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Attachment 2

ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED

12/16/2020 4:18 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Recreational Abalone Fishery Closure Extension

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/12/2021 5:00 PM

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

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Filed By:
Lisa Kingsley
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/12/2021

TIME: 8:00 AM - 5:00 PM

OFFICER: ODFW Commission

ADDRESS: Oregon Department of Fish
and Wildlife

4034 Fairview Industrial Dr SE
Salem, OR 97302

SPECIAL INSTRUCTIONS:

Because of the rapidly changing
situation with COVID-19, all or
portions of this hearing may be
conducted electronically. Information
will be posted on our website at
[https://www.dfw.state.or.us/agency/c
ommission/minutes/](https://www.dfw.state.or.us/agency/commission/minutes/)

NEED FOR THE RULE(S):

Protect red abalone from harvest while environmental conditions are not favorable. Oregon's abalone population is vulnerable due to its small size and low density and environmental conditions (warm water leading to low kelp abundance).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Wildlife Division, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142.

FISCAL AND ECONOMIC IMPACT:

The sport fishery for red abalone was initially suspended under an emergency rulemaking made in January 2018. This extension reflects a continuation of the current fishery closure and does not result in any new fiscal and economic impacts.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) State agencies that could be affected by these rules are the Oregon Department of Fish & Wildlife (ODFW) and the Oregon State Police (OSP). No significant changes from the current levels of staffing, expenditures, or revenues are expected to result from the adoption of these particular rules.

No units of local government are expected to be significantly affected by these rules.

The public would be continued to be affected by the continued suspension of a small fishery. The consequences of this action have a minimal effect in the realm of statewide fisheries. When the red abalone sport fishery in Oregon was open, it was small in nature with 280 permits/140 abalone harvested annually. Though the public benefits of red abalone conservation cannot be quantitatively estimated here, it is important to recognize there are real benefits that accrue to current and future generations through conservation-based management practices that promote sustainability.

(2) There may be a minor effect to businesses that would have provided goods and services to those who would have participated in Oregon's sport red abalone fishery.

(a) This would include dive and outdoor supply shops along with hotels and camping locations primarily in southwest Oregon. Since the rulemaking is an extension of a current fishery closure it is not expected to result in any new restrictions or fiscal impacts to these businesses.

(b) No significant changes in these costs are anticipated.

(c) No significant changes in these costs are anticipated.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

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.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The rule changes are believed to be fully compatible with legislative direction on wildlife management in Oregon.

The agency is seeking additional input from the public through this noticed rulemaking process.

AMEND: 635-039-0090

RULE SUMMARY: This rulemaking would continue the fishery closure on the sport fishing of red abalone for three more years.

CHANGES TO RULE:

Inclusions and Modifications ¶

(1) The 2020~~1~~ Oregon Sport Fishing Regulations provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2020~~1~~ Oregon Sport Fishing Regulations.¶

(2) For the purposes of this rule, a "sport harvest guideline" is defined as a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not automatically close a fishery. Upon attainment of a sport harvest guideline, the Department shall initiate consultation to determine if additional regulatory actions are necessary to achieve management objectives. The following sport harvest guidelines include the combined landings and other fishery related mortality by the Oregon sport fishery in a single calendar year:¶

(a) Black rockfish, ~~392.289.1~~ metric tons;¶

(b) Blue rockfish and deacon rockfish combined: ~~82.673.7~~ metric tons;¶

(c) Other Nearshore Rockfish combined: ~~11.70.8~~ metric tons;¶

(d) Cabezon, ~~16.89.4~~ metric tons; and¶

(e) Greenling, ~~42.635.8~~ metric tons.¶

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastrelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serriceps*).¶

(4) In addition to the regulations for Marine Fish in the 2020~~1~~ Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone:¶

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit;¶

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the 2020~~1~~ Oregon Sport Fishing Regulations in the Marine Zone, located under the category of Finfish Species, General Marine Species: 56 fish daily bag limit in aggregate (total sum or number), of which no more than one may be a China rockfish, copper rockfish or quillback rockfish in aggregate, and no more than one may be a cabezon, when retention of cabezon is allowed. Retention of the following species is prohibited:¶

(A) Yelloweye rockfish; and¶

(B) Cabezon from January 1 through June 30.¶

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number);¶

(d) Except as specified in subsection (4)(d)(A), retention of all marine fish listed under the category of Finfish Species, General Marine Species, except Pacific cod, sablefish, flatfish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut; when the sport fishery for general marine species (other than flatfish species) is closed outside of the 40 fathom curve as specified in subsection (4)(f).¶

(A) Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.¶

(B) When the all-depth sport fishery for Pacific halibut is open and the sport fishery for general marine species (other than flatfish species) is closed outside of the 40-fathom curve as specified in subsection (4)(f), fishing with long-leader gear is allowed on the same trip as all-depth halibut fishing as follows:¶

(i) When rockfish are onboard the vessel, anglers are only allowed to retain the species listed under subsection (4)(h)(A) and must use longleader gear as defined in subsection (4)(e)(F).¶

(ii) Pacific cod, sablefish, flatfish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark) may be retained while all-depth halibut fishing, prior to

retaining any rockfish species; ¶

(iii) It is not required to separate all-depth halibut fishing from long-leader fishing by returning to the dock and offloading fish. A long-leader fishing trip must be separated from any other fishing trip where groundfish are retained by returning to the dock and offloading fish; and¶

(iv) All other requirements and prohibitions contained within subsection (4)(h) apply.¶

(e) Harvest methods and other specifications for marine fish in subsections (4)(a), (4)(b) and (4)(c) including the following:¶

(A) Minimum length for lingcod, 22 inches.¶

(B) Minimum length for cabezon, 16 inches.¶

(C) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.¶

(D) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.¶

(E) When angling for groundfish or Pacific halibut in the Pacific Ocean or when in possession of groundfish or Pacific halibut, all watercraft shall have a functional descending device on board and shall use a descending device when releasing any rockfish outside of the 30-fathom curve (defined by latitude and longitude) as shown in Title 50 Code of Federal Regulations Part 660 Section 71. Upon request, a descending device shall be presented for inspection by any person authorized to enforce the wildlife laws or a representative of the Department. In this subsection, "descending device" means a device capable of returning a rockfish back to a depth of at least 100 feet to assist the fish in recompression and to improve the fish's chance of survival.¶

(F) Long-leader gear means fishing gear with the following: one fishing line, deployed with a sinker and no more than three hooks, with a minimum of 30 feet (9.14 meters) between the sinker and the lowest hook, and a non-compressible float attached to the line above the hooks. The hooks can only be equipped with artificial lures or molded soft plastic or rubber imitations of worms, eggs, insects, bait fish, crayfish, etc. 5 inches or less in length and/or artificial flies. Natural bait may not be used.¶

(f) Sport fisheries for species in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections 4(b) and (4)(d). Ocean waters are closed for these species, with the exception of flatfish species, during ~~May~~June 1 through ~~September~~August 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown in Title 50 Code of Federal Regulations Part 660 Section 71, except as provided in subsection 4(d) or when fishing with long-leader gear during such times and in such areas as allowed in federal rule. A 20-fathom, 25-fathom, or 30-fathom curve, as shown in Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line as inseason modifications necessitate. In addition, the following management lines may be used to set area-specific regulations for inseason action only:¶

(A) Cape Lookout (45°20'30" N latitude); and¶

(B) Cape Blanco (42°50'20" N latitude).¶

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 70 (October 1, 2018 ed.). Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water;¶

~~(h) Notwithstanding any other provisions of this rule, o~~On any fishing trip where fishing with long-leader gear (as defined in subsection (4)(e)(F)) occurs seaward of the 40-fathom curve (defined by latitude and longitude) as shown in Title 50 Code of Federal Regulations Part 660 Section 71, the following apply:¶

(A) It is unlawful to retain any species in the Groundfish Group other than yellowtail rockfish (*Sebastes flavidus*), widow rockfish (*S. entomelas*), canary rockfish (*S. pinniger*), deacon rockfish (*S. diaconus*), blue rockfish (*S. mystinus*), redstripe rockfish (*S. proriger*), greenstriped rockfish (*S. elongatus*), chilipepper rockfish (*S. goodei*),

bocaccio rockfish (*S. paucispinis*), or silvergray rockfish (*S. brevispinis*);¶

(B) The daily bag limit is 10 fish in aggregate for the species listed in section (4)(h)(A);¶

(C) A long-leader fishing trip must be separated from any other fishing trip where groundfish are retained by returning to the dock and offloading fish, except as specified in subsection (4)(d)(B)(iii);¶

(D) It is unlawful for an angler who retained fish on a long-leader fishing trip to retain more than 10 fish in aggregate of the species listed in subsection (4)(b) in the same day;¶

(E) It is unlawful to fish for any species in the Groundfish Group, including those listed in subsection (4)(h)(A), inside of the 40-fathom curve or with gear that is not long-leader gear as defined in subsection (4)(e)(F); and¶

(F) Federal rules governing the long-leader fishery will supersede these rules to the extent of any inconsistency, including the definition of long-leader gear.¶

~~(i) Topsmelt and jacksmelt are included in the daily limit for herring, anchovy, sardine, and true smelts of 25 pounds per day in aggregate. Topsmelt and jacksmelt are not included in the General Marine Species daily limit of 5 fish per day.¶~~

~~(5) Take of abalone prohibited, twenty-four hours per day, in all Oregon waters until March 17, 2021.¶~~

~~(6) Effective January 1, 2020, surface buoys used to mark recreational crab pots or rings must be marked in a visible, legible and permanent manner, with information clearly identifying the owner of the crab pots or rings. The identifying information must include first and last name or business name and at least one of the following:¶~~

~~(a) Permanent address;¶~~

~~(b) Phone number;¶¶~~

~~(c) Angler Identification number; or¶¶~~

~~(d) The vessel documentation number issued by the U.S. Coast Guard, or, for an undocumented vessel, the vessel registration number issued by the state~~5) Take of abalone prohibited, twenty-four hours per day, in all Oregon waters until March 17, 2024.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 497.121, ORS 506.119, ~~ORS 496.146~~506.119, ORS 496.138

Statutes/Other Implemented: ~~ORS 496.004, ORS 496.007, 121, ORS 496.146, ORS 496.162, ORS 506.129, ORS 496.0162, ORS 506.129~~496.016, ORS 497.022