

CARES Act Sec. 12005 Oregon Spend Plan

Prepared by Oregon Department of Fish and Wildlife and

Pacific States Marine Fisheries Commission

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Background

In March 2020 Congress passed the CARES Act to help provide relief from the coronavirus pandemic and associated COVID-19 disease. Section 12005 of the CARES Act made \$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. Sec. 12005 also specified that funds may be awarded on a rolling basis, and within a fishing season, to ensure rapid delivery of funds. Potential availability of funds could extend until September 30, 2021. Up to 2% of funds may be used for administration and oversight activities.

Additional NOAA direction/guidance

Just under \$16M of the \$300M is available to Oregon, determined in part from a National Oceanic and Atmospheric Administration (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. Tribal members participating in non-tribal state and/or federal fisheries may be eligible for funds covered under Oregon's spend plan, consistent with requirements for other businesses participating in non-tribal fisheries.

Fishery participants eligible for potential funding include Oregon-based commercial fishing businesses (including shellfishing), 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). Although NOAA is not expecting disbursements to gear/tackle businesses, the agency left 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.

The lost revenue to the fishery participant must be greater than 35% as compared to the prior 5-year average revenue (2015-2019). Individual years cannot be excluded from this prior 5-year average, even if the year included a federally designated fishery disaster. NOAA has left it to the states to determine how to address entities that have been in business less than 5 years.

NOAA also provided guidance on additional federal requirements for recipients of relief funds that applicants will have to affirm, such as: certifying that if they receive any additional COVID-19 related federal financial assistance and/or are able to collect traditional revenue (e.g., sales from fishing or processing), the sum of all funds will not exceed their average annual fishery-related revenue earned across the previous 5 years; and 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.

These and other federal requirements must be incorporated into application materials, along with additional state requirements for eligibility and qualification.

Oregon Department of Fish and Wildlife (ODFW) is Oregon's lead agency for developing a "spend plan" for Oregon's nearly \$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. Oregon's 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 for review and disbursement of relief funds consistent with ODFW's spend plan. Oregon's spend plan, once reviewed and approved by NOAA, may be used for any future funds appropriated by Congress for the same purpose.

The Pacific States Marine Fisheries Commission (PSMFC) is the disbursement agent for Oregon. PSMFC will develop application materials consistent with Oregon's spend plan and then solicit, review and approve applications prior to disbursing relief funds. Disbursement of funds is expected to be audited by the federal Office of Inspector General. Applicants receiving CARES Act funds must maintain records supporting their claims and proof of funds received for a period of no less than 3 years after the close of the primary grant award to PSMFC (i.e., retain records until at least September 30, 2025).

Overarching Approach for Oregon's Spend Plan

Direct payments will be made to individual businesses based on COVID-19-related losses scaled to available funds. Eligible applicants will 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 time period. The absolute loss for all eligible applicants that certified >35% loss will be totaled. If this total exceeds funds available, then disbursements will 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 cap will be placed on the maximum disbursement allowed per applicant to help level disbursements, and disbursements re-scaled accordingly. If total claims are less than available funds, a second round of applications may be solicited for a subsequent time period.

Eligible business applicants

Eligible applicants for Oregon's Sec. 12005 CARES Act relief are limited to commercial harvester and processor businesses, qualified mariculture businesses, recreational charter and guide businesses, and qualified retailers of fishing gear, tackle and bait. Specifications for eligibility follows.

Commercial harvesters: Eligible businesses are limited to the commercial fishing vessel license holder for vessel-based harvesters or the commercial fishing license holder for non-vessel harvesters that do not also have a commercial fishing vessel license. Limited fish sellers (commercial harvester that sells directly off the vessel to the public) are covered as a commercial harvester business based on the commercial fishing license holder.

Commercial processors: Eligible businesses are limited to reporting wholesale fish or bait dealers (often referred to as first receivers, who purchase directly from commercial fishers and report on fish tickets to ODFW), or non-reporting wholesale fish or bait dealers (purchase from other wholesale dealers and do not purchase from commercial fishers, so are not required to report on fish tickets).

Mariculture: Eligible businesses must have either a shellfish grower, shellstock shipper, or shellfish shucker/packer certification from Oregon Department of Agriculture; utilize product from open-system marine aquaculture (i.e., non-container and located in the marine or estuarine environment); and are 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 businesses: Eligible businesses are limited to charter and guide license holders. Only losses associated with fishing for marine species and/or anadromous species will be considered.

Fishing gear/tackle/bait retailers: Eligible businesses are limited to retail businesses where gear/tackle/bait sales associated with marine and/or anadromous fisheries make up over two-thirds of their overall annual revenues. For purposes of this spend plan, gear and tackle are defined as specific fishing equipment put into the water to catch fish, not equipment on the boat necessary to put that gear/tackle/bait into the water.

All of the above categories or sectors 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 license), a commercial fishing license for non-vessel commercial harvesters (ODFW license), a reporting or non-reporting wholesale fish or bait dealer license (ODFW license), a guide or charter license (Oregon State Marine Board (OSMB) license), shellfish grower, shellstock shipper, or shellfish shucker/packer certification (Oregon Department of Agriculture (ODA) certification) or, for gear/tackle/bait 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 (e.g., processing plant physically located in Oregon) 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 (e.g., harvester with Oregon commercial fishing vessel license) can claim those revenue losses in their Oregon claim, but only if they are not claiming those losses in another state.

Eligible claims

To make a potentially eligible claim, a business must have participated in marine and/or anadromous fisheries (or qualified shellfish mariculture) during the period of time impacted by COVID-19 in 2020 (e.g., Mar-May) as well as the prior five years, or at least the prior two years (2018 and 2019) if the business was not established until after 2015.

The business must state their claimed loss for 2020 and demonstrate that 2020 gross revenues (not net revenues) associated with all marine/anadromous fishery participation during the weeks or months timeframe of COVID-19 impacts represents a greater than 35% loss compared to average revenue for the prior five years for the same weeks or months (see below for more on timeframe and an exception to the prior 5-year average requirement). 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, and cannot exclude years, even if designated as fishery disaster by Secretary of Commerce). The business must certify their claim and documentation through signed affidavit.

The timeframe applicants select for assessing COVID-related impacts to their business' gross revenue across all fisheries must be between February 1, 2020, and June 30, 2020, inclusive, and reflect losses primarily due to COVID-related impacts, and not weather or other factors. The timeframe selected must be continuous (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 some fisheries.

The comparison years to assess prior average gross revenue must use the same weekly or monthly timeframe as used to assess losses in 2020. If the business existed for this 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).

A simple calendar timeframe (i.e., date) will be used for all fishery participants except Dungeness crab harvesters. Dungeness crab harvesters are required to translate their calendar dates in 2020 to a "days-from-opener" timeframe for their crab revenue in 2020 and then use that same days-from-opener timeframe for all comparison years. This is necessary because crab season opener dates have varied over the years, and crab harvester revenues are driven much more by days into the season than by calendar day. For seasons when areas opened on different dates, crab harvesters must use the opening date for the area they fished first. Applicants can access an online table that translates the days from opener to calendar dates, for each crab harvesting season (link provided with application materials). Dungeness crab harvesters who also participated in other fisheries during the selected timeframe will use the calendar date approach to compare all non-crab revenue.

Application materials

Application materials, including self-certification affidavit, are provided in Attachment A. Applications will provide the documentation and certification necessary to demonstrate revenue loss related to COVID-19 within the requirements of Sec. 12005 of the CARES Act, federal fund direct-payment rules, and Oregon's spend plan. Application documentation and certification includes the following for each business applicant.

- Certification that applicant's business is based in Oregon, and that applicant and/or another representative of the business will not apply for Sec. 12005 CARES Act funding relief from any other state, territory or tribe for the revenue losses claimed in the Oregon application.
- Relevant ODFW, OSMB or ODA license or certification for business eligibility (or Secretary of State registration for retail businesses).
- Identification of timeframe used for losses in 2020 (February through June options only) and comparison years (five prior years, unless business not in place until after 2015, then at least prior two years). For Dungeness crab harvesters, documentation of timeframe used must be translated into days-from-opener for crab revenue for consistency with comparison 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 the same timeframe 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 Sec. 12005 CARES Act relief, exceeds the total average annual revenue for the comparison years, the applicant must reimburse the federal government through PSMFC for the surplus up to the amount received for CARES Act relief.
- Certification requirements for federal direct payments.

Application timeline

The PSMFC will begin the application period as soon as possible after receiving NOAA's approval of Oregon's spend plan (approximately one week). The application period will extend for one month to ensure participants in summer fisheries have time to apply. We anticipate the application period will begin in August, 2020.

Eligibility requirements and application materials will be noticed/posted online at the PSMFC website, with corresponding notices and links on the ODFW website. ODFW will also request postings on other relevant industry/business websites and other social and media platforms. PSMFC, with assistance from ODFW, OSMB, and ODA will mail a postcard to all known 2020 fishery participants owning either a commercial fishing vessel license, wholesale fish or bait dealer license, charter/guide license, or shellfish grower, shellstock shipper, or shellfish shucker/packer certification informing them of the start of the application process and provide links to application eligibility and materials. There is not a realistic way to identify and mail all potentially eligible retailers of gear/bait/tackle, so these businesses will be covered through more passive outreach, including a press release and webpage notices.

All applications must be signed and mailed to PSMFC, and must be post-marked by the deadline one month after the application period begins.

Application review and fund disbursement

The PSMFC will be responsible for receiving and reviewing applications, approving business and claim eligibility (based on criteria specified in this plan), determining direct payment amounts, and disbursing payments. 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 (see below), and disburse direct payments to eligible businesses with approved claims. Disbursements are anticipated to begin in the fall of 2020, depending on the length of time needed for NOAA approval of the spend plan and PSMFC review and approval of applications.

Direct payment disbursements will be based on the sum of approved claims of eligible applicants scaled to available funds. Total available funds (\$15,768,349) represent the original allocation from NOAA

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(\$15,982,827) minus required federal withholding for Hollings and other assessments (\$111,784) and administrative and oversight costs for PSMFC (\$67,167) and ODFW (\$35,527), which is far below the 2% allowance in the CARES Act for administrative and oversight costs.

If total claims exceed available funds, then a maximum claim allowance will be imposed to help level disbursements, and claims readjusted to available funds incorporating this maximum allowance. The maximum claim allowance, if needed, will be 80% to 90% of the average ten-highest individual claims (80% if claims more than double available funds; 90% if claims exceed, but do not double available funds). If total claims are less than available funds, a second round of applications may be solicited for a subsequent time period.

Dispute process

PSMFC will notify applicants that did not meet Oregon's eligibility requirements, or did not provide necessary certification and documentation, or whose 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.