

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

FILED

4-11-17 11:34 AM

ARCHIVES DIVISION
SECRETARY OF STATE

Department of Fish and Wildlife

635

Agency and Division

Administrative Rules Chapter Number

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RULE CAPTION

Coquille Tribe Special Gathering Permit for Clams

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

Hearing Date	Time	Location	Hearings Officer
6-9-17	8:00 a.m.	4034 Fairview Industrial Dr. SE, Salem OR 97302	Oregon Fish & Wildlife

RULEMAKING ACTION

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

ADOPT:

OAR Chapter 635, Division 041, Rule 0550.

AMEND:**REPEAL:****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 497.075

Other Authority:**Statutes Implemented:**

ORS 497.075

RULE SUMMARY

The Oregon Department of Fish and Wildlife (Department) has worked with the Coquille Tribe to provide opportunity for tribal harvest. Under a new Memorandum of Understanding (MOU), the State will annually issue a Special Gathering Permit for Clams to the Coquille Tribe. The MOU stipulates the Coquille Tribal members engage in harvest with no waste, have in possession their Tribal Gathering License while gathering clams, use hands or hand tools, and allow Department employees or enforcement officers to inspect Tribal Gathering License, gear and catch upon request.

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.

06-09-2017 Close of Hearing	Michelle Tate	michelle.l.tate@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.

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Coquille Tribe Special Gathering Permit for Clams

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

In the Matter of:

OAR Chapter 635, Division 041, related to Coquille Tribal Clam Harvest

Statutory Authority:

ORS 497.075

Other Authority:

Statutes Implemented:

ORS 497.075

Need for the Rule(s):

This rule is needed to adopt the Memorandum of Understanding (MOU) with the Coquille Tribe that specifies annual issuance of a Special Gathering Permit for the harvest of specified clam species. Both the Department of Fish and Wildlife (ODFW) and the Coquille Tribe are adopting the MOU through their established rulemaking bodies. The rulemaking described here will fulfill the Department's commitment to adopt the MOU.

Documents Relied Upon, and where they are available:

Staff report for the Oregon Fish and Wildlife Commission meeting of June 9, 2017, "Coquille Tribal Clamming".

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 97302-1142, 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 FIS.

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 FIS.

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 FIS.

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

See Attached FIS.

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

See Attached FIS.

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

No small business were involved or directly subject to the rule. Small businesses that could be affected by the rule are those that provide goods and services to recreational shellfishers. Those may include shellfishing outfitters, food and beverage stores, gasoline stations, sporting goods stores, general merchandise stores, accommodation businesses, food services and drinking places.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

The rules are believed to be fully compatible with legislative direction on the goals of fish and wildlife management in Oregon.

for public comment

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007

Fiscal and Economic Impact Statement for the June 9, 2017 Hearing In the Matter of Rules Relating to Coquille Tribe Clam Special Gathering Permit

New rules would establish a no-cost Coquille Tribe Clam Special Gathering Permit for exclusive use by members of the Coquille Tribe in Coos or Curry County. The permit would allow Tribal Members to harvest clams under agreed upon conservation principles. The primary purpose of the rule changes is to obtain better information about the Coquille tribal clam harvest activities, and to ensure that tribal harvests are adaptively managed over time to best fit tribal historical uses and the Department's goals for conservation and management of Oregon clam resources. The new rules will require the Department and the Coquille Tribe to work together to establish a baseline with respect to harvest effort and to identify an appropriate level of data gathering for the future that is consistent with the Coquille Tribe and the Department's mutual interest in sustainably managing the collection of clams.

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. With this agreement, annual shellfish licenses currently purchased by Coquille members would no longer be necessary. The number of Coquille tribal members that regularly purchase annual resident shellfish licenses is few; therefore, the impact on lost shellfish license revenue is expected to be minimal. OSP would take into account the ability to harvest clams with no waste specific to the Coquille Tribe, but enforcement efforts would essentially be unchanged. No significant changes to the expenditures or revenues to these agencies are anticipated as a result of this rule change.

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. Since the Coquille Tribe will have the ability to harvest clams with no waste rather than the daily catch limit of the general license buying public, it is possible that collections by the Coquille Tribe could affect recreational harvest at specific locations in the Coos estuary where the tribe is active in the collection of clams. However, significant impacts are not anticipated to the overall populations of clams and, by extension, to recreational clamming opportunities. Likewise, tribal harvests may have limited impacts on clam populations in specific areas that are used for commercial clam harvests, but the overall commercial industry is not likely to be impacted since there is no quota on commercial harvest.

The table below specifies the three categories of clams and their constituent species that are regulated with the recreational shellfish license and the Coquille Tribe clam harvest permit.

Category	Common name	Genus and species	ODFW Sport Daily Catch Limit	Coquille Tribe Clam Harvest
Bay clam	Gaper clam	<i>Tresus capax</i>	20 bay clams, of which only 12 in aggregate may be gaper clams	Non-commercial harvest with no waste
Bay clam	Butter clam	<i>Saxidomus gigantea</i>		
Bay clam	Cockle	<i>Clinocardium nuttallii</i>		
Bay clam	Pacific littleneck clam	<i>Leukoma staminea</i>		
Razor clam	Pacific razor clam	<i>Siliqua patula</i>	First 15 taken	Non-commercial harvest with no waste
Other clam	Softshell clam	<i>Mya arenaria</i>	First 36 clams	Non-commercial harvest with no waste
Other clam	Purple varnish clam	<i>Nuttallia obscurata</i>	72 clams	

Most businesses affected by these rules are believed to be "small business."

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.