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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

04/19/2021 3:08 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend Rules for Commercial Coastal Pelagic Species Fisheries

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/18/2021 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: 06/18/2021

TIME: 8:00 AM - 5:00 PM

OFFICER: Oregon Fish and Wildlife
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/commission/minutes/>

NEED FOR THE RULE(S):

This rule is needed to modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries in order to be consistent with federally adopted regulations. Consistency with federal regulations established under the Magnuson-Stevens Fishery Conservation and Management Act is needed to provide orderly fisheries and enhance the ability of the State to enforce regulations necessary for conservation of CPS stocks in conjunction with other regional, state, and federal fishery management entities.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

1. Pacific Fishery Management Council Decision Summary Document April 6-15, 2021

2. Staff Report prepared for the Oregon Fish and Wildlife Commission hearing on June 18, 2021.

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, Fish Division, Second Floor, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142.

FISCAL AND ECONOMIC IMPACT:

The 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) for enforcement costs. With no directed Pacific sardine fishery and limited incidental landings on the Pacific coast again in 2021-22, Ad Valorem revenues to ODFW from sardine landings will be lower than historical levels and will likely be similar to those since the directed fishery has been closed (2015). Overall, no significant changes in these agencies' operations or expenditures are expected as a result of this rule change.

B. Units of local government may 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 could be affected by the adoption of these rules, as discussed below:

Commercial Pacific Sardine

The Harvest Guideline (HG) is adopted annually by the PFMC for the entire harvest area (Pacific Ocean off of CA, OR and WA), based on available biomass estimated by the sardine stock assessment and a predetermined harvest control rule. When biomass is estimated below the cutoff for directed commercial fishing as it is this year, the HG is set at zero but harvest specifications and management measures are still set to account for small-scale fisheries, tribal fisheries, and incidental catch in other fisheries (Table 1).

See Table 1. Pacific sardine harvest specifications (attached to notice filing)

In addition to continuing the closure of the directed Pacific sardine fishery for 2021-2022, the PFMC has adopted an annual catch target of 3,000 mt, and the following accountability measures for incidental catch and the live bait fishery (active primarily in California):

- o An incidental sardine catch allowance of 20% for commercial coastal CPS fisheries, except live bait and minor directed fishing;
- o Directed take of sardines in the live bait fishery will be allowed. A per-trip limit of 1 mt of Pacific sardine will apply if the live bait fishery attains 1,800 mt;
- o If the annual catch target of 3,000 mt is attained, a 1 mt per trip limit of Pacific sardine would apply to live bait, and a 1 mt per trip limit of incidentally caught Pacific sardine would apply to commercial CPS fisheries;
- o An incidental per-trip allowance of 2 mt of sardines applies to non-CPS fisheries.

These stringent measures will continue the low level of economic benefit accruing to Oregon businesses involved with sardine harvest relative to recent years. It is difficult to quantify the exact magnitude of the decrease in benefits because the fish migrate annually along the entire U.S. West Coast and beyond, and incidental sardine catch may be landed in any of the three states.

Commercial Pacific sardine landings in Oregon are outlined in Table 2 below. The value of sardine landed in Oregon depends on many factors including the coast-wide harvest guideline, availability and quality of sardine, and market conditions. Data and models to predict the availability and quality of sardine or market conditions do not exist.

However, given that the directed commercial sardine fishery will remain closed for the 2021-2022 season and the allowed incidental sardine catch is limited, it is clear that the value of the fishery will be quite low relative to years when the directed fishery was open (prior to 2016).

See Table 2. Pounds and Value of Pacific Sardines Landed in Oregon (attached to notice filing)

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) It is not expected that compliance with proposed regulations will increase the effect of compliance costs, as adoption of the Pacific sardine 2021-2022 fishery closure, annual catch target of 3,000 mt, and the accountability measures for incidental catch and the live bait fishery are very similar to the PFMC federal guidelines for 2021-2022, in terms of potential impacts to Oregon businesses.

(2)(a) The main types of small business subject to the rules are commercial fishermen targeting coastal pelagic species. The department issued 19 sardine limited entry permits (2 resident and 17 nonresident) in 2020. Wholesale dealers/processors who buy Pacific sardine would be affected and there were 7 in 2015, the last year that directed commercial fishing was open. Other small businesses affected would be marine fuel providers, commercial fishing businesses that use large volumes of sardine as bait, marine service and supply businesses, tackle shops, and restaurants/cafes/bars. Information is not available to estimate the number of those types of small businesses affected.

(b) No significant changes in these costs are expected for the small businesses subject to the rule.

(c) No significant changes in these costs are expected for the small businesses subject to the rule.

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

The proposed rule changes were developed through the Pacific Fishery Management Council's public process, which involves advisory committees and public comment. Representatives of small businesses participated in that process.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 635-004-0375

RULE SUMMARY: This amended rule will modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries in order to be consistent with federal regulations governing Pacific sardine harvest specifications and management measures for the July 2021-June 2022 fishing season. Federal rules recommended by the Pacific Fishery Management Council (PFMC) for the 2021-2022 season include a continued closure of the Pacific sardine directed commercial fishery along the entire West Coast due to low stock biomass, and limits on incidental sardine harvest in other commercial fisheries. Federal rules have not published at the time of this filing, but are expected to reflect PFMC recommendations and will publish prior to the rulemaking hearing.

CHANGES TO RULE:

635-004-0375

Scope, Inclusion, and Modification of Rules ¶

(1) The commercial coastal pelagic species fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of

Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking coastal pelagic species. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:¶

(a) Code of Federal Regulations, Part 660, Subpart I, (October 1, 2018-20 ed.); and¶

(b) ~~Federal Register Vol. 85, no. 129, dated July 6, 2020 (85 FR 40135)~~[INSERT CITATION WHEN AVAILABLE]¶

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable coastal pelagic species fishing requirements. Where federal regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.¶

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0380 through 635-004-0545 for additions or modifications to federal coastal pelagic species regulations.¶

¶

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

Statutory/Other Authority: ORS 496.138, ~~ORS 496.162~~, ~~ORS 506.036~~, ~~ORS 506.109~~, ~~ORS 506.119~~, ~~ORS 506.129~~

Statutes/Other Implemented: ~~ORS 496.162~~, ~~ORS 506.109~~, ~~ORS 506.129~~

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Table 1. Pacific sardine harvest specifications

Fishing year (July 1 – June 30)	Overfishing Limit (OFL)	Acceptable Biological Catch (ABC)	Annual Catch Limit (ACL)
2014-2015	39,210	35,792	23,293
2015-2016	13,227	12,074	7,000
2016-2017	23,085	19,236	8,000
2017-2018	16,957	15,479	8,000
2018-2019	11,324	9,436	7,000
2019-2020	5,816	4,514	4,514
2020-2021	5,525	4,288	4,288
2021-2022*	5,525	3,329	3,329

*The COVID pandemic prevented some routine federal research and as a result, there was no new stock assessment, which is why the OFL is the same value as the year prior. The ABC and ACL have been reduced to account for scientific uncertainty.

Table 2. Pounds and Value of Pacific Sardines Landed in Oregon

Year	Pounds	Metric Tons (mt)	Total Value	Price per pound
2005	99,449,714	45,110	\$5,550,237	\$0.06
2006	78,633,884	35,668	\$3,714,520	\$0.05
2007	92,910,549	42,144	\$4,539,791	\$0.05
2008	50,593,285	22,949	\$5,659,963	\$0.11
2009	47,357,065	21,481	\$5,277,187	\$0.11
2010	45,970,905	20,852	\$5,234,097	\$0.12
2011	24,302,389	11,023	\$3,177,915	\$0.14
2012	93,957,315	42,618	\$8,978,373	\$0.10
2013	57,817,000	26,225	\$6,298,778	\$0.11
2014	17,170,662	7,778	\$3,522,051	\$0.21
2015	4,698,943	2,131	\$812,686	\$0.17
2016	8,816	4	\$318	\$0.04
2017	2,553	1	\$248	\$0.10
2018	20,433	9	\$3,145	\$0.15
2019	27,825	13	\$3,760	\$0.14
2020	1,017	0.5	\$0	\$0.00