

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

FILED 6-12-14 2:42 PM ARCHIVES DIVISION SECRETARY OF STATE
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<u>Department of Fish and Wildlife</u>	635
Agency and Division	Administrative Rules Chapter Number
<u>Therese Kucera</u>	(503) 947-6033
Rules Coordinator	Telephone
<u>Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302</u>	
Address	

RULE CAPTION

Adopt and Amend Rules for Commercial Dungeness Crab Fisheries.

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

Hearing Date	Time	Location	Hearings Officer
8-1-14	8:00 a.m.	4034 Fairview Industrial Dr SE, Salem, OR 97302	Oregon Fish and Wildlife

RULEMAKING ACTION

Secure approval of rule numbers 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:

OAR Chapter 635, Division 005, as determined justified.

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

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 506.036, 506.109, 506.119, 506.129.

Other Authority:

HB 3262 (2013), HB 4049 (2014)

Statutes Implemented:

ORS 506.109, 506.129, 506.306, 508.936

RULE SUMMARY

The adopted and amended rules for commercial Dungeness crab fisheries will implement recent legislation and recommendations of the Coastal Dungeness Crab Tri-State Committee. House Bill (HB) 4049, passed in 2014, changed provisions related to suspension, revocation, and transfer of Dungeness crab permits. The administrative rules are being updated to conform to these changes. HB 3262, passed in the 2013, authorized the Oregon Fish and Wildlife Commission (ODFW) to issue commercial fishing vessels permits to remove gear remaining in the ocean 15 or more days after the commercial season closes. HB 3262 exempts gear removed under such a permit from personal property laws. Adopted rules implement a gear removal permitting system as authorized by HB 3262. Also, rule amendments implement changes to the Pre-Season Testing Protocol for the Commercial Dungeness Crab Fishery (Protocol) and the fishery start time (time of day) which have 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. House-keeping 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.

The Agency 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.

08-01-2014 8:00 a.m.

Therese Kucera

Teri.Kucera@state.or.us

Last Day (m/d/yyyy) and Time
for public comment

Rules Coordinator Name

Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

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Department of Fish and Wildlife
Agency and Division

635
Administrative Rules Chapter Number

Adopt and Amend Rules for Commercial Dungeness Crab Fisheries.

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, Divisions 005, related to commercial Dungeness crab fisheries in the Pacific Ocean and Columbia River.

Statutory Authority:

ORS 506.036, 506.109, 506.119, 506.129.

Other Authority:

HB 3262 (2013), HB 4049 (2014)

Statutes Implemented:

ORS 506.109, 506.129, 506.306, 508.936

Need for the Rule(s):

These rules are needed to modify state regulations for commercial Dungeness crab fisheries in-order-to implement recent state legislation and recommendations of the Coastal Dungeness Crab Tri-State Committee. House Bill (HB) 4049 was passed in 2014 and changed provisions related to suspension, revocation, and transfer of Dungeness crab permits. Similar provisions need to be updated in administrative rule(s). HB 3262, passed in 2013, authorized the Oregon Fish and Wildlife Commission (OFWC) to issue commercial fishing vessels permits to remove Dungeness crab gear remaining in the ocean 15 or more days after the close of the season. HB 3262 exempts gear removed under such a permit from personal property laws. Adopted rules are needed to implement a permitting system as authorized by HB 3262. Rule amendments are needed to implement changes to the Pre-Season Testing Protocol for the Commercial Dungeness Crab Fishery and fishery start times (time of day) which have been mutually agreed to by the States of Oregon, Washington and California fish and wildlife agencies under the auspices of the Pacific States Marine Fisheries Commission's Coastal Dungeness Crab Tri-State Committee process. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Documents Relied Upon, and where they are available:

1. Staff Report for the Oregon Fish and Wildlife Commission hearing of August 1, 2014.
2. House Bill 3262, Enrolled (2013 Regular Session)
3. House Bill 4049, Enrolled (2014 Regular Session)

A copy of the rules and the other documents relied upon for this rulemaking [the above documents] are available from the Oregon Department of Fish and Wildlife, Fish Division, Second Floor, 4034 Fairview Industrial Drive SE, Salem, Oregon, between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

Fiscal and Economic Impact:

See attached.

Statement of Cost of Compliance:

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

See attached.

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

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

See attached.

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

See attached.

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

See attached.

How were small businesses involved in the development of this rule?

Oregon Dept. of Fish and Wildlife (Department) held three public meetings in major crab fishing ports to gather industry input and recommendations on a variety of topics including the Protocol and provisions of the gear removal program. Owners of small businesses and their representatives were the primary audience for these meetings. Small businesses' Representatives also advised Department representatives at the May 2014 meeting of the Coastal Dungeness Crab Tri-State Committee where revisions to the Protocol were negotiated between the states of Oregon, Washington and California.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

Changes to rules were developed in close consultation with the affected industry and negotiated between Oregon, Washington and California through the Tri-State Dungeness Crab Committee.

<u>08-01-2014 8:00 a.m.</u>	<u>Therese Kucera</u>	<u>Teri.Kucera@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

**Fiscal and Economic Impact Statement for the August 1, 2014 Hearing In the
Matter of Rules Relating to
Commercial Ocean Dungeness Crab Fishery Regulations**

Rules are being proposed to modify state regulations for commercial Dungeness crab fisheries in order to implement recent state legislation and recommendations of the Coastal Dungeness Crab Tri-State Committee in the three areas.

(1) Conforming OAR's to HB4049. The Commission will be asked adopt OAR's to conform with the enrolled HB4049. The bill removes the authority to revoke or suspend a limited entry Dungeness crab permit from the courts and from the Oregon Fish and Wildlife Commission (OFWC). It authorizes the Commercial Fishery Permit Board to suspend or revoke limited entry Dungeness crab permits. The bill also allows for Dungeness crab permits that were transferred to a vessel shorter than 10' than the vessel that held the permit on January 1, 2013 to be transferred back to a vessel that is equal to or smaller than the vessel that held the permit January 1, 2013.

(2) Season Start Changes. A rule amendment is needed to implement changes to the Pre-Season Testing Protocol for the Commercial Dungeness Crab Fishery and the fishery start time (time of day) 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. The Tri-State Committee agreed to a number of changes to further clarify testing schedules and procedures to help further ensure an organized opening to the Ocean Dungeness crab season on good quality crab. In addition, rules are proposed to lengthen the presoak period prior to the fishery opening from 64 hours to 73 hours to facilitate a fishing start time of 9AM.

(3) Post-season Derelict Gear Program. HB 3262 was passed in the 2013 legislative session and authorized the Oregon Fish and Wildlife Commission to issue permits to commercial fishing vessels to remove Dungeness crab gear that remains in the ocean 15 days after the close of the commercial season. The bill exempts gear removed under such a permit from personal property laws. Derelict or abandoned fishing gear can have negative impacts on living marine resources and adoption of new rules is necessary to implement an effective permitting system for the removal of gear as authorized by HB 3262. The purpose of this permit program is to further incentivize getting lost and abandoned crab gear out of the ocean. For enforcement and tracking purposes, requirements of the permits issued will include: pre- and post-recovery notifications to ODFW staff, logbooks, gear registration and tagging of all retrieved gear by a OSP or ODFW staff.

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. (1) Proposed rules would mean marginally less workload for the OFWC. (2) Proposed rules would not be expected to affect costs or revenues for ODFW or OSP in any significant way. (3) Proposed rules will affect ODFW and OSP. The level of activity in the new program cannot be determined at this point, but there will likely be additional workload for ODFW staff for administering and tracking the program as well as registering gear at the docks after recovery trips. There will also be some costs incurred by the Department associated with the purchasing of tags for the program and travel to the docks for registering gear. There will likely be some additional workload for OSP in terms of staff resources for assisting with registering gear at the docks. These additional costs/workload are not expected to be significant and expected to be absorbed by existing budgets/staff.

Overall, no significant changes to the expenditures or revenues of these agencies are anticipated as a result of these rule changes.

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. (1) Commercial Fisheries Permit Board will have some additional workload since they will be required to decide to suspend or revoke crab permits. The public is not expected to be affected otherwise. (2) The proposed rules are not expected to result in significant costs or benefits to the public. (3) Participants in the Derelict Gear program, which is restricted to vessels with commercial boat licenses (1,532 in 2013), are anticipated to benefit in terms of being able to keep or sell any crab gear retrieved through the program. The general public benefits in that reduction in derelict gear will be a boon for living marine resources in Oregon.

Overall, the proposed rule changes would not be expected to have significant impacts on the costs or benefits of the commercial crab business or other sectors of the public.

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 316 resident and 106 nonresident crab permits issued in 2013. 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 the 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.