may allow for the private, nonprofit organization to:¶

(a) Distribute the funds received for an activity that advances the strategic priorities of the OOST, consistent with the policies and procedures established by the private, nonprofit organization, and the statutes, rules, policies and procedures under which OOST operates, or¶

(b) Transfer the funds received to the OOST for deposit into the Oregon Ocean Science Fund to be used as provided for in ORS 196.567.¶

(c) Acknowledge that the OOST may use a portion of the funds received to support the administrative costs of the OOST.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565 - 196.570



OAR 141-141 Rulemaking Public Comments

1) Christine Moffitt, Friends of South Slough

DSL received written testimony from Christine Moffitt, President of Friends of South Slough (FOSS), which is attached on page 2.

2) Peggy Joyce & Rebecca Gladstone, League of Women Voters of Oregon (LWVOR)

DSL received written testimony submitted on behalf of Peggy Joyce, LWVOR Coastal Portfolio, and Rebecca Gladstone, LWVOR President, which is attached on page 4.

3) The OOST received three comments regarding the OOST rule change, from Cyndi Karp of Mid-Coast Water Planning Partnership, Brett Kenney of Plank House LLC, and Linda Palmer.

Comment: "I strongly support Oregon Ocean Science Trust rules changes to be able to partner with private nonprofits for fundraising purposes. Under the new rules proposed by the state, will provide an excellent future progress for Ocean Research. Work together is a good thing. Public & Private Partnerships are an Oregon way of helping collaboration, coordination & accomplish grants funding for ocean research. Oregon Legislators understand the importance of Oregon working together with numerous partners to accomplish Oregon research goals."

Comment: "At 141-141-0170 please consider including all of Oregon's nine tribal governments as eligible grant recipients."

Comment: "Yes, I agree for Oregon Ocean Science Trust to partner with private nonprofit organizations in order to make financing happened."

June 30, 2020

Oregon Department of State Lands
Rules Coordinator
775 Summer St. NE
Suite 100
Salem, Oregon 97301
rules@dsl.state.or.us



Subject: Public comment on rule change allowing the Oregon Ocean Science Trust to partner for fundraising purposes.

The Friends of South Slough (FOSS) stands in strong support of the proposed rule change for Oregon Ocean Science Trust to continue to allow funding support from nonprofit partners to further their mission in ocean science research.

The Oregon Ocean Science Trust provides critical science based information, that leads to informed decision making for Oregon's policy makers. This is especially critical as ocean conditions are changing rapidly due to climate change.

FOSS is an independent all-volunteer, board-run not for profit corporation based in Charleston, Oregon. Since its inception, our primary mission and activities have been to support the operations and activities of the South Slough National Estuarine Research Reserve, southernmost arm of the Coos Estuary on the southern Oregon Coast.

The rule change for Oregon Legislature's 2019 Senate Bill 753 will make it easier for the Oregon Ocean Science Trust to partner with nonprofit partners such as FOSS. This change is even more important today than in 2019.. As State revenue shortfalls continue as a result of the world-wide pandemic, non-government funding contributions can help offset those shortfalls.

Sincerely,

A handwritten signature in blue ink that reads "Christine M. Moffitt".

Christine M. Moffitt
President



Todd Buchholz
Vice President

Cc: Senator Arnie Roblan



The League of Women Voters of Oregon is a 100-year-old grassroots nonpartisan political organization that encourages informed and active participation in government. We envision informed Oregonians participating in a fully accessible, responsive, and transparent government to achieve the common good. LWVOR Legislative Action is based on advocacy positions formed through studies and member consensus. The League never supports or opposes any candidate or political party.

June 29, 2020

To: DSL Rules Coordinator
775 Summer St. NE, Suite 100
Salem, OR 97301
Email: rules@dsl.state.or.us

Re: Rules Governing the Oregon Ocean Science Trust (OOST)

Since the League's testimony on behalf of the creation of OOST in 2013, nothing has changed as dramatically as the accelerated impact of rising ocean temperatures and the devastation of ocean acidification and hypoxia on Oregon's fishing industry. Our coastal areas bear the brunt of this change, exacerbated this year by the economic devastation wrought by COVID-19 on small businesses and tourism dependent cities and towns along the entire coast of Oregon.

Without understanding the science behind coastal and nearshore management efforts - towns, small cities and the marine industries that depend on thriving ocean ecosystems for survival, are at risk of failure not only in the short term but long term development of new industries whose ultimate successes depend on scientific data to support their economic and ecological risk.

Without a sustained and ongoing funding source OOST cannot fulfill the mandate that created it in 2013.

The League of Women Voters of Oregon supports rules allowing OOST to enhance the state's capacity for peer-reviewed scientific ocean and coastal research by establishing and executing a competitive grant program to conduct research and monitoring related to Oregon's ocean and coastal resources.

We urge the support of administrative rules that will allow OOST to fulfill its intended mission established in 2013 and thank you for the opportunity to publicly speak on this rule change.

A handwritten signature in black ink that reads "Rebecca L. Gladstone".

Rebecca Gladstone
LWVOR President

A handwritten signature in black ink that reads "Peggy Joyce".

Peggy Joyce
LWVOR Coastal Portfolio

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DSL 1-2020
CHAPTER 141
DEPARTMENT OF STATE LANDS

FILED
02/13/2020 3:13 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amendment to OAR Chapter 141, Division 141: Rules Governing the Oregon Ocean Science Trust

EFFECTIVE DATE: 03/01/2020 THROUGH 08/27/2020

AGENCY APPROVED DATE: 01/24/2020

CONTACT: Kaitlyn Wiggins
503-986-5279
kaitlyn.r.wiggins@state.or.us

755 Summer St. NE
Suite 100
Salem, OR 97301

Filed By:
Kaitlyn Wiggins
Rules Coordinator

NEED FOR THE RULE(S):

The amendments and new rules are needed to provide the Ocean Science Trust with direction on how to exercise its statutory authority under 2019 SB 753 (ORS 196.570) for entering into agreements with private, nonprofit organizations for fundraising.

JUSTIFICATION OF TEMPORARY FILING:

In 2019, the legislature passed House Bill 2829, which allocated \$1,000,000 to the State Department of Fish and Wildlife for the Oregon Conservation and Recreation Fund. The Fund is intended to provide the Department of Fish and Wildlife with money for the conservation, management, research, habitat improvements, enforcement, outdoor recreation, education and other activities that serve to protect, maintain or enhance the fish and wildlife resources of Oregon. However, money in this Fund cannot be released unless the Department of Fish and Wildlife has raised matching funds from sources other than state government. Matching funds must be deposited into the Fund before July 1, 2021.

Also in 2019, the legislature passed SB 753, which allowed the Ocean Science Trust to partner with private, nonprofit organizations for fundraising. Together, these new legislative authorities allow the Ocean Science Trust to tap into the resources of private, non profit organizations to reach private donors who could provide matching funds for the Oregon Conservation and Recreation Fund.

Given the legislative deadlines on the Fund, the opportunity will diminish if action is not taken quickly. If the rules are not adopted, it could result serious prejudice to the public in the form of lost opportunities that could be realized from use of funds made available under HB 2829 (2019). Failure to enact temporary rules will delay and may hinder the ability of the Ocean Science Trust to form agreements and begin the fundraising efforts.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 2829 (2019) - Oregon Legislative Information System (OLIS)

SB 753 (2019) - OLIS

ORS 196 - Oregon State Legislature

RULES:

141-141-0100, 141-141-0110, 141-141-0130, 141-141-0170, 141-141-0180

AMEND: 141-141-0100

RULE TITLE: Purpose and Applicability

RULE SUMMARY: OAR 141-141-0100 is amended to recognize the broader scope of the rule division.

RULE TEXT:

These rules govern the Oregon Ocean Science Trust (OST).

STATUTORY/OTHER AUTHORITY: ORS 196.565(6)

STATUTES/OTHER IMPLEMENTED: ORS 196.565–196.569

AMEND: 141-141-0110

RULE TITLE: Policies

RULE SUMMARY: The rule is amended to more closely align with the statutory direction of the Trust.

RULE TEXT:

- (1) The OST shall promote peer-reviewed, competitive research and monitoring that leads to increased knowledge and understanding of Oregon's ocean and coastal resources.
- (2) The OST shall promote innovative, collaborative, community-oriented, multi-institutional approaches to research, monitoring and data management related to Oregon's ocean and coastal resources.
- (3) The OST shall enhance this state's capacity for peer-reviewed scientific ocean and coastal research; and
- (4) The OST shall, subject to available funding, establish and execute a competitive grant program to conduct research and monitoring related to Oregon's ocean and coastal resources. [2013 c.776 §2]

STATUTORY/OTHER AUTHORITY: ORS 196.565(6)

STATUTES/OTHER IMPLEMENTED: ORS 196.565–196.569

AMEND: 141-141-0130

RULE TITLE: Competitive Grants Process

RULE SUMMARY: The rule is amended to clarify that Ocean Science Trust may pay for administrative costs and to allow third party administrators the ability to make funding decisions, consistent with the new authority in SB 753 (2019), codified in ORS 196.570.

RULE TEXT:

- (1) The OST shall oversee a competitive grants process that will carry out funding priorities established by the OST.
- (2) The OST, or a third party administrator selected by the OST, shall solicit and review proposals to address the funding priorities.
- (3) The OST may use a portion of funds available to support the administrative costs of the OST or the costs of a third party administrator selected by the OST.
- (4) The competitive grants process shall consist of the following:
 - (a) Development of a request for proposals (RFP).
 - (A) The OST shall develop an RFP for each grant cycle.
 - (B) Pre-proposals may be requested depending on the scope of the RFP. Requirements of any pre-proposals will be described in the RFP.
 - (b) Issuance and notification of the RFP.
 - (A) Any person may submit a proposal to the competitive grant program in accordance with the eligibility requirements outlined in the RFP.
 - (B) Details of proposal length and scope will be specified in the RFP and shall include information necessary for objective evaluation of the submission such as but not limited to:
 - (i) Qualifications of investigators to complete the work;
 - (ii) Alignment of proposed activities with OST funding priorities;
 - (iii) Potential partners and their anticipated involvement;
 - (iv) Identification of a fiscal agent;
 - (v) Planned outcomes;
 - (vi) Realistic project timeline;
 - (vii) Budget and budget justification, including sources and amount of cash and in-kind matching funds;
 - (viii) Peer review process; and
 - (ix) Data management plan.
 - (c) Technical review of all proposals received in response to the RFP.
 - (A) Written evaluation of each project based on established criteria shall be provided by technical reviewers to the OST along with funding recommendations. Review criteria may include but are not limited to:
 - (i) Projects that are cost-effective, innovative, collaborative and multi-institutional; and
 - (ii) Include involvement by, or address issues relevant to, community stakeholders with interests in Oregon's ocean and coastal resources.
 - (B) Actual and perceived conflicts of interest shall be avoided in the review process.
 - (d) Selection of proposals to be funded, contingent upon availability of funds.
 - (A) In the event a third party administrator is selected by the OST to manage the competitive grants process, the third party shall provide recommendations to the OST based on the technical review process. The OST is the final decision authority in selection of proposals to be funded, unless such authority is inconsistent with the terms of any agreement reached under OAR 141-141-0170.
 - (B) The OST's funding decision shall take into account overall programmatic considerations such as but not limited to:
 - (i) The balance of priorities addressed;
 - (ii) Geographic regions and communities represented; and
 - (iii) The diversity of participants within the portfolio of proposals being considered.

- (C) Notification of supported projects shall be publicly disseminated.
- (e) Development and execution of grant agreements with selected proposals and their applicants.
- (A) Each successful applicant shall enter into a grant agreement with the OST or its administrator.
- (B) All grant agreements will be on a form provided by the OST that has been approved by the Oregon Department of Justice.
- (C) No grant expenditures may be incurred outside of the period of performance.
- (D) The grant agreement describes requirements as determined by the OST, which may include but are not limited to those related to:
 - (i) Schedule and submission of deliverables;
 - (ii) Project management;
 - (iii) Allowable administrative costs;
 - (iv) Insurance requirements;
 - (v) Schedule for the release of grant payments;
 - (vi) Requirements for release of funds;
 - (vii) Data accessibility;
 - (viii) Compliance with local, state, federal and other applicable regulations; and
 - (ix) Programmatic and financial reporting.
- (f) Engagement and management of interactions with applicants during proposal development and review, and project and grant execution including but not limited to technical and fiscal oversight.
- (A) The OST, or third party administrator, will serve as the point-of-contact for management and questions regarding all aspects of the grant program.
- (B) The OST reserves the right to negotiate and/or adjust the final grant amount and work plan prior to the award as appropriate and consistent with OST policy and funds available.
- (g) Management of grant reporting requirements.
- (A) Programmatic and financial reporting requirements will be outlined in the grant agreement.
- (B) Continued support of grants is subject to compliance with grant agreements and approval of required reports.
- (C) Future funding is contingent on successful completion and reporting of existing grants.

STATUTORY/OTHER AUTHORITY: ORS 196.565(6)

STATUTES/OTHER IMPLEMENTED: ORS 196.565–196.569

ADOPT: 141-141-0170

RULE TITLE: Agreement with Private, Nonprofit Organizations

RULE SUMMARY: This rule is added to explain Ocean Science Trust's ability to enter into agreements with private, non profit organizations for fundraising and grant distributions. This new authority is based on 2019 SB 753, codified in ORS 196.570.

RULE TEXT:

- (1) Under the direction of the OST, the executive director of the OST may enter into an agreement with a private, nonprofit organization under which the organization shall solicit gifts, grants and donations in support of the work of the trust.
- (2) The agreement may allow for the private, nonprofit organization to:
 - (a) Distribute the funds received to any person who submits a proposal for an activity that advances the strategic priorities of the OST, consistent with the procedures established by the private, nonprofit organization, or
 - (b) Transfer the funds received to the OST for deposit into the Oregon Ocean Science Fund to be used as provided for in ORS 196.567.
 - (c) Acknowledge that the OST may use a portion of the funds received to support the administrative costs of the OST.

STATUTORY/OTHER AUTHORITY: ORS 196.565(6)

STATUTES/OTHER IMPLEMENTED: ORS 196.565 - 196.569

ADOPT: 141-141-0180

RULE TITLE: Grants to Public Entities

RULE SUMMARY: The rule is added to explain Ocean Science Trust's authority to make noncompetitive grants to public entities.

RULE TEXT:

(1) The OST may make direct, noncompetitive grants to public entities, including but not limited to state agencies, county agencies, local agencies, or public universities, for projects that advance the strategic priorities of the OST.

(2) The grant making authority in subsection (1) is in addition to the authority in ORS 196.568 to reimburse the State Treasurer, the Department of State Lands, or other agencies for the costs of administering the fund or supporting the trust.

(3) The OST may use a portion of funds received to support the administrative costs of the OST.

STATUTORY/OTHER AUTHORITY: ORS 196.565(6)

STATUTES/OTHER IMPLEMENTED: ORS 196.565 - 196.569