

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
 A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Fish and Wildlife, Fish division

635

Agency and Division

Administrative Rules Chapter Number

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RULE CAPTION

Amendments to Rules for Commercial and Recreational Groundfish Fisheries and Fish Dealer Records and Reports

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

December 2, 2011 08:00 a.m.

Ramada Inn & Suites - Portland Airport
6221 NE 82nd Avenue
Portland, OR

Oregon Fish and Wildlife Commission

Hearing Date

Time

Location

Hearings Officer

*Auxiliary aids for persons with disabilities are available upon advance request.***RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: OAR Chapter 635, Divisions 004, 006, and 039 as determined justified.**AMEND:** OAR Chapter 635, Divisions 004, 006, and 039 as determined justified.**REPEAL:** OAR Chapter 635, Divisions 004, 006, and 039 as determined justified.**Stat. Auth.:** ORS 496.138, 496.146, 496.162, 497.121, 506.109, 506.119, 506.129, 508.530 and 508.535**Other Auth.:****Stats. Implemented:** ORS 496.004, 496.009, 496.162, 506.109, 506.129, 508.025, 508.040, 508.535 and 508.550**RULE SUMMARY**

These amended or adopted rules, as determined justified, will modify commercial and sport groundfish fisheries; establish annual groundfish management measures for 2012; and modify requirements for fish dealer records and reports, including Fish Receiving Tickets and Monthly Remittance Reports. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

December 2, 2011**Last Day for Public Comment**

(Last day to submit written comments to the Rules Coordinator)



Lance Thomson

October 14, 2011

Signature

Printed name

Date

* Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Fish and Wildlife, Fish Division

635

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Amendment of OAR Chapter 635, Divisions 004, 006, and 039 to incorporate changes to rules governing commercial and recreational groundfish fisheries, and fish dealer records and reports.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Amendments to Rules for Commercial and Recreational Groundfish Fisheries and Fish Dealer Records and Reports

Statutory Authority: ORS 496.138, 496.146, 496.162, 497.121, 506.109, 506.119, 506.129, 508.530 and 508.535.

Other Authority:

Stats. Implemented: ORS 496.004, 496.009, 496.162, 506.109, 506.129, 508.025, 508.040, 508.535 and 508.550.

Need for the Rule(s): These amended rules are needed to modify commercial and recreational groundfish fisheries, establish annual groundfish management measures for 2012, and modify requirements for fish dealer records and reports, including Fish Receiving Tickets and Monthly Remittance Reports.

Documents Relied Upon, and where they are available:

1. Staff report for the Oregon Fish and Wildlife Commission hearing of December 2, 2011.
2. Decisions of the Pacific Fishery Management Council June 12-17, 2010
3. Federal Register Vol. 76, No. 91 Dated May 11, 2011 pages 27508-27562
4. Federal Register Vol. 76, No. 187 Dated September 27, 2011 pages 59634-59655

The above documents are available for public inspection in the Department of Fish and Wildlife, Fish Division, Third Floor, 3406 Cherry Avenue NE, Salem, Oregon, between 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

Fiscal and Economic Impact, including Statement of Cost of Compliance: See attached.

How were small businesses involved in the development of this rule? The Department held several public meetings in the fall of 2010 to discuss state groundfish regulations and federal harvest specifications and management measures proposed by the Pacific Fishery Management Council (Council) for groundfish fisheries in 2011 and 2012. Regulations for 2011 fisheries were adopted in the Federal Register on May 11th, 2011. Proposed federal regulations for 2012 were published in the Federal Register on September 27, 2011. Representatives of small businesses participated in those meetings. In addition, several public meetings were held in September 2011 to discuss state regulations for the 2012 commercial nearshore groundfish fishery and the recreational groundfish fishery, with representatives of small businesses in attendance. Representatives of small businesses in the seafood processing industry, which will be affected by modifications to rules governing fish dealer records and reports, were contacted directly by department staff during development of these rules.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The alternatives for commercial and sport groundfish rule changes were developed through the Council process, which involves advisory committees and public comment. Department staff also conducted several public meetings to discuss proposed changes to federal and state groundfish regulations. The alternatives for modifications to rules governing fish dealer records and reports were developed in direct consultation with the affected industry.


Signature

Lance Thomson
Printed name

October 14, 2011
Date

Fiscal and Economic Impact Statement for the December 2, 2011 Hearing Regarding Use of PSMFC System for Electronic Fish Tickets

Fiscal and economic impact: Changes are being proposed to the rules that govern the implementation of Trawl Individual Quotas (TIQ) and electronic fish receiving tickets. In order to accurately account for TIQ pounds, dealers are required to report their landing in the Pacific States Marine Fisheries Commission (PSMFC) electronic reporting system. However, due to current rules, most dealers are reporting the initial landing in the PSMFC system, and are printing and submitting paper tickets to ODFW. Fish dealers are then submitting any amendments to landings via a paper ticket to ODFW resulting in the two systems having different data. This proposed rule change would mandate that only a ticket processed in the PSMFC system would be accepted by the state for that landing, thereby having dealers who start a ticket in the PSMFC system only use that system for any updates or changes to a landing.

Proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. The only state agency that might be affected by adoption of these rules is the Oregon Department of Fish and Wildlife (ODFW). There are no additional costs to ODFW associated with these rule changes. Costs of processing fish ticket information may decrease due to increased efficiency, though a significant change is not expected.

B. No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

C. The public will be affected by the adoption of these rules. Dealers will be required to modify the way they report landing information, though costs associated with this should be negligible. These changes are not expected to affect dealer profitability in any significant fashion.

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.

Most businesses affected by this rule are believed to be "small businesses."

Fiscal and Economic Impact Statement for the December 2, 2011 Hearing In the Matter of Exempting Some Species from Fish Ticket Requirements

Fiscal and economic impact: Changes are being proposed to the regulations that would exempt a number of species that are generally not sold from fish ticket requirements. State rule requires all species landed by a commercial vessel to be recorded on a fish ticket. In practice, incidental catches of some unmarketable fish and invertebrates delivered in trawl catches have been collected in a "trash tote" at the plants and not reported on fish tickets. Current rules will be changed to allow this practice to continue.

Proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. The only states agencies that might be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW) and Oregon State Police (OSP). No additional costs to ODFW or to OSP are expected with these rule changes since they simply codify what is now current practice, involving no additional oversight or enforcement effort.

B. No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

C. The public will not be affected by the adoption of these rules. Dealers will be able to continue current practice to deal with the incidental catch and incur no additional costs.

There are two possible rule changes to allow the current practice to continue: by exempting incidental limits of specific species/species group from fish ticket requirements or by allowing the use of a "miscellaneous fish" code to account for these species on the fish ticket. In either case, no economic impacts from the rule change are expected.

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.

Most businesses affected by this rule are believed to be "small businesses."

Fiscal and Economic Impact Statement for the December 2, 2011 Hearing Regarding Clarification of Conversion Factor Language in Fish Tickets

Fiscal and economic impact: Changes are being proposed to the rules that govern the estimation of round weight on fish tickets. Conversion factors for converting weights of dressed fish to whole (round) weights were put into a rule to allow dressing of fish at sea for a limited number of species. However, the original language did not specify that the fish had to be dressed at sea in order to use a conversion factor. A plant might use the conversion factor on fish that were landed whole and then dressed at the plant, which could result in lower reported round weights. Proposed changes would clarify the rule language so that the conversion factor can only be used for fish that are dressed at sea.

Proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. The state agencies that would be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP). No significant additional costs to ODFW or to OSP would be expected to result from these rule changes.

B. No units of local government are expected to be affected by these rules and therefore no significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

C. The public will be affected by the adoption of these rules. Dealers are already required to report landed weight and these rule changes will mean no major changes in doing business and no significant additional costs.

Most fish are landed whole or "round". Fish are at times dressed at sea ("heading," "gutting," or both) to maintain freshness of the catch. A current rule established the use of conversion factors to take the weight of dressed fish and calculate the round weight. These factors vary by fish species and type of dressing applied. The current rule does not specify that fish need to be dressed at sea to apply the conversion factor. Some plants have been using the conversion factor on fish dressed at the plant and then reporting the catch weight using that factor instead of the landed round weight, with the former generally being lower than the latter. A recent ODFW analysis showed that sablefish pounds were underreported by about 12,000 pounds in 2010, though this only accounted for around 0.2% of all sablefish landings. However, the analysis also determined that an individual sablefish landing could have an error of more than 20% in pounds reported, showing that this issue could have a serious impact if the practice became more widespread.

Having accurate records of the round weight of landed catch are important for biological and regulatory management of fisheries. Pounds landed are needed for: (1) tracking quotas (individual and aggregate); (2) determining fishery removals from the population (stock assessment); (3) determining damages for commercial fishing violations (OAR 635-006-0232); and (4) determining payment for legal commercial fishery overages (635-006-0233).

The proposed rule changes seek to ensure that reported weight reflects the condition of the fish when it was landed. Two rule changes will accomplish this end. The first rule will apply to fish tickets and require dealers to report the weight of fish as landed as well as how the fish was dressed, where applicable. The second will apply to monthly remittance reports filled out by the dealer; it will prohibit the use of conversion factors if fish were landed round.

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.

Most businesses affected by this rule are believed to be "small businesses."

**Economic and Fiscal Impact Statement for the December 2, 2011 Hearing
In the Matter of Rules Relating to Adoption of Federal Regulations and
2012 Commercial and Recreational Groundfish Fisheries**

Fiscal and economic impact: Rule changes are being proposed to adopt federal and state groundfish harvest regulations in the commercial and recreational fisheries. There is a proposed reduction in the cap for commercial Cabezon landings. For recreational groundfish fisheries, there are proposed changes in the seasonal depth restriction structure, in inseason management tools, and in the Cabezon fishing seasons.

The proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. The state agencies that could be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP). Significant changes from the previous several years' landings and enforcement needs are not anticipated from these rule changes. Since restrictive commercial management measures have been in effect for several years, significant changes from the status quo are not expected.

B. We do not have enough information or suitable methodology to predict the extent to which units of local government will be affected by these rule changes. Some Oregon port districts may be impacted, but significant impacts are not anticipated for either the commercial or the recreational fisheries. More detailed consideration of impacts is not possible because of data constraints.

C. The public will be affected by the adoption of these rules. The proposed rules are necessarily consistent with actions of the Pacific Fishery Management Council (PFMC), which establishes federal harvest levels for groundfish. Adoption of commercial regulations that exceed these harvest levels would likely result in preemption of state management authority. The harvest levels will limit commercial fishers' and processors' income, but significant changes relative to the current situation are not anticipated. The proposed change in depth restriction structure for recreational groundfish fisheries will affect where fishermen can fish, though the number of angler trips is not expected to be significantly impacted.

Adoption of Federal Regulations

Standard procedure is for the state of Oregon to adopt federal regulations by reference for both sport and commercial fisheries in state waters each year. The state can be more conservative but not more liberal than the federal regulations. There were no substantive changes in federal regulations for 2012, mainly because most changes are made on a two-year cycle and this is an off year.

Federal rules implementing changes for 2011 were adopted in state rule by reference through a temp rule due to timing issues. Therefore, the commission has not had the opportunity to adopt the 2011 changes (by reference to federal rule) into permanent state regulation. The only major change is the implementation of a Trawl Individual Quota program, which means changing management from a cumulative managed fishery to an IFQ (Individual Fishing Quota) or rationalized fishery. In conjunction with development and implementation of the Trawl Individual Quota program, formal allocations of some groundfish species are made for the trawl and non-trawl fisheries.

The PFMC undertook an extensive analysis of economic impacts in the Environmental Impact Statement for the TIQ program. In general, the program is expected to reduce overcapitalization in the fishery, resulting in consolidation (reduction in number) of both vessels and processors participating. This could result in increased participation in fisheries such as shrimp and crab where there exist a significant number of latent (unused) permits. This could negatively impact current participants in those fisheries. The geographic distribution of landings is expected to change as well, likely shifting to those ports with greatest infrastructure for processing and provisioning. The price per pound of some groundfish resources may increase as a result of increased product quality as fishermen will have greater flexibility in how and when they fish. Total volume of landings may decrease in the short term due to very low allocations of some overfished species to many fishermen. However, volume is expected to increase in the long term as fishermen learn how to access healthy stocks while avoiding overfished or prohibited species, regulations that were designed for the pre-rationalized fishery are potentially relaxed (e.g. Rockfish Conservation Area lines), and overfished species are rebuilt. There are likely to be some increased enforcement costs for OSP as a result of the complexity of the program. In addition, there may be increased sampling costs for the state in order to provide data necessary for tracking catches by species and for stock status determination and potentially increased costs in terms of state fishery managers' time as they attempt to assist fishermen in understanding program elements and regulations.

Commercial fixed gear fisheries only saw routine modifications and the sport fishery saw implementation of a seasonal one-fish sub-bag limit for cabezon.

Commercial Groundfish

Commercial nearshore groundfish fishery quotas will be at the same levels as 2011 for all species, except for Cabezon. The 2011 federal harvest limit for Cabezon of 50 mt was relatively close to the state landing cap applied in 2010. The federal harvest limits will then decline to 48 mt in 2012 and to 47 mt in 2013. The state is proposing a 30.3 mt cap for 2012 commercial Cabezon landings, which represents about a 3% decrease from the original state landing cap. The impacts on the commercial fishery will depend on the availability of species to substitute for the Cabezon landings as well as on management restrictions for other sensitive species (e.g., yelloweye rockfish). In recent years, Cabezon landings have not reached the mandated limits, so impacts to fishers are expected to be minimal.

In recent years, commercial seasons have been constrained by a combination of harvest caps and period limits. Since fleet size and efficiency are sufficient to harvest entire harvest caps within several months, period limits were implemented to extend the season. These measures combine to affect the timing, volume, and associated price of landings. Impacts of management measures on individual vessels will differ depending on location or port, product form and target species mixes. The scale of vessel operations and associated fixed and variable costs determines whether a management measure will affect profitability, and provide a comparative advantage or disadvantage relative to other vessels in the fishery.

Ex-vessel prices depend in part on the quantity of product available at a given point in time. If management measures spread landings over a greater period of time, ex-vessel prices should be more stable and on average higher than if landings are taken over a shorter period. However, prices are also dependent on processors' needs and the scale of processing operations.

Potential changes in harvest patterns may also impact businesses that process fish or purchase live fish. Management measures that extend the season may have a positive impact on this

sector by providing product to processors and consumers for a longer period. Product volume and timing will also impact this sector. At times the volume of landings may not be sufficient for large processors because of the scale of their operations.

At the time of this writing, we are unable to project likely positive or negative impacts because of uncertainty associated with the management measures that will be proposed. In addition, data required for bioeconomic models that incorporate fishing choices and predict reactions to regulation such as fishing location and target species are not available. However, for both harvesting and processing sectors we do not expect impacts to be significant because changes in commercial nearshore caps and associated regulations are likely to be small relative to the 2011 season.

Recreational Groundfish

With regard to season structure, the recreational groundfish fishery will be restricted to inside of 30 fathoms from April 1 through September 30 (accounting for 88% of angling trips in 2009-10). This represents a change from the current 40-fathom depth restriction during that period. This change is proposed to reduce impacts to overfished species, specifically yelloweye rockfish, as well as to reduce the potential for further depth restrictions inseason. Nevertheless, further inseason depth restrictions may be necessary if impacts to overfished species are high and that option will remain. All depths will continue to be open for the recreational bottomfish fishery between October 1 and March 31, with the exception of cabezon (discussed below).

Depth restrictions are the primary management measure used in the bottomfish fishery to reduce impacts to yelloweye rockfish and involve a trade-off between the reduction of yelloweye rockfish impacts (a protected species) and fishing opportunities. As depth restrictions become shallower, yelloweye impacts decrease due to lesser catch rates and discard mortality rates (the number of released fish that are assumed to die). At the same time, these restrictions decrease the area available for fishing. Ports that have few or no shallow water rocky reefs, which is the habitat fished by bottomfish anglers, can be extremely affected by depth restrictions. For example, 20-fathom depth restrictions implemented inseason in July the past two years have impacted anglers from Garibaldi more than other areas of the coast, because they have little rocky reef habitat inside 20 fathoms. Anglers from these ports should benefit from having a 30-fathom depth restriction from April to September to keep yelloweye impacts within the quota instead of allowing fishing to 40 fathoms from April to June and then having to restrict the fishery to 20 fathoms from July to September.

Table 1. Percentage of recreational groundfish angler trips at different depths (in fathoms) for ports with over 5,000 trips annually and Oregon ports overall (for months with 40 ftm depth restriction in place in 2009-2011).

Depth (ftm)	All Ports	Bandon	Brookings	Charleston	Depoe Bay	Garibaldi	Gold Beach	Newport	Pacific City
<10	40.2%	10.1%	55.8%	32.2%	34.4%	3.3%	30.6%	46.0%	47.5%
10-20	51.5%	72.2%	42.0%	57.9%	58.4%	54.0%	61.1%	51.1%	51.3%
20-30	7.4%	17.4%	1.9%	8.7%	6.8%	40.7%	7.6%	1.6%	1.2%
30-40	0.5%	0.3%	0.2%	0.6%	0.3%	1.5%	0.8%	0.6%	0.0%
>40	0.3%	0.0%	0.1%	0.6%	0.0%	0.5%	0.0%	0.6%	0.0%

As seen in Table 1, only 0.8% of angler trips for all ports occurred in depths greater than 30 fathoms. Setting the depth restriction at 30 fathoms for the main season should have minimal impact on trips. Although only 7.4% of all angler trips occurred between 20 and 30 fathoms,

Bandon had over 17% and Garibaldi over 40% of trips in that those depth ranges. Avoiding moving the depth restriction to 20 fathoms, as has been done the past two seasons, would likely benefit fishermen in these areas. Note that this analysis does not account for potentially important variables affecting fishermen behavior such as variation in weather, in trip lengths, in gas prices, and in the strengths of other relevant fisheries.

The Central Oregon Coast subarea (Cape Falcon to Humbug Mt) nearshore Pacific halibut fishery will remain restricted to inside of 40 fathoms. Anglers may retain bottomfish while participating in the nearshore halibut fishery, though retention and possession of bottomfish outside of 30 fathoms is prohibited (as stated above). Anglers can retain any bottomfish caught inside of 30 fathoms. This is not expected to have significant impact on halibut angler trips.

Regarding inseason management tools, bottomfish management lines will be established. These lines may be used inseason to implement differential regulations along the coast as necessary, with the aim of reducing impact to overfished species while still allowing some fishing opportunities. These lines will not be used pre-season to allocate quota. They will be located at 45° 20'30" N. latitude at Cape Lookout and at 42° 50'20" N. latitude at Cape Blanco.

For cabezon, a bottomfish species, there is no change to the seasonal (April 1-September 30) one fish sub-bag limit for ocean boat and shore and estuary anglers. Thus, retention of cabezon will be allowed April 1 through September 30, or until the recreational landing cap is reached. A new proposed rule would implement a seasonal spawning/nest guarding closure for cabezon from October 1 through March 31. Cabezon are primarily an incidental catch by anglers targeting lingcod and/or rockfish (>90% of anglers only kept one or less when allowed to keep up to seven); therefore, the proposed change to cabezon regulations (winter spawning season closure) is not expected to have any effect on the number of bottomfish angler trips.

Table 2. The number of groundfish trips by recreational anglers by trip type for years 2004 to 2010.
(Source: RecFIN)

Year	Charter Trips	Private Trips	Total
2004	31,126	25,532	52,658
2005	36,240	35,187	71,427
2006	35,841	35,833	71,674
2007	35,611	31,054	66,665
2008	33,797	38,481	72,278
2009	31,885	39,974	71,859
2010	35,667	41,420	77,087

Summary

Although harvest restrictions reduce positive economic impacts in the short run, conservation through restrictive regulations and Optimum Yields set at the federal level are intended to perpetuate these groundfish resources at higher levels in the long run. Failure to restrict harvests to appropriate levels to allow for rebuilding of stocks may result in more severe adverse economic impacts in the future. The proposed regulations are intended to strike a balance between present and future consumption that sustains fishery resource benefits over time.

Detailed economic analyses are required under federal law (NEPA), and are part of the Environmental Impact Statement (FEIS) filed by the PPMC. The FEIS contains additional information on the economic and social effects of the 2011 regulations. That document is incorporated into this statement by reference.

Most businesses affected by these rules are believed to be "small business."

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.

References:

ODFW (Oregon Department of Fish and Wildlife). 2011. Report on the Rationalized Trawl Fishery off Oregon.

PFMC (Pacific Fishery Management Council) and NMFS (National Marine Fisheries Service). 2009. Proposed Acceptable Biological Catch and Optimum Yield Specifications and Management Measures for the 2009-2010 Pacific Coast Groundfish Fishery Final Environmental Impact Statement Including Regulatory Impact Review and Initial Regulatory Flexibility Analysis.

PFMC (Pacific Fishery Management Council) and NMFS (National Marine Fisheries Service). 2010. Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery: Final Environmental Impact Statement.

Archer, Erik, Mark Karnowski, and Susan Hilber. 2011. Sablefish Conversion Factor Accuracy. Oregon Department of Fish and Wildlife.