

Agenda Item Summary

BACKGROUND

The legislature's adoption of SB 241 in the 2007 session (Attachment 5) clarifies the Commission's authority to create limited entry fisheries by rule and sends appeals of denials of these permits to the Commercial Fishery Permit Board rather than to the Commission. These rules implement these statutory changes. In addition, staff proposes specific changes to the sardine fishery permit renewal dates.

PUBLIC INVOLVEMENT

A Developmental Fishery Board meeting was held, with a conference call option, in Newport on August 29, 2007 to discuss potential changes to the Developmental Fishery Program regarding rule amendments resulting from SB241.

Two sardine fishery conference calls were conducted to discuss potential rule changes. One call on October 25th was conducted with the Sardine Advisory Group; three industry and one public representative participated in the call. All sardine permit holders and processors were invited to a second meeting/call on November 20th. Only three industry members participated.

ISSUE 1

THE COMMERCIAL SARDINE LIMITED ENTRY PERMIT RENEWAL DEADLINE DATE

ANALYSIS

At the September 2007 Commission meeting, the Commission asked ODFW to review and consider modifying the limited entry sardine permit renewal date to be consistent with other commercial limited entry fishery permit renewal dates. Attachment 4 shows all current limited entry fisheries with permit renewal dates. Those fisheries which have been removed from the developmental fisheries program are highlighted in gray on the Table. Not all limited entry fisheries are consistent with the same renewal deadline dates. The administrative rules for some fisheries simply incorporate the statutory renewal language of requiring application for renewal by "December 31 of the permit year." (Gillnet salmon, troll salmon, shrimp and scallop). The statutory language does not identify whether "the permit year" refers to the year for which the permit is being sought, or the year of the current permit that is being renewed. The rules do not currently clarify this ambiguity, but by practice the Department allows these permits to be renewed up until December 31 of the year for which the permit is sought. For fisheries without a statutorily imposed renewal deadline, the Commission has specified by rule that renewal application must be made by "January 31 of the permit year sought" (E.g., Brine shrimp, bay clams, and sea urchins), or "December 31, of the current year [i.e., the year for which the permit is currently held]" (sardines). The Black/Blue Rockfish fishery, by statute, makes permits expire December 31 of each year and requires renewal application by January 1, but allows a grace period until April 1. Dungeness crab permits, by rule, must be renewed at the beginning of each year. The

Yaquina bay roe herring fishery has no renewal deadline specified in either statute or rule.

Option 1

The sardine fishery was removed from the developmental fisheries program and established as a limited entry fishery by rule. To be consistent with the other fisheries established in rule, “January 31 of the permit year sought” would be used. For example if a renewal is sought for 2008 the applicant would until January 31, 2008 to submit a renewal application. Draft rules for OAR 635-006-1015 and 635-005-1075 under Option 1 of Attachment 5 reflect this change. Also under this option, the permit renewal requirements are clarified to show that the “permitted vessel” must make the minimum landing requirements. If an incomplete renewal application is submitted and returned by ODFW, the applicant must return a completed application by March 1 for renewal.

Option 2

The industry meeting participants support, “December 31 of the permit year sought”, as the best option for a new renewal date. They stated that it would give fishermen the most flexibility for renewal. For example, a permit granted for 2007 would have to be renewed by December 31, 2008. One person commented the permit must be renewed prior to fishing in 2008. Under this scenario most fishers would likely renew in late spring to early summer, but the Department would not be able to tell until the end of a subsequent year whether all the permits had been renewed and thus whether any further permits remained to be distributed to those who wished to enter the fishery. Also, it would be virtually impossible for a person who only renewed their permit at the end of the year to make the required landings to renew the permit for the subsequent year.

If the Commission chooses to be consistent with the current practice for limited entry fisheries in statute then the renewal date may be modified to “December 31 of the permit year sought”. For example, if a renewal is sought for a 2008 permit the applicant must submit a renewal application by December 31, 2008. If the applicant would like to participate in the 2008 fishery, the 2007 permit must be renewed prior to fishing in 2008. Draft rules for OAR 635-006-1015 and 635-005-1075 under Option 2 of Attachment 5 reflect this change. This option also clarifies permit renewal requirements to show the permitted vessel must make the minimum landing requirements but does not allow for an additional month for incomplete applications. Staff recommends this option and believes a full year is ample time for the applicant to renew. This option lengthens the time for turnover of permits not renewed, since we would only know at the end of the year how many permits had been renewed in that year and thus how many should have been available in the preceding year for reallocation to others.

Option 3

If the Commission makes no changes, the sardine renewal deadline would stay as December 31 of the current year.

OPTIONS

1. Modify the commercial sardine permit application deadline to be January 31 as stated in Option 1 of Attachment 5.
2. Modify the commercial sardine permit application deadline to be December 31 as stated in Option 2 of Attachment 5.
3. Status quo; sardine permit must be renewed by December 31 of the current year.

STAFF RECOMMENDATION

1. Option 2

ISSUE 2

ADOPT OREGON ADMINISTRATIVE RULES TO IMPLEMENT SENATE BILL 241

ANALYSIS

SB241 passed on April 16, 2007 (Attachment 6). The bill amended Oregon Revised Statutes (ORS) 508.755 to change the appeals process related to fisheries that are removed from the developmental fisheries list by rule and moved to a limited entry program (such as the recent sardine and bay clam fisheries). Currently, the Commission must review permit appeals for these fisheries because no part of the Commercial Fishery Permit Board had authority over these subjects and absent specific authority, the Commission cannot delegate its authority to refuse to issue commercial fishing licenses. ORS 496.112(3). In addition, this legislation requires that, beginning in 2008, all persons denied a developmental fisheries permit or a rule-created limited entry permit, or denied renewal or transfer of developmental fisheries permit or rule-created limited entry permit, must request review by the Commercial Fishery Permit Board. This legislation also expands the membership of the Commercial Fishery Permit Board to include representatives of developmental fisheries and representatives of any new restricted permit system established by administrative rule.

Staff asks the Commission to make a finding that all previous-created limited entry fisheries are “established under section 2 of this 2007 Act” and will be managed under the same legal authority as the other limited entry fisheries, regardless of whether they are created by rule or statute. Staff proposes the Commission adopt parallel rules for all these fisheries. Under the new law, the Commission will no longer be responsible for these appeal hearings.

Membership of the Commercial Fishery Permit Board for the developmental fishery, sardine, bay clams and brine shrimp fisheries is currently being established. Staff will return later to ask the Commission to formally make those appointments.

For issue 2, the draft rules make review of sardine, brine shrimp and bay clam permits similar to the limited entry fishery for urchins. This language is specific to the process for application, the duties of the Commercial Fishery Permit Review Board, and responsibilities of ODFW for review of a denial. Under OAR 635-006-1075(1)(k)(C), the Commission would still retain its authority to waive minimum landing requirements for all limited entry sardine permit holders due to “unusual market conditions”. For consistency the rules also authorize the Commercial Fishery Permit Board to waive minimum landing requirements for an individual permit holder due to “the permit holder's illness or injury, or to circumstances beyond the control of the permit holder” in all the limited entry fisheries with minimum landing requirements.

OPTIONS

1. Adopt draft language as displayed under Issue 2 of Attachment 5.
2. No Action

**STAFF
RECOMMENDATION**

1. Option 1

DRAFT MOTION	I move to affirm that the limited entry bay clam, brine shrimp and sardine fisheries are established under section (2) of SB241, to adopt language as propose by staff in Option 2 of Issue 1, (to modify the sardine permit renewal date to December 31 of the permit year sought); and to transfer authority of the developmental fishery and limited entry sardine, bay clam and brine shrimp fishery permit appeals process to the Commercial Fishery Permit Review Board as shown in Attachment 5.
EFFECTIVE DATE	Upon filing