

**Oregon Fish and Wildlife Commission**

Date: November 1, 1996

EXHIBIT _____**SUBJECT** Commercial Dungeness Crab Limited Entry Fishery**PRINCIPLE STAFF PERSON** Jim Golden**PHONE:** 541-867-4741**COMMISSION ACTION REQUESTED**

- Adopt rules which clarify existing statutes regarding limited entry permits for ocean Dungeness crab

DOCUMENTS INCLUDED

1. Agenda Item Summary
2. Staff report
3. Draft Rules

RELATED STATUTES

ORS 508.921 through 508.941

RELATED RULES

OAR 635-006-1000 through 635-006-1210

**Read and
Approved by:****Division Chief****Date** _____**Attorney General****Date** _____**Director****Date** _____

Agenda Item Summary

BACKGROUND

- License limitation for the commercial Oregon ocean Dungeness crab fishery was implemented December 1, 1995 following passage of HB 3094 by the 1995 Oregon Legislature.
- A - Several issues have been raised which require clarification of existing rules as a result of the experience of the department and the Commercial Fishery Permit Board in permit issuance, denials and appeals.
- B - HB 3094 requires ODFW to submit a report to the 1997 Legislature on the number and vessel characteristics of vessels participating in the ocean Dungeness crab fishery. The report must contain information regarding transfers of permits authorized by the Act and actions of the Commercial Fishery Permit Board and must make recommendations regarding the need, feasibility, structure and implementation of a permit buy-back program sponsored by the fishing industry.

PUBLIC INVOLVEMENT

The Dungeness Crab Commodity Commission, Dungeness Crab Permit Board and interested members of the industry will be contacted for their comments prior to the November 1 Commission meeting.

LICENSE ISSUES

ISSUE 1

Definition of "construction" for purposes of determining eligibility for permit issue.

ANALYSIS

- The statute does not define "construction", but uses the phrase "The vessel for which application is made was under construction...". Options are: define construction to 1) apply only to new vessels whose construction was solely for the purpose of Dungeness crab fishing and occurred between December 1, 1988 and August 14, 1991; or 2) consider previously built vessels undergoing conversion for the purpose of fishing for Dungeness crab to potentially qualify as meeting the statutory requirement of "under construction."

ISSUE 2

Definition of "completion" for purposes of determining eligibility for permit issue.

ANALYSIS

- The statute does not define "completion." This issue arises in ORS 508.931 (1)(b) "and was licensed as an Oregon vessel from the date of completion...". The

staff proposes that the date of completion be based on the first date the vessel makes a landing of Dungeness crab in Oregon. Another option is to use an occasion for which paperwork is typically retained, in order to establish that the vessel was licensed in Oregon from the date established in an appropriate document. The staff has identified several documents that would be appropriate under option 2.

ISSUE 3

Definition of the geographic area of the ocean Dungeness crab fishery.

ANALYSIS

- ORS 508.926 provides that it is unlawful to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit. The ocean Dungeness crab fishery is generally understood to include all fishing for crab in Oregon waters of the Columbia river and all other water seaward of Oregon's coastline and river mouths. In order to avoid confusion over the term "ocean Dungeness crab fishery" it is recommended that this definition be adopted in rule.

ISSUE 4

Whether a vessel may receive an initial issuance of an Oregon ocean Dungeness crab permit if landings were made during the window period with a single delivery license, in lieu of a boat license.

ANALYSIS

- ORS 508.035 describes a single delivery license as a separate license in the absence of an individual commercial fishing and boat license.
- The statute is unclear whether a single delivery license may be used in lieu of a commercial fishing and boat license for the purpose of initial eligibility for a crab permit. ORS 508.931 requires for initial issuance that the vessel be licensed continuously pursuant to ORS 508.260. ORS 508.260 speaks specifically to commercial boat licenses and does not refer to single delivery licenses.
- The Dungeness Crab Permit Review Board has taken the position that the use of single delivery licenses for the purpose of initial eligibility should not be allowed.
- Options for consideration include 1) allowing the use of one or more single delivery license in determining initial eligibility and 2) not allowing the use of one or more single delivery license in determining initial eligibility.

ISSUE 5

Whether a single delivery license may be used to land crab in Oregon, with or without an ocean Dungeness crab permit.

ANALYSIS

- We have been advised that without explicit authority in the statutes, the better interpretation is that there is no legal authority under the statute to authorize a single delivery license to be used *in lieu of* an ocean Dungeness crab permit.
- A single delivery license may be used in the absence of an individual commercial fishing and boat license. The only other requirement for landing crab is the ocean Dungeness crab limited entry permit. We conclude that ocean Dungeness crab may be landed in Oregon using a *combination* of a crab permit and a single delivery license. ORS 508.926 and 508.035. However, because of the confusion on this issue, we recommend rules be adopted.

ISSUE 6

Landing Requirement for Transfer of a Permit

ANALYSIS

- Application of the rules for transfer of a permit are complicated by the interpretation of the term "last 60-month period." A permitted vessel with a history of landings may qualify for transfer in one month, only to be ineligible for transfer one month later because the 60-month period has advanced one month. Options include 1) eliminating the 500 pound landing requirement entirely; and 2) refining the definition of a 60-month period to encompass whole seasons.

DRAFT MOTION

I move to adopt OAR 635-006-XXX through 635-006-XXX as recommended by staff (with the following exceptions)....

EFFECTIVE DATE

December 1, 1996



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

Restricted Vessel Permit Systems

Definitions

635-006-1010 For the purpose of OAR 635-006-1015 through 635-006-1210:

(1) "Completion" of a vessel for the purposes of initial eligibility for an Oregon ocean Dungeness crab permit pursuant to ORS 508.931 is defined as occurring when the vessel first makes a landing or delivery of ocean Dungeness crab into Oregon ports.

[(1)] (2) "Crab fishing season" is the period from December 1 of one year through August 14 of the next year.

[(2)] (3) "Length" or "Overall Length" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions as in a dive step or platform. For the purpose of initial ocean Dungeness crab permit issuance, length of the vessel is overall length of the vessel on September 9, 1995.

(4) "ocean Dungeness crab fishery" for the purposes of ORS 508.926, means all fishing for Dungeness crab in Oregon waters of the Columbia River and all other ocean water seaward of Oregon's coastline and river mouths.

[(3)] (5) "Owner" is any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. Owner does not include a leasehold interest.



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

[(4)] (6) "Replacement vessel" is a vessel purchased to replace a permitted vessel which has been lost due to fire, capsizing, sinking or other event. For the ocean Dungeness crab fishery, a replacement vessel shall be no more than 10 feet greater than the vessel which it replaces.

[(5)] (7) "Sea urchin fishery" shall mean the commercial fishing for *Strongylocentrotus franciscanus*, *S. purpuratus*, and *S. droebachiensis*.

(8) "Under construction" for the purposes of initial eligibility for an Oregon Ocean Dungeness crab permit pursuant to ORS 508.931, means that between December 1, 1988 and August 14, 1991 a contract was signed and earnest money paid equaling at least 10% of the value of the contract, or invoices have been paid for 10% or more of the total construction cost, to produce a newly constructed vessel, including but not limited to, the laying of the new vessel's keel.

[(6)] (9) "Yaquina Bay Roe-herring fishery" shall mean the commercial net fishery for Pacific herring (*Clupea harengus pallasii*) which occurs annually between January 1 and April 15 in Yaquina Bay.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: Adopted 1-24-96, ef. 2-1-96

Requirement for Permit

635-006-1015 (1) The following provide general requirements for permits:

(a) Gillnet salmon - see ORS 508.775;



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

(b) Troll salmon - see ORS 508.801 and 508.828;

(c) Shrimp - see ORS 508.880 and 508.883;

(d) Scallop - see ORS 508.840 and 508.843;

(e) Roe-herring:

(A) It is *unlawful* for an individual to operate a vessel in the Yaquina Bay roe-herring fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner or buyer to buy or receive roe-herring taken in the Yaquina Bay roe-herring fishery from a vessel for which the permit required by section (1)(e) of this rule has not been issued.

(f) Sea Urchin:

(A) It is *unlawful* for an individual to take or attempt to take sea urchins for commercial purposes without first obtaining a permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner, or buyer to buy or receive sea urchins taken in the sea urchin fishery from a person for which the permit required by section (1)(f) of this rule has not been issued.

(g) Ocean Dungeness crab:

(A) Except as provided under the reciprocity provisions of section 6 (3), it is *unlawful* for an individual to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit issued pursuant to [section 4 or 6, Chapter 484, Oregon Laws 1995] **ORS 508.931 or 508.941. A single delivery license may not be substituted for an ocean Dungeness crab**



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

permit. Once a vessel has obtained an ocean Dungeness crab permit, Dungeness crab may be landed by the vessel using a combination of an ocean Dungeness crab permit and a single delivery permit in lieu of a commercial fishing and boat license.

(2) The permits required by section (1) of this rule are in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

(3) No vessel may hold more than one vessel permit for a given fishery at any one time.

(4) Unless otherwise provided, vessel permits must be purchased by December 31 of the license year.

(5) No vessel permit may be transferred away from a vessel without the lien holder's written permission.

(6) Applications for permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: Adopted 1-24-96, ef. 2-1-96

Permit Fee

635-006-1025 The annual fee to participate in limited entry fisheries is as follows:

(1) Gillnet salmon - \$75. See ORS 508.790 and Section 6, Chapter 512, Oregon Laws 1989.

(2) Troll salmon - \$75. See ORS 508.816 and Section 6, Chapter 512, Oregon Laws 1989.



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

(3) Shrimp - \$75. See ORS 508.901.

(4) Scallop - \$75. See ORS 508.858.

(5) Roe-herring - \$75. See ORS 508.765.

(6) Sea Urchin - \$75. See ORS 508.760.

(7) Ocean Dungeness crab - \$75. See [Section 6 (4), Chapter 484, Oregon Laws 1995]

ORS 508.941(4).

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: Adopted 1-24-96, ef. 2-1-96

Eligibility Requirements for a Permit

635-006-1035 Eligibility for a limited entry permit is as follows:

(1) Gillnet salmon - see ORS 508.784.

(2) Troll salmon - see ORS 508.810.

(3) Shrimp - see ORS 508.886 and 508.895.

(4) Scallop - see ORS 508.852.

(5) Roe-herring - An individual is eligible to obtain the permit required by ORS 508.765:

(a) By renewal of previous year's permit;

(b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085.

(6) Sea Urchin - An individual licensed as a commercial fisherman under ORS 508.235 is

eligible to obtain the permit required by OAR 635-006-1015:



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

- (a) By renewal of previous year's permit; or
- (b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085; or
- (c) Through a duly authorized medical transfer of an existing permit in accordance with 635-006-1095;
- (d) By combining three currently renewed permits into one new permit as provided in OAR 635-006-1095.
- (7) Ocean Dungeness crab:
 - (a) [See Chapter 484, Oregon Laws 1995] ORS 508.931.
 - (b) For the purposes of eligibility for the ocean Dungeness crab fishery permit, a boat which received a license waiver issued pursuant to ORS 508.808 shall be considered as having possessed a boat license for that year.
 - (c) ORS 508.931 and 508.941 require that the vessel be previously licensed in accordance with ORS 508.260 for the purposes of initial eligibility for an ocean Dungeness crab fishery permit. A single delivery license may not be substituted for a boat license for this purpose.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: Adopted 1-24-96, cf. 2-1-96

Revocation and Refusal to Issue Permits

635-006-1060 The Commercial Fishery Permit Board may revoke and refuse subsequent issuance of limited entry fisheries permits as follows:

Div. 006-6



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

- (1) Gillnet salmon permit - see ORS 508.787.
- (2) Troll salmon permit - see ORS 508.813.
- (3) Shrimp permit - see ORS 508.898.
- (4) Scallop permit - see ORS 508.855.
- (5) Roe-herring permit - see ORS 508.485 and 508.490.
- (6) Sea Urchin permit - see ORS 508.485 and 508.490.
- (7) Ocean Dungeness crab permit - see ORS 508.485 and 508.490.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: Adopted 1-24-96, ef. 2-1-96

Review of Denials

635-006-1065 (1) An individual whose application for issuance or renewal of a limited entry permit is denied by the Department may request review of the Department's decision by doing so in writing to the Commercial Fishery Permit Board. The procedure for requesting review and the applicable standard of review shall be as follows:

- (a) Gillnet salmon- see ORS 508.796;
- (b) Troll salmon - see ORS 508.825;
- (c) Shrimp - see ORS 508.910;
- (d) Scallop - see ORS 508.867;
- (e) Roe-herring - see ORS 508.765. For the roe-herring fishery, the Board may waive requirements for permits if the Board finds that:



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

(A) The individual for personal or economic reasons chose to actively commercially fish the permit vessel in some other ocean fishery during the roe-herring season; or

(B) The Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(f) Sea Urchin - see ORS 508.760. For the sea urchin fishery, the Board may waive requirements for permits if the Board finds that failure to meet the requirements was due to illness, injury or circumstances beyond the control of the permittee;

(g) Ocean Dungeness crab - see [Section 6 (2), Chapter 484, Oregon Laws 1995]

ORS 508.941

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a letter of delegation to the Department.

(3) For those fisheries requiring a \$75 application fee for Board review, the fee is nonrefundable. However, if the Board grants the applicant's request, the nonrefundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.550.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: Adopted 1-24-96, ef. 2-1-96



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

Renewal of Permit

635-006-1075 (1) An individual who obtained a limited entry vessel permit may renew the permit as follows:

(a) Gillnet salmon- see ORS 508.781;

(b) Troll salmon - see ORS 508.807;

(c) Shrimp - see ORS 508.892;

(d) Scallop - see ORS 508.849;

(e) Roe-herring permit - Permits may be renewed by submission to the Department of a \$75 fee and a complete application;

(f) Sea Urchin permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have annually lawfully landed 5,000 pounds of sea urchins in Oregon. If a permittee obtained a permit later than January of the prior year (because the permit was obtained through the lottery, or as a result of Permit Board actions or surrender of a permit by a permit holder), the permittee shall not be required to make the 5,000 pound landing by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate that the 5,000 pound landing requirement was fulfilled during the first full year (twelve-month period) in which the permit was held.

(g) Ocean Dungeness crab permit - see [Section 6 (4), Chapter 484, Oregon Laws 1995]

ORS 508.941.



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

(2) An application for renewal in any limited entry fishery shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete by January 31, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: Adopted 1-24-96, cf. 2-1-96

Transferability of Permits

635-006-1095 Any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void. The following rules apply to transfer of limited entry fishery permits:

- (1) Gillnet salmon - see ORS 508.793.
- (2) Troll salmon - see ORS 508.822.
- (3) Shrimp - see ORS 508.907.
- (4) Scallop - see ORS 508.864.



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

(5) Roe-herring:

(a) A permit is transferable to:

(A) A replacement vessel of the permit holder; or, upon request of a permit holder, the Department may authorize transfer of a permit to a replacement vessel owned by an individual other than the permit holder. However, any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void;

(B) The purchaser of the vessel when the vessel is sold.

(6) Sea Urchin:

(a) Medical Transfers: If the number of permits is at 31 or more, the Department may authorize a permit to be transferred to a specified individual for up to 90 days upon petition by a permittee on the form provided by the Department. The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder and such other evidence the Department considers reliable. At the end of the transfer period, the transfer may be renewed by the Department to the original transferee or to a new transferee, provided that the permittee again submits medical evidence documenting that the injury or illness continues to prevent the permittee's return to diving. The total amount of time a permit may be transferred shall not exceed two years (beginning with the first medical transfer in 1996). When the total number of permits reaches 30 or less the Department shall not allow any permit transfers for any medical reason;

(b) If the Department, or the Board, after review of a denial by the Department, allows a transfer, the original permit holder shall give written notice to the Department of the name,



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (6)(a), request the Department to transfer the permit back to the original permit holder. Such transfer requires 30 days' written notice to the Department. In any event, upon expiration of the transfer period specified in (6)(a), or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (6)(a) of this rule;

(c) The total landings of sea urchins by all transferees of a permit shall not exceed the greater of either of the following amounts:

(1) Up to 5,000 pounds per 90-day period, not to exceed 5,000 pounds annually; or

(2) Twenty-five percent of the amount landed by the original permit holder in the previous season's catch, for each 90-day period.

(d) Combination Permit Transfers: If the number of permits is at 31 or more, the Department may transfer permits from one person to another as follows:

(A) The individual receiving the transferred permit (the purchaser) obtains no more than three total permits, each of which is valid for the current year in which the permit is purchased, from existing permit holders;

(B) The Department combines the three permits into a single new permit issued to the purchaser, and

(C) No transferred permit is valid for harvesting sea urchins until conditions (d)(A) and (d)(B) are met. Individual permits which are transferred may not be used individually and are not renewable. Once a permit has been transferred in accordance with (d)(A) the individual to



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

whom the permit has been transferred has up to 24 months from the date of transfer to combine it with two others to create a valid new permit.

(e) When the total number of permits reaches 30 or less, the Department shall approve the transfer of any permit to any purchaser of the permit, provided that not more than one sale or transfer of the permit occurs within that calendar year.

(7) Ocean Dungeness crab - see [Section 5, Chapter 484, Oregon Laws 1995] ORS 508.936 and:

(a) The vessel permit is transferable provided the vessel holding the permit has landed at least 500 pounds of ocean Dungeness crab in each of two crab fishing seasons in the last [60 months] five crab seasons, or during the last six crab seasons if application is made during the season. Crab fishing season means ocean Dungeness crab season. However, the Board may waive the landing requirement as well as the 60-month waiting period provided by [Section 5, Chapter 484 Oregon Laws 1995] ORS 508.936 if the Board finds that strict adherence to these requirements would create undue hardship to the individual seeking to transfer a permit. The board also may delegate to the Department its authority to waive these requirements in such specific instances as the Board sets forth in a letter of delegation to the Department;

(b) The vessel permit is transferable:

(A) To another vessel; or

(B) To the purchaser of the vessel when the vessel is sold.

(c) The vessel to which a permit is transferred, with the exception of vessels covered by (d), shall not be:



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

(A) More than 10 feet longer than the vessel from which the permit is transferred; and

(B) More than 99 feet in length.

(d) Permits obtained as a result of qualifying under section [(4)(1)(d) of Chapter 484,

Oregon Laws 1995] (1)(e) of ORS 508.931 may only be transferred to vessels of a length of 26 feet or less;

(e) The length of a vessel for purposes of transferring permits is the length of that vessel on September 9, 1995, unless subsequently modified to increase its length;

(f) Except for vessels described in section (d), transfer of permits is limited to vessels no more than 10 feet longer than the permitted vessel, regardless of length of vessels previously holding the permit;

(g) In the event a vessel is destroyed due to fire, capsizing, sinking or other event, the vessel owner has up to two years to transfer the ocean Dungeness crab fishery permit to a replacement vessel.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: Adopted 1-24-96, ef. 2-1-96