



# Oregon

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**To:** The Honorable Michael Dembrow, Chair  
Senate Committee on Environment and Natural Resources



## Senate Bill 1025

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Oregon Department of Fish and Wildlife

The department appreciates the opportunity to discuss Senate Bill 1025 with you today. The department manages commercial and recreational shellfish harvest, and is committed to ensuring that the harvest of clams is managed in a sustainable manner to provide lasting benefits to current and future generations of Oregonians.

Senate Bill 1025 would require the department to make substantial changes to the existing rules and regulations regarding commercial harvest of clams. Changes would include prohibition of commercial harvest of clams from the intertidal zone (from both estuarine and coastal beaches), enacting changes to the costs and allocation of permits for commercial clam harvests, requirement for additional field surveys of clam populations in the subtidal and intertidal zones of Tillamook Bay and other estuaries, and modification of procedures to establish annual commercial quotas. I will first describe how the Department currently manages commercial clam harvest fisheries in a science-based and sustainable manner. I will then describe how the bill would change the management approach, and the impacts of those changes.

The department actively monitors harvest levels of recreational and commercial shellfish harvest activities in Oregon bays and estuaries. ODFW also conducts periodic rigorous stock assessments of bay clam populations, which establish standing stock biomass and are used to establish annual landing quotas for the commercial bay clam dive fisheries. The annual landing quotas follow principles of sustainable fisheries management and are established at 5-10% of the standing stock biomass. The harvest of clams by these fisheries is actively monitored through implementation of commercial logbooks and commercial fish tickets, which document location of harvest and pounds landed. These information streams are used to inform inseason management to ensure quotas are not exceeded.

In addition to establishment of annual harvest quotas, the commercial harvest of bay clams is managed by the issuance of permits and licenses. ODFW issues a maximum number of 10 limited-entry coast-wide commercial bay clam dive permits, and also issues open-access commercial intertidal animal harvest permits. Commercial harvest activities are further regulated by the establishment of harvest seasons, restrictions on the sizes of bay clams that can be taken (based on biologically-supported rationale), and by closure of some areas to commercial harvest. For example,

the region around Garibaldi and portions of the Ghost Hole in Tillamook Bay are off-limits for the commercial bay clam dive fishery.

The department's Shellfish and Estuarine Assessment of Coastal Oregon (SEACOR) team, established by the Department's request and Legislative approval 2007, is conducting quantitative surveys of bay clam populations in all of the major bays and estuaries in Oregon. The team returns to specific estuaries on a rotational basis every 8-10 years. ODFW recognizes the value that increased frequency of surveys would provide (see Shellfish Task Force recommendations below), but additional resources would be needed to achieve this objective. Currently, funds generated by the sale of commercial and recreational shellfish licenses provide support for ODFW's SEACOR team.

Senate Bill 1025 appears to be focused on making changes to both the commercial harvest of bay clams from the intertidal zone (Clam and Intertidal Fisheries), and to making changes to the commercial harvest of bay clams from the subtidal zone (Bay Clam Dive Fishery). The language, however, does not make it clear that the proposed provisions would affect both of these commercial clam fisheries. In addition, the current language (i.e. Section 2. "a person who takes clams for commercial purposes") would also apply to the commercial harvest of razor clams from the intertidal zone, such as the commercial fishery which occurs along the Clatsop plain.

Section 2.1 would require commercial harvesters to retain all clams regardless of size or condition. This provision is contradictory to existing regulations (OAR 635-005-0385) which were developed to consider the biological characteristics of the different species of clams, including the size-structure of their populations, abundances of different size categories of clams, growth rate, size/age at maturation, and ability to rebury and survive following removal from the substrata.

Section 2.2.b would prohibit the commercial take of clams with a mechanical item, but does not clearly define "mechanical item". OAR 635-005-0275 specifies that "it is unlawful to take shellfish and invertebrates for commercial purposes by any means except by hand or hand powered methods including shovel, rake, and abalone iron." In addition, OAR 635-005-0310 specifies that "permits may be issued to mechanically harvest clams in subtidal areas by means of a water jet or other hand or handpowered tool. Application for such a permit must be written and include a description of the specific areas where mechanical taking is proposed and such other information as the Director shall require." These existing rules already generally prohibit the harvest of clams by any means other than hand or powered methods, while providing the opportunity for commercial harvesters to request the authority (on a case-by-case basis) to mechanically harvest clams in certain situations. No permits to allow the mechanical harvest of bay clams have been issued following establishment of annual landing quotas for bay clams.

Section 2.2.b would prohibit commercial harvest of clams "on a sand bar." However, the bill does not provide a definition of "sand bar" nor provide spatial context regarding the locations where a sand bar may occur. When taken together, the combined language of Section 2 and Section 2.2.c would prohibit the commercial harvest of razor clams from the intertidal zone, sand bars, and sandy shores along the Oregon coast.

Section 2.2.d would prohibit commercial harvest of clams "in the Ghost Hole fishing area in Tillamook Bay." OAR 635-005-0290 specifies that bay clams may not be harvested from "the 'Ghost Hole' in the area from the floating toilet south to Sandstone Point and 500 feet westward from the Highway 101 shoreline." Much of the concern and conflict regarding harvest of bay clams

from the vicinity of the Ghost Hole appears to stem from different interpretations of the boundaries of the “Ghost Hole”, or a lack of awareness or misunderstanding about the existing regulations and boundary lines. Additional clarity on those boundaries, whether in statute or rule, may be beneficial.

Section 3.2 would “limit the number of persons that take clams for commercial purposes in a single estuary” but the proposed language does not specify the number of persons that may participate in the commercial fishery for any particular estuary, nor does it limit harvest in any one area. The Bay Clam Dive Fishery is already regulated and managed as a restricted-entry commercial fishery permit system. The existing ODFW permit system includes: (A) Coast-wide Bay Clam Dive Permit (maximum 10 permits); and (B) South-coast Bay Clam Dive Permits (maximum 5 permits). Bay-specific harvest quotas are used effectively to regulate the amount of take from specific areas, as needed.

Section 3.3 would require ODFW to adopt rules to “ensure that no more than 50% of the total take of clams for commercial purposes in Oregon occurs in a single estuary.” Establishment of landing cap at 50% for a single estuary is not consistent with the history of sustainable management of the commercial bay clam fisheries. Establishment of an arbitrary landing cap at 50% for a single estuary could result in added harvest pressure at sites where the commercial fishery has not developed for reasons that are unrelated to the species composition or abundance of bay clams.

Some bays, such as Tillamook Bay, encompass a very large area that is suitable for bay clams, and support a very high biomass of bay clams. About 85% of the state’s commercial bay clam harvest comes from Tillamook Bay (about 500,000 lbs of bay clams each year). Other bays, such as Netarts Bay (930 ha) are considerably smaller and have little habitat suitable for commercial harvest. About 5% of the state’s commercial bay clam harvest comes from Netarts Bay (about 20,000 lbs of bay clams each year). Establishment of a landing cap at 50% of the statewide total landings for a single estuary would create a management standard that is not biologically-based, and would not consider the spatial extent of suitable habitat, stock assessment data for the target populations, or information regarding the level of effort expended by commercial harvesters in other bays and estuaries.

Section 4.1 would require ODFW to conduct annual assessments of the percentage of total commercial harvest of clams for every estuary in Oregon from which clams are harvested for commercial purposes. This information is already compiled as a result of annual processes carried out by the department.

Section 4.2 would require ODFW to conduct a survey of the clam population every six years for any bay or estuary from which 45% or more of the statewide commercial harvest occurred during three or more of the previous six years. Acceleration of surveys to every six years, rather than ten years as is currently done, is worthy of consideration. However, several estuaries currently experience low levels of commercial harvest of bay clams (e.g., Siletz Bay, Yaquina Bay, and Alsea Bay). Prioritizing surveys to focus only within bays and estuaries that experience commercial harvest of bay clams would be contrary to the statutory intent to conduct scientific surveys in all of Oregon bays and estuaries, thus additional resources would be needed.

Sections 7.2–7.3 would increase fees for resident and non-resident permits. Given the low number of permits issued, the increased permit fees would likely not generate sufficient revenue to address increased costs of surveys and other requirements. Oregon non-resident commercial fishing fees are generally priced at no more than \$50 greater than the resident version, in order to reduce potential conflicts with interstate commerce laws. The magnitude of the proposed cost differential between

resident and non-resident permit fees is likely to precipitate legal challenges similar to prior incidences experienced when resident/non-resident pricing was highly disparate.

Section 7.4 states that "it is unlawful to take clams for commercial purposes under a permit issued under subsection (1) of this section without first having obtained a license under ORS 508.035". The requirement for commercial clam harvesters to obtain an annual Oregon Commercial Fishing License is already established by ORS 508.035. Currently, the Bay Clam Dive Fishery is exempt from the requirement to obtain a Commercial Shellfish and Intertidal Animal harvest Permit, and Section 8 would require ODFW to amend OAR 635-005-0245(3).

It would be advisable to establish a new Oregon Bay Clam Advisory Committee to provide a forum for input among the commercial harvesters affected by the specific provisions of SB 1025, and to provide an avenue for discussion among the recreational clammers and other stakeholders who have interest in the long-term sustainability of clamming opportunities in Tillamook Bay and other Oregon estuaries.

Last, the Shellfish Task Force issued a series of 32 detailed recommendations regarding steps designed to advance state-wide management oversight, enhance production, conduct critical research, improve water quality, assess wild shellfish stocks, and conserve and restore Oregon's diverse shellfish resources. Of particular note, the Task Force developed Recommendation #25: Increase the frequency of shellfish stock assessment surveys and conduct stock assessment surveys in the subtidal zone. This recommendation recognized that additional support is needed to allow ODFW to complete state-wide stock assessment surveys more rapidly. A shorter time-period between the bay clam population surveys will provide more accurate information to address permitting and license decisions, make adjustments to landing quotas and harvest regulations, and address other resource use issues.

Thank you for the opportunity to provide testimony.

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