

Enrolled
House Bill 3108

Sponsored by Representative KRIEGER; Representatives BROWN, GARRARD, HOPSON, JENSON, KROPF, MORGAN, VERGER, Senators FISHER, MESSERLE

CHAPTER

AN ACT

Relating to commercial fishing; creating new provisions; amending ORS 506.011, 508.326, 508.505 and 508.755; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 9 of this 2003 Act are added to and made a part of ORS chapter 508.

SECTION 2. (1) Notwithstanding any other provision of the commercial fishing laws and except as provided in subsection (4) of this section, a person may not operate a vessel for:

- (a) Landing black rockfish or blue rockfish in a fishery without a black rockfish and blue rockfish vessel permit issued under section 3 of this 2003 Act; or
- (b) Landing nearshore fish in a fishery without a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement issued under section 3 of this 2003 Act.

(2)(a) The State Fish and Wildlife Commission may prescribe by rule the type of fishing gear that a vessel required to have a permit under this section shall use to land black rockfish, blue rockfish or nearshore fish.

(b) The commission may not prescribe a rule under this subsection that allows a vessel to use:

- (A) Diving gear.
- (B) Pots, unless a vessel was issued a pot endorsement in the Interim Nearshore Fisheries Plan through the Developmental Fisheries Program enacted by the commission.

(3) Notwithstanding any other provision of the commercial fishing laws, a wholesaler, canner or buyer may not buy or receive black rockfish, blue rockfish or nearshore fish taken in a fishery from a vessel for which the permit required by this section has not been issued, unless the black rockfish, blue rockfish or nearshore fish were taken pursuant to subsection (4)(a), (b) or (c) of this section.

(4) A person may operate a vessel without a permit required by this section if the person:

- (a) For only one landing per day, lands no more than 15 pounds of black rockfish, blue rockfish, nearshore fish or a combination of black rockfish, blue rockfish or nearshore fish and if the black rockfish, blue rockfish and nearshore fish:
 - (A) Make up 25 percent or less of the total poundage of the landing; and
 - (B) Are landed with fishing gear that is legal to use in the fishery in which the black rockfish, blue rockfish or nearshore fish are landed;
- (b) Operates a vessel in the ocean troll salmon fishery pursuant to ORS 508.801 to 508.825 and the person lands black rockfish, blue rockfish or a combination of black rockfish and

blue rockfish in the same landing in which the person lands a salmon under the permit required by ORS 508.801 to 508.825. The black rockfish or blue rockfish landed under this paragraph must be landed dead. A person who lands black rockfish and blue rockfish under this paragraph may land up to the greater of:

(A) 30 black rockfish or 30 blue rockfish per landing or a combination of 30 black rockfish and blue rockfish per landing; or

(B) 100 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue rockfish per landing;

(c) Operates a vessel in the west coast groundfish trawl fishery pursuant to federal regulations and lands no more than 1,000 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue rockfish per calendar year and if the black rockfish and blue rockfish:

(A) Make up 25 percent or less of the total poundage of each landing; and

(B) Are landed dead; or

(d) Is a nonprofit aquarium or has contracted with a nonprofit aquarium to land black rockfish, blue rockfish or nearshore fish for the purpose of displaying or conducting research on the black rockfish, blue rockfish or nearshore fish.

(5) Notwithstanding the amounts set forth in subsection (4)(b) of this section, the State Fish and Wildlife Commission may change the amounts of black rockfish, blue rockfish or the combination of black rockfish and blue rockfish allowed to be landed under subsection (4)(b) of this section by rule based on an assessment of the resource.

SECTION 3. (1) The State Department of Fish and Wildlife may issue a black rockfish and blue rockfish vessel permit to a vessel that landed a minimum of 750 pounds of nontrawl caught black rockfish, blue rockfish or nearshore fish in any one calendar year between January 1, 1995, and July 1, 2001, for delivery to a fish processor licensed pursuant to ORS 508.025.

(2) The department may issue a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement to a vessel that was issued a permit under the Interim Nearshore Fisheries Plan through the Developmental Fisheries Program.

(3) The department may renew a black rockfish and blue rockfish vessel permit or a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement if the vessel made a minimum of five commercial fish landings during the calendar year prior to the request for renewal for delivery to a fish processor licensed pursuant to ORS 508.025.

(4) Permits issued under this section expire on December 31 of each year. An owner of a vessel with a permit must submit a renewal application to the department by January 1 of each year. If the owner of a vessel with a permit does not submit a renewal application by January 1, the department shall, not later than February 1, send to the owner by certified letter a notice of the failure to submit the renewal application. An owner may renew a permit later than January 1, but not later than April 1, if the owner pays a \$150 late fee in addition to the fee required in section 4 of this 2003 Act.

(5) In making determinations regarding initial eligibility for and renewal of a permit issued under this section, the department may consider department records and receipts and accounts, contracts and other business records of private parties that the department considers reliable.

SECTION 4. (1) The annual fee for a black rockfish and blue rockfish vessel permit or a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement issued under section 3 of this 2003 Act is \$75.

(2) Applications for a permit shall be in such form and contain such information as the State Department of Fish and Wildlife, by rule, may prescribe.

(3) All fees collected under this section, section 3 of this 2003 Act, and ORS 508.505 (1)(b) shall be placed into the Black Rockfish, Blue Rockfish and Nearshore Species Research Account established in section 5 of this 2003 Act.

SECTION 5. (1) There is established a Black Rockfish, Blue Rockfish and Nearshore Species Research Account in the State Treasury, separate and distinct from the General Fund. Interest on moneys in the account shall be credited to the account.

(2) The account shall consist of moneys deposited into the account by the State Department of Fish and Wildlife from fees collected for the value of black rockfish, blue rockfish or nearshore fish at the point of landing pursuant to ORS 508.505 (1)(b) and black rockfish and blue rockfish vessel permit fees and late fees collected under sections 3 and 4 of this 2003 Act. The moneys in the account are continuously appropriated to the State Department of Fish and Wildlife for gathering and analyzing data and conducting research on the black rockfish and blue rockfish fishery and the nearshore species fishery.

SECTION 6. (1) An owner of a vessel that has a black rockfish and blue rockfish vessel permit or a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement shall keep a log book that includes:

- (a) The amount of food fish that are caught;
 - (b) The date on which the food fish are caught;
 - (c) The species of food fish that are caught by the vessel; and
 - (d) Any other information that the State Department of Fish and Wildlife may prescribe.
- (2) The State Department of Fish and Wildlife shall:

(a) Annually collect and summarize the information required by subsection (1) of this section; and

(b) Present a report on the black rockfish and blue rockfish fishery and the nearshore species fishery, including the summary prepared in paragraph (a) of this subsection, to the State Fish and Wildlife Commission during a public meeting held by July 1.

SECTION 7. (1) The State Fish and Wildlife Commission may establish by rule a lottery for issuing permits to vessels under section 3 of this 2003 Act.

(2) A vessel may qualify for the lottery if the vessel:

- (a) Has a boat license issued pursuant to ORS 508.260 for the current year; and
 - (b) Had a boat license issued pursuant to ORS 508.260 for the previous year.
- (3) Based on an assessment of the resource, the commission may:

- (a) Suspend the lottery for up to two years; and
- (b) Renew a suspension of the lottery every two years.

(4) The commission shall establish by rule a threshold number of permits below which the department shall issue permits through the lottery.

SECTION 8. (1) A black rockfish and blue rockfish vessel permit with a nearshore fish endorsement issued under section 3 of this 2003 Act may be transferred to another vessel if:

(a) The permit has been renewed a minimum of five times; and

(b) The vessel operating under the permit has made, in the previous calendar year, a minimum of five landings that contained at least 15 pounds of black rockfish, blue rockfish or nearshore fish.

(2) Notwithstanding subsection (1) of this section, a black rockfish and blue rockfish vessel permit with a nearshore fish endorsement:

(a) May be transferred one time per calendar year to a replacement vessel that is owned by the same person that owns the vessel to which the permit was originally issued.

(b) That is issued to a vessel owned by a sole proprietor may be transferred upon the death of the sole proprietor.

(3) A black rockfish and blue rockfish vessel permit with a nearshore fish endorsement may not be transferred to a vessel that is more than five feet longer than the vessel to which the permit was originally issued.

(4) A black rockfish and blue rockfish vessel permit issued under section 3 of this 2003 Act:

(a) May be transferred to another vessel except as provided in paragraph (b) of this subsection.

(b) May not be transferred to a vessel that is more than five feet longer than the vessel to which the permit was originally issued.

SECTION 9. (1) A person whose application for issuance, renewal or transfer of a permit under section 3 of this 2003 Act is denied by the State Department of Fish and Wildlife may make written request to the Commercial Fishery Permit Board for review of the denial. The review provided in this subsection is in lieu of any such review by the department or the State Fish and Wildlife Commission. The request shall be in such form and shall contain such information as the board considers appropriate. The request shall be accompanied by a nonrefundable fee of \$75, which shall apply toward the permit fee if the application is approved.

(2) In accordance with the applicable provisions of ORS 183.310 to 183.550, the board shall review denials of applications for issuance, transfer or renewal of permits. Orders issued by the board are not subject to review by the commission, but may be appealed as provided in ORS 183.480 to 183.550. The board may waive requirements for renewal or transfer of permits if the board finds that the person fails to meet the requirements as the result of illness, accident or other circumstances beyond the person's control.

(3) In accordance with the applicable provisions of ORS 183.310 to 183.550, the board may promulgate such rules as it considers necessary to carry out its duties, functions and powers under this section.

SECTION 10. The State Department of Fish and Wildlife shall establish by rule a threshold number of permits that is required by section 7 of this 2003 Act by January 1, 2004.

SECTION 11. ORS 506.011 is amended to read:

506.011. As used in the commercial fishing laws, unless the context requires otherwise:

(1) "Anadromous fish" includes but is not limited to salmon, as defined in ORS 506.016; roccus saxatilis, commonly known as striped bass; alosa sapidissima, commonly known as shad; acipenser medirostris and acipenser transmontanus, commonly known as sturgeon; and thaleichthys pacificus, commonly known as smelt.

(2) "Animals living intertidally on the bottom" includes but is not limited to starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates and shore, hermit and other small crabs not included within subsection (1) or [(4)] (7) of this section.

(3) "**Black rockfish**" means **sebastes melanops, commonly known as black rockfish.**

(4) "**Blue rockfish**" means **sebastes mystinus, commonly known as blue rockfish.**

[(3)] (5) "Food fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction pursuant to ORS 506.036.

(6) "**Nearshore fish**" means:

- (a) **Enophrys bison, commonly known as buffalo sculpin;**
- (b) **Hemilepidotus hemilepidotus, commonly known as red Irish lord;**
- (c) **Hemilepidotus spinosus, commonly known as brown Irish lord;**
- (d) **Scorpaenichthys marmoratus, commonly known as cabezon;**
- (e) **Hexagrammos decagrammus, commonly known as kelp greenling;**
- (f) **Hexagrammos lagocephalus, commonly known as rock greenling;**
- (g) **Hexagrammos stelleri, commonly known as whitespotted greenling;**
- (h) **Oxylebius pictus, commonly known as painted greenling;**
- (i) **Sebastes atrovirens, commonly known as kelp rockfish;**
- (j) **Sebastes auriculatus, commonly known as brown rockfish;**
- (k) **Sebastes carnatus, commonly known as gopher rockfish;**
- (L) **Sebastes caurinus, commonly known as copper rockfish;**
- (m) **Sebastes chrysomelas, commonly known as black and yellow rockfish;**
- (n) **Sebastes dalli, commonly known as calico rockfish;**
- (o) **Sebastes maliger, commonly known as quillback rockfish;**
- (p) **Sebastes miniatus, commonly known as vermilion rockfish;**
- (q) **Sebastes nebulosus, commonly known as china rockfish;**

- (r) **Sebastes nigrocinctus, commonly known as tiger rockfish;**
- (s) **Sebastes rastrelliger, commonly known as grass rockfish;**
- (t) **Sebastes serranoides, commonly known as olive rockfish; or**
- (u) **Sebastes serriiceps, commonly known as treefish.**

[(4)] (7) "Shellfish" includes but is not limited to abalone, clams, crabs, crayfish or crawfish, mussels, oysters, piddocks, scallops and shrimp.

SECTION 12. ORS 508.505 is amended to read:

508.505. (1) Additional fees shall be collected by the State Fish and Wildlife Director in the amount prescribed by this section, except as provided in ORS 508.510. Every person operating within the state as a canner, buyer, bait dealer or wholesaler of any food fish or shellfish shall pay, in addition to all other licenses or fees provided by law, a fee equal to the value of the food fish at the point of landing multiplied by the following rates:

(a) All salmon and steelhead, 3.15 percent.

(b) All black rockfish, blue rockfish and nearshore fish, five percent.

[(b)] (c) All other food fish and shellfish, 1.09 percent for the period beginning January 1, 1992, and ending December 31, 1992. Thereafter the State Fish and Wildlife Commission may increase the rate to not more than 1.25 percent to the extent that the commission determines upon review that revenues received are inadequate to maintain the legislatively adopted program level. The commission shall report its revenue review and any proposed rate increase to the Emergency Board prior to the time the rate increase is implemented.

(2) Only **live**, fresh or frozen in the round or dressed food fish or shellfish are subject to the fees provided in this section. "Dressed" includes but is not limited to beheaded, gutted, filleted, loined or shucked. However, frozen food fish or frozen shellfish received in a wrapped package to which a legible label is stamped or printed showing the name, address, brand or trade name of the original processor or wholesale distributor under which the package is marketed and the kind of frozen food fish or frozen shellfish contained therein, for distribution and ultimate sale in the original package are not subject to the fees provided in this section.

SECTION 13. ORS 508.755 is amended to read:

508.755. (1) There is established within the State Department of Fish and Wildlife the Commercial Fishery Permit Board. The board shall consist of members appointed by the State Fish and Wildlife Commission as follows:

(a) Three members shall be chosen to represent the Columbia River gillnet salmon fishing industry.

(b) Three members shall be chosen to represent the ocean troll salmon fishing industry.

(c) Three members shall be chosen to represent the ocean pink shrimp fishing industry.

(d) Three members shall be chosen to represent the Yaquina Bay roe-herring fishing industry.

(e) Three members shall be chosen to represent the sea urchin commercial fishery.

(f) Three members shall be chosen to represent the ocean Dungeness crab fishing industry.

(g) Three members shall be chosen to represent the black rockfish and blue rockfish fishing industry and the nearshore fish fishing industry.

[(g)] (h) Two members shall be chosen to represent the public.

(2) A member of the board shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for travel and other expenses incurred in the performance of official duties.

(3) The board shall select such officers, for such terms and with such duties and powers, as the board considers necessary for the performance of those offices.

(4) A majority of the members of the board constitutes a quorum for the transaction of business.

(5) The board shall meet at such times and places as may be determined by the chairperson or by a majority of the members of the board.

(6) Notwithstanding any other provision of law:

(a) Members of the board representing the Columbia River gillnet salmon fishing industry shall participate in actions of the board only on matters arising under ORS 508.285, 508.470 and 508.775 to 508.796.

(b) Members of the board representing the ocean troll salmon fishing industry shall participate in actions of the board only on matters arising under ORS 508.801 to 508.825.

(c) Members of the board representing the ocean pink shrimp fishing industry shall participate in actions of the board only on matters arising under ORS 508.880, 508.883 and 508.889 to 508.910.

(d) Members of the board representing the Yaquina Bay roe-herring fishing industry shall participate in actions of the board only on matters arising under ORS 508.765.

(e) Members of the board representing the sea urchin commercial fishery shall participate in actions of the board only on matters arising under ORS 508.760.

(f) Members of the board representing the ocean Dungeness crab fishing industry shall participate in actions of the board only on matters arising under ORS 508.921.

(g) Members of the board representing the black rockfish and blue rockfish fishing industry and the nearshore fish fishing industry shall participate in actions of the board only on matters arising under section 3, 8 or 9 of this 2003 Act.

SECTION 14. ORS 508.326 is amended to read:

508.326. (1) The Commercial Fisheries Fund is created in the State Treasury, separate and distinct from the General Fund. Except as provided in ORS 506.690, all moneys in the Commercial Fisheries Fund are appropriated continuously to the State Fish and Wildlife Commission for the administration and enforcement of the commercial fishing laws and for the management, propagation, research, habitat improvement and other activities that protect, maintain or enhance the food fish resource of this state. Interest earned on moneys in the fund shall be credited to the fund.

(2) **Except as provided in section 4 of this 2003 Act,** all moneys collected pursuant to ORS 508.505 to 508.550 for fish species taken pursuant to developmental fishery activities referred to in ORS 506.460 shall be credited to a separate account in the Commercial Fisheries Fund. Notwithstanding subsection (1) of this section or ORS 506.306, 25 percent of such moneys shall be expended for general fish management purposes and 75 percent of such moneys shall be expended to pay the expenses of developmental fishery activities pursuant to ORS 506.460.

SECTION 15. Sections 1 to 9 and 18 of this 2003 Act and the amendments to ORS 506.011, 508.326 and 508.755 by sections 11, 13 and 14 of this 2003 Act become operative January 1, 2004.

SECTION 16. The amendments to ORS 508.505 by section 12 of this 2003 Act become operative January 1, 2005.

SECTION 17. Section 18 of this 2003 Act is added to and made a part of ORS chapter 509.

SECTION 18. A person who holds a license or permit issued under the commercial fishing laws may not possess or land any species of euphausiids, commonly known as krill, or take euphausiids from any waters of the Pacific Ocean over which this state has jurisdiction, including the area outside the territorial jurisdiction of this state but within the part of the exclusive economic zone of the United States represented by a straight line extension of the boundaries of the state drawn seaward a distance of 200 nautical miles.

SECTION 19. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.

Passed by House August 4, 2003

Repassed by House August 18, 2003

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Chief Clerk of House

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Speaker of House

Passed by Senate August 14, 2003

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President of Senate

Received by Governor:

.....M,....., 2003

Approved:

.....M,....., 2003

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Governor

Filed in Office of Secretary of State:

.....M,....., 2003

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Secretary of State