

## Agenda Item Summary

### BACKGROUND

On May 18, 2009, the Oregon Department of Fish and Wildlife (department) issued a Notice of Intent to Revoke Commercial Fishing Licenses on Dennis Sturgell. Mr. Sturgell failed to submit a timely request for hearing. As a result, on August 4, 2009 the Oregon Fish and Wildlife Commission (Commission) issued a Final Order revoking Mr. Sturgell's commercial fishing license and Ocean Dungeness Crab permit.

Subsequently, the Commission decided to grant Mr. Sturgell a contested case hearing (despite his late hearing request). However, the Commission chose to leave the August 4, 2009 Final Order in place pending that hearing.

Administrative Law Judge (ALJ) Alison Greene Webster presided over the hearing and on January 20, 2010 issued a Proposed Order. The parties then filed exceptions to the ALJ's Proposed Order.

On February 10, 2010, the License Revocation Board (consisting of three members of the commercial crab fleet) met and made recommendations for the Commission concerning revocation of Mr. Sturgell's license and permit.

At its March 2010 meeting, the Commission is scheduled to hear oral argument from Mr. Sturgell's counsel, and then consider issuing a Final Order.

During its deliberations, the Commission must stay within the record developed during the contested case hearing. In other words, the Commission can only consider those facts that are already in the official record of the case. New facts cannot be considered at this stage of the process.

### PUBLIC INVOLVEMENT

Because this is the last step in a contested case process, public involvement *per se* is not appropriate. However, Mr. Sturgell's counsel is entitled to make a final oral argument to the Commission. To provide for an orderly and efficient use of time, the staff recommends that the Commission limit counsel's argument to five minutes.

### ISSUE 1

**SHOULD THE COMMISSION'S AUGUST 4, 2009 FINAL ORDER BE UPHELD, OVERTURNED OR MODIFIED?**

### ANALYSIS

Because Mr. Sturgell did not submit a timely request for hearing, this case is in the unusual situation of reviewing a Final Order that has been in effect since August 4, 2009. That Final Order has the effect of revoking Mr. Sturgell's commercial fishing license and Ocean Dungeness crab permit for the remainder of 2009, and prevents him from reapplying until August 4, 2010

In her Proposed Order, the ALJ essentially proposed that the August 4, 2009 Final Order be upheld in part and modified in part. The effect of the ALJ's Proposed Order would be to affirm the revocation of Mr. Sturgell's license and permit for the remainder of 2009, but to allow him to reapply on February 4, 2010.

ODFW staff continue to recommend that the Commission uphold its August 4, 2009 order.

On February 10, 2010, the License Revocation Board met and made recommendations for the Commission. Board members Eugene Law and Tom Nowlin recommended that the Commission stand by its original August 4, 2009 Final Order. Board member Doug Westerlund recommended that the Commission instead follow the recommendation of Administrative Law Judge Alison Greene Webster. Staff is preparing a transcript of the Board's deliberations and will provide that transcript to the Commission before its March 12 meeting.

## OPTIONS

1. Affirm the August 4, 2009 Final Order.
2. Overturn the August 4, 2009 Final Order.
3. Modify the August 4, 2009 Final Order.

## STAFF RECOMMENDATION

1. Option 1.

<b>DRAFT MOTION</b>	I move to affirm the August 4, 2009 Final Order.
<b>EFFECTIVE DATE</b>	Immediately.