

WA Sec. 12005 CARES Act Frequently Asked Questions

Q: Why did you limit the timeframe to January 1 through July 31?

A: The State established the January 1 through July 31 to capture businesses that were immediately and directly impacted by the CARES-19 pandemic with the understanding that Congress would appropriate another round of CARES fisheries assistance funds. Utilizing this timeframe was also predicated on the assumption that the spend plan would be submitted much earlier.

The State's approach to developing the spend plan was to be fair, equitable, and comprehensive. To ensure that these values were reflected, it took the State longer than anticipated to develop the spend plan. The State also had to respond to extensive inquiries and incorporate edits from NOAA-Fisheries prior to the submission of its spend plan.

Now that Congress approved another round of fisheries assistance, the states are awaiting NOAA-Fisheries allocations. Once Washington's allocation is determined, the State will modify its spend plan to establish a new timeframe, incorporate gaps identified, and address areas of concern prior to next submission.

Q: Are the 28 consecutive days considered 28 consecutive workdays or 28 consecutive days (including weekends when processing did not occur)?

A: 28 consecutive days, e.g. May 15th through June 11th. This includes weekends, holidays, and dates where processing may not have occurred.

Q: What if 2020 was my first year of operation? (page 9 of spend plan)

A: Applicants in this situation will have their 2020 revenues evaluated against those of comparable applicants and 2015-2019 revenues from the relevant fishery or line of business. The applicant must have fished or operated in 2020. For the Commercial Fishing sector, fish ticket revenues will be used to calculate the distribution of average ex-vessel revenues 2015-2019 and 2020 associated with the license or permit types and fisheries if possible.

The percentile of the applicant's 2020 revenues will be matched to the percentile from the 2015-2019 distribution. For example, if the applicants 2020 revenues corresponded to the 75th percentile (i.e. 25% of participants earned more and 75% earned less than the revenues), then the 75th percentile value from the 2015-2019 revenues would be used to calculate whether the greater than 35% threshold is met and determine the size of the loss.

For sectors where revenue data is not readily available to PSMFC, the distributions will be calculated from the revenue information provided by comparable applicants. If there are not enough comparable applicants with which to calculate percentiles, the median value will be used as the proxy. If there are not three or more comparable applicants receiving payment under the spend plan, the application will be denied.

Q: What if I have an IFQ in my personal name, but a fishing operation in an LLC or corporation? Am I eligible to receive funding for both in separate applications?

A: Those applying under the Washington spend plan use a variety of business organizations and arrangements. The plan therefore allows flexibility for applicants to apply in the way that meets their best interests and fits their financial accounting. It may be that applying under the LLC fits some situations better whereas others in similar situations would prefer to apply as an individual. However, the same losses cannot be claimed more than once, and applicants will be required to produce their accounting of revenues demonstrate connections to the eligible permits and licenses upon request. PSMFC cannot provide advice on every applicant's particular circumstances. Applicants should use the same name and tax reporting unit on the application that they do on the W-9 form.

Q: If an applicant purchased a new boat but retains the same CFEC permit, can the applicant count prior years of business?

A: Yes, applicants are required to report all eligible fisheries revenues for each year even if different permits, licenses, or vessels were used. In other word, it is the individual's or business unit's revenue history that is important as opposed to the particular permit, license, or vessel used to earn the revenue.

Q: What if my business has grown and I now possess multiple permits or licenses; will my comparison years be pro-rated or adjusted to reflect my current status?

A: No. Regrettably this relief is not intending to address business growth. It is strictly looking at the business's gross revenues regardless of how many permits/licenses you may have now or in the past. Applicants are expected to report all eligible fishery revenues earned through sales and activities authorized by one of the licenses or permit types listed on the application for each year they possessed one of the licenses or permit types listed on the application.

Q: For applicants that don't get paid until after July 31st, can applicants use revenues earned within the time period?

A: Section 12005 of the CARES Act all eligible participants must have "incurred" economic revenues losses greater than 35 percent. Therefore, any fisheries work conducted during the period of loss should be included in the calculation of the greater than 35 % loss threshold, regardless of when the payment is received by the participant. Applicants who earned revenues, i.e. made landings/deliveries within their selected time frame, yet did not receive payment until after their selected timeframe may include those revenues in their claim as they have been incurred. Or if it is simpler for accounting, applicants may use the payment date to mark when revenue was earned. This is analogous to the difference between accrual (i.e. fish ticket based) and cash (i.e. payment based) accounting methods. Applicants must pick one method and use it consistently. The incurred (earned) revenue losses reported must have documentation to substantiate should your records be audited, and it is presumed that applicants will use the method they use in their regular accounting.

For the accrual method, commercial fishers who have made deliveries up until July 31st but have not received payment until a later date (outside their claim period) can include those earned revenues in their claim. Applicants who receive an adjustment or "bonus" payment from their processors outside their claim period, perhaps later in the year or even in the following spring, can include those revenues in the year they were earned. If your selected timeframe includes the dates where these adjustments or bonuses are paid the following year you would include them.

Example: Your selected timeframe is 7/3 through 7/31. Fish were delivered to a processor on 7/31 but a check was not issued until 8/15 – In this scenario you could use those revenues. A separate example: Your selected timeframe is 1/1 through 7/31. Fish were delivered on 6/30. A check was issued on 7/31 and an adjustment check was issued the following March (2016-2020); you would include all these revenues as they were incurred or received within your selected timeframe.

Q: What additional assistance needs to be counted towards gross revenue?

A: Applicants should only include gross eligible fisheries revenues that were incurred during their selected timeframe in 2020 and each of the applicable comparison years of operation. Gross revenue meaning “income in” before any deductions, i.e. taxes, labor, fuel, food, ice, moorage, insurance, licenses/permits, etc. The price per pound received or dollar amount received for goods/services.

Applicants will additionally need to be conscious that they do not exceed their 5-year ANNUAL average in 2020 when receiving Washington CARES Act relief. What this means is that when you add any relief you may receive through Washington’s CARES Act + all other traditional revenues + any additional FEDERAL COVID-19 assistance that applicants DO NOT pay back, you cannot be made more than whole as compared to your 5-year annual average. COVID-19 related aid that is forgiven, does count in the more than whole calculation.

Applicants are not responsible for documenting their annual 5-year average on the application but should compute this through examination of prior records. If with the addition of any Washington CARES Act relief you receive, you have exceeded your annual 5-year average, applicants are responsible for repaying any excessive funds back to the federal government through PSMFC if forthcoming. If not forthcoming, applicants will be required to do so through audit by PSMFC, NOAA Fisheries, or the Office of Inspector General.

Neither PSMFC nor WDFW have a complete list of all the COVID-19 assistance available through the FEDERAL government. Federal COVID-19 relief includes but is not limited to the SBA Payroll protection loan (e.g. Economic Injury Disaster Loan (EIDL), and the Paycheck Protect Program (PPP).

Q: How will the USDA’s tariff relief program impact CARES Act assistance?

A: NOAA will not consider funds provided to fishermen under USDA’s Seafood Trade Relief Program (STRP) in its execution of CARES Act fisheries assistance. The STRP program is unrelated to COVID: it addresses only industry impacts from retaliatory trade tariffs in 2019. As such, the STRP is providing assistance to fishermen based on landings in 2019. The CARES Act fisheries assistance is based on revenue losses in 2020. The requirement that eligible entities cannot be made “more than whole” is based on the combination of 2020 traditional revenue, Section 12005 assistance and any other COVID-19 related federal assistance.

Q: How will fisheries disaster funding under the Magnus-Stevens Act or Interjurisdictional Fisheries Act impact CARES Act assistance?

Federal fishery disaster assistance provided in 2020 for a fisheries disaster determined under the MSA or IFA in a previous year does not count in the revenue calculation for 2020.

Q: How are deckhands/crew to be addressed? Can they apply on their own? Is it expected that applicants share the assistance they may receive?

A: The situation is different for applicants who did not operate in 2020. Applicants in that situation should read the spend plan and make the appropriate election and attestation on sharing with crew.

Applicants that did fish in 2020 are not subject to the same choice. Based on comments received, many fishing operation owners will share payments with crew according to preexisting arrangements. However, the spend plan does not require it and any contractual agreements made between two private parties is solely the responsibility of those involved. PSMFC nor WDFW can or will be a mediator in disputes involving disaster/CARES Act relief. Crew that do not hold one of the eligible licenses permit through ownership or contract are not eligible to apply on their own.

Q: What if applicants are unable to find records for one of the years?

A: WDFW as well as the other various state agencies keep records of fish landings and certain other reported transactions. Those agencies may be able to provide records to those needing assistance with their claim. Ultimately however, applicants should recognize that should they be audited and unable to produce the necessary documentation to validate their claim, they may be held responsible for repaying funds received back to the federal government through PSMFC.

Q: I am using my unadjusted revenues which have not met the 35.0% minimum relative loss. After my revenues are adjusted for inflation I will exceed these minimum criteria. What should I report on my claim?

A: Applicants should only report raw unadjusted revenues. PSMFC alone will adjust for inflation when processing claims. Please DO NOT adjust your revenues yourself. Those applicants whose relative loss is 35.0% or greater after PSMFC's adjustment will qualify. More information about the CPI adjustments can be found on page 5 of the application materials.

Q: If my application is submitted early, does that mean I have a better chance of receiving a payment?

A: No, this program is NOT first come first serve. The order of receipt will not affect eligibility or disbursement amount. All applicants postmarked by 3/25 and that have met all criteria outlined in the application materials and spend plan will receive a payment.

Q: Some years I catch fish in July, but often my season does not conclude until August, even September. Am I allowed to include revenues from fish caught after July 31st?

A: Unfortunately, no. Should additional funding become available in the future, it is anticipated that claims will permit revenues that were incurred after August 1 through year's end. This final determination will be made through revisions to Washington's spend plan and through guidance provided by NOAA Fisheries.

Q. Residence in Washington, but licensed in other State?

A: Commercial Fishing sector applicants are expected to apply in their state of residence and apply for all their fishery revenue loss regardless of the state where it was delivered. Individuals who are residents of a state that does not have a CARES Act Section 12005 spend plan may be eligible in that state they fish or hold a license or permit from depending on the eligibility criteria established by that state in their spend plan. States and territories have flexibility in determining how they verify fishery participant residency.