

OFFICE OF THE SECRETARY OF STATE  
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## Attachment 2

ARCHIVES DIVISION  
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SALEM, OR 97310  
503-373-0701

### NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635  
DEPARTMENT OF FISH AND WILDLIFE

**FILED**

12/20/2021 3:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Shellfish Mariculture Transport Biosecurity Regulation Updates

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/18/2022 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.*

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4034 Fairview Industrial Dr SE  
Salem, OR 97302

Filed By:  
Lisa Kingsley  
Rules Coordinator

#### HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 02/18/2022

TIME: 8:00 AM - 5:00 PM

OFFICER: Oregon Fish and Wildlife Commission

ADDRESS: Oregon Department of Fish and Wildlife  
4034 Fairview Industrial Dr SE  
Salem, OR 97302

#### SPECIAL INSTRUCTIONS:

Because of the rapidly changing situation with COVID-19, this hearing will be conducted virtually. Information will be posted on our website at <https://www.dfw.state.or.us/agency/commission/minutes/>

#### NEED FOR THE RULE(S)

Detection of new diseases within west coast mariculture has shown that ODFW's current OARs are inadequate to provide biosecurity for the state's natural resources and mariculture products. Current OARs are inconsistent with other West Coast states, creating the potential for Oregon mariculture products to be classified as restricted and not allowed to be transported to other states, such as Washington. Such a classification would severely impact Oregon mariculture businesses since many rely upon transport into Washington as it is one of the top mariculture states in the nation. Fortunately, most of Oregon's shellfish mariculture transport already complies with necessary regulation changes. Any regulation updates would cause minimal additional work by either the applicant or ODFW but would strengthen the state's biosecurity.

#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Staff report that will be prepared for the Oregon Fish and Wildlife Commission hearing on 2/18/2022.

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, between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

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#### FISCAL AND ECONOMIC IMPACT:

These proposed mariculture transport regulations are not expected to result in major economic or fiscal impacts. A further discussion of potential impacts is provided, as follows.

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#### 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).

The Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP) could experience some fiscal impacts due to an increase in permit applications and enforcement of the new requirements. Overall, these proposed rule changes are not expected to change current levels of costs for either agency. There is no fee associated with the transport permit so revenue will be unchanged.

ODFW impacts: The new requirement for permits for intra-state transport will require more staff time for permit issuance. This is anticipated to be minimal as most mariculture facilities are already applying for and receiving intra-state transport permits.

OSP impacts: While there might be some mariculture facilities that do not currently apply for intra-state permits, the number is anticipated to be low and the need for enforcement for compliance equally negligible. Since 2004, OSP has never been alerted by ODFW of the need for compliance enforcement of any transport permits.

There are anticipated to be no direct impacts to local governments. However, it should be noted that any local government or port that was looking to transport shellfish into the waters of the state for restoration purposes would be required to follow applicable rules.

There is potential economic impact to participants in the mariculture industry. Those participants who have not been issued permits, specifically intra-state permits, will be required to obtain them. Some waters of the state have pests that will require measures to eliminate spread to other state waterways if transport is allowed. These measures would include but are not limited to disinfection methods that would result in loss of time. Fortunately, most mariculture

facilities are already complying with the proposed regulation changes in order to be compliant with Washington biosecurity protocols.

There are no major expected economic impacts to the general public. These proposed requirements are not anticipated to result in increased prices for consumers and ensure Oregon's permitting transport framework is more consistent with neighboring states. Mariculture transport permit requirements, including directives on provision of health certificates, have the potential to allow for increased biosecurity. Increased biosecurity through preventative measures is a cost-effective approach to avert the spread of disease and pests in state marine and estuary waters.

(2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s);

Up to 20 mariculture facilities who transport shellfish, one shellfish hatchery that transports shellfish and one academic program that transports for research purposes would be impacted by the proposed regulation changes. The two businesses that apply for and obtain most of the transport permits, currently are already complying with the biosecurity protocols in order to be compliant with the state of Washington. It is anticipated that any new permits would come from those businesses that would be transporting intra-state. We do not have information regarding the number of entities impacted, but it is expected to be minor since intra-state transfer is more limited.

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

Though we are unable to estimate costs monetarily it is anticipated there would be minimal additional recordkeeping or administrative costs to business participants. Record keeping of production is already a requirement of any Oregon Department of Agriculture plat lease. Most mariculture facilities are already complying with the biosecurity protocols to be compliant with Washington.

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

Since most of the necessary testing is already being conducted to comply with the state of Washington requirements, it is unlikely that there will be additional testing costs for mariculture transporters. If mariculture facilities have not been complying with the Washington protocols, then the cost of testing is estimated to be \$3-\$4,000 per necessary test. Testing is done on a "lot" or "cohort" of animals that can then be parceled out and sold to numerous other businesses.

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

Staff sent a letter to all mariculture facilities that currently obtain transport permits as well as the shellfish hatchery and the academic research facility. Since 2004, an average of 15 transport permits per year are issued. In the last five years, between 5-8 businesses were responsible for all the mariculture transport permits. All of these businesses were sent a letter detailing the proposed changes.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

635-005-0225, 635-005-0890, 635-005-0900, 635-005-0905

AMEND: 635-005-0225

RULE SUMMARY: The proposed regulatory changes relate to Oregon's commercial market squid fishery. The regulatory proposals include: establish a control date for a potential future Limited Entry program (for purse seine vessels), prohibit the use of cable purse lines, strengthen enforceability of current rib line gear requirement, and introduce net size restrictions.

CHANGES TO RULE:

635-005-0225

Organization ¶¶

(1) This Division is organized into the following major shellfish and invertebrate fishery sections: ¶¶

(a) Clam and Intertidal Section, including the following fisheries: ¶¶

(A) Marine Snail and Abalone Fishery; ¶¶

(B) Piddock Fishery; ¶¶

(C) Bay Clam Dive Fishery; and ¶¶

(D) Intertidal Animal, Mussel and Clam Commercial Fisheries. ¶¶

(b) Crab Section, including the following fisheries: ¶¶

(A) Ocean Dungeness Crab Fishery; ¶¶

(B) Bay and Estuary Dungeness Crab Fishery; and ¶¶

(C) Red Rock, Box, Tanner and other Crab Fisheries. ¶¶

(c) Shrimp Section, including the following fisheries: ¶¶

(A) Pink Shrimp Fishery; ¶¶

(B) Spot and Coonstripe Shrimp Fisheries; and ¶¶

(C) Brine Shrimp Fishery. ¶¶

(d) Other Shellfish and Marine Invertebrates Section, including the following fisheries: ¶¶

(A) Weathervane Scallop Fishery; ¶¶

(B) Sea Urchin Fishery; ¶¶

(C) Crayfish Fishery; ¶¶

(D) ~~Oyster~~Shellfish Aquaculture Fishery; ¶¶

(E) Squid Fishery; and ¶¶

(F) Octopus Fishery. ¶¶

(2) Administrative rules OAR 635-005-0230 through 635-004-0275 are general regulations, in addition to and not in lieu of regulations contained within the fishery sections listed in section (1) of this rule. ¶¶

(3) Finfish fishery regulations are located in OAR chapter 635, division 004.

Statutory/Other Authority: ORS 506.036, ~~ORS 506.1019~~, ~~ORS 506.1409~~, ~~ORS 506.129~~

Statutes/Other Implemented: ORS 506.109, ~~ORS 506.129~~

AMEND: 635-005-0890

RULE SUMMARY: The proposed regulatory changes relate to Oregon's commercial market squid fishery. The regulatory proposals include: establish a control date for a potential future Limited Entry program (for purse seine vessels), prohibit the use of cable purse lines, strengthen enforceability of current rib line gear requirement, and introduce net size restrictions.

CHANGES TO RULE:

635-005-0890

~~Oyster~~Shellfish Aquaculture Fishery Defined-

"~~Oyster~~Shellfish aquaculture fishery" means the commercial cultivation of ~~oysters (Crassostrea spp.)~~shellfish in waters of this state.

Statutory/Other Authority: ORS 506.036, ~~ORS 506.1019~~, ~~ORS 506.1429~~, ORS 506.1209

Statutes/Other Implemented: ORS 506.1029, ORS 506.1209

AMEND: 635-005-0900

RULE SUMMARY: The proposed regulatory changes relate to Oregon's commercial market squid fishery. The regulatory proposals include: establish a control date for a potential future Limited Entry program (for purse seine vessels), prohibit the use of cable purse lines, strengthen enforceability of current rib line gear requirement, and introduce net size restrictions.

CHANGES TO RULE:

635-005-0900

~~Oyster Import~~ Shellfish Import and Transfer Applications and Permit

(1) It is unlawful for any person to import ~~oysters~~ import or transfer shellfish into or within this state for the purpose of planting or to plant the same in the waters of this state without first having applied for and obtained a permit to do so from the Director. ¶

(2) Such application shall be ~~in the form of a letter and shall include the following information: maximum quantity provided by the agency to be submitted by the applicant and shall include the following information:~~ ¶

(a) Name of applicant; ¶

(b) Facility and estuary to be imported, ~~name of exporter, the approximate time the shipment will be made, and the name or~~ transported to; ¶

(c) Name and physical address or origin of transport; ¶

(d) The maximum quantity to be imported of ~~the person or agency that will inspect the seed including a notarized certification from such person or agency~~ transported; ¶

(e) Species and size to be imported or transported; and ¶

(f) A notarized certification from an approved shellfish pathologist at the time the ~~oysters~~ shellfish are inspected, declaring them to the best of ~~his~~ their knowledge free from disease, infestation pests, and other substances which might endanger shellfish in the waters of this state. ¶

(3) The Director shall issue a permit to import ~~oysters~~ import or transfer shellfish for planting in the waters of this state when it has been established to ~~his~~ their satisfaction that ~~a qualified person or agency will inspect the oysters and~~ an approved shellfish pathologist has certified them as being free of disease, infestation pests, and other substances which might endanger shellfish in the waters of this state.

Statutory/Other Authority: ORS 506.036, ORS 506.1019, ORS 506.1429, ORS 506.1209

Statutes/Other Implemented: ORS 506.1029, ORS 506.1209, ORS 506.306

AMEND: 635-005-0905

RULE SUMMARY: The proposed regulatory changes relate to Oregon's commercial market squid fishery. The regulatory proposals include: establish a control date for a potential future Limited Entry program (for purse seine vessels), prohibit the use of cable purse lines, strengthen enforceability of current rib line gear requirement, and introduce net size restrictions.

CHANGES TO RULE:

635-005-0905

Prohibited Activities in Restricted Shellfish Areas ¶

(1) All waters, tidelands, and ~~oyster~~shellfish aquaculture handling facilities operated in conjunction with said water and tidelands that have been identified as containing diseases, infestation pests or other substances are defined as a restricted shellfish area. ¶

(2) It is unlawful for any person to move or transfer from a restricted shellfish area any ~~oyster~~shellfish, any marine organisms or other material whatsoever adversely affecting ~~oyster~~shellfish, without first obtaining written permission from the Director.

Statutory/Other Authority: ORS 506.036, ~~ORS 506.1019~~, ~~ORS 506.1129~~, ~~ORS 506.1209~~

Statutes/Other Implemented: ~~ORS 506.109~~, ~~ORS 506.036~~, ~~ORS 506.129~~, ~~ORS 506.1209~~, ~~ORS 506.306~~