

CARES Act Sec. 12005 Oregon Spend Plan framework – DRAFT 6/18/20



The Act

- \$300M available for potential disbursement to “...commercial and charter fishery participants affected by the novel coronavirus...”
- For the purposes of Sec. 12005, “fishery participants” include Tribes, persons, fishing communities, aquaculture businesses not otherwise eligible for assistance under part 1416 of title 7 of the Code of Federal Regulations for losses related to COVID-19, processors, or other fishery-related businesses, who have incurred, as a direct or indirect result of the coronavirus pandemic, economic revenue losses >35% as compared to the prior 5-year average revenue; or any negative impacts to subsistence, cultural, or ceremonial fisheries.
- Funds may be awarded under this section on a rolling basis, and within a fishing season, to ensure rapid delivery of funds. This fund is available for disbursements until September 30, 2021, of which up to 2% may be used for administration and oversight activities.

Additional NOAA direction/guidance

- Approximately \$16M of the \$300M is available to Oregon (\$15,982,827), determined in part from a NOAA assessment of economic revenue of Oregon-based businesses participating in marine and coastal fisheries relative to other states and tribes.
- Tribes have a separate allocation and process, so tribal fisheries will not be part of Oregon’s process or disbursement.
- The main categories for which funds can be utilized include direct payments, fishery-related infrastructure, fishery-related education that address direct and indirect COVID-19 impacts to commercial fishermen, charter businesses, qualified aquaculture operations, subsistence/cultural/ceremonial users, processors, and dealers.
- Fishery participants eligible for potential funding include Oregon-based commercial fishing businesses, charter/for-hire fishing businesses, qualified aquaculture operations, processors, and other fishery-related businesses that are associated with marine and coastal fisheries. It does not include businesses farther down the supply chain (including vessel repair businesses, restaurants, or seafood retailers). NOAA is not expecting disbursements to gear/tackle businesses, but leaves it up to each state to make that determination.
 - States, Tribes, and Territories have the discretion to determine how they will identify fishery participants, consistent with the requirements of the CARES Act.
 - Fishery participants can only be eligible for assistance if from their state/territory of residence.
 - Oregon-based commercial mariculture businesses can be included in Oregon’s process as long as they are not otherwise eligible for assistance under part 1416 of title 7 of the Code of Federal Regulations for losses related to COVID-19, and are open-system marine aquaculture.
- The economic loss to fishery participant must be greater than 35 percent as compared to the prior 5-year average revenue (2015-2019). Entities that have been in business less than 5 years are still eligible for assistance via processes to be developed by the state.

- Each fishery participant receiving CARES Act funding must certify that if they receive any additional COVID-19 related federal financial assistance and/or is able to collect traditional revenue, the sum of all funds will not exceed the participant's average annual revenue earned across the previous 5 years.
- Eligible fishery participants cannot receive other CARES Act funding or other federal funding for the same revenue losses that they receive through this funding process.
- Approval of applications and disbursement of funds can be directly through the Pacific States Marine Fisheries Commission (PSMFC) or through the state's department of fish and wildlife.
- ODFW is Oregon's lead agency for developing a "spend" plan for Oregon's \$16M allocation.
 - The spend plan will clarify the categories for which funds will be used, criteria/information for determining who can be an applicant and application materials and deadlines, timeframe for assessing revenue loss due to Covid-19, proportion of loss necessary for relief eligibility, documentation necessary to support claims, allocation of eligible losses within available funds, and the process for disbursement of funds.
 - Spend plan may include costs for preparing the spend plan and/or for economic analyses that are needed for the spend plan.
 - NOAA must approve ODFW's spend plan before eligible businesses can submit applications to PSMFC for review and disbursement of relief funds consistent with ODFW's spend plan.
- Although Oregon's \$16M can be available for disbursement until September 30, 2021, federal guidance is to get spend plans approved and applications processed in time for disbursements by the end of August, 2020, or shortly thereafter.
 - NOAA will assess disbursement processes at the end of August relative to spend plans, and provide additional guidance/direction if disbursements are not being implemented as planned.
 - Direct Payments are expressly allowed by the CARES Act, however, applications must address direct payments as follows:
 - Direct payments may not be directed to minors.
 - Funds cannot be used to compensate state, local, or tribal governments for lost municipal or government tax revenue.
 - Funds must be used to address fishery related direct or indirect losses or tribal subsistence/cultural/ceremonial impacts.
 - Participants can only be eligible for assistance from their state/territory of residence.
- Disbursement of funds will be audited by the federal Office of Inspector General.
 - Applicants receiving CARE Act funds must retain records/documents necessary to support their claims and received funds for three years after receiving the funds.

Draft framework for Oregon Spend Plan

- *Overarching Concept:* Direct payments to individual businesses based on COVID-related losses scaled to available funds. Eligible applicants would certify, through affidavit and documentation, their relative (>35%) and absolute (\$) loss of revenues for their fishery-related business due to COVID-19 in 2020 compared to average revenue for the five prior years (at least two years for new businesses) for the same monthly time period. The absolute loss for all eligible applicants that certified >35% loss would be totaled. If this total exceeds funds available, then disbursements would be scaled relative to the proportion of funds available compared to the total claims (e.g., if available funds were 50% of total funds claimed, then disbursement would be limited to 50% of each claim). If total claims exceed available funds, a maximum disbursement per applicant will be established to help level disbursements, and disbursements re-scaled accordingly. If total claims are less than available funds, a second round of applications will be solicited for a subsequent time period.
- Eligible business applicants
 - Commercial harvesters
 - Vessel commercial fishing license holder for at-sea harvesters
 - Non vessel harvesters (that do not also have vessel-based operations)
 - Limited fish seller (commercial harvester that sells directly off the vessel to the public) will be covered as a commercial harvester business
 - Commercial processors
 - Reporting wholesale fish dealers (first receivers... purchase directly from commercial fishers and report on fish tickets)
 - Non-reporting wholesale fish dealer (purchase from other wholesale dealers and do not purchase from commercial fishers, so are not required to report on fish tickets)
 - Commercial fishing gear/bait/ice retailers if that is their business' primary source of revenue
 - Business must attest that gear/bait/ice sales associated with marine and/or anadromous fisheries make up over two-thirds of their overall annual revenues
 - Mariculture dealers utilizing open-system marine aquaculture and not otherwise eligible for assistance under part 1416 of title 7 of the Code of Federal Regulations for losses related to COVID-19.
 - Recreational charter and guide business owners
 - Only losses associated with fishing for marine species and/or anadromous species will be considered
 - Recreational gear/bait retailers if that is their business' primary source of revenue
 - Business must attest that gear/bait sales associated with marine and/or anadromous fisheries make up over two-thirds of their overall revenues
 - Must be a "business" and home-based in Oregon
 - For purposes of this spend plan, a business is a participant in marine and/or anadromous fisheries home-ported or based in Oregon, and has either a commercial fishing vessel license (ODFW), a commercial fishing license for non-vessel commercial harvesters (ODFW), a reporting or non-reporting wholesale

- fish or bait dealer license (ODFW), a guide or charter license (OSMB), or, for gear/bait/ice retailers, Oregon Secretary of State business registration.
 - If the Oregon business is part of a broader business located in another state, then only the Oregon-based component of the business can be claimed for Oregon funding, and that Oregon-based component cannot be claimed as part of a funding request from another state
 - Oregon-based business' participating in fisheries in other states can claim those revenue losses in their Oregon claim, but only if they are not claiming those losses in another state.
- Business must have participated in marine and/or anadromous fisheries (or qualified shellfish mariculture) during same 2020 claim period (e.g., Mar-May) for the prior five years, or at least the prior two years (2018 and 2019) if the business was not established until after 2015.
- Business must provide documentation that 2020 gross revenues (not net revenues) associated with all marine/anadromous fishery participation during the months of COVID-19 impacts demonstrates a greater than 35% loss compared to average revenue for the prior five years for the same weeks or months.
 - An exception to requiring the prior 5-year average is allowed if the business was not licensed/registered/established until after 2015, but the business had to have been in place for a minimum of the two years preceding 2020 and all years in business must be used to calculate prior years' average revenue for the timeframe selected for losses.
 - Assessment of loss must be across all marine/anadromous fisheries participated in during the selected timeframes (i.e., cannot exclude fisheries not impacted by COVID-19).
 - An exception can be made for particular fisheries that have been federally designated as fishery disasters by the Secretary of Commerce, where those disaster years can be excluded from prior year averages (e.g., south of Falcon 2016-17 salmon troll fishery).
- Business must certify their claim and documentation through signed affidavit.
- Timelines for business claim and prior years assessment (i.e., weeks or months in 2020, and same timeframe for prior years for averaging).
 - The timeframe for assessing COVID-related impacts to each business' gross revenue across all fisheries can be any or all contiguous weeks between February 1, 2020, and June 30, 2020, inclusive, as long as the losses in 2020 were primarily due to COVID-related impacts, and not weather or other factors.
 - Timeframe selected must be contiguous (i.e., cannot omit weeks within timeframe) and span at least 4 weeks.
 - January 2020 is excluded because of relatively limited COVID-19 impacts and extreme weather events limiting access to fisheries.
 - Comparison years to assess prior average gross revenue must use the same timeframe as used to assess losses in 2020.

- If the business existed for this monthly timeframe in 2015, then the most recent five years preceding 2020 must be used to assess average gross revenue for comparison to 2020.
- If the business began after this weekly or monthly timeframe in 2015, but before this timeframe in 2018, then all available years of operation must be used to assess average gross revenue for comparison to 2020 (i.e., two to four years).
- If the business did not exist until after this weekly or monthly timeframe in 2018, then the business is not eligible for application and funding (i.e., need to have a minimum of two prior years in business to determine average gross revenues for comparison to 2020).
- Certification/documentation required in application
 - Identification of weeks/months used for impact assessment for 2020 (Feb through Jun options only) to be compared using same weeks/months timeframe for comparison years (five prior years, unless business not in place until after 2015, then at least prior two years).
 - Documentation of gross revenues across all fisheries participated in during the selected timeframe for 2020 and comparison years.
 - Certification that COVID-related losses in 2020 exceeded 35% of average for comparison years.
 - Certification of total loss difference in gross revenue attributable to COVID-19 between selected timeframe for 2020 and average gross revenue for same time period across all fisheries during comparison years.
 - Certification that if applicant receives any additional COVID-19 related federal financial assistance and/or is able to collect traditional revenue, the sum of all funds will not exceed the applicant's average **annual** revenue earned across the previous 5 years.
 - If applicant's total annual revenue for 2020, including this CARES Act relief, exceeds the total average annual revenue for the comparison years, the applicant must reimburse NOAA for the surplus up to the amount received for CARES Act relief.
 - Certification that applicant's business is based in Oregon, and that applicant and/or another representative of the business will not apply for Section 12005 of CARES Act funding relief from any other state, territory or tribe for the revenue losses claimed in the Oregon application.
 - Affidavit form for signature.
- Spend plan elements and timeline for submittal and approval
 - Oregon's Spend Plan will describe overall approach, define eligible business applicants, clarify criteria for assessing relative and absolute revenue loss associated with claims and allocation of eligible losses within available funds, identify documentation needed to support claim, provide affidavit form to certify claim, describe application materials/requirements/timeline/deadline, describe the process disbursing funds, and identify administrative costs eligible for reimbursement.
 - ODFW will coordinate with PSMFC and west coast states to ensure reasonable uniformity of approaches among states.

- Spend Plan will be submitted to PSMFC for NOAA approval by the end of June, 2020.
- Application materials/timeframe/deadline
 - Application materials will describe requirements and provide the forms necessary to complete the certification/documentation/affidavit information described above.
 - Application period will begin within one week of NOAA's approval of Oregon's spend plan, and extend for one month (we anticipate the application period will begin before mid-July 2020).
 - Eligibility requirements and application materials will be noticed/posted online at PSMFC website, with corresponding notices and links on the ODFW website and other relevant industry/business websites and other social and media platforms.
 - PSMFC, with assistance from ODFW and OSMB, will provide an email to all known commercial vessel license holders, processors and charters/guides informing them of the start of the application process and provide links to application eligibility and materials
 - Electronic or hand-delivered applications must be received at PSMFC office by the deadline, one month after the application period begins (assume will be before mid-August 2020). Applications mailed to PSMFC must be post-marked by the deadline.
- Disbursement process
 - PSMFC will be the disbursements agent for Oregon.
 - PSMFC, in coordination with ODFW, will review applications, follow up with applicants as necessary to clarify information, determine eligibility and disbursement amount, notify disqualified applicants for a one-week reconsideration process, and begin disbursements by the end of Aug 2020, with initial disbursements completed by the end of Sep 2020.
- Dispute process
 - PSMFC will notify applicants that did not meet Oregon's eligibility requirements or did not provide necessary certification and documentation or their claim exceeded supporting documentation. These applicants will have one week to correct deficiencies for PSMFC review and final determination, after which all decisions will be final.
- Public/stakeholder/business opportunity for input and feedback on Oregon's Spend Plan
 - ODFW webpage, email
 - PSMFC webpage
 - A virtual forum 6/24/20
 - Ongoing ad hoc discussion/vetting with sector leaders
 - Guides/Charters/Processors/Commodity Commissions/
 - Ongoing updates/coordination with local, state, federal reps
 - Coastal Caucus state legislators
 - Governor's Office/Executive Branch agencies
 - OR Congressional delegation
 - Ongoing PSMFC/CA/WA/AK/NOAA reps