

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

|                                                     |                                        |
|-----------------------------------------------------|----------------------------------------|
| Oregon Department of Fish & Wildlife, Fish Division | 635                                    |
| Agency and Division                                 | Administrative Rules Chapter Number    |
| Therese M. Kucera                                   | 3406 Cherry Avenue NE, Salem, OR 97303 |
| Rules Coordinator                                   | (503) 947-6033                         |
|                                                     | Address Telephone                      |

**RULE CAPTION**

Amend Rules for Delays to Start of Commercial Ocean Dungeness Crab Fishery Seasons  
 Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

|                 |           |                                                              |                                   |
|-----------------|-----------|--------------------------------------------------------------|-----------------------------------|
|                 |           | Hallmark Inn<br>744 SW Elizabeth Street<br>Newport, OR 97365 |                                   |
| October 4, 2013 | 8:00 a.m. |                                                              | Oregon Fish & Wildlife Commission |
| Hearing Date    | Time      | Location                                                     | Hearings Officer                  |

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** OAR Chapter 635, Division 005, as determined justified.

**AMEND:** OAR Chapter 635, Division 005, as determined justified.

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129

Other Auth.: \_\_\_\_\_

Stats. Implemented: ORS 506.109, 506.129, 508.306

**RULE SUMMARY**

This rule amendment will implement, by Oregon Administrative Rule, changes to the Pre-Season Testing Protocol for the Commercial Dungeness Crab Fishery (Protocol). The Protocol is a written agreement between the states of Washington, Oregon, and California fish and wildlife agencies, describing the process and criteria for coordinating delays in the start date of the commercial ocean Dungeness crab fishery beyond December 1<sup>st</sup> in the area from Point Arena, CA up to the US/Canada border. Changes to the protocol were recommended by industry advisors and mutually agreed to by the three agencies' representatives at the May 2013 meeting of the Coastal Dungeness Crab Tri-State Committee. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

October 4, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

  
 Signature

Lance Thomson  
 Printed name

August 12, 2013  
 Date

\* Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

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 & Wildlife, Fish Division

635

Agency and Division

Administrative Rules Chapter Number

Amend Rules for Delays to Start of Commercial Ocean Dungeness Crab Fishery Seasons

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Amendment of OAR Chapter 635, Division 005, related to the commercial ocean Dungeness crab fishery seasons start date.

Statutory Authority: ORS 506.036, 506.109, 506.119, 506.129

Other Authority:

Stats. Implemented: ORS 506.109, 506.129, 508.306

Need for the Rule(s):

This amended rule is needed to implement changes to the Pre-Season Testing Protocol for the Commercial Dungeness Crab Fishery (Protocol) which has been mutually agreed to by the states of Washington, Oregon, and California fish and wildlife agencies under the auspices of the Pacific States Marine Fisheries Commission's Coastal Dungeness Crab Tri-State Committee process.

Documents Relied Upon, and where they are available:

1. Pre-Season Testing Protocol for the Commercial Dungeness Crab Fishery (August 2011).
2. Coastal Dungeness Crab Tri-State Committee 2013 Meeting – Decisions and Next Steps Summary ([http://www.psmfc.org/crab/2012-2013%20files/MeetingSummary2013\\_Final.pdf](http://www.psmfc.org/crab/2012-2013%20files/MeetingSummary2013_Final.pdf)).

The above documents are available for public inspection at the Dept. of Fish and Wildlife, Fish Division, Second Floor, at 4034 Fairview Industrial Drive SE, Salem, Oregon, between 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

Fiscal and Economic Impact, including Statement of Cost of Compliance: See attached.

How were small businesses involved in the development of this rule? Revisions to the Protocol were developed in consultation with representatives of small businesses (fishermen and seafood processors) through a two-step process. First, the Oregon Department of Fish and Wildlife held three public meetings in major crab fishing ports to gather industry input and recommendations on a variety of topics including the Protocol. Owners and representatives of small businesses were the primary audience for these meetings. Representatives of small businesses then advised agency representatives at the May 2013 meeting of the Coastal Dungeness Crab Tri-State Committee where revisions to the Protocol were negotiated between the three states.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: Changes to rules were developed in close consultation with the affected industry and negotiated between the states of Washington, Oregon, and California through the Tri-State Dungeness Crab Committee.

  
Signature

Lance Thomson  
Printed Name

August 12, 2013  
Date

**Fiscal and Economic Impact Statement for the October 4, 2013 Hearing  
In the Matter of Rules Relating to Commercial Ocean  
Dungeness Crab Fishery Regulations**

Fiscal and economic impact: Rule changes are being proposed to modify commercial ocean Dungeness crab fishery regulations. This rule amendment is needed to implement changes to the Pre-Season Testing Protocol for the Commercial Dungeness Crab Fishery (Protocol), which have been mutually agreed to by Washington, Oregon, and California state fish and wildlife agencies under the auspices of the Pacific States Marine Fisheries Commission's Coastal Dungeness Crab Tri-State Committee process. This Protocol determines whether the opening date of the commercial Dungeness crab fishery, December 1, needs to be delayed in order to allow crab quality (i.e., meat fill-out ratio) to improve. The primary change is the elimination of using projections to see if the meat ratio criteria (23% for north of Cascade Head; 25% for south of Cascade Head) are met. The decision to set the season opener will now only be based on empirical results of crab tests done in six locations along the Oregon coast. The rules will discontinue the October testing because it is not considered informative. Thus, the first test of the year will be now conducted in mid-November. House-keeping and technical corrections to the regulations may occur to ensure rule consistency.

**Statement of Cost of Compliance**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

The proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. The only state agencies that would be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP) for enforcement costs. Crab testing requires ODFW staff time, but it is unlikely that these rule changes will require additional testing on average since the October testing will be discontinued. No significant changes to the expenditures or revenues to these agencies are anticipated as a result of this rule change.

B. No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

C. The public could be affected by the adoption of these rules. None of the rule changes would have significant impacts on the costs or benefits of the commercial crab business. Rule details are discussed below.

This rule amendment will make season opening delays more likely than under current rules. This could have a positive economic impact in that it will reduce the likelihood of opening the crab fishery too early (i.e., before crab quality has reached optimal levels). Higher quality crab will likely result in higher price per pound paid to commercial fishermen and greater ex-vessel value for the crab fishery over the whole season. Individual crew members may be adversely affected by the greater likelihood of opener delays since work and paychecks would also be delayed. But if the rules result in higher crab fishery values on average, then individual crewmembers may also benefit over the season as a whole. Also, crewmembers would be aware that opener delays will be more likely in the future and will plan accordingly.

Processors will ramp up right before season opens per usual, so the rule changes are unlikely to affect them in any significant way. Given the increased likelihood of delayed season openings, it is possible that some

individual processor employees could be adversely impacted as the timing of work and paychecks would be delayed, though the amount of work would not be expected to decrease. Also, processor employees would be aware that opener delays will be more likely in the future and will plan accordingly.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:**

The main types of small business subject to the rules are commercial crab fishermen and dealer/processors. There were 325 resident and 99 nonresident crab permits issued in 2012. Fifty-six dealers bought landed Dungeness crab in 2012.

Other small businesses affected would be gas stations, tackle shops, charter boat owners, restaurants/cafes/bars, food stores, and places of lodging (hotels, campgrounds, etc.). Information is not available to estimate to number of those types of small businesses affected.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

No significant changes in these costs are expected for the small businesses subject to the rule.

**c. Equipment, supplies, labor and increased administration required for compliance:**

No significant changes in these costs are expected for the small businesses subject to the rule.

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

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.