



Oregon Fish and Wildlife Commission

October 7, 2005

EXHIBIT D

SUBJECT Commercial Dungeness Crab Briefing and 200 Mile Limited Entry Rules

PRINCIPAL STAFF PERSON Patricia M. Burke, Marine Resources Program Manager (541) 867-0300 x226

COMMISSION ACTION REQUESTED Briefing and Rule

DOCUMENTS ATTACHED

1. Agenda Item Summary
2. Notice of Proposed Rulemaking
3. Economic Impact Statement
4. Proposed Rules
5. 2005 Oregon Dungeness Crab Commission Survey
6. 2005 Oregon Dungeness Crab Summit Summary
7. Oregon House Bill 3472A
8. Crab Pot Estimate Figure
9. West Coast Crab Permits by State and Vessel Size
10. Public Comments

RELATED STATUTES ORS 506.109, 506.119, and 506.129

RELATED RULES OAR Chapter 635, Division 005

*Read and
Approved by:*

Division Administrator _____ **Date** _____

Attorney General _____ **Date** _____

Director _____ **Date** _____

Agenda Item Summary

BACKGROUND

During this year's record commercial Dungeness crab season in Oregon, there have been three events affecting the future of the fishery: 1) an Oregon Dungeness Crab Summit, 2) a Tri-State discussion to implement a limited entry 200 mile provision (LE 200), and 3) the passing of House Bill 3472A. The majority of this brief focuses on LE 200 because of the immediate timing of this issue. LE 200 would require coordination with Washington, and both Oregon and Washington agreed to present LE 200 to their Fish and Wildlife Commissions. If adopted, reciprocal rules would be implemented in Oregon and Washington in time for the 2005-06 crab season.

Currently, the west coast Dungeness crab fishery is managed collectively by Oregon, California, and Washington under delegation by the federal government. The three states have jurisdiction over their respective permit holders as well as control over who makes landings within their state. From shore to three miles, West Coast commercial crabbers must have a valid permit for the state waters they are fishing. However, a state commercial crab permit for Oregon, California, or Washington is valid from 3 to 200 miles anywhere within the Tri-State area.

Under LE 200, when fully implemented, each state could manage their crab fishery more independently for the purpose of reducing the effort shift between the three states. A state would restrict its state commercial crab permit by defining the area where fishing with that permit is valid. For example, Oregon would prevent its permittees from fishing off of Washington and California waters out to 200 miles and vice versa, thereby giving all three states the ability to manage their own fisheries without the potential for an influx of effort from the neighboring states' permit holders.

During the September 30, 2004 Dungeness Crab Committee Tri-State meeting, state representatives agreed to consider the potential problems and opportunities associated with LE 200, including gathering industry feedback. On June 1, 2005, the Tri-State Committee met to present their preliminary findings. Washington was strongly in favor of LE 200 and reported that an industry survey showed 61 of 75 respondents supported the rule, 8 did not support it, and 6 remained undecided. At the time of the meeting, Oregon's crab fleet representatives reported similar levels of support from the Oregon permit holders (this survey was initiated by the industry and not all permittees were queried, nor were the specific details of the LE 200 provision supplied). California had not conducted an industry survey. All three states expressed similar concerns about the details of LE 200, particularly with respect to how it would be implemented and enforced. Oregon was also concerned about the uncertainty of California's future adoption of LE 200. California would need to take legislative action in order to adopt LE 200. While a bill passed the California Legislature to authorize this, we understand the Governor will veto it. Absent California action, only Washington vessels

would be restricted from fishing off of Oregon. The next step for the Oregon Dungeness Crab Commission (ODCC) was to send a survey (Attachment 5) to each permittee. ODFW partnered with ODCC to conduct a public Summit (July 27-28, 2005).

In addition to LE 200, the 2005 Oregon Dungeness Crab Summit attendees discussed pot limits and attempted to determine what an acceptable plan would include. Attendees were not able to find consensus on any one proposed plan, but some plan criteria did receive majority support (Attachment 6).

At the most recent Tri-State Dungeness Crab Committee Meeting (August 16, 2005), Oregon and Washington agreed to present LE 200 to their respective Fish and Wildlife Commissions on October 7, 2005. The California Department of Fish and Game (CDFG) is unable to propose such changes without legislative action, but did report survey results from their permit holders: 128 of 156 respondents were in favor. It is unlikely that California will be able to act in time for the 2005-06 season.

The other issue addressed at the August 16, 2005 Tri-State meeting was preseason testing for softshell condition in Dungeness crab. The three states agreed on several points that will further standardize and improve preseason testing.

Additionally, in recent years some of the Oregon fleet have been concerned about the trend of permits being transferred to larger vessels. It was suggested that over time this trend could change the character of the fleet. As a result, Oregon House Bill 3472A was passed during the 2005 state legislative session restricting boat length expansion on permit transfers (Attachment 7).

PUBLIC INVOLVEMENT

LE 200: An initial industry-conducted survey was distributed to Oregon permittees in some ports by advisor groups in early 2005 (respondents: 96 in favor, 22 against, and 20 undecided). A similar survey was mailed by the ODCC to all permittees (respondents: 150 in favor, 36 against, and 17 undecided) (Attachment 5).

On July 27th and 28th 2005, ODFW and the ODCC co-sponsored the first Oregon Dungeness Crab Summit. In preparation of the Summit, ODFW mailed background information on LE 200 and pot limits to all Oregon permit holders and processors. During the Summit, approximately 50 crabbers (this represents approximately 10% of the crab fleet) and processors provided their positions on two key issues which had been identified for action by the industry and ODCC surveys: extending limited entry authority out to 200 miles and crab pot limits. Summit attendees consisted of representation from the entire coast, each port, and various sectors of the fleet. Participants included people who have had a long history in the fishery as well as those who have entered recently. A summary of the Summit including an outline of the 200 mile and pot limit discussions was sent out to all participants on August 10, 2005 (Attachment 6). Following the Summit and summary mail-out, ODFW

and ODCC have received numerous correspondences regarding LE 200 (Attachment 10).

In preparation for the August 16th Tri-State meeting, ODFW held a conference call (August 15, 2005) with the Oregon contingent of Tri-State advisors to gather additional feedback about LE 200.

ISSUE 1

ANALYSIS

Pot Limits

The total number of crab pots in waters off Oregon has increased dramatically through time to an estimated 185,000 pots (Attachment 8). Concerns have been raised about gear conflicts, resource wastage through ghost fishing, the littering of the ocean floor with lost pots, and pots placed primarily to reserve ocean floor real estate in excess of the number required to fish effectively. Industry, regulatory agencies, and the public have suggested pot limits as a method of reducing these impacts. A one-year interim pot limit plan proposed to the Oregon Fish and Wildlife Commission in August, 2002 was not adopted.

Washington implemented a pot limit plan beginning with the 1999-2000 season. That plan limits boats to either 300 pots or 500 pots based on coast wide landings between December 1, 1996 and September 15, 1999. The California Legislature passed a bill which includes a pot limit plan for the area south of Point Arena; a similar measure was vetoed in California last year.

Several basic concepts of a plan were generally agreed upon by the portion of the fleet and processors in attendance at the Crab Summit:

- A target for the total number of pots in Oregon of approximately 150,000
- An appeals board to hear special cases
- The control date of August 14, 2001 established by the Commission be maintained as a criteria for qualification
- Landings are likely to be used as an allocation criteria
- After initial allocations, pot numbers may be reduced incrementally to achieve a final goal
- Permit stacking (stacked permits retired permanently, half the pots added to the purchaser's permit pot limit, up to a cap) was generally supported as a part of the reduction plan
- Buoy and pot tags will likely be required to allow for effective enforcement
- A process for subsequent review and adaptive management should be included to identify the level of success of the plan and consider any potential modifications

Many questions remain as to how to fashion an equitable pot limit plan. At the Summit, 29 attendees supported basing pot allocations on historical landings and 25 attendees supported historical pot declarations rather than landings. Of these two approaches, crab landings constitute a much more complete and robust data set. The number of tiers that should be included in any plan is contentious. Opinions range from a single pot limit for all

boats, to plans that include 2 (like WA), 5, or 10 or more tiers, to a plan that would have an individual pot limit for each of the 434 permits. There are also related issues hinging on whether or not Oregon institutes 200 mile jurisdiction that will require consideration, such as the impacts of different pot limits in Oregon and Washington.

OPTIONS

Commission to provide direction on whether the Agency should continue to work with fleet and processors to develop a simple, enforceable, and equitable plan for OFWC consideration.

ISSUE 2

Implementation of House Bill 3472A

ANALYSIS

HB3472A (Attachment 7) made changes to the permit transfer conditions for commercial Dungeness crab fisheries. Beginning on January 1, 2006, a permit may not be transferred to a vessel that is more than 10 feet longer than the vessel which held the permit on that date. However, the Commercial Fishery Permit Board may waive this length restriction for reasons of undue hardship for the person seeking the transfer. The Commission will be required to define "undue hardship" by rule.

To implement the provisions of HB3472A, the department notified all holders of Oregon commercial Dungeness crab permits of the new permit transfer provisions. Permit holders are offered an opportunity to correct any errors in boat length by submission of appropriate documentation to ODFW Licensing by January 1, 2006. Staff will return with proposed language to define "undue hardship" later.

OPTIONS

Commission input welcome.

ISSUE 3

200 Mile Limited Entry (LE 200)

ANALYSIS

The amount of effort in the Oregon Dungeness crab fishery has increased dramatically (Attachment 8). Current estimates suggest that there may be as many as 185,000 pots in the Oregon fishery. At the time of limited entry (1995-96), it was estimated that there were approximately 140,000 pots in the fishery. These estimates do not include out-of-state fishermen crabbing in federal waters (3-200 miles) off of Oregon.

Washington state has used season delays for the non-tribal fishery as its primary mechanism to provide more opportunity for the Tribal fisheries, as they are required to do by a federal court case.

Washington Tribes currently harvest between 25 and 28% of the crab off Washington each year and their capacity to harvest crab has been steadily increasing. Under the federal court decision, Washington Tribes are eligible to harvest 50% of the crab in the tribal "usual and accustomed" areas off of Washington. The Tribes will continue to require opportunity to harvest crab and thereby increase their percentage of the annual catch. If this happens, more non-Tribal Washington vessels may choose to fish further to the south in Oregon waters (3-200 miles).

LE 200 was suggested as a means of stabilizing or preventing effort shifts and increases in the West Coast crab fishery. Following its proposal, Oregon has been evaluating the potential impacts of implementation of LE 200. California and Washington have also considered this option; however, California is unable to implement this type of regulation without legislative action. Oregon and Washington have continued discussions about LE 200 even though California may not be able to act.

Oregon considered three options during its analysis of LE 200:

- 1) Oregon, California and Washington would place restrictions on their respective state commercial crab permits to prohibit vessels from fishing off of neighboring states' waters out to 200 miles;
- (2) Oregon and Washington would place restrictions on their respective state permits but California would take no action; and
- (3) No change to state jurisdiction beyond three miles.

If Oregon and Washington place restrictions on their respective state commercial crab permits, the effect would be that Oregon crabbers would be prohibited from fishing in waters off of Washington (shore to 200 miles). Likewise, Washington commercial crab permit holders would also be prohibited from fishing in waters off of Oregon (shore to 200 miles). Dual Oregon and Washington permit holders would not be restricted from either of the two states and could continue to fish and make landings in both states. California permit holders could continue to fish in Oregon and Washington waters outside three miles. Oregon and Washington permittees would also be able to fish California waters outside 3 miles. It has been noted that dual California-Oregon permitted vessels will still be able to fish off Washington and land into Oregon. According to Lt. Dave

Cleary (OSP), enforcement of the boundaries would require cooperation between Oregon and Washington enforcement agencies, but would not be unreasonably difficult.

The majority of opposition in Oregon has been voiced by North coast fishermen with Oregon-only permitted vessels. Their main concern was that the 27 Oregon-only permitted vessels that fished outside 3 miles in Washington and landed into Oregon last year would no longer be able to fish in Washington, possibly resulting in more effort in Oregon. Some Washington permittees would also lose their ability to fish off Oregon, but the number of vessels in this position is smaller (about 7). Those who oppose LE 200 are also worried about the ramifications of a Washington state sponsored buyback program. There are 55 vessels with both Oregon and Washington permits (Attachment 9). The majority of these vessels are from Washington. If a buyback occurs in Washington, these vessels may sell their Washington permits and keep their Oregon permits. Oregon has approximately 100 latent crab permits which may be obtained as well. Concern was also expressed about the fact that Washington has a pot limit, while Oregon does not. This may result in an effort increase off Oregon. Fiscal impact estimates, developed by Harry Upton, ODFW economist, (Attachment 3) indicate that implementation of LE 200 provisions may result in total personal income losses in the range of 1.3 to 2.8 million dollars.

ODFW recognized at the August 16, 2005 Crab Tri-State meeting that some of the concerns expressed by those who oppose LE 200 would be alleviated if Oregon and Washington institute a fair start provision at the Oregon-Washington boundary. Both states recognize that vessels should not be allowed two openers. Without a fair start provision, if the Washington fishery opens after the Oregon fishery, dual Oregon-Washington permitted vessels could fish both openers. These vessels would have an unfair advantage because the majority of the crab is caught during the first few weeks following season opening. A fair start provision would prevent vessels from fishing two openers by requiring that dual Oregon-Washington vessels declare which state they will fish first. Much like the softshell declaration process, vessels would need to wait a given amount of time, 30 days for example, before exercising the other state's permit. The specific details of how the fair start provision would be need to be consistently adopted/implemented by both states.

Summary of LE 200

Pros

- LE 200 may stabilize or prevent effort shifts and increases in the West Coast crab fishery
- Out-of-state permit holders would not be allowed to fish in water adjacent to Oregon
- Oregon will be able to more accurately assess the level of effort in the Oregon crab fishery
- Both states would need to agree to a "fair start" provision if one state delays its season opening

Cons

- Some Oregon permit holders would lose traditional fishing grounds in Washington
- Crab population density and quality shifts from Oregon to Washington on a year-to-year basis and LE 200 would prevent single-permitted fishers from accessing crab opportunity when the quality crab and densities are north of the state border.
- There are more Washington vessels with Oregon and Washington permits than Oregon vessels with Washington permits.
- A Washington buyback program following a 200 mile agreement could increase pressure in Oregon
- There appears to be a negative economic impact for Oregon
- There are uncertainties about how softshell delays and Washington non-tribal fishing delays will interrelate
- The details of the Oregon-Washington interstate and Washington intrastate declaration process are not explicit at this time
- Unless permit transfers are suspended during season opening negotiations (November 15 through January 15th), some transfers may enable vessels to have two openers during seasons with softshell delays in parts of the Tri-State fishing area

OPTIONS

Option 1: Adopt a rule to prohibit Oregon permittees from fishing from 3 to 200 miles off of Washington (if Washington takes reciprocal action).

Option 2: Status quo

STAFF

Option 1

RECOMMENDATION

DRAFT MOTION	I move to adopt the changes to OAR 635-005- as shown on Attachment 4 [with the following exceptions...]
EFFECTIVE DATE	December 1, 2005

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
 A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Fish and Wildlife (ODFW) Fish Division

635

Agency and Division

Administrative Rules Chapter Number

Katie Thiel

(503) 947-6033

Rules Coordinator

Telephone

3406 Cherry Avenue NE, Salem, OR 97303

Address

ODFW Commission Room
 3406 Cherry Avenue NE
 Salem, OR 97303

October 7, 2005

8:00 a.m.

Fish and Wildlife Commission

Hearing Date

Time

Location

Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request? Yes No

RULEMAKING ACTION

ADOPT:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Rules in Chapter 635, Divisions 005 and 006

AMEND:

Rules in Chapter 635, Divisions 005 and 006

REPEAL:

Rules in Chapter 635, Divisions 005 and 006 may be repealed as determined justified.

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.**Amend and Renumber:** Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 506.109 and ORS 506.119

Stat. Auth.:

Other Authority

ORS 506.129

Stats. Implemented:

RULE SUMMARY

Consider regulation changes to *implement state jurisdiction out to 200 miles in the commercial Dungeness crab fishery by restricting Oregon permitted vessels to fish for crab south of the Oregon/Washington border, and allowing crab legally taken in the Pacific Ocean and Columbia River to be landed in Oregon with a valid Oregon permit. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.*

ORS 183.335(2)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

October 7, 2005

Last Day for Public Comment

Signature and Date
 June LeTarte

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday.

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Fish and Wildlife - Fish Division

635

Agency and Division

Administrative Rules Chapter Number

In the Matter of amendment of)	Statutory Authority,
OAR Chapter 635, Divisions 005,)	Statutes Implemented,
and 006 relating to Commercial)	Statement of Need,
Shellfish Fishery)	Principal Documents Relied Upon,
)	Statement of Fiscal Impact

Statutory Authority: ORS 506.109 and ORS 506.119

Other Authority:

Statutes Implemented: ORS 506.129

Need for the Rule(s):

The rules are needed to: Implement Oregon's authority to regulate the crab fishery out to 200 miles if agreed by the Tri-State Dungeness Crab Committee. These measures may reduce the growing number of vessels and gear originating from Washington by preventing fishing for crab in federal waters adjacent to Oregon without an Oregon permit. Washington is implementing measures to restrict Washington vessels from fishing off Oregon and Oregon is implementing complementary measures to restrict Oregon vessels from Washington waters.

Documents Relied Upon:

- a. 2005 Oregon Dungeness Crab Summit Summary Letter, dated August 10, 2005
- b. Staff Report prepared for Oregon Fish and Wildlife Commission Meeting of October 7, 2005

The above documents are available for public inspection in the Department of Fish and Wildlife, Fish Division, Third Floor, 3406 Cherry Avenue NE, Salem, Oregon, between 8:00 a.m. and 4:30 p.m., on normal working days, Monday through Friday.

Fiscal and Economic Impact:

Please see attached.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

ODFW invited the entire industry, including interested coastal constituents, to a public meeting (2005 Crab Summit) to solicit public input on the issue. At the Summit, industry participants provided feedback on state jurisdiction out to 200 miles. In addition, the results of an industry-wide survey were considered.

Authorized Signer and Date

June LeTarte

Economic Impact Statement for the October 7, 2005 Rulemaking involving the Amendment of Rules Relating to the Management of the Commercial Dungeness Crab Fisheries

Fiscal and economic impact: The proposed rules will affect state agencies, units of local government and the public, respectively, as discussed below. The proposed rules would place a restriction on all Oregon Dungeness crab permit holders from fishing in Washington waters (0-200 miles). Likewise, the Washington Department of Fish and Wildlife would enact an administrative rule which would prohibit Washington permitted vessels from fishing in Oregon waters (0-200 miles). Dual Oregon and Washington permit holders would not be affected by the proposed plan, and would continue to be allowed to fish and deliver within both Oregon and Washington boundaries.

a. State agencies which could be affected by rules relating to crab management regulations are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP). No major changes from the current levels of these agencies' operations or expenditures are expected as a result of these particular rules. Some additional enforcement activities may be required to ensure that vessels comply with the new restrictions.

The Oregon Department of Fish and Wildlife collects catch fees in the amount prescribed by ORS 508.505 that are deposited into the Commercial Fish Fund. The fee is calculated by multiplying the value of food fish, except for salmon and steelhead, by 0.0109 (1.09%) at the point of landing. Since more crab is landed by Oregon vessels fishing in Washington waters than Washington vessels fishing in Oregon waters, a net decrease in crab landings is likely. Assuming the net losses in landed value calculated in section c, Department revenue losses would be nearly \$14,000 using 2004-05 landing levels and prices, and approximately \$7,000 using average landings and prices from the last ten seasons. (See part c for discussion of landings and revenues)

b. Units of local government which could be affected by these regulations include port authorities and county governments. Port authorities and county governments may derive revenues and experience costs related to the provision of moorage. However, no significant changes are expected as a result of these rules.

c. The public which may be economically affected by the adoption of the proposed rule amendments include Dungeness crab harvesters and processors in the state of Oregon. Oregon crabbers who do not have a Washington permit would not be able to take, possess or deliver crab from Washington waters. Preliminary fish ticket data for the 2004-05 season indicate that 27 Oregon vessels would be affected. These vessels caught approximately 1.1 million pounds of crab off Washington and landed them in Oregon. Using the average 2004-05 price of \$1.47 per pound, Oregon crabbers would forego \$1.66 million in ex-vessel revenue. Washington crabbers who do not have an Oregon permit would be prohibited from crabbing south of the border and from delivering in Oregon. Preliminary data for this season indicate that seven Washington vessels that landed 277,000 pounds would be affected. The ex-vessel revenue foregone by Washington crabbers would be approximately \$408 thousand.

If both Washington and Oregon crabbers are restricted, it may be assumed that Oregon harvesters would recover a portion of their losses that is equal to the level of landings made by Washington harvesters in Oregon waters. Therefore, the level of revenue lost to Oregon crab harvesters would be the difference of approximately \$1,255,000 annually.

However, 2004-05 was an unusual year with record landings. Therefore, these revenue estimates are likely to be higher than those in a typical year. To obtain a more representative estimate, it is assumed that the level of landings by Oregon vessels from Washington waters would be in proportion to the average landings and value over the last decade. By using the ten-year average of total landings, the annual revenue loss would decrease from \$1,255,000 to \$664,000. Both estimates depend on only one season of data because landings by area are not available for previous crab seasons. The 2004-05 season was also atypical because the season north of Cape Falcon opened 45 days late. Potential bias associated with only one season of area reporting is unknown. These revenue losses were used to calculate department losses provided in section a.

Since reliable catch data by area are unavailable for seasons before 2004-2005, there is a high degree of uncertainty associated with these estimates. The degree to which displaced Oregon vessels may recoup ex-vessel revenue in Oregon waters may be greater than these estimates. However, presumably Oregon vessels fished in these areas because profits were higher than their next best alternative. Although a great deal of uncertainty exists, generally the impacts of this additional constraint are likely to include greater competition for the crab resource in Oregon waters, lower industry and vessel profits, and a decrease in total landings.

Dungeness crab landings and ex-vessel revenue of vessels with Oregon permits fishing in Washington waters, vessels with Washington permits fishing in Oregon waters and average total Oregon landings and ex-vessel revenue over the last decade.

	Vessels with OR Permits in WA		
Season	Landings (lbs)	Landed value	Average Price/lb
2004-05	1,131,075	\$ 1,662,680	\$ 1.47
Assuming 10 yr avg.	511,000	\$ 879,000	\$ 1.72
	Vessels WA Permits in OR		
2004-05	277,467	\$ 407,876	\$ 1.47
Assuming 10 yr avg.	125,000	\$ 215,000	\$ 1.72
	Entire Oregon Fishery		
2004-05	33,595,044	\$ 49,384,714	\$ 1.47
Avg. last 10 seasons	15,175,000	\$ 26,100,000	\$ 1.72
	Potential Oregon Revenue Losses		
Assuming 2004-05	853,608	\$ 1,255,000	\$ 1.47
Assuming 10 yr avg.	386,000	\$ 664,000	\$ 1.72

Economic contributions may be defined as a measure of the income received by households in Oregon due to the fishing industry. The estimate of personal income includes wages and proprietary income made by crewmen and captains during harvesting, workers at processing

plants, and people working at suppliers for fishing industry businesses. It also includes re-spending of wages throughout the economy (the multiplier effect) (Research Group 2004). The estimated marginal impact on state level personal income (direct, indirect and induced) per pound of ocean caught Dungeness Crab harvested and processed in Oregon was about \$3.13 per pound in 2001 or \$3.31 per pound in 2004 dollars. This estimate represents a measure of the per unit effect on state level total personal income which would be associated with increases or decreases in ocean Dungeness Crab harvests. Using this estimate, the total impact on Oregon personal income using the 2004-05 season would be approximately \$2.83 million, or using the ten year average would be \$1.28 million. Since total personal income estimates are based on landings and revenue information, they are also subject to the same uncertainties that were cited earlier in this document.

Most businesses affected by these rules are believed to be "small business."

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

References

The Research Group. 2004. Oregon's Commercial Fishing Industry, Preliminary Review of Year 2003 and Outlook for 2004. ODFW and OCZMA.

Dungeness Crab Fishery

635-005-0042**Areas**

Oregon Dungeness crab permits are valid only in Oregon state waters and the Pacific Ocean in federal waters south of an east-west line extending 200 nautical miles westward at 46° 15' 00" N. Lat. (Oregon/Washington border).

Stat. Auth.: ORS 506.109, ORS 506.119 and ORS 506.129

Stats. Implemented: ORS 506.129

Hist.:

635-005-0047**Possession and Landing Limits**

(1) It is *unlawful*, from the second Monday in June through August 14, for any permitted ocean Dungeness crab vessel to take, land or possess more than 1200 pounds of Dungeness crab per week from the Pacific Ocean and Columbia River.

(2) Landing Dungeness crab legally taken from the Pacific Ocean and Columbia River is allowed in Oregon with a valid Oregon Dungeness crab permit.

(3) [(2)] Commercial fishers must retain copies of fish landing receipts for a minimum of 90 days on board vessels landing Dungeness crab under the cumulative catch limit described in section (1) of this rule. The receipts must be available for inspection by authorized enforcement officials and by employees of Oregon Department of Fish and Wildlife (ODFW). Legal landing receipts are defined in section [(3)] **(4)**.

(4) [(3)] For purposes of this rule, the following definitions apply:

- (a) "Landing" and "Land" means to begin transfer of Dungeness crab from a fishing vessel. Once transfer begins, all Dungeness crab aboard the vessel are counted as part of the landing;
- (b) "Landing receipt" means either an ODFW-issued Fish Receiving Ticket or a fish dealer dock ticket identified with a fish dealer's logo or letterhead and that must include the following:
 - (A) Fish dealer's name and dealer license number;
 - (B) Date of receipt of the Dungeness crab;
 - (C) Name of fisher from whom the Dungeness crab were purchased;
 - (D) Vessel name, vessel license number, and the federal document or State Marine Board number of the vessel from which catch was made;
 - (E) Port name of landing;
 - (F) Fishing gear used by the fisher;
 - (G) Gross pounds of Dungeness crab received and price paid per pound; and
 - (H) Signature of both the fisher making the landing and the individual preparing the dock ticket.
- (c) "Week" means the period beginning 12:01 a.m. local time Monday through 12 midnight Sunday.

Stat. Auth.: ORS 506.109, ORS 506.119 and ORS 506.129

Stats. Implemented: ORS 506.129

Hist.:

Attachment 5

2005 Crab Survey Results	OREGON BOATS			* O-O-S		
	YES	NO	U	YES	NO	U
Did you participate in the Oregon Crab Fishery prior to Aug. 14, 2001?	170	15		24	6	
Do you support 200-mi. States jurisdiction for crab?	150	36	17	19	13	5
Should we continue Pre-Season price negotiations?	181	7	12	30	2	1
Should the 10' increase on license transfers be one time only?	131	62	7	22	15	3
Do you want to see changes to Pre-Season Testing?	132	45	25	16	14	3
Do you support changing to a December 10 th Opener?	79	105	17	12	22	5
Should we make the recovery rate 24% statewide? (vs 23/25%)	106	50	41	24	8	2
Do you want to continue the use of haul-out boats?	95	94	7	9	25	3
Should we have one opener in state for Domoic or soft-shell?	52	116	30	16	19	2
Should the state allow cotton blend vs. 100% cotton bio's ?	137	49	10	22	13	2
Do you support some kind of pot limit?	135	43	13	17	14	5
Do you want to see 'Individual Fishery Quotas' (IFQ's) for crab?	36	149	11	18	14	4
Do you support poundage limits or trip limits?	68	116	18	9	22	5
Should we ask the State to allow a small % of short crab?	73	116	9	19	15	1
Should crewman sign affidavit stating knowledge of 'short-crab' reg's?	113	61	15	18	16	3
In 'split' openers, do you support a 30 or a 90 day delay period?	144	28	26	29	3	4
Should crab buoy's be tagged with permit-holder information?	45	129	29	13	21	3



Memorandum

Oregon Department of Fish and Wildlife Marine Resources Program

2040 S.E. Marine Science Drive
Newport, OR 97365
(541) 867-4741 FAX (541)867-0311

TO: Oregon Dungeness Crab Industry Participants August 10, 2005
FROM: Patricia Burke, Manager, Marine Resources Program ODFW
RE: 2005 Oregon Dungeness Crab Summit

On behalf of the Oregon Department of Fish and Wildlife (ODFW), I want to extend our appreciation to all of the industry members who attended the 2005 Oregon Dungeness Crab Summit. The participants were sincere, candid and provided excellent advice and information throughout the two days. Their hard work made the Summit a success. In addition, the Summit would not have been possible without the strong co-sponsorship by the Oregon Dungeness Crab Commission. We are extremely grateful to Nick Furman, Hugh Link and the Commissioners for their advice and assistance. Bob Jacobson was the meeting facilitator and proved to be a significant factor in the successful outcome of the Summit.

For those that were unable to attend, a condensed summary of the Summit is provided below. MANY details and issues were discussed that are not included in this brief summary. Small group notes and staff notes of the Summit comments have been recorded to assist staff in review of the advice received.

SUMMARY: On July 27th and 28th 2005, ODFW and the Oregon Dungeness Crab Commission (ODCC) cosponsored the first Oregon Dungeness Crab Summit. During the Summit, between 40 and 50 crabbers and processors (attendee list on reverse) provided their positions on two key issues which were identified for action in a recent industry/ODCC distributed survey: extending limited entry authority out to 200 miles (i.e., preventing vessels holding only Oregon permits from fishing within 200 miles off Washington and/or California and reciprocal action by those states); and crab pot limits. Summit attendees consisted of an excellent representation of the entire coast, each port, and various sectors of the fleet. Participants included people who have had a long history in the fishery as well as those who have entered recently.

In addition to industry participants, Director Lindsay Ball (ODFW), and Oregon Fish and Wildlife Commissioner Jon Englund provided opening comments. Also present were representatives from Oregon State Police, (Lt. Dave Cleary and Sgt. Bill Vanderberg), Assistant Attorney General Steve Sanders and various staff and managers from ODFW. They were available to answer questions during discussions.

Following opening remarks by Nick Furman and Patty Burke, Director Lindsay Ball acknowledged the industry preference (via industry surveys) to have ODFW adopt new regulations with respect to these two issues. He urged industry to take advantage of this Summit to provide specifics so that ODFW would not have to act absent industry leadership. Without that advice, ODFW will develop a plan. Commissioner Jon Englund also spoke (and attended the entire two-day Summit). His message was that he has heard from industry participants over recent years that change was needed and that they feared that an industry-driven proposal (on pot limits) would never come forward. He encouraged attendees to work hard to arrive at specific recommendations.

Success of the Summit is defined by the ability of ODFW to build recommendations to bring forward for discussion and Commission consideration. The following two attachments outline the 200-mile and pot limit discussions at the Summit.

200 Mile State Permit Authority: Summit Results Summary

Discussions began with state limited entry permit jurisdiction to 200 miles. During an informational presentation on this issue, industry participants were presented with three options: (1) Oregon, California and Washington would place restrictions on their respective state commercial crab permits to prohibit vessels from fishing off of neighboring state's waters out to 200 miles; (2) Place restrictions on Oregon and Washington permits but not California; and (3) No change to state jurisdiction beyond three miles. The Summit concluded that option 1 is unlikely for the 2005-06 season given California's inability to make the change by administrative rule. Hopefully, California's legislature will act to allow the California Department of Fish and Game to adopt rules to regulate its crab fishery in the near future. Summit participants raised a number of excellent issues related to the application of this regulation. Once the issue was thoroughly discussed, a vote was taken on each of six questions prepared during the discussion. The majority of attendees favored implementation of option 1, but absent action by the California Legislature, supported option 2. There was some opposition expressed from Columbia River crabbers and processors were split on the issue. A summary of the issues raised as well as voting results are on the reverse of this summary sheet.

If Oregon and Washington place restrictions on their respective state commercial crab permits, the effect would be that: Oregon commercial crab permits would have a restriction which prohibits fishing in waters off of Washington from shore to 200 miles. Likewise, Washington commercial crab permit holders would also be prohibited from fishing in waters off of Oregon shore to 200 miles. Dual Oregon and Washington permit holders would not be restricted from either of the two states and could continue to fish and make landings in both states. California permit holders could continue to fish in Oregon and Washington waters outside three miles. Oregon and Washington permittees would also be able to fish California waters outside three miles. According to Lt. Dave Cleary (OSP), enforcement of the boundaries would require cooperation between Oregon and Washington police, but would not be unreasonably difficult.

NEXT STEPS

The 200 mile provision will be presented at the August 16th Tri-state meeting in Portland and if approved there, will be discussed at the October 7th Oregon Fish and Wildlife Commission Meeting in Salem for consideration of implementation for the 2005-6 season.

200 Mile State Permit Authority: Summit Results Summary

1. Does the Summit support the general policy of developing restrictions on Oregon permits to prohibit their use in either CA or WA waters shore to 200 miles as long as both states act in concert to restrict their state permits?

VOTE: (Permit Holders: 36 yes, 7 no) (Processors: 3 yes, 3 no)

2. Does the Summit support a rule which applies only to the OR-WA permits, leaving no restrictions on OR vessels fishing in CA and no limitations on CA permits?

VOTE: (Permit Holders: 35 yes, 5 no) (Processors: 3 yes, 3 no)

3. Does the Summit support the implementation of this authority for the 2005-6 season?

VOTE: (Permit Holders: 36 yes, 6 no) (Processors: 3 yes, 3 no)

4. Should ODFW include language that enables this limitation on Oregon and California vessels if/when CA-DFG or the CA legislature adopts a law to enable such permit restrictions?

VOTE: (Permit Holders: 39 yes, 2 no) (Processors: 3 yes, 3 no)

5. If 200 mile permit limits are applied, and either WA or OR (or CA if applicable), crab fisheries are closed after December 1, should landings continue to be allowed in the closed state (if an OR vessel has an OR and WA permit, can the OR vessel fish in OR waters and land in WA?... Or vice versa)?

VOTE: (Permit Holders: 23 yes, 6 no) (Processors: 6 yes, 0 no)

6. (If 1-5 approved), should there be a condition on WA and OR permits (by the respective states) to prohibit landing crab caught off of WA (on the CA permit) in OR?

VOTE: **Please note that although this was supported by Summit participants, after receiving further legal advice post-Summit, the Department was advised that this provision (#6) would be unlawful.*

Pot Limit Results: Summit Results Summary

Participants focused on a potential pot limit system for the remainder of the Summit. Excessive amounts of gear in the water, wastage, navigational problems, gear purchased for reserving real estate vs. amount of gear needed to fish effectively, were problems that were identified. A participant suggested status quo or individual fishing quotas as an alternate approach. The moderator and ODFW clarified that the Summit was intended to develop a pot limit proposal. The goal here was to give the industry a process to weigh in, specifically, on the design of pot limits. Two examples of pot limit plans were presented to give attendees a starting point for discussion. A second issue briefing was given to explain additional handouts to be used as guidelines for breakout group discussions. Six key parameters of the sample pot limit plan were outlined for the participants to consider: the total number of pots which should be allowed in the fishery, one pot limit or tiers, the number of tiers a pot limit plan should have (if tiers are used), the percentage of permits in each tier, the number of pots per tier, qualifying criteria (boat size, pot declaration history, historical participation, landings, etc.), and the fishing seasons/years that might be considered when determining qualification for each tier.

Breakout groups of approximately 8-10 members were randomly selected by counting off in the main meeting room. Moderator Bob Jacobson selected an industry spokesperson for each group. Breakout groups were given two guiding principles with which to evaluate their pot limit plans—an acceptable proposal must be: 1) administratively reasonable; and 2) enforceable. Some basic pot calculations tools were provided to each group as well. From then on it was up to industry participants to work together to come up with a pot limit proposal.

Following initial breakout group discussions, there were several proposals which fell into two general categories of approach. The first was a five-tiered plan including permit stacking and 5% across-the-board reductions each year until a target of 150,000 pots is reached. The second was a percentage reduction over time for each permit holder until the target number of pots was reached and a baseline for each permit would be established based on pot declarations. Over lunch, these two approaches were written up for each group. Each spokesperson was asked by the moderator to take both proposals back to their breakout groups for one final session of deliberation. Later, spokespersons presented their group's thoughts about the two proposals as well as any alternative plans that may have been developed.

Bob Jacobson concluded the meeting by asking attendees to vote and/or give a verbal response to many of the ideas brought forward during the day's discussion of pot limits. Twenty nine attendees favored a pot limit system with tiers established through landings history and 25 attendees favored an across-the-board reduction to all permit holders based on pot declaration history. Concern was significant regarding the accuracy of declarations as a basis for establishing a floor for pot reductions. ODFW staff stated that we share these concerns. However, those who support this approach argued that a tiered system simply redistributes the pots from vessels that fish a larger number of pots to vessels that currently fish fewer pots.

After discussion of the break-out groups, an 8 to 12 tiered option was suggested (36 attendees in favor and 12 against). This had not been discussed in detail. In general, some attendees considered a plan with a higher number of tiers more equitable, but no consensus was developed on the number of tiers. There was strong support for using the current control date as a way to establish landing records if those are to be used. New entrants opposed this approach.

General Summit recommendations were made as follows. No votes were taken on these issues. These recommendations were elements that most groups brought forward with general support, and which had support in the final full Summit discussion; some had opposition (as noted):

- Target of 150,000 pots (or less) for the entire Oregon crab fishery (currently 185,000 pots is a rough estimate for 2004-5)
- Consider further across the board pot reductions of between 5% and 10% per permit after initial pot limit implementation until the target is reached
- Permit stacking (stacked permits retired permanently, half the pots added to the purchaser's permit pot limit, up to a cap) (very strong support)
- Establish an appeals board to handle claims of misallocation (unanimous support)
- Formal review of the plan after 3 years (unanimous support)
- Required buoy and pot tags for enforcement purposes (OSP urged that this be a requirement)
- Use of the existing control date in establishing criteria (supporters of new entrants opposed)

A vote was taken to gauge support for the across the board cut based on pot declarations (25 support) and the tier approach using landings history (29 support). This may be a good indicator of the overall split in the fishery on this critical issue (i.e., whatever approach is chosen will engender significant opposition).

A vote was taken on support of 8-12 tiers (36 yes, 12 no) and a range of 1,000 pots to 200 pots for tiers (23 yes, 18 no). Both of these positions/issues came up in the last minutes of the session and were not fully discussed by the break-out groups, therefore, these votes were not viewed as informed as were the other Summit recommendations. It was agreed that an initial ODFW proposal would consider all of the feedback from the Summit.

Despite agreement on most elements of the pot limit proposal, the most divisive of the issues remain for ODFW to work out. The Summit members did narrow the field enough to give ODFW guidance on the pros and cons of each option. There will not be consensus on a final approach, but given the informed support of the Summit participants, we feel that a proposal can be drafted and put out for comment.

NEXT STEPS:

ODFW, working with OSP, will put together a draft pot limit approach over the next few months and will send it out to all permit holders and all Summit participants. Comments will be requested at that time.

NOTE: After consideration post-Summit, the option of using declarations as a basis for a pot limit program, ODFW staff has decided not to pursue that tool for qualification. This does not preclude across the board cuts over time nor does it preclude other options.

A proposal will be finalized for presentation at the Oregon Fish and Wildlife Commission early next spring-summer 2006. A goal, if passed, would be to implement in the 2006 season.

73rd OREGON LEGISLATIVE ASSEMBLY--2005 Regular Session

**Enrolled
House Bill 3472**

Sponsored by Representative KRIEGER

CHAPTER

AN ACT

Relating to commercial fishing; creating new provisions; amending ORS 508.285, 508.936 and 508.947; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 508.285 is amended to read:

508.285. (1) The fee for each license required by this chapter is as follows:

- (a) Albacore tuna landing license, \$20.
- (b) Resident boat license, \$200.
- (c) Nonresident boat license, [~~\$400~~] **\$760**.
- (d) Resident commercial fishing license, \$50.
- (e) Nonresident commercial fishing license, [~~\$100~~] **\$290**.
- (f) Commercial fishing license for resident persons 18 years of age or younger, \$25.
- (g) Commercial bait fishing license, \$60.
- (h) Fish buyer license, \$150.
- (i) Fish bait dealer license, \$60.
- (j) Food fish canner license, \$350.
- (k) Shellfish canner license, \$350.
- (l) Single delivery license, \$100.
- (m) Wholesale fish dealer license, \$350.

(2) As used in this section, "resident" means an actual bona fide resident of this state for at least one year prior to application for a license.

SECTION 2. ORS 508.947 is amended to read:

508.947. (1) The State Department of Fish and Wildlife may issue a black rockfish and blue rockfish vessel permit to **an owner of** a vessel that landed a minimum of 750 pounds of nontrawl caught black rockfish, blue rockfish or nearshore fish in any one calendar year between January 1, 1995, and **January 1, 2001, or in the six-month period between January 1, 2001, and** July 1, 2001, for delivery to a fish processor licensed pursuant to ORS 508.025.

(2) The department may issue a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement to **an owner of** a vessel that was issued a permit under the Interim Nearshore Fisheries Plan through the Developmental Fisheries Program.

(3) The department may renew a black rockfish and blue rockfish vessel permit or a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement if the vessel made a minimum of five commercial fish landings during the calendar year prior to the request for renewal for delivery to a fish processor licensed pursuant to ORS 508.025.

(4) Permits issued under this section expire on December 31 of each year. An owner of a vessel with a permit must submit a renewal application to the department by January 1 of each year. If the owner of a vessel with a permit does not submit a renewal application by January 1, the department shall, not later than February 1, send to the owner by certified letter a notice of the failure to submit the renewal application. An owner may renew a permit later than January 1, but not later than April 1, if the owner pays a \$150 late fee in addition to the fee required in ORS 508.949.

(5) In making determinations regarding initial eligibility for and renewal of a permit issued under this section, the department may consider department records and receipts and accounts, contracts and other business records of private parties that the department considers reliable.

(6) **Except as provided in ORS 508.955, new vessel permits may not be issued under this section after December 30, 2005.**

SECTION 3. ORS 508.936 is amended to read:

508.936. (1) The system established under ORS 508.921 shall include provisions to make the vessel ocean Dungeness crab permit required by ORS 508.926 transferable:

(a) To another vessel; or

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

(2) The vessel to which a permit is transferred [*shall*] **may** not be:

(a) More than 10 feet longer than the vessel from which the permit is transferred; [*and*] or

(b) More than 99 feet in length.

(3) Notwithstanding subsection (2) of this section, a permit issued to a vessel:

(a) Under ORS 508.931 (1)(e) shall be transferred only to a vessel that is 26 feet or less in length.

(b) May not be transferred to a vessel that is more than 10 feet longer than the vessel for which the permit was held on January 1, 2006. However, the Commercial Fishery Permit Board may waive the length restriction in this paragraph if the board finds that strict adherence to the length restriction would create undue hardship, as that term is defined by rule by the State Fish and Wildlife Commission, for the individual seeking transfer of the permit.

(4) Transfer of a permit under this section is subject to the approval of the State Department of Fish and Wildlife according to such rules as the State Fish and Wildlife Commission may adopt. Any transfer of a permit from a vessel without the written consent of each person holding a security interest in the vessel is void.

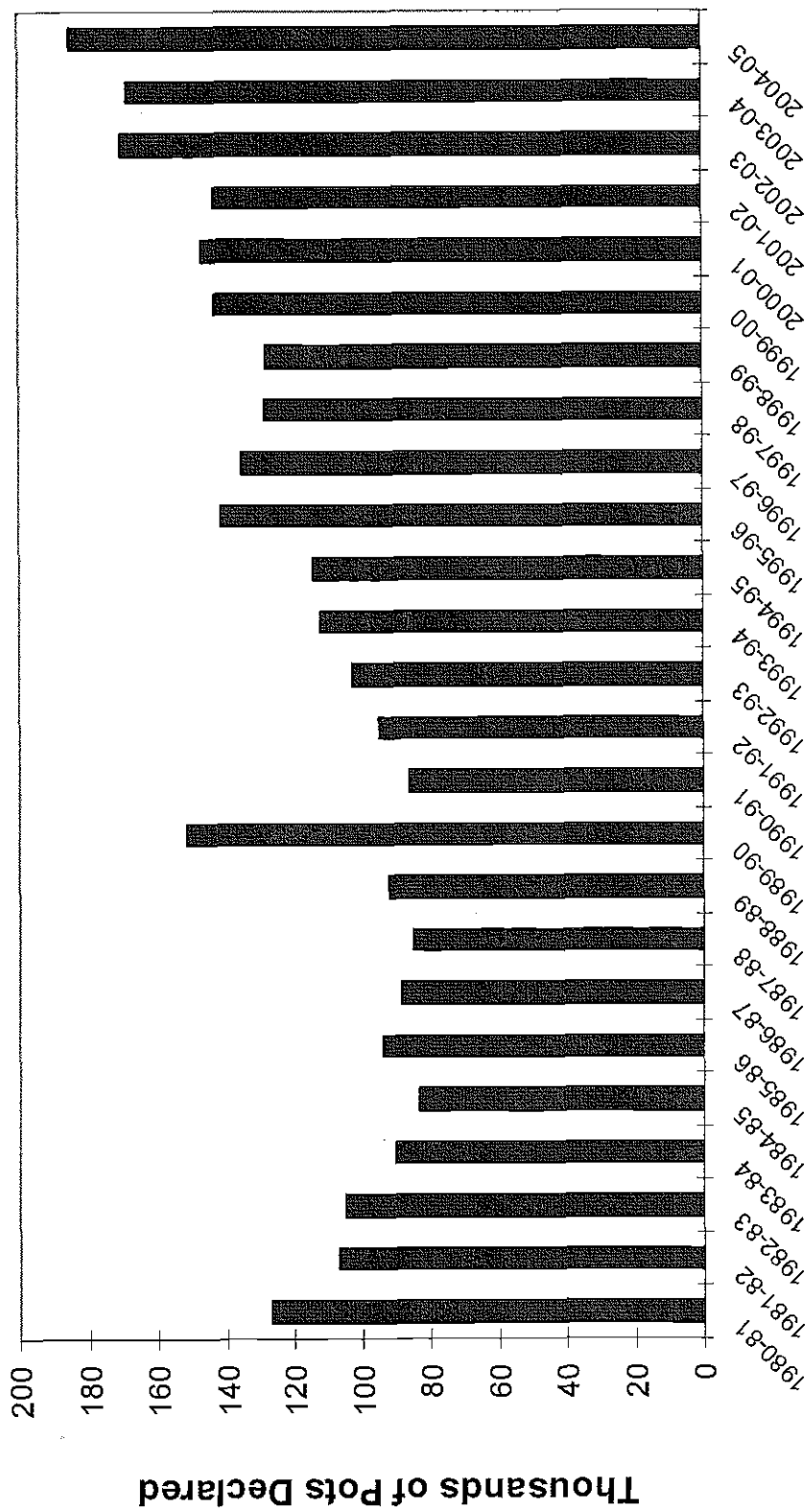
[(5) A vessel ocean Dungeness crab permit shall not be transferred to another vessel more than once in a 60-month period. However, the Commercial Fishery Permit Board may waive the waiting period if the board finds that strict adherence to the waiting period would create undue hardship for the individual seeking transfer of the permit.]

[(6)] **(5)** For purposes of this section, the length of a vessel shall be determined by the manufacturer's specification of overall length, United States Coast Guard documentation stating overall length or a survey of overall length by a certified marine surveyor, as the State Fish and Wildlife Commission by rule shall establish.

SECTION 4. The amendments to ORS 508.936 by section 3 of this 2005 Act become operative January 1, 2006.

SECTION 5. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Estimated Dungeness Fishing Effort In Oregon



Crab Season

1995-96 was the first season after the limited entry program was initiated.

Number of Permits by State and Vessel Size for the Pacific Coast
Dungeness Crab Fishery

State Issuing Permit	Number of Permits	State of Residency						
		OR	WA	CA	AK	NV	ID	CA Non-Resident
OR (2005)	433	339	69	16	5	3	1	
WA (2005)	228	17	202	8	1			
CA (2004)	622			550				72
OR + WA	55	12	43					
OR + CA	53	41	2	9		1		
CA + WA	4		1	3				
CA+OR+WA	8	4		3	1			

Vessel Size (ft)	State Issuing Permit			Total
	OR	WA	CA	
<25	24	0	34	58
25-29	32	12	65	109
30-34	37	15	116	168
35-39	67	20	122	209
40-44	56	28	106	190
45-49	73	39	84	196
50-54	41	25	42	108
55-59	34	48	22	104
60-69	39	23	21	83
70-79	19	9	5	33
80-89	8	1	2	11
≥90	3	2	3	8
Unknown	0	6	0	6
Totals	433	228	622	1283

Data Files Used: 2005 ODFW Crab Permittees
 2005 WDFW Crab Permittees
 2004 CDFG Crab Permittees