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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

04/27/2022 8:49 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend Rules for Commercial Coastal Pelagic Species Fisheries

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/17/2022 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.

CONTACT: Oregon Department of Wildlife
503-947-6233
Lisa.M.Kingsley@odfw.oregon.gov

4034 Fairview Industrial Dr SE
Salem, OR 97302

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: 06/17/2022

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 virtually. Information will be posted on our website at <https://www.dfw.state.or.us/agency/commission/minutes/>

NEED FOR THE RULE(S)

These rules are needed to modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries 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.

In addition, these rules are needed to improve the description and enforceability of specifications for commercial purse seine net gear used in the squid fishery by adjusting the language to accommodate common net construction while maintaining the functional intent of the rule to minimize benthic impacts from this gear type. Further revision of the gear specifications in OAR is needed to accommodate common net construction practices while maintaining the intent of the rules by allowing attachment of purse rings or purse ring bridles less than 36 inches above the bottom net only within 60 feet of either end of the net.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Pacific Fishery Management Council Decision Summary Document April 8-13, 2022
2. Staff Report prepared for the Oregon Fish and Wildlife Commission hearing on June 17, 2022.

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, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142. Contact Lisa Kingsley at 503-947-6233 or lisa.m.kingsley@odfw.oregon.gov to view by appointment between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department has solicited input from representatives of underrepresented communities likely to be affected on whether the proposed rule will have a fiscal impact on the community, the extent of the fiscal impact, and whether the rules will have significant impact on underrepresented communities. For a complete list of persons, the department has invited to provide pre-notice comments please contact Lisa Kingsley at 503-947-6233 or lisa.m.kingsley@odfw.oregon.gov.

FISCAL AND ECONOMIC IMPACT:

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

- A. The Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP) are the two agencies affected by these rule changes, and ODFW does not anticipate significant effects to fiscal status or operations. Since 2015, the sardine fishery has been closed except for limited incidental landings and ODFW has not received significant sardine landing revenue. Revised market squid gear restrictions will simplify OSP enforcement and improve operations.
- 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).

In addition to continuing the closure of the directed Pacific sardine fishery for 2022-2023, 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 2,500 mt;
- o If the annual catch target of 3,800 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 until the ACL is reached.

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 2022-2023 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).

Commercial Market Squid Purse Seine Gear

In March 2021, the Oregon Fish and Wildlife Commission adopted specifications for commercial purse seine net configuration intended to reduce adverse impacts to the environment and gear conflict with the Dungeness crab fishery. The rules were amended in March 2022 to remove a potential loophole that could have allowed legal gear configurations that did not meet the intent of the rule. The OAR modification proposed at this time better aligns the recently adopted regulations with a commonly used method of constructing purse seine nets. Without this revision, harvesters would need to reconfigure their nets to comply with the specifications in OAR, incurring costs for gear modification and possibly lost fishing time. Nets used in the fishery should already be compliant with the proposed amendment; therefore, the amendment avoids imposing an additional cost on squid harvesters.

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) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

It is not expected that compliance with proposed regulations will increase the effect of compliance costs, as adoption of the Pacific sardine 2022-2023 fishery closure, annual catch target of 3,000 metric ton (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) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s);

The main types of small business subject to the rules are commercial fishermen targeting coastal pelagic species. The department issued 21 sardine limited entry permits (three resident and 18 nonresident) in 2021.

Wholesale dealers/processors who buy Pacific sardine would be affected. There were seven 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.

For the commercial squid fishery from 2016-2021 there were 57 unique vessels with landings, with a range of 11-40 vessels participating per year. The squid fishery is still relatively new in Oregon, so it is possible that participation will change in future years.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

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

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

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 sardine fishery 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. The proposed market squid purse seine gear rule changes were developed in consultation with the Market Squid Advisory Panel (MSAP) convened by ODFW, which consists of representatives of squid fishing and processing businesses.

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

No. The proposed rule changes were developed through the Pacific Fishery Management Council process, which involves advisory committees and public comment.

NOTE: Additional PDF filed with this filing not included in this document. Please contact Department of Fish and Wildlife for a copy of this document.

RULES PROPOSED:

635-004-0375, 635-005-0931

AMEND: 635-004-0375

RULE SUMMARY: These amended rules would modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries to be consistent with federal regulations governing Pacific sardine harvest specifications and management measures for the July 2022-June 2023 fishing season. Federal rules recommended by the Pacific Fishery Management Council (PFMC) for the 2022-2023 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.

In addition, these amended rules would modify state regulations for purse seine gear in the market squid fishery to align gear specifications with practical net construction considerations and improve enforceability.

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 REFERENCE 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 506.125~~ORS 506.119

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

AMEND: 635-005-0931

RULE SUMMARY: These amended rules would modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries to be consistent with federal regulations governing Pacific sardine harvest specifications and management measures for the July 2022-June 2023 fishing season. Federal rules recommended by the Pacific Fishery Management Council (PFMC) for the 2022-2023 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.

In addition, these amended rules would modify state regulations for purse seine gear in the market squid fishery to align gear specifications with practical net construction considerations and improve enforceability.

CHANGES TO RULE:

635-005-0931

Fishing Gear - Squid Fishery ¶¶

(1) For the purposes of OAR 635-005-0930 through 635-005-0922 and 635-012-0030 through 635-012-0150, "take" is defined to include attracting any squid by light.¶¶

(2) It is unlawful to take market squid for commercial purposes using a purse seine net that:¶¶

(a) Exceeds 1,800 feet in length;¶¶

(b) Exceeds 2,600 meshes in depth, excluding chaffing strip and corkline strip;¶¶

(c) Exceeds 1 7/8 inch mesh size, excluding chaffing strip and corkline strip;¶¶

(d) Has a chaffing strip or a corkline strip that is more than 25 meshes wide;¶¶

(e) Has purse rings or a purse ring bridle attached less than ~~than 36 inches above the lead line~~ [than] 36 inches above the lead line, except purse rings or purse ring bridles may be attached less than 36 inches above the lead line within 60 feet of each end of the net;¶¶

(f) Is not pursed using a rib line that is a minimum of 36 inches above the lead line; or¶¶

(g) Is pursed using a steel cable purse line.¶¶

(3) It is unlawful for a vessel to pump market squid onboard directly from the pursed seine of another vessel unless squid so received make up no more than 20% of the weight of each landing and the vessel receiving squid in such manner:¶¶

(a) Has lawfully deployed purse seine gear during the current year and pumped resultant catch onboard the same vessel for delivery to a port of landing or fish dealer in Oregon;¶¶

(b) Possesses onboard, in working order, legal seine gear capable of catching market squid including but not limited to seine net, skiff, and pumping gear; and¶¶

(c) Documents the vessel that made the set, any other vessel pumping squid from the pursed seine, and information on catch and location in the logbook required under OAR 635-004-0376.

Statutory/Other Authority: ~~ORS 506.036, ORS 506.119, ORS 506.129, ORS 506.10119~~

Statutes/Other Implemented: ~~ORS 506.1209, ORS 506.1029~~