



Oregon Fish and Wildlife Commission

October 11, 2002



SUBJECT Developmental Fisheries Program

PRINCIPAL STAFF PERSON Patty Burke, Jean McCrae Phone: (541) 867-4741

COMMISSION ACTION REQUESTED Adoption of permanent rules for the review of denials of Developmental Fishery permits and in the harvest program for some developmental fishery species.

DOCUMENTS ATTACHED

1. Agenda Item Summary
2. Hearing Notice and Fiscal Impact Statement
3. Staff Report
4. Draft Administrative Rules
5. Public Comments

RELATED STATUTES ORS 506.109, 506.119, 506.129

RELATED RULES OAR Chapter 635, Division 006

*Read and
Approved by:*

Division Director

REDACTED FOR PRIVACY

Date 9/30/02

Attorney General

REDACTED FOR PRIVACY

Date 9/30/02

Director

REDACTED FOR PRIVACY

Date 10-01-02

Agenda Item Summary

BACKGROUND

This item is the annual review of the Developmental Fisheries Program for 2002 as well as proposed rule changes to developmental fisheries program procedures, and changes in the harvest program for some developmental fishery species.

PUBLIC INVOLVEMENT

- The Developmental Fisheries Board held a meeting on August 26, 2002 at which the Board did not have a quorum. Issues outlined in the staff report were discussed at this meeting.

ISSUE 1

Adopt permanent rules for the review of denials of Developmental Fisheries permits. (OARs 635-006-0910 and -0930)

ANALYSIS

In May 2002, the Commission adopted temporary rules amending the procedures to appeal denials of Developmental Fishery Permits. These temporary rules were adopted because the current OARs did not reflect current State Laws regarding contested case hearings and rules were needed to proceed with a pending appeal.

The Developmental Fisheries Board reviewed the temporary rules and concurred with the revisions.

OPTIONS

1. Adopt, as permanent, the temporary rules established in May 2002, with additions suggested by Developmental Fisheries Board members.
2. No action: status quo; temporary rule expires and reverts to the OARs in effect before May 2002.

STAFF RECOMMENDATION

Option 1

ISSUE 2

Allow year round season for commercial abalone fishery. (OAR 635-006-0850(1)(a)(M))

ANALYSIS

The permit holder has requested to change to a year-round season rather than a May through October season. Smaller landings over a longer period of time would provide for a more stable market rather than larger landings flooding the market over a shorter period of time. With an overall quota, the Board and staff feel the poundage can be landed any time without adversely affecting the resource.

OPTIONS

1. Adjust the flat abalone harvest season to year-round.
2. No action: status quo.

STAFF RECOMMENDATION

Option 1.

ISSUE 3

Convert the remaining trawl permits for spot prawn to pot permits by 2004. (OAR 635-006-0850(1)(b)(C))

ANALYSIS

The spot prawn fishery has been under the Developmental Fisheries program since 1995. Staff conducted a review of the fishery summarizing landings and effort in Oregon and management and research in other states. Most prawn landing into Oregon come from off Washington with trawl gear.

Staff recommended to the Developmental Fisheries Board changing the Oregon spot prawn fishery to a pot-only fishery because of concerns with effort shifts from Washington, higher rates of bycatch (including rockfish) with trawl gear, selectivity of trawl gear for smaller, male prawns, and consistency with Washington regulations.

Members of the Board did not feel there was enough data from Oregon to draw conclusions from and were reluctant to put anyone out of business. They suggested reducing the number of trawl permits through attrition.

OPTIONS

1. Convert all trawl permits to pot permits by 2004.
2. Reduce the number of trawl permits through attrition.
3. No action: status quo, number of trawl permit remains at 6.

STAFF RECOMMENDATION

Option 1.

ISSUE 4

Adjust the gaper clam incidental catch provision to include pounds.
(OAR 635-006-0850(1)(b)(F))

ANALYSIS

In 2001, the Commission authorized an incidental catch of gaper clams during the closed season of January through June. The regulation was adopted in terms of numbers of clams: one gaper clam for every eight butter clams harvested.

Since the regulation was adopted, we have heard from several harvesters who express that it is easier for them to weigh their clams than it is to count them and would like the regulation expressed in terms of pounds.

OPTIONS

1. Adjust the gaper clam incidental catch regulation to reflect either numbers (one gaper clam per eight butter clams) or pounds (25 pound of gaper clams per 100 pounds of butter clams), whichever is greater.
2. No action: status quo, incidental catch is in terms of numbers only.

STAFF RECOMMENDATION

Option 1.

DRAFT MOTION

I move to amend OAR Division 006 as proposed by staff in Attachment 4 [with the following changes...].

EFFECTIVE DATE

Upon filing.

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

Mike Lueck

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Rules Coordinator

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2501 SW First Avenue; P. O. Box 59; Portland, OR 97207

Address

Forestry Dept. - Mt. Hood Headquarters

Fish and Wildlife

10/11/02

8:00 a.m.

16400 Champion Way - Sandy, OR 97055

Commission

Hearing Date

Time

Location

Hearings Officer

Hearing Date

Time

Location

Hearings Officer

Hearing Date

Time

Location

Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?

Yes X

No

RULEMAKING ACTION**ADOPT:**

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

AMEND: OAR Chapter 635, Divisions 004, 006**REPEAL:****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.

Stat. Auth.: ORS 506.109 and 506.119

Other Authority

Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460, 506.465

RULE SUMMARY

Adopt permanent rules for the review of denials of Developmental Fishery permits; change regulations in the harvest program for some developmental fishery species recommended by the Developmental Fishery Board; add 33 nearshore species to the developmental species list and develop a harvest program for the nearshore fishery; and amend regulations for the ocean food fish fishery to establish special management areas. This notice was published in the September *Oregon Bulletin*. This refile reflects only a change in the hearing location.

October 11, 2002

Last Day for Public Comment

REDACTED FOR PRIVACY
 REDACTED FOR PRIVACY

Authorized Signer and Date

Sharon M. Bird

9-13-02

*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 5:00 pm on the preceding workday.

Secretary of State
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
Agency and Division

635
Administrative Rules Chapter Number

| | | |
|---|---|----------------------------------|
| In the Matter of amendment of |) | Statutory Authority, |
| OAR Chapter 635, Divisions 004 and 006 |) | Statutes Implemented, |
| relating to the Developmental Fisheries |) | Statement of Need, |
| Program and the Ocean Food Fish fishery |) | Principal Documents Relied Upon, |
| |) | Statement of Fiscal Impact |

Statutory Authority: ORS 506.109 and 506.119

Other Authority:

Statutes Implemented: ORS 506.129, 506.450, 506.455, 506.460, 506.465

Need for the Rule(s):

The rules are needed for the review of denials of Developmental Fishery permits; change regulations in the harvest program for some developmental fishery species recommended by the Developmental Fishery Board; add 33 nearshore species to the developmental species list and develop a harvest program for the nearshore fishery; and amend regulations for the ocean food fish fishery to establish special management areas.

Documents Relied Upon:

Staff report for Oregon Fish and Wildlife Commission Meeting of October 11, 2002

The above document is available for public inspection in the Department of Fish and Wildlife, Fish Division, Third Floor, 2501 SW First Avenue, Portland, 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?: No

If not, why?: The Developmental Fishery Board met and considered requests to change the harvest programs for developmental fisheries species.

REDACTED FOR PRIVACY
REDACTED FOR PRIVACY

Authorized Signer and Date

Sharon M. Bird

9-13-02

Fiscal and Economic Impact Statement for the October 11, 2002 Hearing in the Matter of the Amendment of Rules Relating to the Developmental Fisheries Program and Ocean Food Fish Fishery

Fiscal and economic impact: The proposed rules will affect state agencies, units of local government and the public, respectively, as discussed below. The rules are needed to establish a permanent process for the review of denials of Developmental Fishery permits; to change harvest regulations for certain developmental fishery species; to add 33 nearshore species to the developmental species list; and, to establish special management areas for the ocean food fish fisheries.

- a. The only state agency which should be affected by adoption of these rules is the Oregon Department of Fish and Wildlife. No significant changes from the current legislatively levels of the department's operations or expenditures are expected as a result of the amendment of the rules recommended by the staff.
- b. No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.
- c. The public could be affected by the adoption of these rules: The existing statutes and rules require adoption of a list of developmental fisheries species, and the establishment or maintenance of limited entry harvest systems for the associated developmental fisheries. For this hearing, ODFW staff proposes several issues be considered by the State Fish and Wildlife Commission toward prescribing a developmental fisheries program for several nearshore ocean food fish species:
 - (1) To add the thirty-three new species to "Category A" of the developmental species list.
 - (2) To establish commercial harvest programs for the 33 new developmental species.
 - (3) To re-establish area management for black rockfish, blue rockfish, and establish area management for 33 new developmental fisheries species.
 - (4) To establish permanent rules for the review of denials of developmental fishery permits that are required to harvest developmental fisheries species.

Overall, the developmental fisheries rules are expected to produce positive economic effects for the public and small business both in the short run and in the long run. Rules related to the limiting of harvester entry to particular fisheries can be viewed as imposing additional costs (in the form of permit fees) on harvesters in the short run, and as potentially excluding some harvesters who might not apply for limited entry permits soon enough. We do not have specific information or models to predict how many vessels might be excluded from the nearshore fisheries by this rule. However, in the long run, implementation of the rules are expected to yield positive economic effects by controlling the development of fisheries, so the fisheries are sustainable in the long run. This is intended to help prevent the typical cycle in fisheries of boom (as a virgin stock is fished down to maximum sustainable yield levels) and bust (when the stock becomes incapable of sustaining yields at the initial exploitation level).

If the proposed species are added to the developmental species list, we expect positive direct economic effects. The current economic impact on personal income of the live fish fishery was about 2 million dollars at 2001 harvest levels and prices. We are unable to estimate the magnitude of those effects because we don't have enough information to predict harvest levels or associated revenues. Also, ODFW staff is concerned that several of the species may be easily overexploited due to the continuation and growth of an open access fishery directed towards live fish. A developmental fisheries program that includes the species proposed for addition to the developmental species list will help maintain populations of nearshore species, and increase the likelihood of creating a sustainable fishery.

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

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

**Developmental Fisheries Program
Staff Report**

**Prepared for Oregon Fish and Wildlife Commission
October 11, 2002 Portland, Oregon**

Summary of Staff Report

ODFW staff is providing the annual review of the Developmental Fisheries Program for 2002 as well as proposed rule changes to developmental fisheries program procedures, and changes in the harvest program for some developmental fishery species.

Key elements and conclusions from the staff report are:

- One hundred and forty permits for the harvest of developmental fisheries species have been issued in 2002, through August. Most landings of developmental fisheries species have been as bycatch in other fisheries, except sardines. The sardine fishery may be closed by NMFS because the harvest guideline was reached.
- Staff completed a review of the abalone research fishery and the spot prawn fishery, continued participation in the planning process of a federal management plan for migratory species (which includes swordfish), participated in PFMC pelagic species management team meetings, participated in an international symposium on sardines, and collected samples and observed bycatch in the sardine fishery.
- The Developmental Fisheries Board considered requests to adjust the harvest program for flat abalone, spot prawns and bay clams. The Board did not have a quorum to make formal recommendations, but members provided suggestions.
- The ODFW staff recommend: adopting permanent rules for the review of denials of Developmental Fishery permits; regulation changes in the harvest program for some developmental fishery species as suggested by the Developmental Fishery Board; and a regulation change in the harvest program for spot prawns that is more conservative than changes suggested by the Developmental Fishery Board.

Outline of Staff Report

| | | |
|------|--|--------|
| I. | Introduction | Page 4 |
| II. | Annual Report of Developmental Fisheries Activities | Page 4 |
| | • Summarizes permits and landing activities of developmental fishery species. | |
| | • Summarizes research and management activities of developmental fishery program | |
| III. | Staff Analysis of Issues and Options - Recommendations | Page 8 |

• *Issue 1.*

Adopt permanent rules for the review of denials of Developmental Fisheries Permits.

OARs 635-006-0910 and -0930

- Option A (*preferred*) Staff recommends the Commission adopt, as permanent, the temporary rules established in May 2002.
- Option B No action: status quo, temporary rule expires and revert to original OARs in effect before May 2002.

• *Issue 2.*

Allow year round season for commercial abalone fishery.

OAR 635-006-0850(1)(a)(M)

- Option A (*preferred*) Staff recommends the Commission adjust the flat abalone harvest season to year-round.
- Option B No action: status quo.

• *Issue 3.*

Convert the remaining trawl permits for spot prawn to pot permits by 2004.

OAR 635-006-0850(1)(b)(C)

- Option A (*preferred*) Staff recommends the Commission convert all remaining trawl permits for spot prawn to pot permits by 2004, changing the Oregon fishery to a "pot only" fishery.
- Option B Reduce spot prawn trawl permits through attrition by issuing no new permits when current permits are not renewed (*suggested by Developmental Fishery Board members*).

Option C No action: status quo.

• *Issue 4.*

Adjust the gaper clam incidental catch to include pounds.

OAR 635-006-0850(1)(b)(F)

Option A (*preferred*) Staff recommends the Commission adjust the gaper clam incidental catch regulation to reflect either numbers (one gaper clam per eight butter clams) or pounds (25 pound of gaper clams per 100 pounds of butter clams), whichever is greater.

Option B No action: status quo, incidental catch is in terms of numbers only.

Appendix A Flat Abalone Survey Report Page A-1

Appendix B Oregon's Sardine Fishery 2001 Summary Page B-1

Appendix C Spot Prawn Fishery Report Page C-1

Oregon Administrative Rules

I. Introduction

For the hearing scheduled on October 11, 2002, staff will provide the annual review of the ODFW Developmental Fisheries Program and forward suggestions from Developmental Fisheries Board members to: adopt permanent rules for the review of denials of Developmental Fishery permits; make changes in the harvest program for some developmental fishery species; amend rules to add nearshore species to the developmental species list and develop a harvest program for the nearshore fishery; and amend rules re-establishing special management areas for black rockfish.

II. Annual Report of Developmental Fisheries Activities

Permits

ODFW staff has issued 140 permits for the harvest of developmental fisheries species through August, 2002 (Table 1). Of the 120 permits issued in 2000, 36 were renewed for 2002 (as compared to 33 the previous year). Remaining permits for three fisheries (sardines, bay clams, and spot prawns) were issued through a lottery. All available permits were issued for seven fisheries (spot prawns, coonstripe shrimp, abalone, bay clams, sardines, octopus, and hagfish).

Landings

Landings of developmental fisheries species through August 2001 are summarized in Table 2. The majority of the landings of developmental species were taken as incidental catch in other fisheries, with the exception of hagfish and sardines. Through August, 11 vessels have landed over 40 million pounds of sardines into Astoria (compared with 28 million pounds for a season total in 2001). Because of the increased landings into Oregon and Washington, the National Marine Fisheries Service may close the sardine fishery off Oregon, Washington, and northern California before the end of September because the harvest guideline was reached. Log records through August show 95% of the landings were taken off Oregon and 5% off Washington. Six processors are buying sardines in Astoria, an increase from five in 2001. The landing fees for species in all categories have generated approximately \$50,598 into the developmental fisheries fund in 2002, through August.

Research

Sardines

Staff attended and summarized the 2001 sardine fishery at an international symposium on sardines in Mexico. The report of the 2001 fishery is attached as Appendix B

Staff collected samples of sardines from the commercial harvest that will be analyzed for size, sex, maturity, and age. Samples worked up through August show a larger average size in the beginning of the season than last year (163 gm average, compared to 143 gm average in June, 2001). We lost the funding to hire a seasonal for ride-along trips on commercial vessels to observe by-catch, but existing staff has made 4 trips, through August. Logbook records summarized through August (251 trips) show bycatch of 86 salmon (averaging 0.3 salmon/trip - 72% released alive) anchovies, herring, shad, mackerel, sharks, and squid. Sardines sampled in 2001 and aged by California Dept. of Fish and Game showed a similar age composition as 2001; mostly 2-4 year olds with a range of 0-9 year olds.

Pacific Fishery Management Council Activity

The third draft of the Pacific Fisheries Management Council's (Council) fishery management plan for highly migratory species (which will include swordfish and blue shark) will be reviewed by the Council in November. Staff participated in three team meetings, two public hearings, and two Council meetings in the last year in the development process.

Staff also participated in a Coastal Pelagic Team meetings to prepare the 2002 stock assessment and fishery evaluation document for coastal pelagic species and discuss issues related to the Pacific sardine harvest guideline formula.

Developmental Fishery Board Activities

The Developmental Fishery Board held one meeting in 2002. The Board did not have a quorum of voting members so formal recommendations could not be made. However, the participating members reviewed the temporary rules for procedures to appeal denials of permits, the abalone and spot prawn fisheries, and the nearshore fishery and provided feedback on staff recommendations.

Table 1. 2002 Developmental Fishery Permits (as of 9/6/02).

| | Permits Allowed | Permits Issued | Renewals from 2001 |
|--|--------------------|-------------------|-----------------------|
| Pacific hagfish | 25 | 25* | 1 |
| blue shark | 10 | 3 | |
| swordfish | 10 other | 3 | |
| | 20 longline | 3 | |
| northern anchovy & Pacific herring | 15 | 5 | |
| Pacific sardine & Pacific saury | 20 | 20* | 15 |
| Pacific sandfish | 10 | | |
| smelt | 20 | | |
| Pacific pomfret | 10 | | |
| slender sole | 10 | 1 | |
| box crab | 25 | 15 | 3 |
| Oregon hair crab & scarlet king crab & grooved tanner crab | 10 | 3 | |
| spot shrimp | 6 trawl | 6* | 4 |
| | 10 other | 10* | |
| coonstriped shrimp & sidestripe shrimp | 10 | 10* | 2 |
| cockle clams (ocean) | 5 | | |
| bay clams | 10 coastwide | 10* | 8 |
| | 5 south coast | 5* | |
| giant octopus | 10 | 10* | 1 |
| California market squid | 30 trawl | 4 | |
| other squid spp. | 30 other | | |
| fragile urchin | 6 trawl | | |
| | 6 other | | |
| sea cucumber | 6 trawl | 3 | |
| | 10 diver | 1 | |
| | 10 other | | |
| marine snails | 10 | 1 | |
| brine shrimp | 3 | 1 | 1 |
| flat abalone | 1 | 1* | 1 |
| | total | 140 | 36 |

* all available permits issued

Table 2. Landings of developmental fisheries species, by category, through August, 2001

| Category A | Pounds | Category B | Pounds | Category C | Pounds |
|---------------------|------------|---------------------|--------|---------------------|-------------------|
| Pacific hagfish | 401,892 | salmon shark | - | spiny dogfish | 10,952 |
| blue shark | 575 | black hagfish | - | soupin shark | 207 |
| swordfish | - | Eelpouts | - | skate | 808,219 |
| northern anchovy | 2,886 | skilfish | - | American shad | 58,125 |
| Pacific herring | 21,552 | carp | - | Pacific cod | 42,540 |
| Pacific sardine | 36,729,613 | yellow perch | - | Pacific flatnose | - |
| Pacific saury | - | brown bullhead | - | Pacific grenadier | 111,688 |
| Pacific sandfish | - | northern squawfish | - | cabezon | 68,655 |
| smelt | 5,339 | | | sculpins | 1 |
| Pacific pomfret | - | euphausiids (krill) | - | kelp greenling | 759,010 |
| slender sole | - | Pacific sand crab | - | jack mackerel & | 42,383 |
| | | freshwater mussels | - | Pacific mackerel | |
| box crab | 3,526 | | | greenstriped | |
| | | | | rockfish | |
| Oregon hair crab | - | | | redstripe rockfish | |
| scarlet king crab | 646 | | | shortbelly rockfish | |
| grooved tanner crab | 3,376 | | | sharpchin rockfish | |
| spot shrimp | 39,208 | | | splitnose rockfish | |
| coonstriped shrimp | 2,236 | | | Pacific sanddab | 251,358 |
| sidestripe shrimp | - | | | butter sole | 72 |
| flat abalone | 1,586 | | | English sole | 685,861 |
| butter clams | 23,197 | | | rex sole | 451,017 |
| cockle clams | 78,222 | | | rock sole | 13,101 |
| gaper clams | 4,115 | | | sand sole | 181,082 |
| littleneck clams | 101 | | | lemon sole | 6,074 |
| softshell clams | 710 | | | spotted ratfish | - |
| giant octopus | 46,788 | | | wolf-eel | 1,618 |
| Calif. market squid | 4,384 | | | walleye pollock | 9,872 |
| other squid spp. | - | | | | |
| fragile urchin | - | | | red rock crab | 912 |
| sea cucumber | - | | | purple sea urchins | 410 |
| marine snails | - | | | crayfish | 48,215 |
| brine shrimp | 35,000 | | | | |
| | | | | grand total | 40,956,321 |

III. Staff Analysis of Issues and Options - Recommendations

The following discusses staff recommendations. The full text of proposed rule changes is attached as Attachment 4.

- *Issue 1.*
Adopt permanent rules for the review of denials of Developmental Fisheries Permits.
(OAR 635-006-0910 and 0930)

Issue 1

In May 2002, the Commission adopted temporary rules amending the procedures to appeal denials of Developmental Fishery Permits. These temporary rules were adopted because the current OARs did not reflect current State Laws regarding contested case hearings and rules were needed to proceed with a pending appeal.

The Developmental Fisheries Board reviewed the temporary rules and they concurred with the revisions.

- Option A:** (*preferred*) Staff recommends the Commission adopt, as permanent, the temporary rules established in May 2002.
- Option B:** No action: status quo, temporary rule expires and OARs revert to those in effect in May 2002.

- *Issue 2.*
Allow year round season for commercial abalone fishery.
(OAR 635-006-0850(1)(a)(M))

Issue 2

Beginning with the 2001 season, the Commission authorized one permit to commercially harvest flat abalone. The permit was allowed providing the harvester conduct density surveys and provide samples for maturity studies. A report summarizing data collected in 2001 is attached as Appendix A.

The permit holder has requested to change to a year-round season rather than a May through October season. He feels smaller landings over a longer period of time would provide for a more stable market rather than larger landings flooding the market over a shorter period of time. With an over-all quota, the Board members and staff feel the poundage can be landed any time without affecting the resource.

Option A: (preferred) Staff recommends the Commission adjust the flat abalone harvest season to year-round.

Option B: No action: status quo.

• **Issue 3.**

Convert the remaining trawl permits for spot prawn to pot permits by 2004.

(OAR 635-006-0850(1)(b)(C))

Issue 3

The spot prawn fishery has been under the Developmental Fisheries program since 1995. Staff conducted a review of the fishery summarizing landings and effort in Oregon and management and research in other states. The report is attached as appendix C.

In Oregon, commercial fishing for spot prawns is allowed year-round. Six permits are issued for trawl gear and ten for pot gear. Annual renewal requirements are five landings of at least 100 pounds or one landing of 1,000 pounds, round weight. "Fisheye" excluders must be used on trawl gear.

Since 1993, landings have ranged from 8,000 pounds to 137,000 pounds, with 70-100% landed by trawl gear. However, only about 20% of the prawns landed in Oregon have been harvested in Oregon waters. Most are caught off Washington, with a small amount coming from northern California. Prawns harvested off Oregon are found in a few, small, well-defined areas, characterized by a high relief rock bottom in 90- 125 fm.

Spot prawns are protandric hermaphrodites, they all start out as males and then transition into females as they get older. Research data from University of Washington show a difference in the size of prawns caught by pot and trawl gear. Trawl gear harvested smaller (male) prawns while the pot gear harvested larger (female) prawns.

The California Department of Fish and Game recently completed a two-year observer program on their trawl and pot spot prawn fisheries. Data show a much higher bycatch with trawl gear (90%) than with pot gear (50%). Currently California has a limited entry system for pot gear and is exploring methods (gear/area/season restrictions) to reduce bycatch with trawl gear.

The Washington Department of Fish and Wildlife feel their prawn stock is stable and capable of supporting current harvest levels. However, they have concerns regarding the degradation of habitat by trawl gear. They introduced new regulations for 2002 converting all spot prawn trawl permits to pot permits by 2003.

Staff recommended to the Developmental Fisheries Board changing the Oregon spot prawn fishery to a pot-only fishery by allowing the trawl vessels to fish with trawl or pot gear for one year and then converting to pot gear. The main reasons were:

1. Increased trawl pressure in Oregon may result when Washington closes to prawn trawling in 2003.
2. Trawl gear selectivity is biased toward the smaller male prawns.
3. Oregon does not have the productive prawn area to support increased trawl activity.

4. High rates of trawl bycatch compared with pot gear.
5. Gear competition in Oregon's small prawn areas prevents pot gear from being fished.
6. Consistency with PFMC action to limit trawl footrope size and reduce habitat damage in areas important to juvenile rockfish. There is also concern for long-lived sponges and corals.
7. Other states, particularly Washington, have moved in that direction, and there is merit in maintaining uniformity in state-to-state management.

Members of the Board did not feel there was enough data from Oregon to draw conclusions and were reluctant to put anyone out of business. They suggested reducing the number of trawl permits through attrition. Members of the prawn trawl industry indicated there may be only two trawl vessels working off Oregon next year. Staff agreed reducing the trawl permits to two would reduce concerns regarding increased trawl effort, however staff still believe that the harvest of small prawns by trawl gear jeopardizes the long-term productivity of Oregon prawn populations and that habitat damage from prawn trawls in these deepwater coral and sponge habitats is a serious concern.

- Option A:** (*preferred*) Staff recommends the Commission convert all remaining trawl permits for spot prawn to pot permits by 2004, changing the Oregon fishery to a "pot only" fishery, and issuing no new pot gear permits until the total falls below 10.
- Option B:** Reduce spot prawn trawl permits through attrition by issuing no new permits when current permits are not renewed (*suggested by Developmental Fishery Board members*).
- Option C:** No action: status quo, number of trawl permits remains at 6, with 10 permits issued for harvest by other gear.

• *Issue 4.*

Adjust the gaper clam incidental catch to include pounds.
(OAR 635-006-0850(1)(b)(F))

Issue 4

In 2001, the Commission authorized an incidental catch of gaper clams during the closed season of January through June. The initial recommendation had been to set the incidental catch allowed in terms of pounds: 25 pounds of gaper clams for each 100 pounds of butter clams landed. OSP felt a count of clams would be easier to enforce because harvesters may not have scales on their vessels. Therefore, the regulation was adopted in terms of numbers of clams: one gaper clam for every eight butter clams harvested.

Since the regulation was adopted, we have heard from several harvesters who express that it is easier for them to weigh their clams than it is to count them and would like the allowable incidental catch to be expressed in terms of pounds.

Staff recommends the regulation be adjusted to reflect both numbers or pounds, whichever allows the greater incidental catch of gaper clams.

Option A: (*preferred*) Staff recommends the Commission adjust the gaper clam incidental catch regulation to reflect both numbers (one gaper clam per eight butter clams) or pounds (25 pound of gaper clams per 100 pounds of butter clams), whichever allows a greater incidental catch of gaper clams.

Option B: No action: status quo, incidental catch is measured in terms of numbers only.

DIVISION 006

COMMERCIAL FISHERIES
COMMERCIAL GEAR; LICENSES, POUNDAGE
FEES,
RECORDS AND REPORTS

Developmental Fisheries Program

635-006-0850

Developmental Fisheries Species List

(1) The Developmental Fisheries species, permit and gear restrictions, and landing requirements for renewal of Category A permits are as follows:

(a) FISH

(A) Pacific hagfish (*Eptatretus stouti*) fishery has a qualifying and annual renewal requirement of five landings. There are 25 permits for harvest of which there are no trawl permits;

(B) Blue shark (*Prionace glauca*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 10 permits for harvest of which there are no high seas drift net permits and no large mesh gill net permits. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(C) Swordfish (*Xiphias gladius*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Permits are valid for and renewal requirements are calculated from February 1 through January 31 of the following year. There are 20

permits for harvest by floating longline and 10 permits for harvest by other gear. Specially adapted drift/gill net may be permitted. Experimental gear permits may be required. Five single-delivery permits will be issued to those who applied by annual filing date, but did not receive a Developmental Fishery Permit. Gill net gear must conform to California gear restrictions;

(D) Northern anchovy (*Engraulis mordax*) and Pacific herring (*Clupea pallasii*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 15 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(E) Pacific sardine (*Sardinops sagax*) and Pacific saury (*Cololabis saira*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 20 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. Experimental gear permits may be required;

(F) Pacific sandfish (*Trichodon trichodon*) fishery has a qualifying and annual renewal requirement of five landings. There are 10 permits for harvest of which there are no dredging permits and no trawl permits, however, limited numbers of experimental gear permits may be issued for trawl harvest. Permits are area specific. Experimental gear

permits may be required. No permit is needed for hand lines or hand harvest;

(G) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 20 permits for ocean harvest of which there are no trawl permits, however, limited numbers of experimental gear permits may be issued for trawl harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(H) Pacific pomfret (*Brama japonica*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest. Experimental gear permits may be required;

(I) Slender sole (*Eopsetta exilis*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest. Experimental gear permits may be required.

(b) INVERTEBRATES

(A) Box crab (*Lopholithodes foraminatus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 25 permits for harvest with pots only;

(B) Grooved tanner crab (*Chionoecetes tanneri*), Oregon hair crab (*Paralomis mulitispina*) and scarlet king crab (*Lithodes couesi*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest with pots only;

(C) Spot prawn (*Pandalus platyceros*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing or one landing consisting of at least 1000 pounds.

After 2002, new permits for trawl gear will not be issued and trawl permits may be renewed as pot permits. After 2003, permits will be issued for pot gear only; no new permits will be issued until the number of permits issued is below 10, after which there may continue to be 10

permits. [There are six permits for harvest by trawl gear and 10 permits for harvest by other gear.] Permits are area specific. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(D) Coonstripe shrimp (*Pandalus danae*) and sidestripe shrimp (*Pandalopsis dispar*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing. There are 10 permits for harvest by pot gear;

(E) Ocean cockle clams (*Clinocardium nuttallii*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing.

There are five permits for ocean harvest only. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(F) Bay clams including cockle clams (*Clinocardium nuttallii*), butter clams (*Saxidomus giganteus*), gaper clams (*Tresus capax*, *nuttallii*), native littleneck clams (*Protothaca staminea*), and softshell clams (*Mya arenaria*) fishery has no qualifying and annual renewal requirements for intertidal hand harvest, an unlimited number of permits, and a \$25 permit fee. There are 11 permits (individual or vessel) for subtidal dive harvest, effective March 18, 1997-December 31, 1997, and 10 permits thereafter for statewide harvest and five permits for harvest south of Heceta Head. Qualifying requirements are either five landings consisting of at least 200 pounds each landing or an annual total of 2500 pounds for one calendar year during the qualifying period of January 1, 1990 through October 16, 1995. Annual renewal requirements are either five landings consisting of at least 100 pounds each landing or an annual total of 2500 pounds. An incidental catch of one gaper clam per eight butter clams, **or 25 pounds of gaper clams per 100 pounds of butter clams, whichever allows the greater gaper clam incidental catch,** is allowed during the closed season notwithstanding OAR 635-005-0020;

(G) Giant octopus (*Octopus dofleini*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest using octopus pots only;

(H) California market squid (*Loligo opalescens*) and other squid (several species) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 30 permits for harvest using trawl gear and 30 permits for harvest using other gear types. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(I) Fragile urchin (*Allocentrotus fragilis*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 500 pounds each landing. There are six permits for harvest using trawl gear and six permits for harvest using other gear. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head;

(J) Sea cucumber (*Parastichopus* spp.) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are six permits for harvest using trawl gear, 10 permits for harvest by diver, and 10 permits for harvest by other gear. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(K) Marine snails (various species) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for subtidal harvest only;

(L) Brine shrimp (*Artemia* spp.) fishery has a qualifying and annual renewal requirement of at least 5000 pounds landed. There are three permits to harvest adults.

(M) Flat abalone (*Haliotis walallensis*) fishery has a single permit authorized, a 3,000 pound annual quota limit, an annual renewal requirement of 10 landings of at least 20 pounds each landing, a 4-1/2 inch minimum size, [a May-October] year-round season, taken from nonintertidal areas with an abalone iron, and such additional permit conditions as the Director deems appropriate as required by OAR 635-006-870 and OAR 635-006-0880.

(2) The Developmental Fisheries Species List, Category "B," is as follows:

(a) FISH

- (A) Salmon shark (*Lamna ditropis*);
- (B) Carp (*Cyprinus carpio*);
- (C) Black hagfish (*Eptatretus deani*);
- (D) Yellow perch (*Perca flavescens*);
- (E) Eelpouts (family Zoarcidae);
- (F) Brown bullhead (*Ameiurus nebulosus*);
- (G) Skilfish (*Erilepis zonifer*);
- (H) Northern squawfish (*Ptychocheilus oregonensis*).

(b) INVERTEBRATES

- (A) Euphausiids (krill) (family Euphausiidae);
- (B) Pacific sand crab (*Emerita analoga*);

(C) Freshwater mussels (families Margaritifera, Anodonta, Gonidea, and Corbicula).

(3) The Developmental Fisheries Species List, Category "C," is as follows:

(a) FISH

- (A) Spiny dogfish (*Squalus acanthias*);
- (B) Soupfin shark (*Galeorhinus zyopterus*);
- (C) Skate (family Rajidae);
- (D) American shad (*Alosa sapidissima*);
- (E) Pacific cod (*Gadus macrocephalus*);
- (F) Pacific flatnose (*Antimora microlepis*);
- (G) Pacific grenadier (*Coryphaenoides acrolepis*);
- (H) Cabezon (*Scorpaenichthys marmoratus*);
- (I) Sculpins (family Cottidae);
- (J) Kelp greenling (*Hexagrammos decagrammus*);
- (K) Jack mackerel (*Trachurus symmetricus*);
- (L) Chub (Pacific) mackerel (*Scomber japonicus*);
- (M) Greenstriped rockfish (*Sebastes elongatus*);
- (N) Redstripe rockfish (*Sebastes proriger*);
- (O) Shortbelly rockfish (*Sebastes jordani*);
- (P) Sharpchin rockfish (*Sebastes zacentrus*);
- (Q) Splitnose rockfish (*Sebastes diploproa*);
- (R) Pacific sanddab (*Citharichthys sordidus*);
- (S) Butter sole (*Pleuronectes isolepis*);
- (T) English sole (*Pleuronectes vetulus*);
- (U) Rex sole (*Errex zechirus*);
- (V) Rock sole (*Pleuronectes bilineatus*);
- (W) Sand sole (*Psettichthys melanostictus*);
- (X) Curlfin (lemon) sole (*Pleuronichthys decurrens*);

(Y) Spotted ratfish (*Hydrolagus colliei*);

(Z) Wolf-eel (*Anarrhichthys ocellatus*);

(AA) Walleye pollock (*Theragra chalcogramma*).

(b) INVERTEBRATES

(A) Red rock crab (*Cancer productus*);

(B) Purple sea urchins (*Strongylocentrotus purpuratus*);

(C) Crayfish (*Pacifastacus leniusculus*).

Stat. Auth.: ORS 506.109 and 506.119

Stats. Implemented: ORS 506.129, 506.450, 506.455,
506.460, and 506.465

Hist.:

635-006-0910

Procedures for Issuance, Transfer and Renewal of

Developmental Fisheries Species Permits

(1) Applications:

(a) An applicant for a permit must submit a complete application in writing accompanied by an annual fee of up to \$75. The application shall include the species of fish to be taken, the method and gear proposed to be used, and the area from which the Developmental Fisheries Species are to be taken, and other information as the Department may require;

(b) Complete applications must be received postmarked or date-stamped by January 1 of the year of issue for new species added to the developmental fishery list in OAR 635-006-0850, and thereafter by the annual filing date of February 1 of the year of issue, except applications for box crab permits must be postmarked or date-stamped by January 1 of the year of issue;

(c) An application shall be considered complete if it is legible, has all information requested on 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 the filing date, the individual shall not be considered to have applied in a timely manner;

(d) Before applying for a permit, an applicant must first have obtained the appropriate vessel license (or individual license if permit is issued to individual) for the year the permit will be issued.

(2) Number of permits allowed:

(a) An individual shall not submit more than one application, per permittee, for each developmental fishery species gear category;

(b) No permittee who holds a valid developmental fisheries permit may apply for any additional permits for the same species gear category[. A valid developmental fisheries permit is a permit which is neither at issue in a pending Permit Review Board proceedings nor before a court of law]unless the Department proposes to deny that permit;

(c) If a permittee, who holds a permit at issue either before the [Permit Review Board]Commission or a court of law, is awarded another permit for the same species gear category through the lottery and thereafter prevails before the [Permit Review Board]Commission or in court, the permittee shall immediately surrender one of the permits to any Department office, so that only one valid permit per species gear category is held.

(3) Issuance of permits:

(a) If the number of applications received by the filing date is less than the number of permits available, all applicants who have submitted complete applications shall be issued a permit within 14 days of the filing date.

(A) Any remaining permits shall be issued on a first-come, first-served basis, within 14 days of receipt of each completed application, until the maximum number of permits is issued. Priority shall be based on postmark or date-stamped date;

(B) The names of applicants who did not receive a permit shall be placed on an alternates list, in the order they are received, until the next annual filing date. Applicants whose names are placed on the alternates list shall be refunded their permit fee minus a \$10 application fee. Permits which become available before the end of the year shall be made available to the alternates list, in the order listed. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply, he shall forfeit the permit and the permit shall then be made available to the next name on the alternates list.

(b) If the number of applications received by the filing date is greater than the number of permits available, the Department shall determine first how many applications there are with preference points as accrued under OAR 635-006-0915, except for new species that have qualification

restrictions set forth in OAR 635-006-0850. Evidence of landings must be supplied by the applicant and submitted with the application.

(A) If the number of these applicants does not exceed the number of permits, they shall be given all available permits and any remaining applicants shall be placed in a lottery;

(B) If the number of applicants who have preference points exceeds the number of permits, then these applicants only shall be placed in a lottery, and grouped by the number of preference points they have accrued for each species gear category. Applicants with the highest number of preference points for each species gear category will be drawn first. Applicants having the highest number of preference points per species gear category will be drawn next. This permit issuance process will continue through descending numbers of preference points until all the available permits have been issued, unless all qualified applicants with preference points have been issued permits prior to that point. Permits shall be issued within 14 days of the lottery;

(C) In addition, remaining applicants (who do not have preference points) shall be placed in a lottery and their names shall be drawn;

(D) The Department then shall prepare an alternates list, in which applicants who have preference points are listed first (in the order drawn), and thereafter remaining applicants are listed, in the order in which they were drawn. All applicants whose names are placed on the alternates list shall be refunded their permit fee minus a \$10 application

fee. Any permits available before the end of the year shall be made available to the first name on the alternates list. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply for the lottery permit within 30 days, he shall forfeit such permit and the permit shall then be made available to the next name on the alternates list.

(c) Permits may be made available before the end of the year by a permittee voluntarily turning in a permit.

(4) Persons to whom permits are issued: Permits shall be issued to either a vessel or an individual person when hand harvest methods are used. The permit holder is the owner or controller of the vessel or the individual person when hand harvest methods are used.

(5) Transfer of permits: Permits for Developmental Fisheries Species are not transferable to another person or entity; provided however that permits may be transferred to another vessel owned or controlled by the permit holder up to two times annually.

(a) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member as defined by OAR 635-006-0810. Permit transfer shall require a copy of the death certificate and the original permit, and must be requested by the family member to the deceased which shall be presumed by possession of the permit and death certificate.

(b) To transfer a permit, a permittee shall first apply on a form provided by the Department and shall include a \$25 transfer fee;

(c) No transfer shall be considered effective until the permittee has received approval from the Department and an updated permit.

(6) Renewal of permits:

(a) Permits may be renewed by submission, to the Department, of the appropriate fee and a complete application date-stamped or postmarked before January 1 of the year for which renewal is sought, except renewal applications for box crab permits must be postmarked or date-stamped before December 1 of the year prior to which renewal is sought;

(b) An application for renewal shall be considered complete if it is legible and has all information requested on 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 before the deadline listed in (6)(a) above, the individual shall not be considered to have applied for renewal in a timely manner;

(c) It is the responsibility of the permit holder to ensure 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;

(d) In addition to timely and complete filing to renew a permit, a permittee must annually lawfully land the required pounds and/or landings listed in OAR 635-006-0850. However, if a permittee obtained a permit later than July 1 of the prior year, the permittee shall not be required to make the annual landing requirement by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate the annual landing requirement was fulfilled during the first full year in which the permit was held.

(e) Landings made by one vessel can not be used for qualification to renew more than one permit per permit category in any given year.

(7) Authority of Director: Consistent with OAR 635-006-0810 through 635-006-0950, the Director is authorized to issue Developmental Fisheries Permits under the authority of ORS 506.460.

Stat. Auth.: ORS 506.109, 506.119
Stats. Implemented: ORS 506.129, 506.450
Hist.:

635-006-0930

Review of Denials

[(1) A Permit Review Board consisting of members appointed by the Commission shall be established as follows:

(a) Three members shall be chosen to represent developing fisheries industries; and

(b) Two members shall be chosen to represent the public.]

[(2)1] An individual whose application for issuance, renewal or transfer of the permit required by OAR 635-006-0900 is denied by the Department may, within 60 days of receipt of denial, make written request, [accompanied by a \$25 application fee,] to the [Permit Review Board] Commission for a hearing for review of the denial. The request shall [be in such form and shall contain such information as the Permit Review Board considers appropriate] identify why the permit should be granted.

[(3)2] In accordance with any applicable provisions of ORS 183.310 to 183.550 for conduct of contested cases, [the Permit Review Board] a hearings officer shall review the proposed denial by the Department of an application for issuance, renewal or transfer of a permit. The Developmental Fisheries Board is designated as a party to the contested case.

(3) A party must petition for Commission review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(4) The [Permit Review Board] Commission may [recommend] waive[r of] landing requirements for renewal of a permit if it finds that failure to meet those requirements was due to illness, injury, or circumstances beyond the control of the permittee. Final Orders shall be issued by the [Permit Review Board are not subject to review by the

Commission but] Commission and may be appealed as
provided in ORS 183.480 to 183.550.

Stat. Auth.: ORS 506.109, 506.119

Stats. Implemented: ORS 506.129, 506.450

Hist.:

NO CORRESPONDENCE
RECEIVED
AS OF:
October 1, 2002.