

Agenda Item Summary

BACKGROUND

When the Oregon Fish and Wildlife Commission (OFWC) adopted the Dungeness crab pot limitation program in 2006, it directed Oregon Department of Fish and Wildlife (department) staff to review the program after three years, consistent with recommendations from industry and staff. The purpose of the review is to establish the effectiveness of the pot limitation program and to analyze whether the pot target (about 150,000 pots) is appropriately effective in achieving the goals of the program.

The goals of the program are many, derived from industry input, administrative needs, statutory requirements, agency policy, and Commission guidance. Overall, the primary goals are:

- Conduct an orderly fishery
- Reduce gear-driven derby fishery conduct
- Reduce pot loss in the ocean
- Reduce gear conflicts with other fisheries
- Provide access to the fishery resource
- Enhance the value of the harvested resource

Beginning with the 2006-07 commercial ocean Dungeness crab season, the Commission adopted the following three-tier system for the 433 permit holders in 2006:

Tier	Number of Permits	Number of Pots in Tier
200 pots	98	19,600
300 pots	179	53,700
500 pots	156	78,000
TOTAL	433	151,300

Revisions to the pot limit program through a pot stacking system were discussed in detail at the Dungeness Crab Industry Summit in Gold Beach, July 2007. Many members of the crab industry were supportive of a stacking system; however, they could not reach a consensus on the details of a system.

The pot limit program along with other issues related to the commercial Dungeness crab fishery were reviewed and discussed at the most recent Dungeness Crab Industry Summit held in Newport, July 28-29, 2009. Other issues discussed include:

- Derelict gear retrieval
- Vessel / Fleet safety
- Season start date
- Dungeness crab logbooks

This agenda item presents the three-year review of the pot limit program and discusses the topics related to the commercial Dungeness crab fishery

as reviewed at the Crab Summit in July. Minor revisions to the Oregon Administrative Rules (OARs) are recommended based on industry suggestions received at the Summit.

PUBLIC INVOLVEMENT

- Oregon Dungeness Crab Commission (ODCC) meetings (March, May, October of 2008, February, and June of 2009)
- July 11, 2008 – Fleet safety meeting at the department with United States Coast Guard (USCG) and National Institute of Occupational Safety and Health (a branch of the Center for Disease Control (NIOSH-CDC)) representatives
- Oregon Dungeness Crab Advisory Committee (ODCAC) meetings (7/16/08 and 3/27/09)
- August 14, 2008 – Tri-State Dungeness Crab Committee meeting
- OFWC meetings – Nov 2008, Feb 2009 – Dungeness crab fishery updates.
- June 26, 2009 – Pre-summit mailing to all Dungeness crab fishery permit holders and other crab industry members (Attachment 4)
- July 28-29, 2009 – Dungeness Crab Industry Summit (Newport, OR)
- August 31, 2009 – Post-summit mailing to all Dungeness crab fishery permit holders and other crab industry members (Attachment 5)

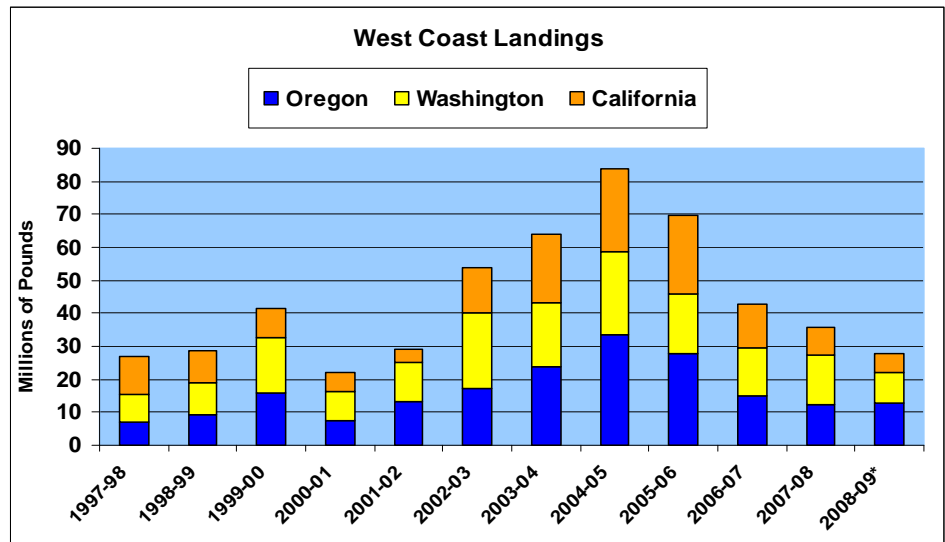
ISSUE 1

3-YEAR REVIEW OF CRAB POT LIMITATION PROGRAM AND RECOMMENDED MODIFICATIONS

ANALYSIS

The pot limit program was evaluated based on how it has accomplished the goals that were defined early in the process, its effect on the overall fishery, its effects on individual businesses, and what modifications might improve the program in the future.

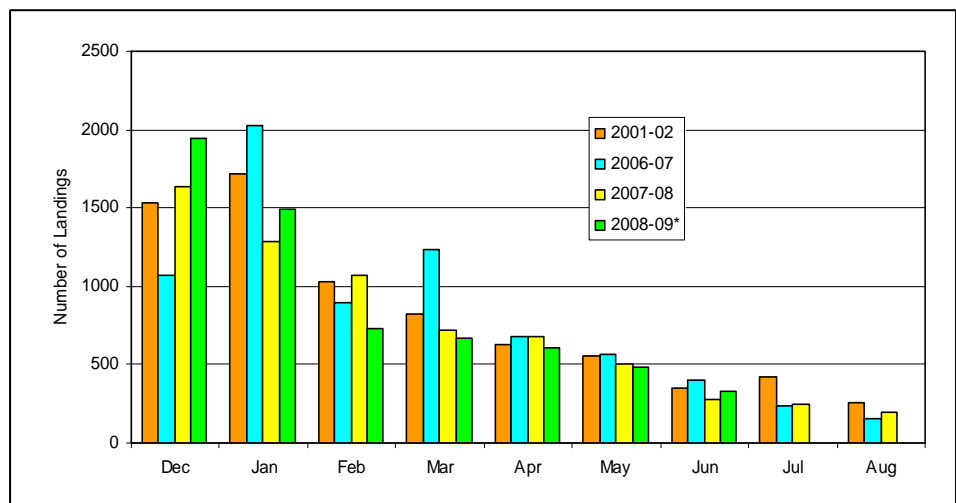
Oregon Fishery: Overall, the fishery has maintained its productivity following implementation of the pot limit program. As shown in the figure below, the Oregon fishery has maintained its share of west coast landings. Since 1997-98 season, Oregon landings have averaged 35 percent of the west coast landings, nearly identical to their share under pot limits. Oregon landings ranged between 12.2 and 15.1 million pounds annually during the three seasons following pot limits, above the long-term average of about 10 million pounds landed annually in Oregon.



Although many factors influence ex-vessel value of landings and average price, both were among the highest of the past 20 years. Ex-vessel value totaled \$33 million for the 2006-07 season and \$29 million for the 2007-08 season, down from the record high of \$49 million in 2004-05. The average price for the 2007-08 season set a record at \$2.38 per pound.

For fishery comparisons before and after pot limits, the 2001-02 season was chosen as the most comparative season to the three seasons with pot limits. Landings in Oregon totaled 13.1 million pounds for the 2001-02 season, compared to 15.1, 12.2 and 12.9 million pounds (* figures for 2008-09 season are preliminary) for the past three seasons with pot limits, respectively. The fishery opened on December 1 throughout Oregon during each of these years.

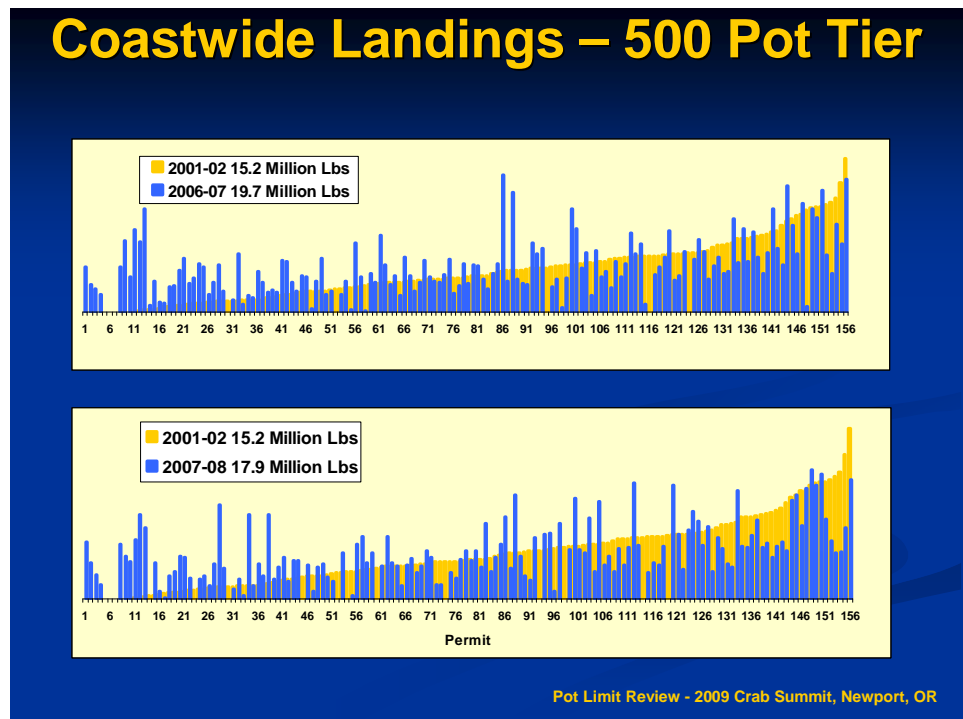
Trends in monthly catch and effort were very similar for all these seasons, an indication that most fishers adapted to their pot limits well. About 80 percent of the landings during each season were made during December and January. Patterns of monthly effort (in number of landings) were also quite similar, as shown in the figure below. The effect of the large December 2006 storm reduced the number of trips (and catch) that month, but the fleet regained that loss the following month.



Permit transfers are another means for permit holders to adjust to pot limits and the number of transfers was atypically high the first year pot limits took effect. During 2005-06, the year preceding pot limits, 44 permits were transferred. During the first year of pot limits, 64 permits were transferred, followed by 32 transfers during the 2007-08 season. Although the year is incomplete, transfer activity appears to be even lower this year.

Individual Permit Holders: Although highly variable from season to season, those who were top producers generally remained as top producers. Many factors, such as alternative fishing opportunities in Oregon or other states, can affect the production by an individual permit holder in Oregon and contribute to the observed seasonal variability. For comparison of individual permit holders before and after pot limits, the 2001-2002 season was chosen as the most comparative to seasons with pot limits, due to a similar volume of landings and a statewide December 1 season start date.

As an example of this variability, coast wide (Tri-State) landings by each 500-pot permit after pot limits (2006-07 in top panel and 2007-08 season in bottom panel) is compared to its landings in 2001-02 before pot limits. The results for comparisons of permit in the 300-pot and 200-pot tiers were similar. In general, high producers remained high producers.



Target of 150,000 pots: Participation in the Dungeness crab fishery was restricted via limited entry beginning with the 1995-96 season. At that time, approximately 115,000 pots were declared fished each season. Subsequently, declared numbers of pots rose to about 147,000 pots in 2000-01, when the control date was set, and continued to rise to about 200,000 pots in 2005-06.

The target adopted for the pot limit program is 150,000 pots for the fleet. When implemented, this target resulted in fewer pots declared fished: 120,000, 127,000, and 113,000 pots during the past three seasons. Fewer pots were fished because about 100 permits are not fished off Oregon during any given season. Although about 25 percent of these permits are consistently not fished off Oregon, most are usually or intermittently fished off Oregon.

Most participants at the Crab Industry Summit support keeping the amount of actively fished pots at current levels and do not want to see the number increased (or decreased). Consequently, they did not support a change in the target of 150,000 pots at this time.

Permit/Pot Stacking: During the discussion of potential adjustments to the pot limitation program, the topic of permit stacking was mentioned. When breakout groups were polled to determine their support for this idea, there were some that support pursuing stacking, some against it, and some neutral. Discussions revolving around permit stacking revealed that similar to the process conducted during the Dungeness Crab Industry Summit in 2007, there are many different opinions on specific aspects of what a permit stacking program would include. Details concerning the maximum number of pots allowed on a single permit, which permits/vessels would be eligible to participate, how many new tiers should be created, along with others were mentioned. Rather than delve into those debates at the summit, it was decided that department staff would distribute a survey to all permit holders to quantify the fleetwide support for pursuing a stacking plan. That survey was mailed out at the end of August and responses are being analyzed.

Recommended adjustments to the pot limit program

Members of the industry at the 2009 Crab Summit strongly supported some minor changes to the crab pot limitation program, 1) to facilitate clean-up of lost or derelict crab gear, and 2) to allow fishers to change buoy tags at sea in conjunction with a permit transfer during the season.

1. Derelict gear retrieval. Derelict gear retrieval was not specified in rule when the pot limit program was adopted. However, trial provisions for derelict gear retrieval were made by temporary rules each of the past three seasons, amending OAR 635-005-0055. To maintain the integrity of the pot limit program and adequate enforceability as it was newly implemented, only a small number of pots were allowed on board that were not a part of the vessel's pot limit. For the purpose of derelict gear retrieval, temporary rules allowed vessels to recover and take on board up to six pots belonging to others and transport them to shore for the owners to pick up. This six-pot limit applied to each trip during the primary fishing season (December to June) and the limit was raised to 50 pots per trip for the summer fishery (June through August), when landings are also limited to 1,200 pounds per week. All commercial vessels were allowed to retrieve an unlimited number of crab pots per trip during September and

October, after the season was closed.

At the 2009 Crab Industry Summit, many industry participants indicated that their initial concern over a smooth, orderly implementation of the pot limit program has eased based on their experiences during the past three seasons, whereas the issue of derelict crab gear recovery is a growing concern. Consequently, most supported increasing the number of derelict pots that may be retrieved during the primary fishing season. Their recommended numbers of pots varied, generally from 12 to 30 pots during the primary fishing season. Staff recommend adopting permanent rules limiting the number of derelict pots that may be retrieved during the primary season (December 1 to the second Monday in June) to 25 pots per trip and the number during the summer fishery, including the two-week gear clean-up window (after the second Monday in June through August 28) to 50 pots per trip. Staff also recommends to continue allowing all commercial fishing vessels to retrieve an unlimited number of commercial Dungeness crab pots per trip during August 29 through October 31, after the season is closed and well before the next season starts.

As previously adopted in temporary rules, staff recommends adopting the following conditions in permanent rule (as shown in OAR 635-005-0055(9)(b), Attachment 7):

- (1) Pots must be unbaited upon retrieval;
- (2) Dungeness crab may not be retained from the recovered derelict pots;
- (3) Each derelict pot must be entered in the logbook at the time; and
- (4) Pots must immediately be transported to shore during the same fishing trip that retrieval took place.

2. At-sea Buoy Tag Changes for Permit Transfers. Ocean Dungeness crab permit transfers may occur when one or both vessels are fishing and have gear in the water. In accordance with the transfer, buoy tags to identify a vessel's pots must be changed to match new permit ownership. Currently, rules to prevent tampering with other fisher's gear also prevent a change of tags at sea. So, gear must be hauled on board, brought to shore, buoy tags changed, and hauled back out to fish. Industry requested that a permit holder, when completing a permit transfer, be allowed to change buoy tags at sea to minimize the disruption and cost associated with changing tags on shore.

Staff recommends that the department issue a waiver through license services to change buoy tags at sea, provided that a request must be in writing and a waiver be approved and issued prior to a change of buoy tags. A copy of the waiver must be on board the vessel making the change of buoy tags (as shown in OAR 635-005-0055(9)(d), Attachment 7).

OPTIONS

1. For the purposes of derelict crab gear recovery, allow vessels during the primary season to retrieve a maximum of 25 pots that belong to others per fishing trip and raise that number to 50 pots per trip during the summer fishery. During August 29 through October 31, all commercial fishing vessels are allowed to retrieve an unlimited number of pots (as shown in OAR 635-005-0055(9)(b), Attachment 7).

2. For permit transfers during the fishing season, allow waivers of gear requirements to change buoy tags at sea (as shown in OAR 635-005-0055(9)(d), Attachment 7).
3. No action (status quo).
4. Modify staff options.

**STAFF
RECOMMENDATION**

Options 1 and 2.

ISSUE 2

**ADDITIONAL TOPICS ADDRESSED AT COMMERCIAL
DUNGENESS CRAB SUMMIT, 2009**

ANALYSIS

On July 28-29, 2009, department staff, in partnership with the ODCC, hosted the third Commercial Dungeness Crab Industry Summit in Newport. At this two day meeting, members of the crab fleet and representatives from seafood processors were provided information on several topics pertinent to the Dungeness fishery. Agency representatives were also present from the (USCG), Oregon State Police, NIOSH-CDC, Oregon Department of Agriculture (ODA), Pacific States Marine Fisheries Council (PFMC), Oregon State University, Washington Department of Fish and Wildlife, Oregon Sea Grant, Oregon Health and Sciences University, and coastal county commissioners.

The first topic presented was the three year review of the pot limit program as discussed in ISSUE 1 above. Other topics reviewed and discussed included:

- 1) **DEVELOPMENT OF LONG-TERM DERELICT GEAR PROGRAM** - facilitate industry leadership in developing a long-term program to minimize and recover derelict crab fishing gear;
- 2) **VESSEL SAFETY** - a review of the human mortality rate in the Dungeness fishery and ways to improve safety in the fishery;
- 3) **SEASON START DATE** - a review of the December 1 season start date and a discussion of proposals for modifications; and
- 4) **LOGBOOKS** - a report on the progress that has been made with data from the newly required logbooks in the Dungeness fishery.

DEVELOPMENT OF LONG-TERM DERELICT GEAR PROGRAM

Concerns about marine debris, including derelict fishing gear, are mounting at all levels, from international to local interests. For example, the National Oceanic and Atmospheric Administration (NOAA) maintains and funds a national marine debris prevention and recovery program and the West Coast Governor's Agreement on Ocean Health specifically identifies marine debris as an important component to address in their action plan under Priority 1: Clean Coastal Waters and Beaches.

An estimated 10,000-15,000 commercial Dungeness crab pots are lost or otherwise become derelict off Oregon each season. Gear loss in the

commercial Dungeness crab fishery is unavoidable, and a recent NOAA grant enables ODFW and its industry partners to implement a pilot (short-term) project to develop methods for the recovery of gear and to remove substantial amounts of gear during 2009 and 2010 (see attachment 6). However, a long-term effort is needed to reduce re-accumulation and minimize the problems associated with derelict crab gear to the extent practicable. At the Summit, Director Elicker encouraged the industry to take a leadership role to develop and implement a long-term gear recovery program.

At the Crab Industry Summit, participants in break out groups discussed ways the industry could take responsibility and leadership for derelict gear clean up on an on-going basis. Many participants expressed an interest in addressing this issue offered many good ideas to start the discussion. The ODCC and Oregon Sea Grant committed to continue working with the industry to develop a long-term program.

VESSEL SAFETY

There has been growing concern about the safety of the Oregon Dungeness Crab fleet, following the report of this fishery in the media as the true “deadliest catch”. ODFW staff presented background information and current proposals to improve the fleet safety record. A panel consisting of Michele Longo Eder (industry member), Nick Furman (ODCC), Devin Lucas (National Institute of Occupational Safety and Health - Center for Disease Control), Dan Hardin (USCG) and Jay Englund (Englund Marine) led a discussion on ways to improve safety and the possible role of ODFW in regulating safety inspections.

Bar crossings were identified as the most problematic part of fishing activity in Oregon. Multiple comments encouraged crew to wear pfd's when crossing the bar. Industry participants at the summit agreed that they do not want ODFW to require USCG vessel inspection decal before issuing fishing permits or buoy tags. However, they also agreed that safety training, regular safety drills, and improving safety gear design were all crucial in making the fleet safer. Industry encouraged ODCC and the USCG to offer more safety training opportunities, with special requests for: 1) regularly scheduled courses in smaller ports, 2) courses later in the year (closer to opening day, when crew is assembled), and 3) include information on each of Oregon's bars in the safety trainings. The survey sent out to the entire Dungeness industry will allow us know how a broader range of crabbers feel about fleet safety and how to best improve it.

SEASON START DATE

Traditionally the Oregon Dungeness Crab season starts December 1 (as outlined in rule). The time just prior to the start of each crab season is hectic for all sectors of the industry for multiple reasons. For example: 1) Thanksgiving holiday makes it difficult to coordinate with processors, fishermen, and state agency staff (ODA and ODFW); 2) industry wants to make good use of the fishing days in December to meet the Christmas market; and 3) sometimes crab are not filled out enough to open on

December 1 or are not high enough in quality to obtain a good price. Some industry members believe that a later state-wide start date may decrease the conflict associated with these factors. There was industry support both for changing the date and for keeping the opening date December 1. It was recognized that the start date is tightly linked to other issues including preseason testing, price negotiation meetings, timing overlap with other fisheries, holiday market considerations and other fishery management agreements (i.e. Tri-State Dungeness Crab Committee and Magnuson-Stevens Act). In order to ascertain the level of fleetwide support for investigating an alternate season start date, questions were included in the survey previously mentioned. Industry feedback that we receive will help us decide how to pursue this issue. ODA staff has become more involved in the Dungeness fishery over the recent several seasons by mediating preseason price negotiation meetings and will continue to work with ODFW and Tri-State representatives to ensure an orderly fishery.

LOGBOOKS

ODFW now has 2 years of logbook pages in hand and a database created to track the information. We have entered a significant portion of the data and gotten state legislature approval to add staff for additional logbook data entry (for crab and other fisheries). The data can be displayed with pot string start/stop locations and landings information associated with each string. This can help us understand where important fishing grounds are located and will aid in fishery management decisions including marine spatial planning (e.g. renewable energy siting in the ocean). Throughout any such mapping and reporting processes, the confidentiality of specific information will be protected. At the crab summit, there was support for changing some of the logbook rules including: 1) having the requirement for logbook completion be 24 hours *after* each delivery (rather than the current rule which requires the logbook to be completed “prior to landing”), and 2) allowing certain entries that are redundant to be referenced rather than repeatedly written. Development of an electronic logbook may help streamline the data collection process and allow for more accurate information. PSMFC representative Dave Colpo volunteered to help with the development of such a system.

OPTIONS

Commission guidance

STAFF RECOMMENDATION

N/A

ISSUE 3

APPEALS OF DUNGENESS CRAB PERMIT RENEWAL DATES

ANALYSIS

By rule (OAR 635-006-1075(1)(g)), a Dungeness crab fishery permit not renewed by December 31 lapses, and may not be renewed for subsequent years. During the past two years, four permit holders permanently lost their permits because they failed to renew them by the deadline. Dungeness crab permit holders, whose renewal was denied by the department, may appeal the decision to the Commercial Fishery Permit Review Board (Board), according to OAR 635-006-1065(1). However,

neither statute nor rule currently authorizes the Board to waive renewal date requirements for this fishery. Consequently, an individual may appeal to the Board, but cannot receive relief there. Currently, the only recourse is to appeal the department's denial to the Court of Appeals.

For most limited-entry commercial fisheries, statutes authorize the Board to waive permit renewal date requirements under certain conditions, such as illness, accident or other circumstances beyond the person's control. Consistent with the Board's authority for these other fisheries, staff recommends allowing the Board to waive the Dungeness crab permit renewal date requirement, if the Board finds that strict adherence to this requirement would create undue hardship to the individual seeking to renew a permit. For this purpose, undue hardship means significant adverse consequences caused by death, permanent disability injury or serious illness requiring extended care by a physician (OAR 635-006-1095(7)(d)).

OPTIONS

1. Authorize the Commercial Fishery Permit Review Board to waive the renewal date requirement for undue hardship (as shown in proposed OAR 635-006-1065(1)(g), Attachment 7).
2. No action.

STAFF RECOMMENDATION

Option 1.

ISSUE 4

SUSPENSION OR REVOCATION OF COMMERCIAL FISHING PRIVILEGES

ANALYSIS

By statute, persons convicted of certain wildlife law violations are prohibited from participating "in the activity for which the license tag or permit is required" (ORS 497.441). The statutes relating to suspension of commercial fishing licenses for violations of commercial fishing laws, ORS 508.485 and 508.490, do not have exactly this same language, even though the purpose of both of these statutes is to prohibit participation in hunting or fishing activities as a result of a conviction relating to those activities. The issue arises in the fishing context because a "crew license" is not specific to a named person, so that even if a person's commercial fishing license is suspended, the person could still participate in the fishery using a crew license issued to the vessel rather than a named person. We believe that when the legislature authorized the Commission to suspend or revoke a commercial fishing license after convictions of fishing law violations, it did not intend the use of the "crew license" as a way to completely circumvent the Commission's effort to prohibit commercial fishing by the person. The Commission's adoption of the rule provision (as shown in proposed OAR 635-006-0145(4), Attachment 7) would close a loophole that currently allows a person with a suspended commercial fishing license to still participate in any commercial fishery. Adoption of the rule makes the consequences for both wildlife and commercial fishing violation convictions the same.

OPTIONS

1. Prohibit any fisher with a suspended or revoked commercial fishing license from participating in any commercial fishery.
2. No action.

**STAFF
RECOMMENDATION**

Option 1.

DRAFT MOTION	I move to amend OAR Chapter 635 Divisions 005 and 006 as proposed by staff and shown in Attachment 7.
EFFECTIVE DATE	Upon filing.