

CARES Act Sec. 12005 Oregon Spend Plan – Round Two

Prepared by Oregon Department of Fish and Wildlife and Pacific States Marine Fisheries Commission
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Background

In March 2021 NOAA Fisheries announced a second round of CARES Act funds to provide relief from the coronavirus pandemic. Section 12005 of the CARES Act provided funding 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 during the same period; or any negative impacts to subsistence, cultural, or ceremonial fisheries.

Additional NOAA direction/guidance

Just over \$13M of funds are available to Oregon for round two, 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. Applicants must be 18-years old or older. Non-residents are not eligible for funds unless they are residents of a state that did not receive a CARES Act allocation.

To qualify for CARES Act funds, an eligible participant’s revenue loss must be greater than 35% as compared to the average revenue in the comparable period across the prior five years (2015-2019). Individual years cannot be excluded from this prior 5-year average, even if no revenue was generated or 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 (details follow).

NOAA also provided guidance on federal requirements that applicants for relief funds will have to affirm, such as: certifying that if they receive(d) any additional COVID-19 related federal financial assistance and/or are or were able to collect traditional revenue (e.g., sales from fishing or processing), the sum of all revenues – including relief funds – will not exceed their average annual fishery-related revenue earned across the previous 5 years during the same period. 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. In short, applicants cannot be made “more than whole” as a result of federal COVID-19 aid received. Federal aid funds received for purposes other than COVID relief, such as tariff relief payments, are not included in this category.

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 allocation. The spend plan, provided here, describes the categories for which funds will be used, eligibility criteria, application materials and deadlines, timeframe for assessing revenue loss due to COVID-19, how available funds will be applied to eligible claims, 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. Oregon's spend plan for round two builds upon that used in round one, with improvements to address eligibility gaps found in round one, and to improve the application process. If funds remain after this round of distribution a subsequent round may be conducted.

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 may be audited and 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 loss of revenues for their fishery-related business due to COVID-19 for the applicable period in 2020 compared to average revenue for the same period in 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 the total of all claims exceeds funds available (as expected), then disbursements will be scaled relative to the 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 claim allowance will be imposed to help level disbursements. If total claims are more than double the available funds, the maximum claim cap will be 80% of the average of the ten highest individual claims. If total claims exceed but are not double the available funds, the maximum cap will be 90% of the average of the ten highest individual claims. If total claims are less than available funds, a second round of applications may be solicited.

Residency requirements

Applicants in the processor, mariculture, recreational charter/guide, or gear, bait, and tackle categories 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 that is home-ported or based in Oregon, and has either 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 or suitable alternative demonstrating legal retail activities.

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 with a CARES Act allocation.

Commercial harvesters must be Oregon residents, or participants in Oregon fisheries residing in another state that does not have a CARES Act allocation.

Oregon Revised Statute 497.002 defines residency for license, tag, and permit holders in Oregon, and this definition will be used in determining CARES Act fund eligibility:

“ORS 497.002 “Resident” and “nonresident” defined. Except as provided in ORS 497.006, as used in this chapter:

(1) “Resident” means a person who has resided in this state at least six consecutive months immediately prior to the date of making application for a license, tag or permit issued by the State Fish and Wildlife Commission. Temporary absence from the state for a purpose other than establishing residency outside the state shall not be considered in determining whether a person meets the residency requirements of this subsection.

(2) “Nonresident” means any person other than a resident. [1973 c.723 §41]”

Residency claims for individuals or entities may be reviewed at any time to ensure applications are in accordance with applicable state spend plan residency requirements. Holding an Oregon resident license improperly, or when also holding a resident license from another state or claiming residency in another state may, violate Oregon or other state laws. Following review for potential errors, applicants identified as suspect in terms of residency status will be referred for enforcement or appropriate administrative processes in each applicable state. If the appropriate authorities determine that the applicant held a resident license or permit improperly, the applicant will be deemed ineligible under this spend plan. Applicants who receive CARES Act funds and are later found to have been in violation of residency status may be subject to audit or legal action.

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 by sector follows.

Commercial harvesters: Most applicants in this category will be licensed in Oregon and participating in at least some Oregon fisheries. However, some commercial harvesting businesses are known to be residents of Oregon, but with all fishing activities conducted in another state, particularly Alaska. Federal guidelines specify that applicants residing in a state which received a CARES allocation must apply in that state, regardless of where fishing occurs.

Oregon resident commercial harvesters are eligible to claim revenue losses in marine and anadromous commercial fisheries only under the Oregon spend plan. An Oregon-based participant in marine and/or anadromous fisheries with a resident commercial fishing vessel license (ODFW license), or a resident commercial fishing license for non-vessel commercial harvesters (ODFW license) is eligible to apply.

Oregon residents who do not hold Oregon licensing and participate in marine and anadromous fisheries **only** as non-residents in another state must apply for losses in revenues in those fisheries under the Oregon spend plan. Such applicants will be required to attest in their application that they were an Oregon resident in 2020.

Applicants applying as individuals must attest to personal residence in Oregon; applicants applying as entities - companies, corporations, etc. - must attest that the business is permanently based in Oregon, even if fishing activities occur entirely out-of-state.

To be eligible, Oregon residents only participating in out-of-state fisheries must hold one or more of the following licenses or permits:

- **California** 2020 non-resident Commercial Fishing License or non-resident Vessel Permit.
- **Alaska** 2020 Commercial Fisheries Entry Commission (CFEC) non-resident Commercial Fishing Permit.
- **Alaska** 2020 fisheries federal Pacific Halibut and Sablefish Individual Fishing Quota Program Fishing permit.

- **Bering Sea and Aleutian Islands** 2020 Crab Rationalization Individual Fishing Quota Permit.
- **Alaska** 2020 NOAA Fisheries License Limitation Permit.
- **Washington** 2020 non-resident commercial license that authorizes fishing for or delivery of food fish or shellfish in Washington.
- **Other states** –non-resident 2020 state licensing comparable to those listed above.

Per federal guidelines, participants in Oregon fisheries who are not Oregon residents **and** reside in a state that does not have a CARES Act allocation may apply under the Oregon spend plan. Non-resident participants in Oregon fisheries that also participate in another state or states as a non-resident and are residents of a state without a CARES Act allocation should apply in the Oregon if the largest portion of their revenues from 2015-2019 fishing activities was generated in Oregon.

Residents of a state that does have a CARES Act allocation **must** apply in that state.

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 the 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 (Oregon State Marine Board). Only losses associated with fishing for marine species and/or anadromous species will be considered. Fisheries other than those for marine/anadromous species are not eligible for CARES Act funds.

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 boats nor equipment on the boat necessary to put that gear/tackle/bait into the water or any other non-fishing items.

Optional format using table summarizing residency and other eligibility criteria ----

<i>Recreational charter and guide businesses:</i>	Home-ported or based in Oregon. Charter and guide Oregon State Marine Board licenseholders. Only marine and anadromous fisheries are eligible; losses from other fisheries may not be claimed.
<i>Mariculture:</i>	Based in Oregon. Shellfish grower, shellstock shipper, or shellfish shucker/packer certification from Oregon Department of Agriculture; utilize product from open-system marine aquaculture; 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.
<i>Commercial processors:</i>	Based in Oregon. ODFW-licensed reporting wholesale fish or bait dealers, or non-reporting wholesale fish or bait dealers. If part of a business with operations in other states, only the portion of the business (e.g., processing plant) physically located in Oregon is eligible.

<p><i>Fishing gear/tackle/bait retailers:</i></p>	<p>Based in Oregon. Retail businesses where gear/tackle/bait sales associated with marine and/or anadromous fisheries make up over two-thirds of overall annual revenues.</p>
<p><i>Commercial harvesters:</i></p>	<p><u>Oregon Residents</u> Residents that fish in Oregon (wholly or in part): Holder of an Oregon commercial fishing vessel license for vessel-based harvesters, or an Oregon commercial fishing license holder for non-vessel harvesters. Includes Oregon limited fish sellers. <u>Claims should include revenues from all marine/anadromous fishing activities, whether in Oregon or in another coastal state(s).</u></p> <p>Oregon residents that do not hold Oregon commercial licenses:</p> <ul style="list-style-type: none"> • Alaska Commercial Fisheries Entry Commission Non-Resident Commercial Fishery Permit. • Alaska fisheries federal Pacific Halibut and Sablefish Individual Fishing Quota Program Fishing permit • Bering Sea and Aleutian Islands Crab Rationalization Individual Fishing Quota Permit • Alaska NOAA Fisheries License Limitation Permit • California non-resident Commercial Fishing License or Vessel Permit. • Washington non-resident commercial license that authorizes fishing for or delivery of food fish or shellfish in Washington. <p><u>Residents of Other States</u> A holder of an Oregon non-resident commercial fishing license that resides in a U.S. state or territory that <u>did not receive</u> a Sec. 12005 federal fund allocation <u>may apply under the Oregon spend plan.</u></p> <p>A holder of an Oregon non-resident commercial fishing license that resides in a U.S. state or territory that <u>did receive</u> a Sec. 12005 federal fund allocation must apply in the state of residency, not in Oregon.</p>

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 specified as well as the same period for 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 its claimed loss for 2020 and demonstrate that 2020 gross revenues (not net revenues) associated with all marine/anadromous fishery participation during the claimed timeframe of COVID-19 impacts represent 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 5-year average requirement). Calculation of loss must include revenues from 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 or if no revenue was generated that year). The business must certify its claim and documentation through signed affidavit.

Applicants must select a timeframe for assessing COVID-related impacts to their business' gross revenue across all fisheries of at least 28 continuous days between July 1, 2020, and December 31, 2020, inclusive. The selected timeframe should reflect losses primarily due to COVID-related impacts, not due to weather or other factors. Oregon's round one distribution covered the timeframe February 1-June 30, 2020.

Oregon residents in the commercial harvesting sector who only participate in out-of-state fisheries (defined below) were inadvertently excluded from eligibility in Oregon's Round One spend plan and will be allowed to include losses within the full period of February – December 2020 in a Round Two application. All other criteria remain the same as for other applicants – no less than 28 continuous days within the period, comparable prior 5-year average, etc. No other claims for the February – June 2020 period will be accepted in Round Two. Only Oregon-resident fishing entities or individuals who do not hold Oregon resident licensing, do not participate in Oregon marine/anadromous commercial fisheries, and are listed among the following may include losses during the period February – June 2020 in Round Two:

- **California** non-resident Commercial Fishing License or non-resident Vessel Permit.
- **Alaska** 2020 Commercial Fisheries Entry Commission (CFEC) non-resident Commercial Fishing Permit.
- **Alaska** 2020 fisheries federal Pacific Halibut and Sablefish Individual Fishing Quota Program Fishing permit.
- **Bering Sea and Aleutian Islands** 2020 Crab Rationalization Individual Fishing Quota Permit.
- **Alaska** 2020 NOAA Fisheries License Limitation Permit
- **Washington** 2020 non-resident commercial license that authorizes fishing for or delivery of food fish or shellfish in Washington.
- **Other states** – non-resident state licensing comparable to those listed above.

Comparison years to assess prior average gross revenue must use the same timeframe (date range) as used to assess losses in 2020. If the business existed for this timeframe in 2015, then years 2015-2019 must be used to assess average gross revenue for comparison to 2020. If the business began after this 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). All available years in the average period must be used, even if no revenue was received. If the business did not exist until after this timeframe in 2018, then the business is not eligible for application and funding – a business must have a minimum of two prior years in business to determine average gross revenues for comparison to 2020.

Process for calculating relative revenue loss:

To determine relative revenue loss for the purpose of round two of CARES Act fishery relief funding in Oregon, eligible applicants should follow these steps:

- 1) Select a period of at least 28 continuous days between July 1 and December 31 (except out-of-state applicants inadvertently omitted from Oregon's round 1 as described above may select a starting date as early as Feb. 1, 2020)
- 2) Calculate the sum of gross revenues from all eligible marine and anadromous fishery activities in the selected period in 2020. (For all calculations, round to the nearest dollar.)
- 3) Calculate the sum of gross revenues from all eligible marine and anadromous fishery activities in the same date range in each year from 2015 through 2019 (or fewer years if the business did not exist in 2015, as described above).

- 4) Calculate the prior 5 year average by summing the results from step 3 and dividing by 5 (or number of years used, if fewer than 5).
- 5) Determine the absolute loss in the selected time period compared to the prior 5 year average by subtracting the 2020 gross revenues (step 2) from the prior 5 year average (step 4).
- 6) Determine the percent loss by dividing the absolute loss (step 5) by the prior 5 year average (step 4). Multiply the result by 100.
- 7) If the percent loss is 35% or greater, the applicant is eligible to apply for CARES Act fishery relief funds.

Example 1:

Period selected by applicant, July 1-Aug 31, 2020 (62 days)

Sum 2020 Gross Revenue in period (revenues from all activities in period) = \$20,000

Sum 2015-2019 Gross Revenue for July 1-Aug 31 of each prior year:

July 1-Aug 31, 2015 = \$35,000

July 1-Aug 31, 2016 = \$45,000

July 1-Aug 31, 2017 = \$40,000

July 1-Aug 31, 2018 = \$35,000

July 1-Aug 31, 2019 = \$37,000

Sum = \$192,000

Average = \$192,000 divided by 5 years = \$38,400 per year

Loss = \$38,400 (average) minus \$20,000 (2020 value) = \$18,400.

Percent loss = \$18,400 (loss) divided by \$38,400 (average) = 0.48 = 48% -- losses qualify as >35% loss.

Example 2:

Period selected by applicant, July 1-Aug 31, 2020 (62 days)

Sum 2020 Gross Revenue in period (revenues from all activities in period) = \$20,000

Sum 2015-2019 Gross Revenue for July 1-Aug 31 of each prior year:

July 1-Aug 31, 2015 = \$35,000

July 1-Aug 31, 2016 = \$45,000

July 1-Aug 31, 2017 = \$0 -- DID NOT FISH THIS YEAR

July 1-Aug 31, 2018 = \$35,000

July 1-Aug 31, 2019 = \$37,000

Sum = \$152,000

Average = \$152,000 divided by 5 years = \$30,400 per year

Loss = \$38,400 (average) minus \$20,000 (2020 value) = \$10,400.

Percent loss = \$10,400 (loss) divided by \$30,400 (average) = 0.34 = 34% -- losses do not qualify as >35% loss.

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 or that the applicant is an Oregon resident, 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 numbers or certification for business eligibility (or Secretary of State registration for retail businesses). Commercial harvesters operating in out-of-state fisheries must supply permit or licensing information to support claim.
- Identification of timeframe used for losses in 2020 (as specified in "Eligible claims" above) and comparison years.
- Documentation of gross revenues across all marine/anadromous fisheries participated in, regardless of state/location, 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

Note, PSMFC will implement an electronic application process for round two – details of this are still in development. Specific content in this section is subject to change, but application process information will be provided to all applicants as part of the application process.

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 45-days to ensure participants in summer fisheries have time to apply.

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 Oregon 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 45 days after

the application period opens.

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 two-week reconsideration process (see below), and disburse direct payments to eligible businesses with approved claims. Disbursements are anticipated to begin in the fall of 2021, depending on the length of time needed for NOAA approval of the spend plan and PSMFC review and approval of applications.

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 2 weeks to correct deficiencies and submit revisions for PSMFC review and final determination, after which all decisions will be final.

Public Comment DRAFT