



# Oregon Fish and Wildlife Commission

November 4, 2005

EXHIBIT D

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<b>SUBJECT</b>	Bay Clam Dive Fishery
<b>PRINCIPAL STAFF PERSON</b>	Jean McCrae, Developmental Fisheries Phone: (541) 867-4741
<b>COMMISSION ACTION REQUESTED</b>	Adopt rules removing bay clams from developmental fisheries species list and establishing limited entry system for the commercial bay clam dive fishery.
<b>DOCUMENTS ATTACHED</b>	1. Agenda Item Summary 2. Notice of Proposed Rulemaking 3. Statement of Need and Fiscal Impact 4. Proposed Administrative Rules 5. Public Comments
<b>RELATED STATUTES</b>	ORS 496.146, 506.036, 506.109, 506.119, 506.129, and 506.450 through 506.465
<b>RELATED RULES</b>	OAR Chapter 635, Divisions 005 and 006

*Read and  
Approved by:*

Division Administrator	<i>[Signature]</i> Redacted for privacy	Date	<u>10-25-05</u>
Attorney General	<i>[Signature]</i> /s/ Steve Sanders	Date	<u>10-27-05</u>
Director	<i>[Signature]</i> Redacted for privacy	Date	<u>10/25/05</u>

## Agenda Item Summary

### BACKGROUND

This agenda item presents proposed rule changes to developmental fisheries regulations based on recommendations by the Developmental Fisheries Board, developed through a number of public meetings.

The Board was created by the 1993 Legislature to make recommendations to the Fish and Wildlife Commission on developmental fisheries. State policy requires the Commission to institute a management system for developmental fishery resources that addresses both long term commercial and biological values and that protects the long term sustainability of those resources through planned commercial development when appropriate (ORS 506.455).

### PUBLIC INVOLVEMENT

The Developmental Fisheries Board has held three public meetings so far in 2005 (February, May, and August). The Board received extensive public input at these meetings on issues outlined in this staff report. Minutes of Board meetings are available upon request.

### ISSUE 1

Whether to remove bay clams from the developmental species list and create a limited entry system for the bay clam dive fishery (OAR 635-006-0850 and 635-006-1005 through 1110).

### ANALYSIS

In 2004, members of the bay clam dive fishery requested bay clams be moved off the developmental species list and placed in its own limited entry system. The industry contends the fishery has reached its full potential as it currently exists and they would like the permits to be transferable. In the six public meetings held in 2004 and 2005, the Board discussed numerous proposals developed by the industry and ODFW staff. The Board recommends the fishery be moved into a limited entry system that is similar to the current permit structure.

#### Background of Fishery

##### Management

Commercial harvest of bay clams (cockle, butter, gaper, littleneck, and softshell clams) has occurred in Oregon estuaries for many years (Table 1). Prior to 1985, a permit was not required. Beginning in 1985, a shellfish harvest permit was required, but there was no limit to the number of permits that could be issued. Except for an experimental fishery with suction dredge gear, most occurred in intertidal areas until the mid-1990s.

In the mid-1990s, harvest from subtidal areas with dive gear began. Harvest from subtidal areas raised concerns because most harvest had been from intertidal areas and the subtidal clam population was considered broodstock for intertidal areas. As a result of the increased dive activity, the Oregon Fish and Wildlife Commission adopted a rule requiring a developmental fishery permit for the commercial harvest of bay clams beginning in 1996. The number of permits using dive gear was restricted; however, the number of intertidal harvest permits was left

unrestricted.

Initially, 20 permits, issued to individual divers, were authorized (Table 2). In 1997, the number of permits was reduced to 10, so permits could then be issued to a vessel where up to two divers could work off the same permit. Initially, all permits were issued for the entire coast. In 1999, five additional permits were added, but harvest under these new permits was restricted to south coast areas (south of Heceta Head).

All available permits have been issued each year (Table 2). Most permit holders renew their permit for the next year by meeting the minimum annual renewal requirements: 5 landings of at least 100 pounds or an annual total of at least 2,500 pounds. Because most of the permit holders are meeting the renewal requirements, there have been only a few permits available for new applicants through the lottery system in the last few years.

#### Harvest

Total harvest of bay clams has fluctuated over the years. There have been high total harvest levels over the last five years (Table 1). The method of harvest has changed from a mixture of dive and intertidal hand harvest to almost totally by dive harvest. Clam harvest using dive gear has accounted for an average of 96.2% of the total annual commercial bay clam harvest since 1996 (Table 3).

The area of harvest has changed from 5-6 bays each year to almost all the harvest coming from Tillamook Bay (Port of Garibaldi). Except in 2004, over 90% of the harvest has come from Tillamook Bay each year since 1994 (Table 3). In 2004 there was a slight increase in harvest from Coos Bay (Port of Charleston).

Cockle clams have made up the majority of the harvest, with butter clams comprising a significant proportion of the harvest in some years (Table 4). In 1996, quotas for cockle harvest with dive gear were established for Tillamook and Netarts bays.

#### Effort

The total number of permits issued has decreased since the dive fishery has developed (Table 1). From 1985 to 1995, the number of permits issued averaged over 100 per year. Since 1996, the number of intertidal permits has averaged 23 per year.

It is difficult to quantify the actual number of divers involved in the fishery. On a vessel permit, up to two divers can work off of the vessels at any one time. Over the course of a year several different pairs of divers could work off the same vessel permit. Landings on fish tickets may be reflected by diver or by vessel. Also, a person with an individual permit may work off of, and make landing attributed to, a vessel permit. Even though effort data are not precise, it is evident from the landings the majority of the harvest can be attributed to a few individuals.

### Gear

Harvest of bay clams has traditionally been by hand methods. In the mid-1970s, experimental fishing was conducted using a high-powered suction dredge and water jet. Harvest with mechanical gear was discontinued because of concerns of the sporadic recruitment of gaper clams and over-efficiency of the gear. In more recent years, ODFW has also not allowed mechanical gear due to lack of data on sustainable harvest levels.

In mid-2002, low-powered water jets were allowed on an experimental basis in Tillamook and Coos Bays. Quotas were established for each species of clams based on survey data in Tillamook Bay and on historical harvest levels in Coos Bay.

### **Removing a Species from the Developmental Species List**

To remove a species from the Developmental Species list (OAR 635-006-0840):

- The fishery needs to meet the definition of a developed fishery; or
- The species is being harvested in excess or optimum sustained yield; or
- The species is listed as threatened or endangered; or
- Continued commercial harvest may lead to gear conflict, habitat damage, excessive discard; or
- Excessive user group conflicts.

The reason for removing the bay clams from the species list is because the dive fishery, as it currently exists, can be considered essentially developed. The definition of a developed fishery (OAR 635-006-0810) is "a fishery where the level of participation, catch, and effort indicate the fishery has approached optimum sustained yield and/or there is sufficient biological information, information on harvest methods, gear types, and markets to develop a long-term management plan for the species."

While specific criteria have not been established to determine if a fishery meets the definition of a developed fishery, there are elements that help define a developed fishery versus an underdeveloped fishery. A developed fishery will have at least some periodic assessments, the level of harvest will be at or near optimum yield, a harvest program is established (which may include seasons, gear, size, bycatch restriction, or closed areas), and the participation in the fishery is basically stable. An underdeveloped fishery will have no assessments, the level of harvest will be less than optimum yield, no harvest program will be established, and participation in the fishery will vary from year to year.

The individuals involved in the dive fishery have remained the same for some time. Of the ten coast-wide permits, eight individuals have had a permit for five years or more; five have had a permit for eight years. Basic life history of the major bay clam species is fairly well known and

regulations have been established based on these characteristics (size limits & seasons). In addition, closed areas have been established for the dive fishery as conservation areas.

Periodic assessments of bay clams are currently intermittent. However, current harvest quotas are based on relatively recent surveys and future surveys are a priority for ODFW's new shellfish program. Even though harvest levels could very well be increased with updated survey data, current harvest levels are near optimum levels given the current survey data.

### **Proposed Limited Entry System**

Once a species is removed from the list, a management plan needs to be established (OAR 635-006-0840). With considerable input from the public, especially the commercial clam industry, the Developmental Fisheries Board recommends putting the bay clam dive fishery into a limited entry system with a structure similar to the current developmental permits. The limited entry system would consist of the following details:

#### Definition of the fishery

- A limited entry permit will be needed to commercially harvest bay clams (cockle, butter, gaper, littleneck, & softshell clams) from subtidal areas in Oregon estuaries using dive gear.
- Intertidal harvest by hand would remain unlimited.

#### Permit Requirement

- Up to 10 permits will be issued to commercially harvest bay clam in any estuary (coast-wide permits).
- Up to 5 permits will be issued to commercially harvest bay clams in estuaries south of Heceta Head (south coast permits).
- Permits may be issued to an individual or to a vessel, designated at the beginning of the year. Designation may not change during the year.
- Limit of two divers operating off a vessel in the water at any one time.

#### Eligibility for Permit

- An individual or vessel is eligible for a coast-wide limited entry permit if they had a coast-wide Developmental Fisheries bay clam dive permit in 2005 (and met renewal requirements).
- An individual or vessel is eligible for a south-coast limited entry permit if they had a south-coast Developmental Fisheries bay clam dive permit in 2005 (and met renewal requirements).

#### Renewal of Permits

- Annual renewal requirements will be five landings of at least 100 pounds or an annual total of 2,500 pounds.
- Renewal requirements will be waived in the case of the death of the permit holder.

#### Appeals Process

- Appeals will be heard by a hearings officer with final decision by the Commission.

#### Issuing New Permits

- New permits will be issued through a lottery.

#### Transfer Provisions

- Permits will be fully transferable.
- Temporary transfers for medical reasons will be allowed for individual permits.

#### Logbooks

- Logbooks will be required.
- Logbooks will need to be turned in, to renew the permit.

#### Other regulations

- Existing permit stipulations for bycatch, closed areas, size limits, and annual quotas in Tillamook and Netarts will be added to shellfish OARs.

## **OPTIONS**

1. Amend rules to remove bay clams from the developmental fisheries species list and create a limited entry system for the bay clam dive fishery.
2. No action: status quo - bay clams would remain under developmental fisheries.

## **STAFF**

Option 1.

## **RECOMMENDATION**

### **DRAFT MOTION**

I move to amend OAR Divisions 005 and 006 as proposed by staff in Attachment 4, to remove bay clams from the developmental fisheries species list and establish a limited entry system for the commercial bay clam dive fishery [with the following changes...]

### **EFFECTIVE DATE**

January 1, 2006

# Appendix Tables to Attachment 1

Table 1. Oregon commercial clam harvest and effort, 1970-2005.

Year	Pounds harvested	Number of harvesters	Number of landings	Average pounds per landing	Number of permits	
					dive	intertidal
1970	25,884	40	258	100.3	-	-
1971	28,526	50	230	124.0	-	-
1972	61,523	37	354	174.8	-	-
1973	17,156	19	187	91.7	-	-
1974	16,315	23	182	39.6	-	-
1975	25,908	19	116	227.3	-	-
1976	88,054	7	97	946.8	-	-
1977	85,733	29	155	304.0	-	-
1978	216,926	15	218	943.2	-	-
1979	94,912	19	128	741.5	-	-
1980	80,467	36	176	442.1	-	-
1981	81,138	30	336	222.5	-	-
1982	134,105	46	538	245.3	-	-
1983	136,185	41	811	168.0	-	-
1984	120,574	30	704	171.3	-	-
1985	99,254	44	614	161.7	65	-
1986	82,829	36	664	124.7	65	-
1987	46,283	34	385	120.2	121	-
1988	44,696	28	258	173.2	136	-
1989	60,482	24	221	273.7	111	-
1990	72,756	38	384	189.5	92	-
1991	87,842	40	473	185.7	126	-
1992	62,044	29	410	151.3	115	-
1993	127,730	38	733	174.3	111	-
1994	180,934	32	422	428.8	113	-
1995	126,967	24	393	323.1	132	-
1996	66,733	21	450	148.3	20	13
1997	75,681	10	288	262.8	11	10
1998	55,246	11	233	237.1	10	22
1999	87,531	20	291	300.8	15	30
2000	110,666	18	324	341.6	15	20
2001	120,040	12	295	406.9	15	6
2002	153,830	18	382	402.7	15	35
2003	190,750	19	374	510.0	15	23
2004	169,061	33	568	297.6	15	49
2005						
35 yr average	92,413					
20 yr average	100,971					
15 yr average	112,406					

Table 2. Numbers of permits, renewals, and applications for bay clam dive permits, 1996-2005.

Year	permits issued		permits renewed from previous year		permits issued through lottery		applications for lottery	
	*cw	*sc	cw	sc	cw	sc	cw	sc
1996	20	-	-	-	-	-	-	-
1997	11	-	5	-	2	-	15	-
1998	10	-	7	-	3	-	12	-
1999	10	5	7	1	3	0	7	-
2000	10	5	9	3	1	2	7	5
2001	10	5	8	3	2	0	7	-
2002	10	5	8	0	2	5	11	5
2003	10	5	8	2	2	3	17	9
2004	10	5	9	4	1	1	13	3
2005	10	5	10	5	0	0	-	-

\*cw-coast wide; sc-south coast

Table 3. Percent landings, by port, for the commercial bay clam dive fishery, 1992-2004.

Year	Nehalem	Garibaldi	Netarts	Newport	Waldport	Winchester	Charleston	Total lbs (thousands)	% harvest with dive gear
1992	14.3	65.6	0.7	12.1	1.1		6.3	51.6	81.4
1993	29.0	65.8	4.5	0.7				112.1	87.8
1994	3.6	92.2		1.3	2.2		0.6	162.2	89.6
1995	6.5	93.0	2.9	5.6	2.0			124.7	98.7
1996	1.8	94.6	1.1	2.1				66.5	99.6
1997	6.2	93.8						74.4	99.2
1998	7.3	91.5					1.2	54.2	98.1
1999	1.9	90.3					7.8	85.9	97.2
2000	1.0	96.7				0.3	2.0	107.6	97.9
2001	0.7	95.8	0.5				3.0	119.2	99.3
2002	0.4	95.4					4.1	153.8	99.1
2003	0.3	93.7					6.0	186.3	97.7
2004	0.5	87.7					11.8	131.0	77.5

Table 4. Percent landings, by species, for the commercial bay clam dive fishery, 1992-2004.

	softshell	butter	littleneck	gaper	cockle
1992	0.1	0.5	17.2	17.9	64.4
1993	-	5.3	32.6	4.8	57.2
1994	-	1.1	3.7	0.8	94.3
1995	-	6.3	7.3	10.1	76.3
1996	-	2.1	6.7	5.2	86.0
1997	-	17.0	12.3	5.7	64.7
1998	-	53.4	10.9	4.7	31.0
1999	-	44.8	3.7	8.0	43.5
2000	-	37.4	1.0	3.6	58.0
2001	-	22.1	0.7	3.7	73.4
2002	-	22.5	0.3	9.0	67.8
2003	-	48.5	0.3	8.0	43.1
2004	-	27.4	0.4	7.4	64.8

# Appendix Tables to Attachment 1

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1997	11	-	5	-	2	-	15	-
1998	10	-	7	-	3	-	12	-
1999	10	5	7	1	3	0	7	-
2000	10	5	9	3	1	2	7	5
2001	10	5	8	3	2	0	7	-
2002	10	5	8	0	2	5	11	5
2003	10	5	8	2	2	3	17	9
2004	10	5	9	4	1	1	13	3
2005	10	5	10	5	0	0	-	-

\*cw-coast wide; sc-south coast

Table 3. Percent landings, by port, for the commercial bay clam dive fishery, 1992-2004.

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1994	3.6	92.2		1.3	2.2		0.6	162.2	89.6
1995	6.5	93.0	2.9	5.6	2.0			124.7	98.7
1996	1.8	94.6	1.1	2.1				66.5	99.6
1997	6.2	93.8						74.4	99.2
1998	7.3	91.5					1.2	54.2	98.1
1999	1.9	90.3					7.8	85.9	97.2
2000	1.0	96.7				0.3	2.0	107.6	97.9
2001	0.7	95.8	0.5				3.0	119.2	99.3
2002	0.4	95.4					4.1	153.8	99.1
2003	0.3	93.7					6.0	186.3	97.7
2004	0.5	87.7					11.8	131.0	77.5

Table 4. Percent landings, by species, for the commercial bay clam dive fishery, 1992-2004.

	softshell	butter	littleneck	gaper	cockle
1992	0.1	0.5	17.2	17.9	64.4
1993	-	5.3	32.6	4.8	57.2
1994	-	1.1	3.7	0.8	94.3
1995	-	6.3	7.3	10.1	76.3
1996	-	2.1	6.7	5.2	86.0
1997	-	17.0	12.3	5.7	64.7
1998	-	53.4	10.9	4.7	31.0
1999	-	44.8	3.7	8.0	43.5
2000	-	37.4	1.0	3.6	58.0
2001	-	22.1	0.7	3.7	73.4
2002	-	22.5	0.3	9.0	67.8
2003	-	48.5	0.3	8.0	43.1
2004	-	27.4	0.4	7.4	64.8

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

Attachment 2

Oregon Department of Fish and Wildlife (ODFW) Fish Division

635

Agency and Division

Administrative Rules Chapter Number

Marci Wightman

(503) 947-6034

Rules Coordinator

Telephone

3406 Cherry Avenue NE, Salem, OR 97303

Address

Columbia Co. Fairgrounds  
Pavilion Building  
58892 Saulser Road  
St. Helens, OR

11/04/05

8:00 am

Fish and Wildlife Commission

Hearing Date

Time

Location

Hearings Officer

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

**RULEMAKING ACTION**

**ADOPT:**

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

Rules in Chapter 635, Divisions 005 and 006

**AMEND:**

Rules in Chapter 635, Divisions 005 and 006

**REPEAL:**

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

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

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

ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.129, ORS 506.450 thru ORS 506.465

Stat. Auth.: ORS

Other Authority:

ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.129, ORS 506.450 thru ORS 506.465

Stats. Implemented:

**RULE SUMMARY**

Remove bay clams from developmental fisheries species list and adopt rules establishing limited entry system for the commercial bay clam dive fishery. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

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

November 4, 2005

Last Day for Public Comment

(Redacted for privacy)

Signature and Date  
June LeTarte

9-14-05

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

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

635

Agency and Division

Administrative Rules Chapter Number

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

Statutory Authority: ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.129, ORS 506.450 thru ORS 506.465

Other Authority:

Statutes Implemented: ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.129, ORS 506.450 thru ORS 506.465

Need for the Rule(s):

These rules are needed to implement changes in the Developmental Fisheries Program regulations; to remove bay clams from the developmental species list and adopt rules establishing a limited entry system for the commercial bay clam dive fishery.

Documents Relied Upon:

Staff report for the Oregon Fish and Wildlife Commission Meeting of November 4, 2005

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

Fiscal and Economic Impact: Attached

Administrative Rule Advisory Committee consulted?:

If not, why?:

Yes, the Developmental Fisheries Board met and considered requests to remove bay clams from the developmental species list and adopt rules establishing a limited entry system for the commercial bay clam dive fishery.

Redacted for privacy

9-14-05  
 \_\_\_\_\_  
 Authorized Signer and Date

June LeTarte

Economic Impact Statement  
for the November 4, 2005 Hearing  
in the Matter of the Amendment of Rules  
Relating to the

Developmental Fisheries Program and the Commercial Shellfish Fishery

Fiscal and economic impact: The rules are needed to remove bay clams from the developmental species list and adopt rules establishing a limited entry system for the commercial bay clam dive fishery. The proposed rules will affect state agencies, units of local government and the public, respectively, as discussed below.

a. The only state agency which should be affected by adoption of these rules is the Oregon Department of Fish and Wildlife. The main cost to the agency of this rule change would involve modification of the information systems required to issue clam permits and to process fish tickets. Clam permits are unique because they can be issued and transferred to both individuals and vessels. Therefore, a special temporary solution will be required until clam permits can be incorporated into an integrated system that will be developed next year. This work will require two full time employees at the Information Services 6 level for 160 hours. The cost of personal services will be approximately \$5,500.

b. No units of local government are expected to be affected by these rules.

c. The public could be affected by the adoption of these rules. In the long run, implementation of these rules is expected to yield positive economic effects by controlling further entry into the fishery. Since entry will be limited and permits will be transferable, permits will become an asset with economic value. Owners of a permit would be able profit from its transfer to other fishermen. Those who wish to enter the fishery would incur the permit cost. The value of a permit would depend on the associated flow of benefits gained by using the permit in the fishery. It is not possible to calculate potential owner benefits because fishery cost data are not available. Those permits that include the entire Oregon coast will have a greater value than those that are constrained to areas south of Heceta Head.

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

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

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

DEPARTMENT OF FISH AND WILDLIFE  
DIVISION 005

COMMERCIAL SHELLFISH FISHERY

Clam Fishery

635-005-0020

Closed Seasons and Areas

It is *unlawful* to take for commercial purposes:

- (1) Gaper clams from January 1 through June 30, except ~~[as authorized under a Developmental Fisheries Permit (OAR 635-005-0900)]~~ under a limited entry bay clam dive fishery permit (OAR 635-006-1015), 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.
- (2) Razor clams from July 15 through September 30 in the area north of Tillamook Head in Clatsop County.
- (3) Any clams from:
  - (a) Little Nestucca Bay;
  - (b) Big Nestucca Bay;
  - (c) Netarts Bay, except cockles may be taken;
  - (d) Salmon River and Bay;
  - (e) Siletz River and Bay;
  - (f) All state parks south of Tillamook Head.
- (4) Bay clams in Tillamook Bay, under a bay clam dive permit (OAR 635-006-1015), from the following areas:
  - (a) The "Ghost Hole" from the floating toilet site south to Sandstone Point and 500 feet westward from the Highway 101 shoreline;
  - (b) The area east of a line connecting the Coast Guard tower on the north jetty and buoy marker 13;
  - (c) An area 100 feet around and including the recreational clam harvest area near Kincheloe Point.
- (5) Cockle clams in Netarts Bay, under a bay clam dive permit (OAR 635-006-1015), from the following areas:
  - (a) An area extending 500 feet to the north adjacent to Oregon State University's shellfish reserve and across the entire width of the bay;
  - (b) Areas of heavy recreational harvest.
- (6) Bay clams in Coos Bay, under a bay clam dive permit (OAR 635-006-1015), from the following areas:
  - (a) In depths less than 10 feet from mean lower low water;
  - (b) The area of South Slough east of the Charleston bridge.

Stat. Auth.: ORS 506.109, 506.119

Stats. Implemented: ORS 506.129

Hist.:

635-005-0030

Size Limit

- (1) The minimum legal size of razor clams taken for commercial purposes is 3-3/4 inches from tip to tip of the shell. It is *unlawful* to possess any razor clams taken for commercial purposes which are less than the minimum legal size.
- (2) ~~[There is no size limit on clams other than razor clams.]~~ The minimum legal size of cockle clams taken for commercial purposes under a bay clam dive permit (OAR 635-006-1015) is 2-1/4 inches at the widest dimension. It is *unlawful* to possess any cockle clams taken for commercial purposes under a bay clam dive permit which are less than the minimum legal size.
- (3) The minimum legal size of gaper clams taken for commercial purposes under a bay clam dive permit (OAR 635-006-1015) is 4 inches at the widest dimension. It is *unlawful* to possess any gaper clams taken for commercial purposes under a bay clam dive permit which are less than the minimum legal size.

Stat. Auth.: ORS 506.119 and 506.129

Stats. Implemented:

Hist.:

635-005-0032

**Catch Limits**

- (1) In Netarts Bay, the annual quota for cockle clams harvested by the bay clam dive fishery (OAR 635-006-1015) is 8,000 pounds.
- (2) In Tillamook Bay, the annual quota for cockle clams harvested by the bay clam dive fishery (OAR 635-006-1015) is 90,000 pounds.
- (3) Staff will initiate rulemaking to close the commercial season for cockle clams for an area when the quota is reached.

Stat. Auth.: ORS 506.109, 506.119

Stats. Implemented: ORS 506.129

Hist.:

**DEPARTMENT OF FISH AND WILDLIFE  
DIVISION 006**

**Developmental Fisheries Program**

635-006-0810

**Definitions**

- (1) For the purposes of OAR 635-006-0820 through [635-006-0950] OAR 635-006-1210 the following definitions shall apply:
- (2) [(4)] "Actively managed" means a fishery under a limited entry system according to the provision of a federal fishery management plan.
- (3) "Bay clams" means cockle clams (*Clinocardium nuttallii*), butter clams (*Saxidomus giganteus*), gaper clams (*Tresus capax, nuttallii*), native littleneck clams (*Protothaca staminea*), and softshell clams (*Mya arenaria*).
- (4) [(2)] "Board" means the Developmental Fisheries Board appointed by the Commission.
- (5) [(3)] "Commission" means the Oregon Fish and Wildlife Commission.
- (6) [(4)] "Department" means the Oregon Department of Fish and Wildlife.
- (7) [(5)] "Developed fishery" means a fishery where the level of participation, catch, and effort indicate the fishery has approached optimum sustained yield and/or there is sufficient biological information, information on harvest methods, gear types, and markets to develop a long-term management plan for the species.
- (8) [(6)] "Developmental fisheries species" means food fish species adopted by the Commission to be managed under the Developmental Fisheries Program.
- (9) [(7)] "Director" means the Director of the Oregon Department of Fish and Wildlife.
- (10) [(8)] "Domestic partner" means an individual who, together with a permit holder has formed a partnership in which both:
  - (a) Are at least 18 years of age;
  - (b) share a close personal relationship and are responsible for each other's welfare;
  - (c) are each other's sole domestic partner;
  - (d) are not married to anyone and neither has had another domestic partner or a spouse within in the previous six months;
  - (e) are not related by blood closer than would bar marriage under ORS 106.020;
  - (f) have shared a household for at least six months; and
  - (g) are jointly financially responsible for basic living expenses, including expenses for food, shelter, and maintaining a household.
- (11) [(9)] "Immediate family" means a permit holder's spouse, domestic partner, children, father, mother, brother, sister, stepchildren, and grandchildren.
- (12) [(10)] "Maximum sustainable yield" (MSY) means an estimate of the largest average annual catch or yield that can be taken over a significant period of time from each stock under prevailing ecological and environmental conditions.
- (13) [(11)] "Underutilized species" means a food fish species or group of species that is not presently harvested in significant quantities due to poor markets or inadequate gear development or may be caught but not utilized due to poor markets.
- (14) [(12)] "Optimum sustained yield" (OSY) means the desired catch level of a fishery that will provide the greatest overall benefit to the state taking into account economic, social, and ecological considerations that will maintain a level of population that insures the long-term productivity of the stock and does not impair its ability to sustain itself into the future.
- (15) [(13)] "Overfishing" means a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY.

Stat. Auth.: ORS 506.109, 506.119, 506.450, 506.455, and 506.465

Stats. Implemented: ORS 596.129; Hist.:

**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 requirement of five landings. Annual renewal requirements are five landings of at least 1,000 pounds each or a total of 25,000 pounds. In addition, landings must be made in at least three different months. Hagfish permits are valid for 90 days from date of issue, unless five landings of at least 1,000 pounds each or a total of 25,000 pounds are made within 90 days from date of issue, in which case the permit is valid for the remainder of the year. 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*) fishery has a qualifying requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Annual renewal requirements are five landings totaling at least 80,000 pounds or landings totaling at least \$25,000, based on ex-vessel price. There are 20 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. Experimental gear permits may be required. This rule incorporates, by reference, the sardine management measures for 2004 included in the Pacific Council List of Decisions for the November 2003 PFMC meeting, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660**, as amended to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Pacific Council decisions and the Federal Regulations may be obtained by contacting the Fish Division at (503) 947-6200;

**(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 multispina*) 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. 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) 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;

(E) [(F)] 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;

(F) [(G)] 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;

(G) [(H)] 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, 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) Skiffish (*Erilepis zonifer*);

(H) Northern squawfish (*Ptychocheilus oregonensis*);

(I) Pacific saury (*Cololabis saira*);

(J) Pacific sandfish (*Trichodon trichodon*);

(K) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*);

(L) Pacific pomfret (*Brama japonica*);

(M) Slender sole (*Eopsetta exilis*).

(b) INVERTEBRATES

(A) Pacific sand crab (*Emerita analoga*);

(B) Freshwater mussels (families Margaritifera, Anodonta, Gonidea, and Corbicula);

(C) Ocean cockle clams (*Clinocardium nuttallii*);

(D) California market squid (*Loligo opalescens*) and other squid (several species);

(E) Fragile urchin (*Allocentrotus fragilis*);

(F) Sea cucumber (*Parastichopus* spp.).

(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) Jack mackerel (*Trachurus symmetricus*);

(I) Chub (Pacific) mackerel (*Scomber japonicus*);

(J) Greenstriped rockfish (*Sebastes elongatus*);

(K) Redstripe rockfish (*Sebastes proriger*);

(L) Shortbelly rockfish (*Sebastes jordani*);

(M) Sharpchin rockfish (*Sebastes zacentrus*);

(N) Splitnose rockfish (*Sebastes diploproa*);

(O) Pacific sanddab (*Citharichthys sordidus*);

(P) Butter sole (*Pleuronectes isolepis*);

(Q) English sole (*Pleuronectes vetulus*);

(R) Rex sole (*Errex zechirus*);

(S) Rock sole (*Pleuronectes bilineatus*);

(T) Sand sole (*Psettichthys melanostictus*);

(U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);

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

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

(X) 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 \$75. ~~[except for bay clams which is \$25.]~~ 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, the vessel operator, and other information as the Department may require;
- (b) Except as listed below, 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.
- (A) Applications for box crab permits must be postmarked or date-stamped by January 1 of the year of issue; and
- (B) Applications for new hagfish permits will be accepted on a first-come, first-serve basis.
- (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.
- (e) Applications for new hagfish permits must include a business plan. The plan format is provided by ODFW. The business plan may include, but is not limited to, a description of vessels and gear currently owned or expected to purchase, identification of the market, and a letter of intent to buy from a processor.
- (f) The vessel operator designated in subsection (a) above may change up to twice a year, with at least three work days' notice by the permit holder to ODFW, Newport office.

**(2) Number of permits allowed:**

- (a) An individual shall not submit more than one application, per vessel (or per person for individual permits), for each developmental fishery species gear category;
- (b) A permit holder who holds a valid developmental fisheries permit may not apply for any additional permits for the same vessel (or person for an individual permit) and species gear category unless the Department proposes to deny that permit;
- (c) If a permit holder who holds a permit at issue either before the Commission or a court of law, is awarded another permit for the same species gear category through the lottery and thereafter prevails before the Commission or in court, the permit holder 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) Except for new hagfish permits, 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) Except for new hagfish permits, 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 permit holder voluntarily turning in a permit.

(d) A subcommittee of the Developmental Fishery Board shall evaluate the business plans submitted by hagfish fishery applicants to determine if the applicant is likely to actively prosecute the fishery. If more applicants submit acceptable business plans than there are available new permits, then the available permits will be distributed as otherwise specified in subsections (3)(a) and (b) of this rule.

(4) Persons to whom permits are issued: Permits shall be issued to an individual person or entity and assigned to a vessel, except 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 reassigned to another vessel owned or leased and 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 reassign the vessel on a permit, a permit holder shall first apply on a form provided by the Department and shall include a \$25 fee;

(c) If the permit holder is not the registered owner of the vessel to which a permit is being reassigned, a copy of a signed lease agreement with the owner of the vessel must accompany the application. The lease agreement must show the permit holder will be in control of the daily activities of the vessel during the time of the lease.

(d) No reassignment shall be effective until the permit holder has received approval from the Department and an updated permit.

(e) If a permit is reassigned to a vessel under the ownership of other than the permit holder, the permit holder or designated vessel operator must be aboard the vessel during harvest activities under the 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 permit holder must annually lawfully land the required pounds and/or landings listed in OAR 635-006-0850. However, if a permit holder obtained a permit later than July 1 of the prior year, the permit holder shall not be required to make the annual landing requirement by the following January. Instead, at the next renewal thereafter, the permit holder 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.

(f) In addition to the above landing requirements, logbooks required under OAR 635-006-0890 must be turned into an ODFW office by the application deadline for renewal of a permit.

(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.:

### Restricted [~~Vessel Permit~~] Participation Systems

#### 635-006-1010

##### Definitions

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

(1) "Bay clam dive fishery" shall mean the commercial fishery for 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*) from subtidal areas in Oregon estuaries using dive gear.

(2) [(4)] "Black rockfish / blue rockfish / nearshore fishery" shall mean the commercial fishery for black rockfish, blue rockfish and nearshore fish.

(3) [(2)] "Brine shrimp fishery" shall mean the commercial fishery for adult *Artemia* spp. from Lake Abert (Lake County).

(4) [(3)] "Completion" of a vessel for the purposes of initial eligibility for an Oregon ocean Dungeness crab permit pursuant to ORS 508.931 is defined as:

(a) A date identified in a contract document as the proposed or actual date of completion; or

(b) The date an insurance policy was in effect covering the vessel for loss or liability; or

(c) The date of inspection for certification by the U.S. Coast Guard; or

(d) Other written document acceptable to the Department that establishes the actual date the vessel was completed for the purposes of entering the Oregon ocean Dungeness crab fishery.

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

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

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

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

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

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

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

(12) [(11)] "Yaquina Bay Roe-herring fishery" shall mean the commercial net fishery for Pacific herring (*Clupea harengus pallasii*) which occurs annually between January 1 and April 15 in Yaquina Bay pursuant to OAR 635-004-0027.

(13) [(12)] "Initial eligibility for vessels to participate" for the purposes of application for an Ocean Dungeness crab permit pursuant to ORS 508.931 means eligibility of a vessel on which to make permit application is confined to vessels which have never obtained an initial permit.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129, and 508.921 through 508.941;

Hist.:

## 635-006-1015

### Requirement for Permit

(1) The following provide general requirements for permits:

(a) Gillnet salmon - see ORS 508.775;

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

(c) Shrimp - see ORS 508.880 and 508.883;

(d) Scallop - see ORS 508.840 and 508.843;

(e) Roe-herring:

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

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

(f) Sea Urchin:

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

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

(g) Ocean Dungeness crab:

(A) Except as provided under the reciprocity provisions of ORS 508.941(3), it is *unlawful* for an individual to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit issued pursuant to ORS 508.931 or 508.941. A Dungeness crab vessel permit is not required for vessels that are engaged solely in setting gear for a permitted vessel and which do not retrieve, retain or possess Dungeness crab.

(B) If the Commission establishes a vessel crab pot limitation or allocation system beyond the 2002-03 ocean crab season, August 14, 2001 is the control date for eligibility criteria related to past participation in the ocean fishery.

(C) In addition to certifying that the vessel is free of crab on November 30 each year, as required by OAR 635-005-0045(1), each vessel operator must declare and certify on the Oregon hold inspection certification form the maximum number of pots that will be used in that season's fishery before fishing.

(D) A single delivery license may not be substituted for an ocean Dungeness crab permit. Once a vessel has obtained an ocean Dungeness crab permit, Dungeness crab may be landed by the vessel using a combination of an ocean Dungeness crab permit and a single delivery permit in lieu of a commercial fishing and boat license. However, crab may not be landed more than twice in any one crab season using single delivery permits.

(h) Developmental Fisheries: See ORS 506.450 through ORS 506.465 and OAR 635-006-0800 through 635-006-0950.

(i) July 1, 2001 is the control date to establish eligibility criteria for the purpose of future limited entry programs for the commercial groundfish fishery.

(j) Black rockfish / blue rockfish / nearshore fishery -- see ORS 508.945.

(k) Brine Shrimp:

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

(B) It is *unlawful* for a wholesaler, canner, or buyer to buy or receive brine shrimp taken in the brine shrimp fishery from a person for which the permit required by this rule has not been issued.

(C) The Department may issue no more than three permits required by section (1)(k) of this rule.

(l) Bay clam dive fishery:

(A) It is *unlawful*:

(i) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in any Oregon estuary North of Heceta Head without first obtaining a coast-wide bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through OAR 635-006-1095;

(ii) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in Oregon estuaries south of Heceta Head without first obtaining either a coast-wide bay clam dive fishery permit or a south-coast bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through OAR 635-006-1095;

(iii) For a wholesaler, canner, or buyer to buy or receive bay clams taken in the bay clam dive fishery from a vessel or person not issued a permit required by this rule.

(iv) To take or attempt to take bay clams where more than two divers operating from any one boat were in the water at the same time.

(B) The Department may not issue more than ten coast-wide permits required by section (1)(l)(A)(i) of this rule nor more than five south-coast permits required by (1)(l)(A)(ii) of this rule.

(C) Permits may be issued to individuals or to vessels, designated at the beginning of the year. Designation may not change during the year.

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

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

**(4) If permits are issued on an individual basis, no individual may hold more than one permit for a given fishery at any one time.**

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

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

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129, and 508.921 through 508.941;

Hist.:

#### **635-006-1025**

##### **Permit Fee**

The annual fee to participate in limited entry fisheries is as follows:

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

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

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

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

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

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

(7) Ocean Dungeness crab - \$75. See ORS 508.941(4).

(8) Black rockfish/blue rockfish/nearshore fishery - \$75. See ORS 508.949.

(9) Brine Shrimp - \$75.

**(10) Bay clam dive fishery - \$0.**

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.:

#### **635-006-1035**

##### **Eligibility Requirements for a Permit**

Eligibility for a limited entry permit is as follows:

(1) Gillnet salmon - see ORS 508.784.

(2) Troll salmon - see ORS 508.810.

(3) Shrimp - see ORS 508.886 and 508.895.

(4) Scallop - see ORS 508.852.

(5) Roe-herring - The ODFW shall issue a permit as per ORS 508.765:

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

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

(6) Sea Urchin - An individual licensed as a commercial fisherman under ORS 508.235 is eligible to obtain the permit required by OAR 635-006-1015:

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

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

(c) Through a duly authorized medical transfer of an existing permit in accordance with OAR 635-006-1095;

(d) By combining three currently renewed permits into one new permit as provided in OAR 635-006-1095.

(7) Ocean Dungeness crab:

(a) See ORS 508.931;

(b) For the purposes of eligibility for the ocean Dungeness crab fishery permit, a boat which received a license waiver issued pursuant to ORS 508.808 shall be considered as having possessed a boat license for that year;

(c) ORS 508.931 and ORS 508.941 require that the vessel be previously licensed in accordance with ORS 508.260 for the purposes of initial eligibility for an ocean Dungeness crab fishery permit. A single delivery license may not be substituted for a boat license for this purpose.

(8) Black rockfish / blue rockfish / nearshore fishery -- see ORS 508.947.

(9) Brine Shrimp -- A commercial fisherman licensed under ORS 508.235 is eligible to obtain the permit required by OAR 635-006-1015:

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

(b) If issued a brine shrimp permit under the Developmental Fisheries Program prior to 2004.

(10) Bay clam dive fishery - An individual licensed as a commercial harvester under ORS 508.235 or a vessel is eligible to obtain the permit required by OAR 635-006-1015:

(a) For a south coast bay clam dive permit for the year 2006, if a bay clam south-coast dive permit was issued to the individual or vessel under the Developmental Fisheries program (OAR 635-006-0900) in 2005 and lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in 2005; or

(b) For a coast wide bay clam dive permit for the year 2006, if a bay clam coast-wide dive permit was issued to the individual or vessel under the Developmental Fisheries program (OAR 635-006-0900) in 2005 and lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in 2005.

(c) After 2006, by renewal of the previous years' permit and satisfaction of the requirements in OAR 635-006-1075(1)(j).

Stat. Auth.: ORS 506.119;

Stats. Implemented: ORS 506.109

Hist.:

### **635-006-1065**

#### **Review of Denials**

(1) Except for bay clam dive fishery permits, an individual whose application for issuance or renewal of a limited entry permit is denied by the Department may request review of the Department's decision by doing so in writing to the Commercial Fishery Permit Board. The procedure for requesting review and the applicable standard of review shall be as follows:

(a) Gillnet salmon- see ORS 508.796;

(b) Troll salmon - see ORS 508.825;

(c) Shrimp - see ORS 508.910;

(d) Scallop - see ORS 508.867;

(e) Roe-herring - see ORS 508.765. For the roe-herring fishery, the Board may waive requirements for permits if the Board finds that:

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

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

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

(g) Ocean Dungeness crab - see ORS 508.941.

(h) Black rockfish / blue rockfish / nearshore fishery -- see ORS 508.960.

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

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

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

#### (5) Bay clam dive fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a bay clam fishery permit is denied by the Department may, within 60 days of receipt of denial, make written request, to the Commission, for a hearing for review of the denial. The request shall identify why the permit should be granted.

(b) In accordance with any applicable provisions of ORS 183.310 to ORS 183.550 for conduct of contested cases, a hearings officer shall review the proposed denial by the Department of an application for issuance, renewal or transfer of a permit.

(c) 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.

(d) Final Orders shall be issued by the Commission and may be appealed as provided in ORS 183.480 to **ORS 183.550**.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.:

## 635-006-1075

### Renewal of Permit

(1) An individual who obtained a limited entry [vessel] permit may renew the permit as follows:

(a) Gillnet salmon- see ORS 508.781;

(b) Troll salmon - see ORS 508.807;

(c) Shrimp - see ORS 508.892;

(d) Scallop - see ORS 508.849;

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

(f) Sea Urchin permit:

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

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

(g) Ocean Dungeness crab permit - see ORS 508.941. A permit which is not renewed by December 31 lapses, and may not be renewed for subsequent years.

(h) Black rockfish / blue rockfish / nearshore fishery -- see ORS 508.947.

(i) Brine Shrimp permit:

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

(B) The permittee shall have lawfully landed 5,000 pounds of brine shrimp in Oregon in the prior year.

(j) Bay clam dive fishery:

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

(B) The permittee shall have lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in the prior calendar year;

(C) Logbooks required under OAR 635-006-1110 must be turned in to an ODFW office by the application deadline for renewal of a permit.

(D) If a permit is transferred under OAR 635-006-1095(10), annual renewal requirements are waived in the year the transfer occurred.

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

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129, and 508.921 through 508.941

Hist.:

## 635-006-1085

### Lottery for Certain Limited Entry Fisheries

(1) A lottery process is provided in all limited entry fisheries except ocean Dungeness crab.

(2) A lottery for issuance of permits shall be conducted as follows:

(a) Gillnet salmon - see ORS 508.792;

(b) Troll salmon - see ORS 508.819;

(c) Shrimp - see ORS 508.904;

(d) Scallop - see ORS 508.861. If the number of permits issued in accordance with ORS 508.849 falls below 25, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 25;

(e) Roe-herring - If the number of permits issued in accordance with OAR 635-006-1035 falls below six, the Department in the next succeeding calendar year may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed six;

(f) Sea Urchin:

(A) If the total number of permits which have been renewed, and/or for which an appeal is pending, with the Commercial Fishery Permit Board and/or awarded through a prior lottery, is less than 30, a lottery shall be held on the 4th Friday in April;

(B) An individual must be 18 years of age or older and furnish proof of age to be eligible for the lottery;

(C) An individual may not already hold a valid urchin permit, however, an individual whose permit is at issue in a pending Sea Urchin Permit Board proceeding or before a court of law may participate in the lottery;

(D) If a permittee whose permit is at issue either before the Sea Urchin Permit Board or a court of law is awarded another permit through the lottery and thereafter prevails before the Board or in court, the permittee shall immediately surrender one of the permits to any Department office, so that only one valid permit is held;

(E) An individual who qualifies to participate in the lottery shall send a complete lottery application to the Department, date-stamped or postmarked no later than April 15 of the year for which the permit is to be issued. An individual shall not submit more than one application to participate in the lottery. For successful applicants, the application fee shall apply toward the permit fee of \$75;

(F) The names of lottery applicants shall be drawn to obtain the available permits. All other names of lottery applicants shall be drawn and placed on an alternate list in the order in which they were drawn, and shall be issued permits during the next 24 months as they may become available through Permit Board actions or surrender of permits by a permit holder;

(G) An individual whose name is drawn in the lottery shall thereafter apply on the prescribed form, to the Department to obtain a permit. Such application must be received by the Department within 30 days of the date the notification was mailed to the successful applicant following the lottery;

(H) Any individual who fails to apply for the lottery permit within 30 days shall forfeit such permit. The permit shall then be made available to the first name on the alternate list, and shall be applied for in accordance with section (G) of this rule;

(I) If all permits are not issued by renewal or through the lottery, permits thereafter may be issued on a first come first served basis up to the total number of permits allowed. All applications shall be mailed to the Department and priority shall be based on postmark or date-stamped date;

(J) The Commission may suspend the lottery for up to two years based upon its assessment of the condition of the resource and recommendations of the Sea Urchin Permit Review Board.

(g) Black rockfish / blue rockfish / nearshore fishery -- see ORS 508.955. If the number of permits issued in accordance with ORS 508.947 falls below 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement.

**(h) Bay clam dive fishery - If the number of permits issued in accordance with OAR 635-006-1035 falls below ten for coast-wide permits or five for south-coast permits, the Department may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed ten for coast-wide permits or five for south-coast permits;**

(3) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(4) Application for vessel permits shall only be accepted for vessels, which in the judgment of the Department, are capable of operating the gear necessary to legally participate in the fishery. Vessels of a size or design incapable of harvesting the permitted species are not eligible for the lottery.

(5) Only one application per vessel may be submitted for each permit fishery lottery.

(6) Any application which is not legible, has incomplete information, or is postmarked after the deadline will not be entered in the lottery. Applications for all [vessel] permits will be accepted at the Headquarters Office of the Department of Fish and Wildlife, and shall be postmarked or date stamped no later than June 30 of the year for which the permit is issued.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.:

**635-006-1095**

**Transferability of Permits**

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

(1) Gillnet salmon - see ORS 508.793.

(2) Troll salmon - see ORS 508.822.

(3) Shrimp - see ORS 508.907.

(4) Scallop - see ORS 508.864.

(5) Roe-herring:

(a) A permit is transferable to:

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

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

(6) Sea Urchin:

(a) Medical Transfers: If the number of permits is at 31 or more, the Department may authorize a permit to be transferred to a specified individual for up to 90 days upon petition by a permittee on the form provided by the Department. The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder and such other evidence the Department considers reliable. At the end of the transfer period, the transfer may be renewed by the Department to the original transferee or to a new transferee, provided that the permittee again submits medical evidence documenting that the injury or illness continues to prevent the permittee's return to diving. There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the first medical transfer of that permit on or after January 1, 1996, and ending two years from that date. When the total number of permits reaches 30 or less the Department shall not allow any permit transfers for any medical reason;

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

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

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

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

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

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

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

(C) No transferred permit is valid for harvesting sea urchins until conditions (d)(A) and (d)(B) are met. Individual permits which are transferred may not be used individually and are not renewable. Once a permit has been transferred in accordance with (d)(A) the individual to whom the permit has been transferred has up to 24 months from the date of transfer to combine it with two others to create a valid new permit.

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

(f) Lottery-issued permit transfers: No permit issued to an individual through the lottery after 1998 may be transferred to another individual until a cumulative total of 20,000 pounds of sea urchins have been landed on commercial fish receiving tickets by the individual issued the permit through the lottery.

(7) Ocean Dungeness crab - see ORS 508.936 and:

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

(b) The vessel permit is transferable:

(A) To another vessel; or

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

(c) The vessel to which a permit is transferred, with the exception of vessels covered by (7)(d), shall not be:

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

(B) More than 99 feet in length.

(d) Permits obtained as a result of qualifying under section (1)(e) of ORS 508.931 may only be transferred to vessels of a length of 26 feet or less;

- (e) The length of a vessel for purposes of transferring permits is the length of that vessel on September 9, 1995, unless subsequently modified to increase its length;
- (f) Except for vessels described in section (d), transfer of permits is limited to vessels no more than 10 feet longer than the permitted vessel, regardless of length of vessels previously holding the permit;
- (g) In the event a vessel is destroyed due to fire, capsizing, sinking or other event, the vessel owner has up to two years to transfer the ocean Dungeness crab fishery permit to a replacement vessel.
- (8) Black rockfish / blue rockfish / nearshore fishery -- see ORS 508.957.
- (9) Brine shrimp fishery: Permits are transferable.
- (10) Bay clam dive fishery:

(a) The permittee may request the Department to transfer a bay clam dive permit up to two times per calendar year.

(b) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member upon request, validated by the Department's receipt of a copy of the death certificate and the original permit.

(c) The Department may authorize a permit issued to an individual to be transferred to a specified individual for up to 90 days upon petition by the permittee on the form provided by the Department due to a medical condition.

(A) The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder, and such other evidence the Department considers reliable.

(B) At the end of the transfer period, the Department may reinstate the permit to the original permit holder or to a new transferee, provided that the original permit holder again submits medical evidence documenting that the injury or illness continues to prevent their return to diving.

(C) There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the first medical transfer of that permit on or after January 1, 2006, and ending two years from that date.

(d) If the Department, after review of a denial by the Commission, allows a transfer, the original permit holder shall give written notice to the Department of the name, address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (10)(A), request the Department reinstate the permit back to their possession. Such transfer requires 30 days' written notice to the Department. In any event, upon expiration of the transfer period specified in (10)(A), or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (10)(A) of this rule.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129, 508.760 and 508.762

Hist.:

#### 635-006-1110

##### Logbook Required

(1) Sea urchin fishery: The Department shall provide a logbook to each individual permitted to harvest sea urchins. Each individual is responsible for maintaining the logbook in accordance with the instructions contained therein and shall, upon request of an authorized representative of the Department, permit examination and transcription of information from such logbook. Information so received by the Department shall be considered as confidential.

(2) Black rockfish / blue rockfish / nearshore fishery -- see ORS 508.953.

(3) Bay clam dive fishery: The Department shall provide a logbook to each permit holder permitted to harvest bay clams. Each permit holder is responsible for maintaining the logbook in accordance with the instructions contained therein and shall, upon request of an authorized representative of the Department, permit examination and transcription of information from such logbook. Catch records and trade secrets documented in the log book are confidential.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.:

## **Public Correspondence**

**No public correspondence received as  
of October 20, 2005**