



Summary of Agenda Item

Title: Disabled Clam Digger Permit

Date of Meeting: April 26, 1995

Exhibit # E

Principal Staff Person: Jim Golden
Doug DeHart

867-4741
Phone: 229-5410 Ext. 347

Read and Approved by:

Division Chief: redacted

Date: 3/24/95

Attorney General:

Date: 4.10.95

Director: redacted

Date: 8/23/95

Description of Item:

Oregon currently has no provisions for people with disabilities who wish to participate in clam digging but are unable to perform the entire operation themselves. Disabled clam digger permits will enable people with disabilities to have assistance digging clams.

Public Involvement Process:

Correspondence and public meeting with disabled advocates, fall 1994 and winter 1995. Public testimony at Commission meeting, April 1995.

Supplemental Information Attached:

Yes X **No**

Hearing Notice:

Yes X **No**

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Relationship to:

Oregon revised statute - ORS # 506.109, 506.119, and 506.129

Oregon administrative rule - OAR # 635-11-120 and 635-39-090

Options available to Commission:

1. Adopt proposed rules enabling disabled persons to obtain permits allowing others to assist them in digging clams.
2. Adopt proposed rules with modifications.
3. Defer action on the issue.

Option recommended: #1

Draft Motion:

I move to amend OAR 635-11-120 and 635-39-090 to provide disabled clam digger permits for disabled recreational clam diggers who need assistance.

NOTICE OF PROPOSED RULEMAKING HEARING

(Statement of Need and Fiscal Impact must accompany this form.)

Oregon Department of Fish and Wildlife

(AGENCY NAME)

Fish Division

(DIVISION)

OAR CHAPTER 635

<u>DATE:</u>	<u>TIME:</u>	<u>LOCATION:</u>	<u>DATE:</u>	<u>TIME:</u>	<u>LOCATION:</u>
4-26-95	*TBA	Village Green Resort Motor Hotel 725 Row River Road Cottage Grove, OR 97424			

* The meeting begins at 8:00 a.m.; however, there will be more than one agenda item. An agenda will be available 10 days prior to the meeting showing the general order in which items will be heard. The agenda is available by writing or calling the address below.

HEARINGS OFFICER(s): _____

STATUTORY AUTHORITY: ORS 496.138, 496.162, 506.119 and 506.129; or

CHAPTER(s) _____, OREGON LAWS 19 _____; or

HOUSE BILL(s) _____, or SENATE BILL(s) _____, 19____ LEGISLATURE

ADOPT: New rules

AMEND: Chapter 635, Divs. 11 and 39

REPEAL: _____

- ☒ This hearing notice is the initial notice given for this rulemaking action.
- ☐ This hearing was requested by interested persons after a previous rulemaking notice.
- ☒ Auxiliary aids for persons with disabilities are available upon advance request.

SUMMARY:

Accommodates persons with disabilities who want to participate in harvesting shellfish for personal use.

LAST DATE FOR COMMENT: 4-26-95

DATE PROPOSED TO BE EFFECTIVE: : 5-1-95

RULES COORDINATOR: Jan Ragni (Agency); Carolyn Porter (Staff)

ADDRESS: Oregon Department of Fish and Wildlife
P. O. Box 59
Portland, OR 97207

TELEPHONE: (503) 229-5400, Ext. 305 or Ext. 353

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments will also be considered if received by the date indicated above.
redacted

Signature _____

March 15 / 1995
Date

STATEMENT OF NEED AND FISCAL IMPACT
BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF OREGON

In the Matter of the Adoption of) STATUTORY AUTHORITY,
Rules to exclude persons with) STATEMENT OF NEED,
disabilities from the requirement) PRINCIPAL DOCUMENTS RELIED UPON
that they take their own catch limit) ADVISORY COMMITTEE,
of shellfish) AND STATEMENT OF FISCAL IMPACT

1. Citation of Statutory Authority: ORS 496.138, 496.162, 506.119, and 506.129.
2. Need for Rules: The rules are needed to accommodate persons with disabilities who want to participate in harvesting shellfish for personal use.
3. Principal Documents Relied Upon:

Correspondence from persons with disabilities and their representatives.

The above documents are available for public inspection in the Department of Fish and Wildlife, Fish Division, Third Floor, 2501 SW 1st Avenue, Portland, Oregon, between 8:00 a.m. and 4:30 p.m., on normal working days, Monday through Friday.

4. Advisory Committee: Ad Hoc Advisory Committee including persons with disabilities, agency representative and enforcement officials met once prior to this rulemaking action.
5. Fiscal and Economic Impact: See attached.

Dated this 13th day of March, 1995.

Oregon Department of Fish and Wildlife
redacted

Signature



Director

Title

Fiscal and Economic Impact Statement for the April 26, 1995 Hearing
in the Matter of Rules Relating to Shellfish Harvesting for Disabled Citizens

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 allow another individual to assist a disabled person in the recreational harvest of shellfish.

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 levels of the department's operations or expenditures are expected as a result of the adoption of these rules.

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: Since the most likely effect of the rules, if adopted, would be to increase participation in recreational shellfishing by disabled citizens, the fiscal and economic effects on individuals and businesses are expected to be positive and modest in magnitude. We are unable to quantify the amount or extent of the potential increase in participation.

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

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

Staff Report to the Oregon Fish and Wildlife Commission Disabled Clam Digger Permit

I. Introduction

Background

The Department has received several requests (attached) to explicitly allow a care provider or special assistant to harvest clams for people with disabilities. Current angling regulations (OAR 635-11-120) provide that "no person shall . . . (5) catch all or part of another person's catch limit." This regulation applies to all fish or shellfish taken and is not directed at care providers of the disabled, but applies equally to all persons in the state.

Consistent with the Americans With Disabilities Act (ADA), it is the Department's intent to modify rules to improve and enhance recreational opportunities for people with disabilities when the modification will not fundamentally alter the program.

In years prior to passage of the ADA, the Department has considered special exceptions or permits to take clams for people with disabilities, but has had difficulty each time over how to determine when a person is disabled, and whether the person with a disability must be at the digging site, in close proximity, or within a line of sight.

While this agenda item specifically addresses clam harvest, the issue of accommodating disabilities is a more general one. Elsewhere in the Department's hunting and fishing regulations "accommodations" have been established to address various situations. In this report we address only clams because the request received was specific and there was a direct comparison of clamming regulations between Oregon and Washington, where a program does exist. Analysis of the larger issue of disability accommodations would require both more exhaustive analysis and definitive legal guidance on compliance with the Americans with Disabilities Act than the Department can carry out at this time.

Washington State Regulations

The Washington Department of Fish and Wildlife (WDFW) has provisions for a shellfish & seaweed license that must be displayed on the outer clothing of the harvester. Washington also has a rule providing a free license for people who are physically handicapped and confined to a wheelchair, veterans age 65 and older, veterans with 30% or more service-related disability, and people who are blind or otherwise disabled as defined by state laws. Beginning in 1980, Washington established that those not qualifying for a free permit may apply for a physical disability permit. This permit allows another person to harvest razor clams if the disabled person is present at the site and properly licensed, within a line of sight or within 1/4 mile if the line of sight is obstructed.

Recent Events and Public Involvement

Oregon's sport clamming season is open year-round with the exception of Clatsop County beaches which are closed to razor clamming from July 15 to August 31. Between September, 1992 and November 1, 1994, however, razor clamming was closed on north

coast beaches due to the presence of marine toxins. When the end of the extended closure was announced on October 18, 1994, a great deal of interest developed and ODFW began to receive a large number of inquiries about razor clamming regulations. One such request compared Oregon and Washington regulations with regard to accommodation of disabilities and found that Washington provided accommodation and Oregon did not.

We have corresponded with representatives of Washington County Disabled Advocates and Independent Living Services in considering their request (attached). A follow-up public meeting was held in Beaverton on January 19, 1995, with representatives of the disabled in Oregon and staff from ODFW and Oregon State Police (OSP).

II. Analysis of Issues

Issue 1: Disabled Clam Digger Permit.

No permit or license is currently required of recreational clam diggers. Harvest is controlled by bag limit and current rules do not allow a person to dig clams for another. The Commission may take action to make reasonable accommodation for disabled persons to provide them with access and improved recreational opportunities. However, such accommodation cannot be at the expense of existing statutory obligations to protect and preserve fish and wildlife resources.

The State of Washington initially provided for assisted clamming opportunities to certain beaches to make rules easier to enforce. Permittees were required to be present at the location where clams were being dug. Subsequent legislative action broadened the opportunity to all open beaches for assisted clamming and WDFW removed the requirement for the disabled person to be present. Clammers were required to be within a line of sight or within 1/4 mile if the view was obstructed.

Oregon clam creel data indicate that intertidal clam resources are in good health (Johnson, 1993 and Link, 1994). Further, ODFW believes provisions to allow another harvester to take clams for a disabled person will not affect resource health and will not add undue administrative or enforcement burden if the number of permits issued is small.

At the public meeting on January 19, 1995, which included people with expertise regarding recreational opportunities under the ADA and advocates for the disabled, the clear message from disabled advocates was that it is not sufficient to allow an assistant to dig clams but that access to the beach also needs to be provided. Guidelines for recreational opportunities have been developed by the US Forest Service in cooperation with other federal agencies and disability groups. The guidelines will aid in defining recreational experiences and developing access for the disabled. Under these standards, the experience of clamming with an assistant should not necessarily be offered unless access is ensured. It was the consensus of those representing people with disabilities at the public meeting that, in addition to providing a permit to allow another person to harvest clams for a disabled person, ODFW should work with other state and federal agencies to develop access sites to clamming beaches. The group recommended locating a few good sites with low gradients as potential candidates for site development. Further, it was recommended ODFW work with persons with disabilities, their advocacy groups and individuals receiving permits to define the clamming experience, evaluate the permit process, and to

explore access issues on an experimental basis. Doing so will allow flexibility in developing a new program. Finally, the group recommended issuing the permits such that they were renewable every four years along with renewal of drivers licenses, however, ODFW is not linked with the Department of Motor Vehicles computer system.

Under the proposed rule change, a qualified person with a disability could obtain a free permit to allow another person to assist in harvesting clams. Permit applications would be reviewed to determine eligibility based on established criteria. Permits would be issued for the current calendar year.

Disabled clam digger permit holders would be required to carry their permits and their assistants would be required to have a second container if they were also harvesting their own bag limits of clams. Disabled diggers would be able to participate in clamming by identifying holes to dig, pulling clams out, putting them in the bucket, etc. Enforcement of the proposed rule could be accomplished with these provisions.

Issue 2: Disabled Clam Digger Permit Eligibility Requirements.

Under the proposed rule change, the disabled person would apply for a special permit and demonstrate proof of disability. Under current rules, ODFW provides free permanent angling licenses to:

1. Veterans who have resided in Oregon for the past year and provide written certification of at least 25% disability from the Veterans' Administration or a branch of the Armed Forces,
2. Persons with disabilities who have resided in Oregon for the past year and provide written certification from a licensed physician that they are unable to be mobile without a wheelchair, and
3. Persons who provide written certification that they are legally blind.

Initially, the State of Washington anticipated 200 to 300 permit applications for its program. The actual number of lifetime permits issued lies somewhere between 6,000 and 10,000; it is difficult to determine the exact number of active permits because many of the permittees have moved or died. The Washington Department of Fish and Wildlife (WDFW) found that there were a number of abuses related to falsifying evidence of the disability. The WDFW recommends linking evidence of a disability to licensing or Department of Social and Health Services procedures to certify individuals have a permanent disability that prevents them from having access to clamming opportunities.

This issue does not involve a harvest license and residency requirement as no license is currently required. Certifiable evidence of physical impairment that prevents digging clams needs to be considered to make a reasonable accommodation. Unless and until we have a shellfish license, staff proposes the following disabled clam digger permit application qualifications:

1. Veterans who provide written certification of at least 25% disability from the Veterans' Administration or a branch of the Armed Forces,
2. Persons with disabilities who provide written certification from a licensed physician that they are not mobile without a wheelchair or who hold a wheelchair angling license,
3. Persons who provide written certification that they are legally blind or who hold a blind angler license, or
4. Persons who provide written certification from a licensed physician that they have some other physical impairment that would prevent them from digging clams or individuals who provide evidence of certification of a disability from another state.

Staff recommends the permit be issued on an annual basis as future legislative action may provide for a shellfish license. Residency requirements may be needed for a free license if a shellfish license is enacted to keep rules consistent with existing provisions for free angling licenses for the disabled.

Options and Recommendations

Option 1 (Preferred): Modify existing rules to allow, by permit, another person to harvest clams for a disabled person (Issue 1). Rules will include criteria for determining eligibility of disabled persons (Issue 2).

It is recommended that permit applications be reviewed and issued according to the criteria listed above and be valid for the calendar year in which application was made. Staff will work with the Oregon Disabilities Commission and advocacy groups such as Washington County Disabled Advocates, Independent Living Services and others to develop a survey questionnaire to aid in evaluating the permit program, developing experience criteria and to seek ways of developing access. Beach access issues will be explored with other state and federal agencies to develop access points on candidate beaches.

Option 2: Status quo - make no provisions for clam harvest by an assistant for a disabled person.

References

- Johnson, J. A., 1994. 1993 Bay clam data series report. ODFW Marine Region Data Report, 17pp.
- Link, T., 1994. Razor clam fishery review. *In: Marine Resource Program review.* ODFW Marine Region Information Report, pages 139-146.

Correspondence



TONY FEDERICI
STATE REPRESENTATIVE
CLATSOP AND COLUMBIA COUNTIES
DISTRICT 1
HOUSE OF REPRESENTATIVES

October 28, 1994

Oregon Fish and Wildlife Commission
P.O. Box 59
Portland OR 97207

Dear Commissioner:

It has recently come to my attention that, while Washington allows disabled citizens to have a "designated digger" when digging razor clams, Oregon does not allow these citizens their own clam limit, separate from the limit of whoever is helping them dig.

I had never thought of the difficulties that Oregonians who love to dig clams might face when struck with a disability, and I imagine the Department of Fish and Wildlife might be hearing of this issue for the first time as well. Upon reflection, it seems that we ought to allow disabled citizens their own clam limit, and allow someone to help them dig those clams. It seems the least we can do for disabled Oregonians, with, I am sure, little if any impact on our clam beds.

I urge you to consider adopting such a proposal at your next commission meeting.

Sincerely,

redacted

Tony Federici
State Representative, District 1



10-31-94

Dear Commissioners,

Upon the news release of the upcoming Razon Clam season to be open on our Oregon beaches; I called in to inquire of any change in bag limit & if there was any tag or permit necessary for a disabled person to have a "designated digger".

I was delighted to hear the limit had not changed, but truly surprised to hear that Oregon does not allow disabled folks to partake At All!

I was advised that possibly bringing this matter up at your next meeting might at least get the problem recognized and considered for some action.

My Mom has lived in Oregon near the coast for all of her 70 years and clam digging was a part of her childhood as well as an adult outing she has always enjoyed.

Since the Oregon beaches were last open she's had a double hip replacement - while the Oregon beaches were closed we've paid to visit the Washington beaches where she was allowed a disabled permit which allowed one of her family members or companions to dig her clams as long as she had her own container. We've designated her our "Spatter".

Also a neighbor of ours in his

mid-forties recently was in a logging accident that seriously injured his shoulder & while he's in therapy using a clam shovel or clam gun would probably be out of the question for him but his wife would be more than willing to help him. Another lady in our area recently had a knee replacement & while she can walk - "needs to" certainly twisting movements would be very difficult for her, this list could go on & I'm sure each of you on the Commission know folks that have disabilities that should not prevent them from enjoying our wonderful Oregon beaches & being allowed to take a bag limit of clams with help from another.

These folks also spend at restaurants, gas stations etc & I understand the Coastal towns could use some economic boost.

Sorry for rambling on but this issue is very important to me and I'm sure to many other voters of Oregon.

Thank you for your time & consideration

redacted

26715 Old Rainier Rd
Rainier Or 97048

1-503-556-0776

NOV-2-1994

Dear Commissioners,

Yes I'd like to say a few words about the disabled folk's cause I'm one of them, I've had both hips replaced and it's so hard for me to get up and down or use one of those guns it hurts my hips both ways. It would be so nice if they could come up with something for us people that are disabled.

Even if we had to pay a few dollars for a disabled lic. I sure wouldn't mind paying my fair share.

Thanks for reading my letter and I'm sure something can be done about this

Sincerely,

redacted
redacted
75656 Heath Rd.
Rainier, Or
97048.

redacted

RECEIVED
NOV - 3 1994
O.D.F.W. MAIL UNIT

November 10, 1994

Kay Brown
Oregon Dept. of Fish and Wildlife
P.O. Box 59
Portland, Oregon 97207

Re: Violation of Title II by Oregon Dept. of Fish and Wildlife

Dear Kay:

Per my earlier phone conversations with Mr. Bohn from your office and Mr. Coenen, from Newport office, they requested I address this request and letter to you about an oversight by the State of Oregon Department of Fish and Wildlife.

It has recently come to the disabled communities' attention that there is a conflict and violation of Title II, in the current rules and regulations for shellfish harvesting for those with disabilities. Currently, there are no special provisions for those with disabilities to have either a "care provider" or "special assistant" to help them harvest if they are physically unable to perform the part of the shellfish harvesting task. The State of Washington has passed several regulations that provide those with disabilities the opportunity to harvest.

My sister, Anita Cook, works as a Fisheries Biologist/Manager with Point Whitney Shellfish Station, State of Washington Fisheries Department--phone number 206-796-4601 and helped suggest the rules that are now in place for the Puget Sound region of the State of Washington. She suggests that the best help would come from Evan Jacobi, internal legal advisor for the State of Washington, Department of Fisheries, direct line number is 206-902-2930. I have currently ordered a draft of the rules from Evan and should receive them by next week. You could either order a copy from Evan or I would be more than happy to send a copy to you.

Some of the problems they faced and resolved were:

Wheelchair users or people with balance or walking problems cannot physically access a steep embankment or rocky area. Part of their rules includes a "line of sight" phrase which enables the disabled person to be within "line of sight" but not necessarily on the physical beach property. Another part of their resolution was to include a phrase that would require "two containers" - one for the care provider and one for the disabled individual so that the limits would be fair and equitable.

It also included terminology that would allow the "care provider" or "assistant" to help with shucking oysters if the disabled person were unable to do so because of their limitations.

Also, many disabled individuals cannot physically "dig" their own razor clams. They have limited hand, wrist, arm or shoulder movement and need assistance from another person to do that part of the task. It would also be helpful if there was a phrase that again allows another person, either a "care provider" or "special assistant" to help them dig, so long as the disabled individual is within the "line of sight."

I would also suggest an addition to the regulations include that the "elderly" could be assisted by another person. Many of them do not qualify as "disabled" but do need assistance from someone more physically able to perform a digging task.

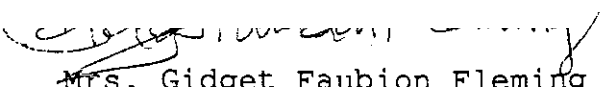
According to Chuck Davis, ADA Coordinator for Independent Living Services, phone number 230-1225, currently you are in violation of Title II, State and Local Programs because your services and programs are not accessible to those that are disabled. I am sure that Chuck Davis, Eugene Organ and myself would be more than happy to assist with the draft of the proposed new regulations.

The reason I got involved with this problem is because my sister, Jo O'Hara, is physically limited and could not dig her own clams. When she called the State Police and Fisheries office, they told her there was nothing currently in the regulations to allow for a care provider or special assistant to help her dig clams. Her care provider would have been cited and fined for helping her under the current regulations, which is appalling. This was very distressing to my sister because she recently became disabled and previously had enjoyed this activity for years as a long time resident of Oregon.

Please contact me about any changes or draft proposals or how I may assist your department. Thank you for your cooperation. Please note that I am hearing impaired. If you need to contact me by phone, let the phone ring at least 20 times.

Best Regards,

redacted


Mrs. Gidget Faubion Fleming
Washington County Disabled Advocate
18925 S.W. Kinnaman Road
Aloha, Oregon 97007
503-642-3742

cc: Chuck Davis, ADA Coordinator
Independent Living Services
4001 NE Halsey
Portland, Oregon 97232-1849
Eugene Organ -Oregon Disabilities Commission

INDEPENDENT LIVING RESOURCES, INC.
(formerly Vision Resources for Independent Living and Access Oregon)
4001 NE Halsey Street
Portland, OR 97232
Phone: (503) 284-3339

Kay Brown
Oregon Dept. Fish and Wildlife
P.O. Box 59
Portland, Oregon 97207

December 1, 1994

Dear Kay:

It has recently come to the attention of our agency that Oregon Department of Fish and Wildlife may be out of compliance under Title II of the Americans with Disabilities Act in regard to their Shellfish harvest program.

As I understand it, current regulations prohibit "care providers" and "special assistants" of people with disabilities from harvesting shellfish for a person with a disability under penalty of being cited and fined as, the permit holder must be physically on the beach to harvest the shellfish themselves.

As you are aware, Title II Section 35.130 (a) of the ADA states: "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity..."

35.130 (7) further states: "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity."

It seems that in not allowing the attendant of a person with a disability the opportunity to harvest for the person with a disability who is unable to traverse the beach themselves, your agency denies people with disabilities the benefits of the shellfish harvest program.


Page 2

Furthermore, it would probably not fundamentally alter the nature of the program to allow people with disabilities who want to participate far as they are able to be in the "line of site" of the person harvesting for them, or allowing one container for the person with a disability and one for their attendant to maintain fair and equitable limits as in the State of Washington rules.

Thank you for your time and consideration in this matter.

Sincerely,

redacted


Charles E. Davis
ADA Programs Coordinator



Personal security 11
532-07-8654-A

To Whom it May Concern

My Name is Frank T Bloyd
I am resident of Oregon for over

54 years. I love to dig clams -

and willing to pay state of Washington

\$20.00 for Privilege of Digging some

clams. I am dig Clams in Oregon

now. I am remarried and I am

87 years old. Also in Washington

I can help disabled People get

a few Clams if they sign a 3 dollar
license & statement from state of
Washington that they have problem
in joints, arthritis, etc.

Oregon does not let People dig
disabled People who love clams
& love to go watch.

Bottom line, Why can't
Oregon have some kind of law
permitting same??

redacted

LTBA
1-12-1

C.M. Nielsen
1963 S.W. Myers Place
Gresham, Oregon
97080

January 5, 1995

Rudy Rosen
Director
Oregon Department of Fish and Wildlife
2501 S.W. First Street
Portland, Oregon 97201

Dear Mr. Rosen:

Oregon fish and game laws currently discriminate against citizens of this State who do not have the ability to "walk upon the beach" stalking the wild clams. Whereas Washington State has regulations that allow designated diggers to do the manual labor for person's whose Doctor's diagnosis is "clam gun impaired".

I recommend that the Oregon Department of Fish and Wildlife become more in compliance with the ADA (Americans with Disabilities Act). Using Washington State's regulations as a guideline, allowing those with disabilities to be within "line of sight" of their personal "designated digger" so that they may enjoy the savory taste of Oregon clams and shellfish from the site of their choice.

Sincerely yours,
redacted

redacted redacted re
C.M. Nielsen da
ct
ed

RECEIVED
JAN 9 1995
O.D.F.W. MAIL DEPT.

Oregon
Administrative
Rules



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

Note: [] means proposed to be deleted

Bold means proposed to be added.

General Restrictions

635-11-120 No person shall:

- (1) Use more than one rod or one line when angling for any fish, or not closely attend the rod or line.
- (2) Use gurdies, winches, or reels affixed to a boat to land fish (rod or line must be held in hand).
- (3) Sell or purchase any fish or shellfish or parts thereof taken for personal use except that the skeletal remains of ocean food fish may be sold; and the sale of eggs from ocean-caught salmon is permitted only to a licensed wholesale fish or bait dealer.
- (4) Angle at any time between one hour after sunset and one hour before sunrise for salmon, steelhead, trout, Atlantic salmon, whitefish, grayling, shad, or sturgeon. All other species may be taken at any time day or night.
- (5) Catch all or part of another person's catch limit, **except to assist disabled clammers (OAR 635-39-090) who have either a valid disabled clam digger permit, a disabled veteran's angling license, a disabled person angling license, or a blind angler license, all of which are issued by Oregon Department of Fish and Wildlife.**
- (6) Trespass on a fishway, weir, or fish trap; or angle within 200 feet of a weir or the entrance or exit of a fishway or fish trap either public or private.



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

Note: [] means proposed to be deleted

Bold means proposed to be added.

- (7) Take or attempt to take fish from state or federal hatchery facilities.
- (8) Remove, alter, or possess ODFW signs.
- (9) Cut or angle through a man-made ice hole larger than 12 inches diameter or length.
- (10) Transport live fish or live eggs from one body of water to another, or import live fish or eggs into the state, without a permit from ODFW.
- (11) Waste fish, shellfish, or marine invertebrates.
- (12) Angle on private land without permission.
- (13) Deny ODFW employees, peace officer, or landowner the opportunity to inspect license and catch.
- (14) Take or attempt to take any fish by means of chumming, or knowingly angle with the aid of chum.
- (15) Continue to angle for the same species after taking and retaining a daily, weekly, or possession limit. **Adopted 4-26-95, ef. 5-1-95. Stat. Auth.: ORS 496.138, 496.146, 496.162, 506.119 & 506.129.**



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

Note: [] means proposed to be deleted

Bold means proposed to be added.

Inclusions and Modifications

635-39-090 (1) The "1995 Oregon Sport Fishing Regulations" provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the "1995 Oregon Sport Fishing Regulations." This rule contains requirements which modify the "1995 Oregon Sport Fishing Regulations" pertaining to the Marine Zone.

(2) Effective January 1, 1995, the minimum length for lingcod is 22 inches overall length.

(3) The following marine research reserves are closed to the taking of marine invertebrates and shellfish:

(a) Gregory Point Research Reserve: seaward of the shoreline in the area defined by the points making lines from 43°20'18.7" N. Lat., 124°22'50.3" W. Long. (point A) to 43°20'35.9" N. Lat., 124°22'53.7" W. Long. (point B) and seaward of the shoreline from 43°20'24.1" N. Lat., 124°22'32.7" W. Long. (point E) to 43°20'39.0" N. Lat., 124°22'38.2" W. Long. (point C; Figure 1);

(b) Pirate Cove Research Reserve: shoreward from the line defined by points at 44°49'05.0" N. Lat., 124°04'02.1" W. Long. (point A) to 44°49'08.8" N. Lat., 124°04'03.6" W. Long. (point B; Figure 2). *Subsections (3)(a) and (b) were submitted to the Commission for proposed adoption at the Commission Meeting 3-22-95, ef. 4-1-95.*



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

Note: [] means proposed to be deleted

Bold means proposed to be added.

(4) Open to angling for halibut:

(a) North of Cape Falcon to Leadbetter Point, Washington, from May 1, seven days per week, until 4,617 pounds have been taken in this season. The daily catch limit is one fish per day with a 32-inch minimum length;

(b) South of Cape Falcon to Florence north jetty:

(A) May 4, each Thursday through Saturday, until 67,706 pounds have been taken in this season;

(B) Re-opens the day following closure of the season described in paragraph (4)(b)(A) of this rule. Fishing is allowed seven days per week inside the 30-fathom curve until the earlier of August 2 or when 3,314 pounds have been taken in this season;

(C) August 3, each Thursday through Saturday, until the earlier of September 30 or when the total catch taken in the entire area south of Cape Falcon to the Oregon-California border reaches 102,193 pounds.

(c) Florence north jetty to Oregon-California border:

(A) May 4, each Thursday through Saturday, until 5,999 pounds have been taken in this season;

(B) Re-opens the day following closure of the season described in paragraph (4)(c)(A) of this rule. Fishing is allowed seven days per week inside the 30-fathom curve until the earlier of August 2 or when 1,500 pounds have been taken in this season;



OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF FISH AND WILDLIFE

Note: [] means proposed to be deleted

Bold means proposed to be added.

(C) August 3, each Thursday through Saturday, until the earlier of September 30 or when the total catch taken in the entire area south of Cape Falcon to the Oregon-California border reaches 102,193 pounds.

(d) During the seasons described in subsections (4)(b) and (c) of this rule the daily catch limits are one fish at a minimum length of 32 inches and one fish at a minimum length of 50 inches. *Subsections (4)(a) through (d) were adopted 3-13-95, ef. 4-2-95.*

(5) A person may assist a disabled clam digger, provided:

(a) Both diggers have their own containers for clams;

(b) The disabled clam digger is within 100 feet of the assistant while the assistant is digging; and

(c) The disabled clam digger has either a valid disabled clam digger permit, a disabled veteran's angling license, a disabled person angling license, or a blind angler license, all of which are issued by Oregon Department of Fish and Wildlife in possession on the clam beds;

(A) Persons wishing to qualify for a disabled clam digger permit must be:

(i) A person who has severely limited mobility because of paralysis or the loss of use of some or all of the person's legs or arms;

(ii) A person who is affected by loss of vision or substantial loss of visual acuity or visual field beyond correction; or



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(iii) A person who has any other disability that prevents the person from walking without the use of an assistive device, or that causes the person to be unable to walk more than 200 feet, including but not necessarily limited to:

(I) Chronic heart condition;

(II) Emphysema;

(III) Arthritis;

(IV) Rheumatism; or

(V) Ulcerative colitis or related chronic bowel disorder.

(B) Persons wishing to qualify for a disabled clam digger permit must provide written certification from a licensed physician. A licensed physician must certify that the person is disabled, as defined above. If the disability is temporary, the physician also must give the date the person is no longer expected to need the disabled clam digger permit. Physicians who are authorized to certify disabled clammers are: Doctors of medicine, Osteopaths, Podiatrists, Chiropractors and Naturopaths.

(d) The person assisting the disabled clam digger permit holder has a copy of the permit in possession on the clam beds. Adopted 4-26-95, ef. 5-1-95. Stat. Auth.: ORS 496.138, 496.162, 506.119 & 506.129.