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NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED: 10/20/2026 12:10 PM
ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Proposed Closure of the Commercial Bay Clam Dive Fishery in Yaquina Bay

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/11/2026 5:00 PM
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.

CONTACT:
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Salem, OR 97302

Filed By:
Adam Buell
Rules Coordinator

HEARING(S)
Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/11/2026
TIME: 8:00 AM - 5:00 PM
OFFICER: ODFW Commission

IN-PERSON HEARING DETAILS
ADDRESS: Oregon Department of Fish and Wildlife, 4034 Fairview Industrial Dr SE, Salem, OR 97302
SPECIAL INSTRUCTIONS:
LAST DAY AND TIME TO OFFER WRITTEN COMMENT TO THE AGENCY: November 11th @ 8:00 AM; LAST DAY AND TIME TO OFFER VERBAL COMMENT TO AGENCY: December 11th CLOSE OF HEARING.

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person or virtually. Additional information regarding participation will be posted on our website at www.dfw.state.or.us/agency/commission/minutes/. The meeting can be viewed at www.youtube.com/user/IEODFW. Any changes to the meeting format (to virtual only if emergency arises) will be posted to our website as soon as possible.

NEED FOR THE RULE(S):

As part of the department's recent Yaquina Bay full estuary assessment, a new subtidal bay clam survey was conducted in spring 2026. This survey found an 84% decrease in biomass of gaper clams in the commercial subtidal harvest area compared to the 2019 survey. The proposed rules close harvest because there are not enough clams remaining in the commercial harvest area for a viable subtidal (dive) fishery due to the significant decline in gaper clams, and low abundances of cockle and butter clams.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 12/11/2026, including the presentation and all provided materials.

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Fish Division, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142. Contact Adam Buell at 503-947-6233 or Adam.M.Buell@odfw.oregon.gov to view by appointment between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

The Department has solicited input from representatives of underrepresented communities likely to be affected on whether the proposed rule will have a fiscal impact on the community, the extent of the fiscal impact, and whether the rules will have significant impact on underrepresented communities. https://www.dfw.state.or.us/OARs/index.asp

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FISCAL AND ECONOMIC IMPACT:

The rules are expected to result in minimal fiscal and economic impacts as discussed below.

Fiscal and economic impacts discussed in this document pertain only to the proposed rules at the time of writing this fiscal impact statement.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

A. The state agencies that could be affected by the adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP). No significant changes in costs to ODFW or to OSP are expected from these rule changes. There is potential for the Yaquina Bay commercial dive clam fishery closure to affect OSP enforcement costs, but any potential changes are expected to be small relative to statewide enforcement costs. There is minimal potential for the closure to impact ODFW commercial fishing license or ad valorem (AV) revenues. In 2025 (the most recent year for which we have full-year harvest data available), there were a total of 9 commercial bay clam dive permit holders. In 2025, bay clam ex vessel landing values from subtidal (dive) fisheries totaled approximately $633,405 and generated $14,568 in AV revenues for ODFW. However, no commercial bay clam landings have been made from the Yaquina Bay fishery since 2022. Thus, the closure of this area is not expected to result in any changes to current commercial harvester behaviors or impacts to commercial licensing and AV revenues in 2027 and beyond relative to the current status quo.

B. Economic impacts to local governments are expected to be minor. Units of local government which could be affected by the Yaquina Bay dive clam fishery closure include port authorities and county governments. Port authorities and county governments may experience costs and derive revenues related to the provision of moorage and other support facilities for commercial dive fishing. There may be potential for some Oregon port districts to be impacted, but significant impacts are not anticipated. A more detailed consideration of impacts is not possible due to data constraints.

C. Some members of the public may be affected by rules related to commercial fishing regulations. Participants in the commercial bay clam dive fishery and wholesale fish dealers who purchase bay clams are among those who may be impacted by these rules. However, given that no commercial harvest has taken place in Yaquina Bay since 2022, we do not anticipate that the proposed closure would result in any significant economic impacts to these members of the public relative to the previous status quo.

Although some of the changes to commercial fishing regulations in general can be viewed as reducing positive economic impacts in the short run, conservation through the

regulation of harvest is intended to perpetuate Oregon's fishery resources at optimal levels in the long run. Failure to restrict harvests could result in adverse economic impacts in the future. The proposed regulations attempt to strike a balance, which will provide optimal harvest opportunities subject to the need to sustain bay clam population levels and to maintain future benefits.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

The main types of small business subject to the rules are commercial harvesters holding bay clam dive permits and businesses that provide goods and services to commercial shellfish harvesters.

In 2025 there were 8 Resident Coastwide Bay Clam Dive permits and 1 Non-Resident Coastwide Bay Clam Dive permit renewed. Wholesale dealers who purchase bay clams may also be affected and there were 10 in 2025 who bought $500 or more worth of bay clam species.

Other small businesses that have the potential to be affected include marinas/moorage facilities, gas stations, dive gear suppliers, restaurants/cafes/bars, food stores, and places of lodging (hotels, campgrounds, etc.). Information is not available to estimate accurately the number of those types of small businesses affected.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

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

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

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

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

ODFW has solicited input on the proposed rules from 8 commercial bay clam dive permit holders, 20 divers, and 11 fish buyers who have been active participants making landings or purchases in the Oregon bay clam dive fishery over the past 3 years.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

ODFW has solicited feedback from potentially impacted members of the public. Likely owing to the low participation in the Yaquina Bay fishery prior to the proposed closure, no feedback has been received to-date. The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

RULES PROPOSED:
635-005-0290, 635-005-0355

AMEND: 635-005-0290

RULE SUMMARY: These amended rules close harvest of commercial subtidal clams in Yaquina Bay. The Commission may decide to adopt staff recommended rule amendments as proposed in Attachment 6, or the Commission may decide to modify the proposed rules or not adopt some or any of the proposed rule amendments.

CHANGES TO RULE:

635-005-0290
Closed Seasons and Areas ¶

It is unlawful to take for commercial purposes:¶
(1) Gaper clams from January 1 through June 30, except under a limited entry Bay Clam Dive Permit (OAR 635-005-0310) 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 in an area west of and including the main channel, north of the northern boundary line for the Shellfish Preserve (Latitude 45°23.68'N), and south of Latitude 45°24.71'N, near the informational kiosk;¶
(d) Salmon River and Bay;¶
(e) Siletz River and Bay; or¶
(f) All state parks south of Tillamook Head.¶
(4) Bay clams in Tillamook Bay from the following areas~~ or during the following times~~:¶
(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, buoy marker 13, and Hobsonville Point; ¶
(c) The area above mean lower low water near Kincheloe Point; ~~or~~and¶
(d) Intertidal cockles ~~on Saturdays, Sundays~~from midnight Friday through midnight Sunday of any week, and on all legal state ~~or~~and federal holidays.¶
(5) Subtidal cockle clams in Netarts Bay.¶
(6) Subtidal bay clams in Coos Bay from the following areas:¶
(a) In depths shallower than 10 feet from mean lower low water; or¶
(b) The area of South Slough south of the Charleston bridge.¶
(7) Any clams from the Shellfish Preserve in Yaquina Bay, Lincoln County, which is the tideflat on the north side of

the wood piling breakwater, south of the troller's basin. The legal description is as follows: Beginning at a point 1,181.24 feet south and 430.55 feet east of the meander corner of Sections 8 and 9, T11S, R11W, W.M., said point being a flashing red beacon on the southeastern end of the U.S. Army Engineers wood piling breakwater, thence northwesterly along said breakwater to a point being a flashing white beacon on the northwestern end of said breakwater located 583.46 feet south and 2,082.62 feet west of the above meander corner, thence southeasterly along the extreme low water line of the sand pit lying on the north side of the said breakwater to the point of beginning, said tideland being 7.2 acres, more or less, at mean low water line.¶
(8) Any clams from the Shellfish Preserve in Netarts Bay beginning from the quarter corner of Section 17, 20, T2S, R10W, thence north 10 degrees 14 feet west 200 feet to point of beginning, thence west approximately 6,250 feet to the west meander line of Netarts Bay, thence north 1,000 feet, thence east about 6,250 feet, thence south along the meander line to the point of beginning, except any privately owned tidelands within the described area are excluded from the closure.¶
(9) Any shellfish from Special Regulation Marine Areas as described in OAR 635-005-0260.¶
(10) Clams or mussels from a health closure area closed for biotoxins. "Health closure area" means an area closed to the public due to health risks of consuming shellfish from the area, and "Biotoxin" means naturally occurring shellfish toxins monitored by the Oregon Department of Agriculture.¶
(11) Any shellfish taken for human consumption from an area designated as restricted by the Oregon Department of Agriculture. Fishers should call the Oregon Department of Agriculture Shellfish Safety Hotline at 1-800-448-2474, the Oregon Department of Agriculture Food Safety Division at 1-503-986-4720 or visit the Oregon Department of Agriculture website at www.oregon.gov/ODA to confirm the area of intended harvest is open before harvesting shellfish.¶
(12) Littleneck clams (Leukoma staminea).¶
(13) ~~Any s~~Subtidal clams from Yaquina Bay~~, except from the designated harvest area. The area is north of the navigation channel and extends eastward from the western end of the commercial boat basin breakwater. Harvest is not allowed from any areas south of the northern navigational channel boundary. Harvest is not allowed in depths shallower than 10 feet below mean lower low water~~.
Statutory/Other Authority: ORS 506.119, ORS 506.129
Statutes/Other Implemented: ORS 506.109

AMEND: 635-005-0355

RULE SUMMARY: These amended rules close harvest of commercial subtidal clams in Yaquina Bay. The Commission may decide to adopt staff recommended rule amendments as proposed in Attachment 6, or the Commission may decide to modify the proposed rules or not adopt some or any of the proposed rule amendments.

CHANGES TO RULE:

635-005-0355
Catch Limits
(1) In Tillamook Bay, the annual commercial landing caps for clams harvested by the bay clam dive fishery are as follows:¶
(a) 110,000 pounds for cockles;¶
(b) 260,000 pounds for gaper clams; and¶
(c) 260,000 pounds for butter clams.¶
(2) ~~In Yaquina Bay, the commercial annual landing cap for gaper clams harvested by the bay clam dive fishery is 20,000 pounds.¶~~
~~(3)~~ When any of the annual commercial clam landing caps specified in section (1) ~~or (2)~~ of this rule are reached, the commercial clam fishery for that species in that particular estuary will close for the remainder of the calendar year.
Statutory/Other Authority: ORS 506.119, ORS 506.129
Statutes/Other Implemented: ORS 506.109