

BEFORE THE OREGON FISH AND WILDLIFE COMMISSION

In the matter of Dennis Lee Sturgell,) **NOTICE OF INTENT TO**
Hammond, Oregon) **REVOKE COMMERCIAL**
) **FISHING LICENSES**

The Oregon Fish and Wildlife Commission is authorized by law to revoke a person's commercial fishing licenses if the person is convicted in Oregon of certain violations of Oregon commercial fishing laws or rules. Under this authority, the Commission now proposes to revoke your commercial fishing licenses. This notice explains the State's allegations against you and how you may respond to them.

I. FINDINGS OF FACT

These are the facts of the situation as understood by the Commission:

1. You (Dennis Sturgell, of Hammond, Oregon) plead guilty to four violations of the commercial fishing laws in Oregon, resulting in :
 - a. Two convictions for violation of ORS 509.006 (general commercial fishing violations), dated January 28, 2009 in the Circuit Court for Clatsop County (case number 086082), resulting in assessment of a total of \$10,926.00 in fines; and
 - b. Two convictions for violation of OAR 635-005-055(7) (unlawful use of commercial crab pots), dated February 6, 2009 in the Circuit Court for Tillamook County (case number 076109), resulting in a sentence of 30 days in jail plus \$41,200.00 of restitution.
2. You hold the following commercial fishing licenses:
 - a. 2009 personal commercial license #20228 issued to Dennis Sturgell;
 - b. Ocean Dungeness Crab permit #96314 issued to Dennis Sturgell

II. APPLICABLE LAW

This is a list of statutes and administrative rules that are relevant to this Notice of Intent to Revoke.

1. Oregon Revised Statutes (ORS) 508.485(1) provides:

“Except for vessel licenses prescribed in ORS 508.285, 508.470, 508.755, 508.775 to 508.796, 508.801 to 508.825, 508.880, 508.883 and 508.889 to 508.910, the State Fish and Wildlife Commission may, in its discretion, revoke for the remainder of the license year any license issued to such person under the authority of the commission or the State Fish and Wildlife Director, and in its discretion may refuse the issuance

of any license issued under the authority of the commission or director during any period not to exceed one year from the date of the license revocation order:

(1) Upon conviction within this state of any person of violation of any of the commercial fishing laws or rules;”

2. ORS 508.490(1) provides:

“Except for vessel licenses prescribed in ORS 508.260 and vessel permits prescribed in ORS 508.285, 508.470, 508.755, 508.775 to 508.796, 508.801 to 508.825, 508.880, 508.883 and 508.889 to 508.910, the State Fish and Wildlife Commission may, in its discretion, refuse the issuance of any license issued under the authority of the commission or the State Fish and Wildlife Director during any period not to exceed two years from the date of the license revocation order:

(1) Upon conviction within this state of any person of violation of any of the commercial fishing laws or rules after such person has once been convicted and penalized under ORS 508.485;”

3. Oregon Administrative Rules (OAR) 635-006-0235 provides:

“635-006-0235 Revocation of and Refusal to Issue Commercial Fishing and Fish Dealer Licenses

(1) Except as provided in section (2) of this rule in accordance with ORS 508.485 and 508.490, upon the third conviction or third forfeiture of bail within three years for violation of any of the Commercial Fishing Laws of the State of Oregon or for conviction in the State of Washington of an offense which was a violation of Columbia River Commercial fishing rules adopted pursuant to the Columbia River Compact, by any person, the Commission shall initiate contested case proceedings in accordance with the Administrative Procedures Act (ORS Chapter 183) to revoke, or refuse to issue, licenses issued under the Commercial Fishing Laws (Chapters 506–513).

(2) Convictions or forfeiture of bail for exceeding trip limits in the groundfish trawl fishery, where the trip limit has not been exceeded by more than 15%, shall not be considered as a conviction or forfeiture of bail for purposes of section (1) of this rule.

(3) The Commission shall appoint a hearings officer to conduct the contested case hearing prescribed in section (1) of this rule.

(4)(a) In addition to the hearings officer, the Commission may appoint a three-member License Revocation Board to be present at the hearing and to make advisory recommendations to the Commission concerning revocation or refusal to issue a license to that person. License revocation boards shall consist of members representing the following fishing industries:

- (A) Troll salmon;
- (B) Gillnet salmon;
- (C) Groundfish and shrimp;
- (D) Crab;
- (E) All other commercial fisheries.

(b) Only members from the appropriate License Revocation Board shall participate in hearings related to their subject area. The hearings officer shall notify the appropriate License Revocation Board of the date, time and place of the hearing, and shall provide any other public notice required by ORS Chapter 183;

(c) At the hearing, the board may request the hearings officer call additional witnesses or seek additional evidence;

(d) At the conclusion of the hearing, the board shall prepare written recommendations concerning the disposition of the case, which the License Revocation Board shall serve on all parties and forward to the Commission.

(5) A proposed order in the form prescribed by OAR 137-003-0070, including findings of fact and conclusions of law, shall be prepared by the hearings officer, served on all parties, and shall be forwarded to the Commission.

(6) In accordance with ORS Chapter 183, the Commission shall provide an opportunity to all parties to respond in writing within a period set by the Commission to the proposed order of the hearings officer and to the written recommendations submitted by the License Revocation Board.

(7) In deciding whether to revoke or refuse to issue a license, the Commission shall consider:

(a) The recommendation of the License Revocation Board;

(b) The gravity of the most recent offense, including whether the offense was a felony and whether the offense involved a closed season, closed area, or *unlawful* gear;

(c) The gravity of the other commercial fishing offenses of which the person has been convicted or forfeited bail;

(d) The impact of the offense on the fisheries resources of the state or, where relevant, on the State of Washington, including consideration of the species involved;

(e) Whether the person also has been convicted of or forfeited bail for violations of the Wildlife laws of the State of Oregon.”

III. CONCLUSIONS OF LAW

This is a summary of how the Department thinks the law applies to the facts of this situation.

1. Within a three-year period, you were convicted four times of violations of the commercial fishing laws of the State of Oregon.
2. Therefore, the Commission has the authority to revoke these commercial fishing licenses held by you, and to bar you from reapplying for these licenses for one year from the date the Commission issues a final order in this case:
 - a. 2009 personal commercial license #20228 issued to Dennis Sturgell;
 - b. Ocean Dungeness Crab permit #96314 issued to Dennis Sturgell

IV. REQUEST FOR HEARING

To challenge this proposed action, you must submit a written request for hearing to the Department of Fish and Wildlife, 3406 Chery Avenue NE, Salem, OR 97303-4924, which must be received by the Department within 60 days after the date this Notice was mailed to you. Your hearing request must admit or deny each allegation in this Notice, and also identify any defenses or claims you intend to raise. If you don't deny a fact alleged in this Notice, it will be presumed admitted. If you don't raise a claim or defense, it will be presumed that you waived that claim or defense. Upon receipt of a timely request for hearing, the case will be referred to the Office of Administrative Hearings, which would assign an Administrative Law Judge to hear the case. The Administrative Law Judge would notify you of the date, time and place of the hearing. You will also receive a document providing information about hearing procedure and your rights.

If you fail to file a timely request for hearing, or if you fail to appear at a scheduled hearing, this Notice will automatically become an enforceable Final Order against you. The Department's file would serve as the record upon default.

DATED this _____ day of _____, 2009.

Marla Rae, Chair
Oregon Fish and Wildlife Commission