Chapter 622

2011 EDITION

Shellfish

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GENERAL PROVISIONS

622.010 Definitions. As used in this chapter:

(1) "Dealer" means every person or peddler engaged in the business of growing, harvesting, processing or distributing shellfish for human consumption.

(2) "Department" means the State Department of Agriculture.

(3) "Peddler" means every person who on the person's own behalf or as the agent of another goes from place to place, or house to house, carrying or offering shellfish for sale.

(4) "Person" includes city, county and state as well as those included within the definition of person in ORS 174.100.

(5) "Shellfish" means:

(a) All edible species of oysters, either shucked or in the shell, fresh or frozen, whole or in part and intended for human consumption.

(b) All edible species of clams, either shucked or in the shell, fresh or frozen, whole or in part and intended for human consumption.

(c) All edible species of mussels, either shucked or in the shell, fresh or frozen, whole or in part and intended for human consumption.

(d) All edible species of scallops, either shucked or in the shell, fresh or frozen, whole or in part, except when the final product is the shucked adductor muscle only, and intended for human consumption. [1955 c.331 §1; 1969 c.283 §1; 1973 c.508 §1; 1993 c.720 §6; 1995 c.25 §1]

622.020 Certificate of shellfish sanitation required to be dealer. No person shall act as a dealer without the certificate or certificates of shellfish sanitation issued by the State Department of Agriculture. [1955 c.331 §3; 1973 c.508 §2]

622.030 Exemptions. This chapter shall not affect the following:

(1) Retail stores selling to the ultimate consumer.

(2) Operations subject to ORS chapters 616, 619, 621, 625, ORS 624.010 to 624.121, 632.275 to 632.290, 632.450 to 632.490 and 632.900 to 632.985 and to the rules pursuant thereto.

(3) Out-of-state dealers operating under a state shellfish program indorsed by the United States Public Health Service. [1955 c.331 §6; 1957 c.66 §1; 1969 c.283 §2; 1973 c.508 §1a; 1983 c.160 §5; 1995 c.206 §2]

622.040 Certificate required for each area of operation. A certificate of shellfish sanitation shall specify the area of operation to which it applies. A separate certificate validated for each area of operation as defined by ORS 622.080 and the State Department of Agriculture rules made under this chapter is required. [1955 c.331 §7(3); 1973 c.508 §3]

622.050 Application for certificate; inspections; expiration and renewal; rules. (1) A dealer shall make application to the State Department of Agriculture for a certificate or certificates of shellfish sanitation. The application shall be accompanied by the required fee or fees.

(2) The department shall issue the initial certificate or certificates of shellfish sanitation, if on inspection the department finds that the dealer has complied with all the provisions of this chapter and the rules of the department under this chapter.

(3) Every certificate of shellfish sanitation shall expire on December 31 following the date of issue or on such date as may be specified by department rule. Any certificate of shellfish sanitation may be renewed on payment of the required fee. Inspection is not a condition precedent for renewal, but an inspection shall be made at some time within the renewal year. [1955 c.331 §7(1),(2),(4); 1973 c.508 §4; 2007 c.768 §31]

622.060 [1955 c.331 §9; repealed by 1973 c.508 §5; (622.065 enacted in lieu of 622.060)]

622.065 Denial, suspension and revocation of certificate; procedure. (1) The State Department of Agriculture may suspend, deny or revoke any certificate of shellfish sanitation issued under this section for violation of any applicable provisions of ORS 622.010 to 622.180 or any rule promulgated under ORS 622.180.

(2) Procedures for denial, revocation or suspension of a certificate shall be as provided in ORS chapter 183. [1973 c.508 §6 (enacted in lieu of 622.060 and 622.070)]

622.070 [1955 c.331 §10; repealed by 1973 c.508 §5 (622.065 enacted in lieu of 622.070)]

622.080 Certificate fees; rules. (1) Persons engaged in the growing, production, harvesting or distribution of shellfish who receive from such operations not more than $50,000 in annual gross income shall pay annual fees to the State Department of Agriculture. The department shall establish the amount of the annual fees by rule, not to exceed:

(a) $300 for a certificate of shellfish sanitation as a shucker-packer, for a person operating a shellfish shucking, packing or repacking plant for the distribution of shellfish.

(b) $200 for a certificate of shellfish sanitation as a grower, for a person engaged in the business of growing shellfish.

(c) $200 for a certificate of shellfish sanitation as a distributor, for any jobber or wholesaler who furnishes or sells shellfish to retail outlets.

(d) $250 for a certificate of shellfish sanitation as a commercial harvester, for any person harvesting clams or mussels for commercial purposes.

(2) Persons engaged in the growing, production, harvesting or distribution of shellfish who receive from such operations more than $50,000 but not more than $500,000 in annual gross income shall pay annual fees to the department. The department shall establish the amount of the annual fees by rule, not to exceed:

(a) $600 for a certificate of shellfish sanitation as a shucker-packer, for a person operating a shellfish shucking, packing or repacking plant for the distribution of shellfish.

(b) $400 for a certificate of shellfish sanitation as a grower, for a person engaged in the business of growing shellfish.

(c) $450 for a certificate of shellfish sanitation as a distributor, for any jobber or wholesaler who furnishes or sells shellfish to retail outlets.

(d) $250 for a certificate of shellfish sanitation as a commercial harvester, for any person harvesting clams or mussels for commercial purposes.

(3) Persons engaged in the growing, production, harvesting or distribution of shellfish who receive from such operations more than $500,000 in annual gross income shall pay annual fees to the department. The department shall establish the amount of the annual fees by rule, not to exceed:

(a) $1,200 for a certificate of shellfish sanitation as a shucker-packer, for a person operating a shellfish shucking, packing or repacking plant for the distribution of shellfish.

(b) $800 for a certificate of shellfish sanitation as a grower, for a person engaged in the business of growing shellfish.

(c) $900 for a certificate of shellfish sanitation as a distributor, for any jobber or wholesaler who furnishes or sells shellfish to retail outlets.

(d) $250 for a certificate of shellfish sanitation as a commercial harvester, for any person harvesting clams or mussels for commercial purposes. [1955 c.331 §8; 1969 c.283 §3; 1973 c.508 §7; 1979 c.696 §10; 1993 c.720 §4; 2007 c.71 §188; 2011 c.323 §1]

Note: Section 4 (1) and (2), chapter 323, Oregon Laws 2011, provides:

Sec. 4. (1) The amendments to ORS 622.080 and 622.290 by sections 1 and 2 of this 2011 Act apply to fees assessed for annual periods that begin on or after July 1, 2011. The Legislative Assembly intends that any initial rule adopted under ORS 622.080 or 622.290 by the State Department of Agriculture shall apply retroactively if necessary to allow charging and collection of the full fee amount established by rule for annual periods that begin on or after July 1, 2011.

(2) If the department does not complete the adoption of initial rules under ORS 622.080 and 622.290 on or before July 1, 2011, for any annual period that begins on or after July 1, 2011, and prior to the initial rules taking effect, the department may elect to charge and collect at the beginning of the annual period a partial payment equal to the applicable fee amount under ORS 622.080 and 622.290 as in effect immediately prior to the effective date of the amendments to ORS 622.080 and 622.290 by sections 1 and 2 of this 2011 Act [June 14, 2011]. If the department elects to charge and collect a partial payment under this subsection, the department shall apply the full amount of the collected partial payment toward the annual fee amount due from the person under the applicable initial rule adopted by the department. [2011 c.323 §4(1),(2)]

622.090 Disposition of fees. The moneys received under ORS 622.050 shall be paid into the State Treasury and placed to the credit of the Department of Agriculture Service Fund. Such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of ORS 622.010 to 622.180. ORS 291.238 does not apply to the expenditure of such moneys. [1955 c.331 §7(1); 1973 c.427 §12; 1993 c.720 §5]

622.100 Certificate not transferable. A certificate of shellfish sanitation issued under this chapter is not transferable from one dealer to another or from one area of operation to another. [1955 c.331 §7(6)]

622.110 Display of certificates. Every dealer shall display the certificate of the dealer or certificates of shellfish sanitation in accordance with the rules made under this chapter. [1955 c.331 §7(5); 1973 c.508 §8]

622.160 Signed statement to be attached to shellfish consignment. No dealer shall send or accept any shellfish without a signed statement attached showing:

(1) The name of the consignor.

(2) The name of the consignee.

(3) The number of the consignor's certificate of shellfish sanitation issued at the point of origin and the date of harvesting or packing, if the consignor is required by law to have a certificate of shellfish sanitation.

(4) The source of the shellfish and the fact of certification of the source by the State Department of Agriculture or certification by a state whose shellfish program is indorsed by the United States Public Health Service, if such certification is required by law. [1955 c.331 §4; 1973 c.508 §9]

622.170 Records of amount and source of shellfish. Any dealer who gathers or receives shellfish from any source other than that designated in the certificate or certif-

icates of shellfish sanitation shall keep accurate records of the amount and source of such shellfish, which records shall be retained for at least 90 days. The State Department of Agriculture shall have access to these records for inspection. [1955 c.331 §5; 1973 c.508 §10]

622.175 Contract with State Police for enforcement. The State Department of Agriculture may contract with the Department of State Police, using such funds as may be available therefor from fees paid to the Department of Agriculture Service Fund pursuant to ORS 622.080, for enforcement of the provisions of ORS 622.010 to 622.180. [1993 c.720 §7b]

622.180 Powers of department; rules; inspections; samples; condemnation. For the protection of the public health, the State Department of Agriculture shall have the following powers and all powers necessary and proper to insure sanitary conditions in the production and distribution of shellfish:

(1) The department shall have power to make rules necessary to enforce the provisions of this chapter. These rules shall at least include the water quality of growing areas, quality of market shellfish, water supply, sewage and waste disposal, drainage, plumbing, building construction, boat and barge sanitation, the handling, storage, construction and maintenance of equipment, lighting and ventilation, insect and rodent control, garbage and refuse disposal, shell disposal, cleanliness of premises, handling, storage and refrigeration of shellfish and the marking of certificate numbers and dating codes on all containers. The department also, by rule, may add to the definition of shellfish, and subject to regulation under ORS 622.010 to 622.180, any aquatic animals regulated as shellfish under the federal National Shellfish Sanitation Program.

(2) The department shall have power:

(a) To inspect any dealer in every phase and locale of operation.

(b) To take samples of any shellfish for bacteriological and toxicity study.

(c) To condemn or remove from sale and destroy any shellfish which are unfit for human consumption, or are from an uncertified source, or are improperly certified.

(d) To issue certificates of shellfish sanitation in accordance with the provisions of this chapter. [1955 c.331 §2; 1973 c.508 §11; 1995 c.25 §2]

OYSTERS, CLAMS AND MUSSELS

622.210 Department defined. As used in ORS 622.210 to 622.360, "department" means the State Department of Agriculture. [1981 c.638 §2; 1997 c.375 §1]

622.220 Jurisdiction; rules; violations. (1) The commercial cultivation of oysters, clams and mussels is declared to be an agricultural activity subject to the regulatory authority of the State Department of Agriculture. The State Fish and Wildlife Commission has jurisdiction over all native oysters, clams and mussels in the waters of this state, but not cultivated oysters, clams and mussels in plats. The commission shall prescribe such rules for the protection of native oysters, clams and mussels and for the taking of native oysters and oyster spat shells subject to the commission's jurisdiction as in the judgment of the commission is for the best interests of the resource.

(2) It is unlawful for any person to take native oysters, clams and mussels in violation of the rules adopted by the commission. [Formerly 509.425; 1997 c.375 §2; 2005 c.22 §436]

622.230 Conversion of plantations to plats; fees. All plats, rights, claims and plantations, and leases lawfully held for such plats, rights, claims and plantations that exist upon the passage of this 1969 Act shall be converted to plats, shall be filed with the State Department of Agriculture by July 1, 1970, and shall:

(1) Include a legal description of the area applied for, specifying its acreage.

(2) Be accompanied by a map sufficient to permit the area applied for to be readily identified.

(3) Be accompanied by an application fee of $25 per plat. [Formerly 509.427; 2005 c.22 §437]

Note: Legislative Counsel made no substitution in 622.230 for "the passage of this 1969 Act."

622.240 Classifying lands for cultivation. The State Department of Agriculture shall investigate and classify those state lands that are suitable for oyster, clam or mussel cultivation. The department shall consult with appropriate local, state and federal agencies to determine whether lands proposed by an applicant for oyster, clam and mussel cultivation are suitable for such shellfish cultivation. [Formerly 509.429; 1997 c.375 §3]

622.250 Application for new plats; fee; notice. (1) Applicants for new oyster plats, in addition to submitting an application in compliance with ORS 622.230 (1) and (2) and the submission of a fee of $250 per plat, shall cause notice of the application to be published once a week for two consecutive weeks in a newspaper of general circulation in each county where any area applied for,

or any part thereof, is located. The notice must state the name of the applicant and the type of operation the applicant proposes to conduct and must describe the area to be planted with oysters.

(2) Not later than the 90th day after publication of the notice referred to in subsection (1) of this section, and upon finding that the notice complied with the requirements of subsection (1) of this section, the State Department of Agriculture may grant to the applicant the area applied for if the area is known to be available and if the department has classified the area as suitable for oyster cultivation.

(3) If the application referred to in this section is denied, the department shall provide the applicant with a written statement explaining the reason for the denial.

(4) Any person who holds an oyster plantation claim or plat that was in effect on June 1, 1997, may submit to the department an application to cultivate clams or mussels on not more than 20 percent of the lands subject to the claim or plat, but not less than one acre. Any such application must be in compliance with ORS 622.230 (1) and (2) and be accompanied by a fee of $250 for each such claim or plantation. [Formerly 509.431; 1997 c.249 §189; 1997 c.375 §4; 2005 c.22 §438]

622.260 Copies of laws to be available. The State Department of Agriculture shall cause copies of the provisions of ORS 622.230 and 622.250 to be made available at the courthouse of each county in which an applicant's approved plat, or part thereof, is located. [Formerly 509.433]

622.270 Reports of cultivators. Any person cultivating oysters, clams or mussels shall file an annual report with the State Department of Agriculture before March 1 of each year showing the number of gallons, bushels or dozens of each species of oysters, or the number of pounds of each species of clams or mussels harvested by the person during the preceding calendar year. The report shall be made on forms provided by the department. [Formerly 509.436; 1997 c.375 §5]

622.280 Withdrawal of unproductive lands. (1) If, for a period of three years after the filing of a plat under chapter 675, Oregon Laws 1969, more than one-half the lands claimed are unproductive, the State Department of Agriculture may withdraw from a claimant and consider abandoned any portion of the unproductive lands claimed by such claimant. However, the reason for such unproductiveness shall not include restrictions by governmental health authorities, the unavailability of seed or infestation by pest or disease.

(2) The department may withdraw from a claimant and consider abandoned those lands:

(a) On which the claimant fails to pay the fees or use taxes referred to in ORS 622.290, unless the department is satisfied that there was reasonable cause for such failure.

(b) That are not marked in the manner provided by ORS 622.320.

(c) That are used or held for purposes other than oyster, clam or mussel cultivation. [Formerly 509.439; 1997 c.375 §6]

622.290 Annual fees and taxes; rules. (1) Persons using state lands for cultivating oysters, clams or mussels shall pay annual cultivation fees and use taxes quarterly to the State Department of Agriculture. Fees and taxes become delinquent 30 days after the end of the quarter.

(2) Use taxes shall be in the amount of 10 cents per gallon of oysters if sold by the gallon, 10 cents per bushel of oysters if sold in the shell by the bushel or one cent per dozen oysters if sold by the dozen.

(3) Use taxes shall be in the amount of one-half cent per pound of clams or mussels sold.

(4) The annual cultivation fee shall be established by department rule in an amount not to exceed $14 for each acre claimed pursuant to chapter 675, Oregon Laws 1969, or claimed pursuant to a plat made subsequent thereto.

(5) Annual cultivation fees and use taxes shall be assessed in lieu of property taxes, lease fees or rental charges for the use of lands upon which oysters, clams or mussels are grown and harvested. [Formerly 509.441; 1997 c.375 §7; 2003 c.14 §374; 2011 c.323 §2]

Note: See note under 622.080.

622.300 Use of fees and taxes. All moneys received by the State Department of Agriculture under ORS 622.290 shall be paid over to the State Treasurer and deposited in the Department of Agriculture Service Fund and be subject to ORS 561.144. All such moneys are appropriated continuously to the department to carry out the provisions of this chapter. [Formerly 509.451; 2011 c.323 §3]

622.310 Effect on prior-acquired rights. Nothing in ORS 506.036 and 622.210 to 622.310 affects any oyster cultivation right acquired prior to January 1, 1982, pursuant to chapter 675, Oregon Laws 1969. [1981 c.638 §12]

622.320 Plats as private property; restriction of public use of waters prohibited. Any plats of lands for the cultivation of oysters, clams or mussels held by citizens of this state, if distinctly marked out by

means which do not obstruct navigation, and not exceeding the extent allowed by regulations, shall be deemed and protected as private property. Such plats, however, shall not restrict the rights of the public to the use of the waters of this state in a normal and customary manner. [Formerly 509.455; 1997 c.375 §8]

622.330 Private oyster beds acquired under prior law not affected. Nothing in ORS 509.505, 511.625, 622.210 to 622.300 and 622.320 interferes with any rights in, or ownership of, any private plantations of oysters or oyster beds acquired or held under law existing on February 17, 1921. [Formerly 509.470]

622.340 Transfer by reference to filed plat; fee. (1) Sales, leases, assignments, conveyances, relinquishments and other transfers of oyster plantations and claims, or parts thereof, or of plats for the cultivation of oysters, clams or mussels may be made by reference to the plat filed as provided in ORS 622.210 to 622.300 and 622.320. The heirs, successors, assignees and lessees of those plats are entitled to continued possession of such plats by compliance with ORS 622.210 to 622.300 and 622.320.

(2) A person proposing to sell, lease, assign, convey, relinquish or otherwise transfer an oyster plantation claim or a plat for the cultivation of oysters, clams or mussels shall provide the State Department of Agriculture notice of such transaction within 30 days of the effective date of the transaction.

(3) The filing of such a notice, if other than a relinquishment, shall be accompanied by a claim or plat certificate reissuance fee of $100 for each affected claim or plat.

(4) The failure to provide the notice required by subsection (2) of this section shall result in the department holding the lessor of record of the claim or plat responsible for compliance with the provisions of ORS 622.210 to 622.360 and all provisions of the lease grant certificate. [Formerly 509.495; 1997 c.375 §9]

622.350 Prior claims, plats, transfers or debts unaffected. Nothing in ORS 622.340 invalidates any claim or plat filed prior to June 14, 1939, or invalidates in any manner any transfers, debts or conveyances made prior to June 14, 1939, of oyster claims or lands made by reference to any filed claims or plats. [Formerly 509.500]

622.360 Cultivation does not affect ocean shore activities. Nothing in ORS 622.210, 622.220, 622.240, 622.250, 622.270, 622.280, 622.290, 622.320 or 622.340 is intended to affect activities on the ocean shore, as defined in ORS 390.605. [1997 c.375 §11]

PENALTIES

622.990 [1955 c.331 §11; repealed by 1973 c.508 §12 (622.992 enacted in lieu of 622.990)]

622.992 Criminal penalty. Violation of any provision of ORS 622.010 to 622.180 or the rules of the division promulgated under ORS 622.180 is a Class C misdemeanor. [1973 c.508 §13 (enacted in lieu of 622.990)]

622.996 Civil penalties; rules; hearing; disposition of moneys. (1) In addition to any penalty available under ORS 561.190 or 622.992, the State Department of Agriculture may impose a civil penalty for a violation of ORS 622.010 to 622.180 or of rules adopted under ORS 622.180. For the purposes of this section, each day a violation continues after the period of time established for compliance shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(2) The department may adopt rules establishing a schedule of civil penalties that may be imposed under this section. Civil penalties imposed under this section may not exceed $10,000 for each violation.

(3) When the department imposes a civil penalty under subsection (1) of this section, the department shall impose the penalty in the manner provided by ORS 183.745, except that the written application for a hearing must be received by the department no later than 10 days after the date of mailing or personal service of the notice of civil penalty.

(4) Moneys received by the department from civil penalties imposed under this section shall be deposited in the General Fund to the credit of the Department of Agriculture Account. [2009 c.175 §18]

CHAPTER 623

[Reserved for expansion]