

Agenda Item Summary

BACKGROUND

COMMERCIAL AND SPORT GROUND FISH REGULATIONS

State rules governing marine sport and commercial groundfish fisheries are based on rules adopted federally. The Pacific Fishery Management Council (PFMC) conducts a significant public process when determining harvest level and regulatory recommendations, which are considered and implemented by the National Marine Fisheries Service (NMFS). Federal regulations are set for two year intervals, with in-season adjustments available at each PFMC meeting (March, April, June, September, and November). Regulations governing the 2011-2012 biennial cycle were published on May 11, 2011 (Attachment 4) and amended as appropriate throughout the year. Additional federal regulations setting 2012 harvest levels for certain species are expected to be published before the end of the year.

The Oregon Fish and Wildlife Commission (Commission) incorporates federal regulations as the basis for additional or more conservative regulations adopted through the state process; the state has the authority to adopt concurrent or more conservative regulations, but not more liberal.

Through separate public processes, Oregon Department of Fish and Wildlife (department) staff develops recommendations for sport and nearshore commercial groundfish fisheries on which the Commission takes action. These regulations involve annual limits, commercial trip limits, sport bag limits, length limits, adjustments to depth-based closures, etc.

FISH DEALER RECORDS AND REPORTS

State regulations require commercial fish dealers to prepare an official "fish receiving ticket" (hereafter, fish ticket) for each purchase of fish or shellfish. Information recorded on the fish ticket includes the pounds of each species received and the price paid per pound among other things. Fish dealers are also required to submit monthly remittance reports to the department that must include the total pounds and total value of all fish and shellfish received and the total fees due. Changes to these rules, primarily for groundfish species, are needed to clarify legal processes for completing fish tickets and/or monthly remittance reports.

PUBLIC INVOLVEMENT

Department staff held a series of five public meetings to discuss the proposed 2011-2012 federal management measures for commercial and sport groundfish fisheries on the following dates:

- Astoria: May 17, 2010
- Newport: May 18, 2010
- North Bend: May 19, 2010
- Brookings: May 20, 2010
- Port Orford: May 20, 2010

The goal of these meetings was to discuss harvest levels and proposed

management measures for sport and commercial groundfish fisheries with constituents. Reports detailing the input received were submitted to PFMC for use in decision making during the June 2010 PFMC meeting.

Staff convened two meetings of the Sport Advisory Committee (SAC) in Newport on February 24 and June 1, 2010 at which sport groundfish management measures for 2011 were discussed with recreational fishery constituents. Staff convened a meeting of the Commercial Nearshore Fishery Advisory Panel in Newport on September 9, 2010 to discuss 2011 nearshore trip limits and other management measures with commercial fishery constituents.

Staff held a series of four public meetings to discuss 2012 sport groundfish annual limits, season structure, and other management measures on the following dates:

- Astoria: September 26, 2011
- Newport: September 27, 2011
- Brookings: September 28, 2011
- Coos Bay: September 29, 2011

A total of 45 people attended these meetings, with highest attendance in Brookings (24 people). To augment public input on the issues addressed at these meetings, the department conducted a web-based survey for the first time in 2011. The online survey had 75 respondents. Of those who provided information on residence (zip code) one was from Washington state, 28 % were from the Portland Metro Area, and 74% were from non-coastal zip codes.

Staff held a series of three public meetings to discuss 2012 nearshore commercial groundfish annual limits, trip limits, and other management measures on the following dates:

- Pacific City: September 27, 2011
- Gold Beach: September 28, 2011
- Port Orford: September 29, 2011

A summary of these meetings is provided in Attachment 6.

Staff worked directly with fish dealers and/or their representatives in developing options for changes to regulations regarding fish dealer records and reports.

ISSUE 1

ADOPTION OF 2012 FEDERAL GROUND FISH REGULATIONS

ANALYSIS

The Commission incorporates federal regulations as the basis for additional or more conservative regulations adopted through the state process; the state has the authority to adopt concurrent or more conservative regulations, but not more liberal. Normally, formal adoption of concurrent regulations would not be necessary for the second year of a biennial cycle as the reference for federal regulations would not change from what the Commission had adopted in the first year. However, because the federal regulations for 2011-2012 (Attachment 4) were not

published until well into the cycle, these regulations were adopted by Oregon via temporary rule on May 13, 2011. This temporary rule was initially set to expire November 8, 2011; however, in-seasons adjustments to the federal regulations were adopted by the state via temporary rule several times after May 13, effectively extending the expiration date of the temporary rule through the end of 2011. Additional federal regulations setting 2012 harvest levels for certain species are expected to be published before the end of the year. The proposed federal rule is provided (Attachment 5) for reference. To remain concurrent with federal regulations in 2012, the Commission must adopt federal regulations, by reference, into permanent rule before expiration of the temporary rule.

Three notable changes to federal management were implemented in parallel with the 2011-2012 regulatory process: Trawl Individual Quota (TIQ) program, intersector allocation and Annual Catch Limits (ACLs). The TIQ program assigns a proportion of the allowable catch for a number of species or species complexes to individual trawl permits. Permit owners will be allowed to catch, lease, or sell the allowable catch assigned to their permit within the constraints of the program. A necessary component of the program is allocation of allowable catches of program species to the trawl and fixed gear sectors (i.e., intersector allocation). This represents a major change to the management of the fishery, however some aspects of the existing management structure, including but not limited to rockfish conservation areas and gear restrictions, will continue.

Under the Reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSA) passed by the United States Congress and signed into law in 2006, all fishery management councils are required to set ACLs for all species managed under a council FMP. ACLs must account for scientific uncertainty and management uncertainty, and must result in less than a 50% probability of overfishing. All sources of mortality, including discard mortality and shore and estuary based fishery mortality, must be counted toward the ACL. Implementation of ACLs will not greatly affect harvest levels or state management for most groundfish species, as the PMFC has managed many species under some type of an annual limit for some time. One exception is cabezon, discussed in detail under Issues 2 and 3 below.

OPTIONS

1. Incorporate federal regulations as amended into proposed administrative rules OAR 635-004-0018, 635-004-0019, 635-039-0080(2) and 635-039-0090(5)(f), as shown in Attachment 3 without change
2. Impose additional harvest restrictions or limitations.
3. Status Quo.
 1. Option 1

STAFF RECOMMENDATION

ISSUE 2

2012 NEARSHORE HARVEST SPECIFICATIONS

ANALYSIS

Nearshore fisheries (e.g., commercial and sport) are managed under annual harvest limits restricting the amount of fish that can be landed and/or impacted. State landing caps are set for five groundfish species and/or species groups: black rockfish, black rockfish and blue rockfish (combined), other nearshore rockfish, cabezon, and greenling. Landing caps are specific to landings only and do not account for mortality attributed to discarded fish. Sport landing caps are specific to landings by anglers fishing from boats in the ocean, and do not account for landings by anglers fishing from the shore or in estuaries, or mortality attributed to discarded fish. Black rockfish is additionally managed under harvest caps for each fishery that include both landings and discard mortality.

Changes to commercial and sport landing and harvest caps are proposed only for cabezon for 2012. This change is necessary to keep total fishery related mortality of cabezon within the 2012 federal ACL. In 2009, NMFS conducted and PFMC accepted a new stock assessment for cabezon, in which the population off Oregon was assessed separately from populations off California and no assessment was conducted for populations off Washington. The ultimate result was the setting of Oregon specific cabezon ACLs at 50 mt in 2011 and 48 mt in 2012. In contrast to state *landing* caps, ACLs are limits on *all* fishery-related mortality, including discards. Thus, they are equivalent to state *harvest* caps.

Oregon established cabezon landing caps for both sport and commercial fisheries based on landings in each fishery in the year 2000, resulting in a 15.8 mt cap for sport fisheries and a 31.3 mt cap for commercial fisheries. However, the cap for sport fisheries did not include any landings made by anglers fishing from shore or in estuaries, and neither sport nor commercial caps included any discard mortality. While the sum of the state landing caps (47.1 mt) is less than the new federal ACL, when impacts due to sport shore and estuary catch (~1.6 mt) and discard mortality are included, the total exceeds the federal ACL.

To establish state harvest and/or landing caps that will result in a low risk of exceeding the ACL when all fishery mortality is accounted for, staff recommends subtracting the estimated shore and estuary impacts from the federal ACL, and then dividing the remainder among the sport and commercial fisheries in the same proportion as the current landing caps (33.5% sport, 66.5% commercial). The shore and estuary catch would then be added to the resulting sport share so that the final harvest cap truly accounts for all sources of sport fishing mortality.

Given a 48 mt ACL, the result is a harvest cap of 17.2 mt for the sport fishery and 30.8 mt for the commercial fishery. All catch and discard mortality would then be managed within that amount for each fishery. For the commercial fishery, estimates of discard mortality are based on federal observer data, and are typically not available for at least one year. Two estimates specific to Oregon cabezon are now available, averaging

0.3 mt per year for 2009 and 2010. Therefore, staff is proposing that the commercial landing cap be set at 30.5 mt, and that a commercial harvest cap (including both catch and discard mortality) be established at 30.8 mt for 2012. Staff also proposes adoption of a sport cabezon harvest cap of 17.2 mt, to include all sources of mortality (e.g., shore, estuary, and ocean landings and discard mortality).

OPTIONS

1. Establish a commercial harvest cap of 30.8 mt (proposed OAR 635-004-0033(3)(b)), a sport harvest cap of 17.2 mt (proposed OAR 635-039-0090(2)(b)), and change the commercial landing cap to 30.5 mt (proposed OAR 635-004-0033(4)(d)) for cabezon as shown in Attachment 3.

2. Status quo.

STAFF RECOMMENDATION

1. Option 1.

ISSUE 3

2012 SPORT GROUND FISH FISHERY REGULATIONS

ANALYSIS

DEPTH BASED CLOSURES

Since 2004, the department has used depth-based area closures to control impacts to overfished species in the sport groundfish fishery. The primary overfished species encountered in the sport groundfish fishery are canary rockfish and yelloweye rockfish, which tend to be distributed deeper than many targeted species (e.g., black rockfish, blue rockfish, and cabezon). Restricting the fishery to shallow waters can be an effective tool to control impacts.

For the past several years, the fishery has been restricted to less than 40 fathoms from April through September. In 2008, 2010, and 2011, inseason action was taken to restrict the fishery to shallower depths due to projected early attainment of yelloweye rockfish impacts. In order to reduce occurrence of similar inseason action in the future, staff recommends restricting the fishery to less than 30 fathoms from April through September.

Depth restrictions have different impacts in different areas due to the distribution of rocky reef habitat, which is the primary habitat fished for groundfish. For instance, off of Garibaldi, over 50% of the groundfish fishing grounds inside of 40 fathoms occurs between 20 and 40 fathoms, while off Newport, less than 5% of the fishing grounds inside of 40 fathoms occurs in that depth range. For this reason, staff recommends establishing management lines that would allow different depth restrictions to be implemented for different areas of the coast as an in-season management tool. Proposed management lines are:

- 1) Cape Lookout: 45° 20'30" North latitude; and
- 2) Cape Blanco: 42° 50'20" North latitude

The implementation of these management lines provides the flexibility to

mitigate overly burdensome impacts from potential further depth-based inseason actions on the northern and southern coasts. Management lines would only be used for in-season actions; they would not be used pre-season to allocate catch or quota to the areas, nor to set up differing regulations.

CABEZON SEASON

The sport groundfish fishery has historically been managed to keep catches below landing and harvest caps while maintaining a year round season. However, the fishery has been closed to cabezon retention before October every year since 2003 in an attempt to keep catches below the landing cap. Despite in-season closures, sport catches of cabezon have exceeded the 15.8 mt landing cap by 0.1 to 2.0 metric tons each year. Cabezon are managed under the marine fish bag limit, which includes a variety of species such as rockfish and greenling and has been set at 7 fish for the last two years.

For the 2011 fishery, the Commission adopted a 1 fish seasonal sub-bag limit for cabezon in order to slow harvest and reduce the risk of in-season closures. The 1 fish bag limit was not effective in achieving a year round season, as demonstrated by the fact that cabezon retention was prohibited on July 21st and the landing cap was exceeded by 2.0 mt. Several options to reduce the risk of in-season closures were discussed in public meetings (e.g., seasonal closures and length restrictions). Establishment of a winter closure garnered the most support from the public. This closure may provide an additional benefit by reducing fishing pressure on cabezon during the peak spawning season which occurs in the late winter/early spring off Oregon. Therefore, staff recommends closing the fishery to cabezon retention from January through March and October through December.

OPTIONS

1. Restrict the sport groundfish fishery to less than 30 fathoms from April through October and establish management lines at Cape Lookout and Cape Blanco as shown in proposed OAR 635-039-0090(5)(f), Attachment 3.
 2. Prohibit retention of cabezon in the sport groundfish fishery from January through March and October through December as shown in proposed OAR 635-039-0090(5)(b)(C), Attachment 3.
 3. Status quo.
1. Options 1 and 2

STAFF RECOMMENDATION

ISSUE 4

FISH DEALER RECORDS AND REPORTS: Clarify rule language to prohibit use of conversion factors for fish landed whole

ANALYSIS

Current regulations require that the weight in pounds of each species landed be recorded on a fish ticket at the time of landing. Three options are given for methods to obtain the weight:

1. Actual round weights based on certified scale measurements;

2. Actual round weights measured using a hopper scale;
3. Weights converted to round weights by multiplying the appropriate conversion factor listed in OAR 635-006-0215.

In addition, regulations require that round weights be reported for all fish and shellfish (except salmonids) in monthly remittance reports submitted to the department. Monthly remittance reports are the basis for determining landing fees, however fees are based on the total value rather than the weight of fish received.

Round weights refer to the weight of whole fish from which no parts have been removed. The conversion factors referred to are used for fish that have been dressed (e.g., head and internal organs removed) and provide a method to obtain a round weight when only the dressed weight is available. Conversion factors have been established for a limited number of species and dressing methods, and may not be used for any other species or dressing method.

The original intent of establishing conversion factors was to allow for certain species to be dressed at sea, before landing, in order to improve product quality. However, the rule language does not specify that conversion factors may only be used for fish that are dressed at sea. Some fish dealers have adopted a process, particularly for sablefish, by which fish are landed round, dressed at the plant, weighed to obtain the dressed weight, and then reported as round weight using the conversion factors. Dealers that have used this method often have written the original round weight on the ticket and then crossed that weight out, leaving only the converted weight as a legal record. The department conducted an analysis of these fish tickets, and found that the converted weights underestimated sablefish landings by over twelve thousand pounds in 2009 (Attachment 7). While this is a small percentage of sablefish landings, converted weights for individual landings were often different from actual weights by 10-20%. Accurate records of the weight of fish landed are needed for a variety of purposes, including tracking quotas (individual and fishery), calculating total removals from the population for stock assessments, determining damages for commercial fishing violations, and determining payment for legal overages.

Staff recommends clarifying the fish ticket and monthly remittance report rule language to require that actual round weights are reported for fish that are landed round. In addition, housekeeping changes to the rule language are proposed, for instance, hopper scales are a type of certified scale, so staff is proposing to simplify the regulation to require only that a certified scale be used.

OPTIONS

1. Adopt rule language in proposed OAR 635-006-0210(1)(i)(A), 635-006-0211(4)(a) and 635-006-0215(3)(g) to clarify that conversion factors may only be used for fish that are landed dressed, as shown in Attachment 3.
2. Status quo.

**STAFF
RECOMMENDATION**

1. Option 1

ISSUE 5

FISH DEALER RECORDS AND REPORTS: Require fish dealers to use the Pacific States Marine Fisheries Commission (PSMFC) electronic fish ticket system for submission of fish receiving tickets.

ANALYSIS

Title 50 of the Code of Federal Regulations, Part 660, Subpart C requires fish dealers purchasing fish landed under the TIQ program to submit electronically through the Pacific States Marine Fisheries Commission (PSMFC) electronic reporting system. This requirement is for the initial submission of the landing to account for the pounds landed against individual quotas.

The PSMFC electronic reporting system was initially created to accept trawl TIQ landings but was modified to accept all Oregon landings. Fish dealers have been submitting electronically through this system and then mailing a hard copy to ODFW to meet state requirements for fish receiving tickets. ODFW has recently undergone a process to accept an electronic data feed from PSMFC which eliminates the need for ODFW to receive a hard copy from the fish dealers.

There have been some issues with this process where changes to the initial submission are sent directly to ODFW and not through the PSMFC process. This creates data reconciliation issues between the two systems where there could be an impact to TIQ catch accounting as well as fishery management. Having the fish dealers submit the initial landing as well as all adjustments and corrections through PSMFC would reduce catch accounting errors and streamline the process for ODFW and Oregon's fish dealers.

Staff is proposing to amend the fish ticket rule language to require fish dealers who initially submit a fish receiving ticket through PSMFC to submit all amendments and corrections through the PSMFC electronic reporting system.

OPTIONS

1. Adopt rule language to proposed OAR 635-006-0210(2) to require fish dealers to submit via PSMFC electronic reporting system for all amendments and corrections if the fish dealer submitted the initial fish receiving ticket electronically to PSMFC, as shown in Attachment 3.
 2. Status quo.
1. Option 1

**STAFF
RECOMMENDATION**

ISSUE 6

FISH DEALER RECORDS AND REPORTS: Exempting some species from fish ticket requirements.

ANALYSIS

All species landed by a commercial vessel are required to be weighed and recorded on a fish ticket (OAR 635-006-2010, 635-006-2011). However,

it has been common practice for incidental landings of fish species that have no marketable value to be lumped into one fish tote and not be recorded on a fish ticket. These individuals are generally discarded at sea and have ended up in the landing primarily by being swept into the hold during the sorting and deck cleaning processes. This common practice has been allowed to date, and the department has no current concern with allowing these landings to continue to be unaccounted for due to the small removal they represent.

In order to continue to allow the current practice, staff recommends approving a list of species that would exempt from fish ticket requirements as shown in Attachment 3 (OAR 635-006-0210 (1)(i)(B)). This list was developed in conjunction with several processing groups, who provided input on an initial list of all of the species that have been involved in this activity. This list does not include species with prohibited status, or other federal or state management restrictions.

OPTIONS

1. Approve list of species exempted from fish ticket requirements in proposed OAR 635-006-0210(1)(i)(B) and 635-006-0211(4)(b), as shown in Attachment 3.

2. Status quo

1. Option 1

**STAFF
RECOMMENDATION**

ISSUE 7

**2010 NEARSHORE LOGBOOK REPORT
(Informational Only)**

ANALYSIS

2010 EFFORT AND CATCH

There were 105 Black and Blue Rockfish Limited Entry permits issued in 2010 of which 55 were black and blue permits (BB) and 70 were black and blue permits with a nearshore endorsement (NS). Of these, 42 BB permits and 62 NS permits were active in 2010. 66 vessels with NS permits and 57 BB permitted vessels made landings of black rockfish, blue rockfish, cabezon or other nearshore species in 2010, for a total of 2,324 fishing days. The number of permitted vessels is higher than the number of active permits due to permit transfers during the year. In addition, 44 non-permitted (NP) vessels fishing under the federal open access program, which are required to submit nearshore logbooks if landing nearshore species, made a total of 128 fishing trips. Combined, the number of trips requiring nearshore logbook submissions totaled 2,452 fishing days.

2010 Nearshore Landings

Species	Pounds Landed	Percent of Cap
Black & blue rockfish	231,917	96%
Other nearshore rockfish	14,397	46%
Cabezon	51,761	75%
Greenling	40,489	78%

NEARSHORE LOGBOOKS RECEIVED

Logbook entries were received from 127 fishing vessels in 2010. These included logbooks from BB, NS and NP vessels accounting for a total of 2,200 fishing days or 89.7 percent of all landings into Oregon requiring nearshore logbooks.

This represents an increase of about 15 percent from the 2009 season. Logbooks returned from fishing vessels within the individual permit classes were 92.6 and 92.2 percent for BB and NS permitted vessels respectively. Vessels fishing under open access privileges returned logbooks for 42.2 percent of their trips, a slight decrease from the previous season. The large increase in compliance for permitted vessels was likely due to improved notification and enforcement. In 2010, staff began mailing a list of missing logbook pages to permit owners and Oregon State Police (OSP) throughout the season. OSP then follows up with enforcement action on those cases they deem necessary. Many vessel operators and owners participated fully, with 100% compliance in the program, and continue to assist department staff in improving the Nearshore Logbook program.

OPTIONS

- 1. NA

**STAFF
RECOMMENDATION**

- 1. NA

DRAFT MOTION

I move to adopt the recommended 2012 commercial groundfish, sport groundfish, and fish dealer records and reports regulations and make housekeeping changes as proposed by staff in Attachment 3.

EFFECTIVE DATE

January 1, 2012