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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

10/17/2023 10:25 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adopt a Conservation and Fishery Management Plan for Red Abalone and Extend the Fishery Closure

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/15/2023 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:

Steven Emerson

Rules Coordinator

HEARING(S)

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

DATE: 12/15/2023

TIME: 8:00 AM - 5:00 PM

OFFICER: Michelle Tate

HEARING LOCATION

ADDRESS: McMinnville Community Center, 600 NE Evans Street, McMinnville, OR 97128

SPECIAL INSTRUCTIONS:

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person or virtually. Additional information regarding participation will be posted on our website at www.dfw.state.or.us/agency/commission/minutes/. The meeting can be viewed at www.youtube.com/user/IEODFW. Any changes to the meeting format (to virtual only if emergency arises) will be posted to our website as soon as possible.

NEED FOR THE RULE(S)

The conservation plan and extension of fishery closure are needed to protect abalone from overharvest while environmental conditions in the nearshore marine waters are not favorable. Oregon's abalone are in decline and vulnerable to further loss due to the small populations size, patchy spatial distribution, low densities, and poor environmental conditions (i.e., marine heatwaves, persistent warm ocean water, decline in kelp, competition with sea urchins). The conservation plan is needed to maintain sustainability of the abalone population and to ensure future opportunity to resume the recreational fishery.

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, Fish Division, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142. Contact Steve Emerson at 503-947-6233 or steven.c.emerson@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. <https://www.dfw.state.or.us/OARs/index.asp>

FISCAL AND ECONOMIC IMPACT:

The sport fishery for red abalone was initially suspended under emergency rulemaking in 2018, followed by extension of the fishery closure in 2021. This new rulemaking reflects an indefinite 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 ODFW and OSP, primarily through additional staff time associated with awareness, and compliance. No significant changes from the current levels of these agencies' staffing, expenditures, or revenues are expected to result from the adoption of the proposed rule.

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

The public would continue to be affected by continued suspension of a small, boutique recreational abalone fishery. The consequences of this action have a minimal effect in the context of statewide fisheries. When the recreational red abalone fishery in Oregon was open, the level of participation was low 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 that there are real benefits that accrue to current and future generations of Oregonians through conservation-based management practices that promote sustainability.

In general, fishery harvest restrictions may reduce short-term benefits, but they are necessary to sustain fishing opportunities and contribute to healthy ocean ecosystems in the long term. Failure to constrain harvests to appropriate levels may result in more severe economic impacts in the future. An indefinite closure of the red abalone fishery in Oregon is needed to preserve the economic and ecosystem-health benefits associated with healthy abalone populations for future generations of Oregonians. This Conservation and Fishery Management Plan for Abalone is intended to strike a balance between present and future use for the purpose of sustaining fishery resource benefits over time.

(2)(a) There may be a minor effect to businesses that would have provided goods and services to those who would have participated in Oregon's recreational red abalone fishery. This would include dive and outdoor supply shops along with hotels and camping locations primarily in south-west 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.

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

(2)(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 businesses is consistent with the proposed rule.

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

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

At the Commission hearing, public correspondence and testimony will be accepted into the record as part of the rulemaking process.

AMEND: 635-039-0090

RULE SUMMARY: This information item will present the Conservation and Fishery Management Plan for Abalone in Oregon, and rulemaking will extend closure of recreational fishery indefinitely.

CHANGES TO RULE:

635-039-0090

Inclusions and Modifications ¶¶

(1) The ~~2023~~current annual 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 ~~2023~~current annual 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, 389.1 metric tons;¶¶
- (b) Blue rockfish and deacon rockfish combined: 68.8 metric tons;¶¶
- (c) Other Nearshore Rockfish combined: 15.8 metric tons;¶¶
- (d) Cabezon, 18.0 metric tons; and¶¶
- (e) Greenling, 33.4 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 2023 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 ~~2023~~current annual Oregon Sport Fishing Regulations in the Marine Zone, located under the category of Finfish Species, General Marine Species: 5 fish daily bag limit in aggregate (total sum or number), of which no more than one may be a cabezon, when retention of cabezon is allowed. Retention of the following species is prohibited:¶¶
 - (A) Yelloweye rockfish;¶¶
 - (B) Cabezon from January 1 through June 30; and¶¶
 - (C) Quillback rockfish.¶¶
- (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 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). A 20-fathom, 25-fathom, 30-fathom, or 40-fathom curve, as shown in Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line for depth-based inseason modifications as necessary. 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) 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.¶

~~(5j) Take of abalone is prohibited, twenty-four hours per day, in all Oregon waters until March 17, 2024.~~

Statutory/Other Authority: ORS 496.138, ORS 496.146

Statutes/Other Implemented: ORS 496.162