

# Chapter 622

1993 EDITION

## Shellfish

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**FOOD AND OTHER COMMODITIES**

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**GENERALLY**

**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 all fresh and frozen oysters, clams or mussels, either shucked or in the shell, and all fresh edible products thereof intended for human consumption. [1955 c.331 §1; 1969 c.283 §1; 1973 c.508 §1; 1993 c.720 §6]

**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, 620, 621, 625, ORS 624.010 to 624.120, 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]

**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.** (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. 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]

**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 license; 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 183.310 to 183.550. [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 Fees; areas of operation.** (1)(a) Persons engaged in the growing, production, harvesting or distribution of shellfish who receive from such operations not more than \$60,000 in annual gross income shall pay the following annual fees to the department:

(A) One hundred fifty dollars 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) One hundred dollars for a certificate of shellfish sanitation as a grower, for a person engaged in the business of growing shellfish.

(C) One hundred dollars for a certificate of shellfish sanitation as a distributor, for any jobber or wholesaler who furnishes or sells shellfish to retail outlets.

(D) Seventy-five dollars for a certificate of shellfish sanitation as a commercial harvester, for any person harvesting clams or mussels for commercial purposes.

(b) Notwithstanding the fees established in paragraph (a) of this subsection, no commercial facility operating in one location shall pay more than \$250 in total annual fees to the department for any combination of certificates issued under paragraph (a) of this subsection.

(2)(a) Persons engaged in the growing, production, harvesting or distribution of shellfish who receive from such operations more than \$60,000 in annual gross income

shall pay the following annual fees to the department:

(A) Three hundred dollars 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) Two hundred dollars for a certificate of shellfish sanitation as a grower, for a person engaged in the business of growing shellfish.

(C) Two hundred twenty-five dollars for a certificate of shellfish sanitation as a distributor, for any jobber or wholesaler who furnishes or sells shellfish to retail outlets.

(D) Seventy-five dollars for a certificate of shellfish sanitation as a commercial harvester, for any person harvesting clams or mussels for commercial purposes.

(b) Notwithstanding the fees established in paragraph (a) of this subsection, no commercial facility operating in one location shall pay more than \$500 in total annual fees to the department for any combination of certificates issued under paragraph (a) of this subsection. [1955 c.331 §8; 1969 c.283 §3; 1973 c.508 §7; 1979 c.696 §10; 1993 c.720 §4]

**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 certificates 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.

(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]

## OYSTERS

**622.210 Department defined.** As used in ORS 622.210 to 622.300 and 622.320 to 622.350, "department" means the State Department of Agriculture. [1981 c.638 §2]

**622.220 Jurisdiction over oysters.** (1) The commercial cultivation of oysters is declared to be an agricultural activity which should be subject to the regulatory authority of the State Department of Agriculture. However, the State Fish and Wildlife Commission has jurisdiction over all native oysters in the waters of this state, and shall prescribe such rules for the protection of oysters therein and for the taking of oysters and oyster spat shells therefrom 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 unless the person complies strictly with all of the rules made by the commission covering such taking. [Formerly 509.425]

**622.230 Conversion of plantations to plats.** (1) All plats, rights, claims and plantations, and leases lawfully held for such plats, rights, claims and plantations which exist upon the passage of this 1969 Act shall be converted to plats, shall be filed with the department by July 1, 1970, and shall:

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

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

(c) Be accompanied by an application fee of \$25 per plat.

(2) All lands held at the time of the passage of this 1969 Act for artificial oyster production under any of the laws of this state shall be given first consideration by the commission in order to allow uninterrupted usage during the transition to the provisions of chapter 675, Oregon Laws 1969. [Formerly 509.427]

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

**622.240 Classifying oyster lands.** The department shall investigate and classify those state lands that are suitable for oyster cultivation. [Formerly 509.429]

**622.250 Application for new plats; notice.** Applicants for new oyster plats, in addition to submitting an application in compliance with ORS 622.230 (1), shall:

(1) 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, the type of operation the applicant proposes to conduct, and must describe the area to be planted with oysters.

(2) Not later than the 30th 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 that subsection, the department 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. [Formerly 509.431]

**622.260 Copies of laws to be available.** The department 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 shall file an annual report with the department before March 1 of each year showing the number of gallons of each species of oysters harvested by the person during the preceding calendar year. The report shall be made on forms provided by the department. [Formerly 509.436]

**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 department may withdraw from a claimant and consider abandoned that portion of the unproductive lands that are in excess of one-half the 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) Which are not marked in the manner provided by ORS 622.320.

(c) Which are used or held for purposes other than oyster cultivation. [Formerly 509.439]

**622.290 Annual fees and taxes.** (1) Persons using state lands for cultivating oysters

shall pay annual cultivation fees and use taxes quarterly to the department. Fees and taxes become delinquent 30 days after the end of the quarter.

(a) Use taxes shall be in the amount of five cents per gallon of oysters if sold by the gallon, or five cents per bushel of oysters if sold in the shell by the bushel.

(b) The annual cultivation fee shall be in the amount of \$2 for each acre claimed pursuant to chapter 675, Oregon Laws 1969.

(2) 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 are grown and harvested. [Formerly 509.441]

**622.300 Use of fees and taxes.** All moneys received by the department 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 ORS 622.220 and 622.320. [Formerly 509.451]

**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 Oyster plats as private property; restriction of public use of waters prohibited.** Any plats of oyster lands 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]

**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 oyster plat.** Sales, leases, assignments, conveyances, relinquishments and other transfers of oyster plantations and claims, or parts thereof, 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 oyster plats are entitled to continued possession of such plats by compliance with ORS 622.210 to 622.300 and 622.320. [Formerly 509.495]

**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]

#### PENALTIES

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

**622.992 Penalties.** 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)]

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#### CHAPTER 623

[Reserved for expansion]