

## Agenda Item Summary

### BACKGROUND

#### GENERAL FEDERAL AND STATE REGULATIONS

State rules governing the Pacific sardine fisheries are based on rules adopted federally. The Pacific Fishery Management Council (PFMC) conducts a significant public process when determining the Harvest Guideline (HG) and regulatory recommendations, which are considered and implemented (occasionally with adjustments) by the National Marine Fisheries Service (NMFS). The Oregon Fish and Wildlife Commission (Commission) incorporates federal regulations annually as the basis for additional or more conservative regulations adopted through the state process (the state has the latitude to adopt concurrent or more conservative regulations; not more liberal).

#### ADDITIONAL STATE REGULATIONS

Through separate public processes, Oregon Department of Fish and Wildlife (department) staff develops recommendations for sardine on which the Commission takes action.

In 2006, the directed fishery for sardines became a limited-entry fishery with 26 permits issued. At that time, sardine abundance and HGs allowed the Oregon fishery to proceed throughout the season. Since then, the abundance of sardines and allowable harvest has declined. In 2008, the fishery off Oregon was affected by closures that forced a later than usual start date, an earlier than normal end date, and closed the fishery for over a month during the height of the season. Consequently, some of the permitted vessels had difficulty making the landings requirements for permit renewal. A new permit requirement that took effect in 2008 also made transferring permits more difficult, further complicating the implementation of the fishery.

Members of the industry approached department staff with the need to consider changes to state regulations and offered some recommendations. Department staff also recognized that circumstances had changed and met with the industry to discuss the concerns and develop options for the Commission to consider.

Four issues are set forth here for the Commission to consider: 1) adopting federal harvest limits for 2009 and related housekeeping rules; 2) changes to permit renewal requirements, owner/operator requirements, and issuance of an industry-wide waiver of permit renewal requirements for 2009; 3) instituting a lottery system for permits; and 4) tendering.

### PUBLIC INVOLVEMENT

Department staff held three public meetings with the sardine industry representatives in Astoria, OR to discuss the 2009 season, changes to landing requirements, waivers for permit renewal, permit transfers, a lottery system for issuing permits, tendering, and other outstanding concerns. Meeting dates were October 30, 2008, January 23, 2009 and February 18, 2009.

Participants at these meetings included Sardine Advisory Board members, permit holders, processors, fishers, representatives of the Oregon State Police (OSP), and ODFW staff. Additionally, ODFW staff received written comments via e-mail.

**ISSUE 1**

**ADOPT 2009 ANNUAL HARVEST SPECIFICATIONS AND MANAGEMENT MEASURES**

**ANALYSIS**

The federal harvest guideline (HG) for the 2009 Pacific sardine fishery off Oregon, Washington and California was published in the Federal Register (Vol. 74, No. 33) on Friday, February 20, 2009. The coastwide maximum HG for the sardine fishery in 2009 was set at 66,932 metric tons (mt) which is 25 percent less than in 2008. The initial overall HG established an initial directed harvest fishery of 59,232 mt, an incidental fishery of 6,500 mt, and a research set-aside of 1,200 mt. These amounts are allocated among three pre-set fishing periods off the west coast as shown in the following table:

	<b>Period 1</b>	<b>Period 2</b>	<b>Period 3</b>
	Jan 1 - Jun 30	Jul 1 – Sep 15	Sep 15- Dec 31
Incidental Set Aside (mt)	1,000	1,000	4,500
Directed Fishery Allocation (mt)	22,006	25,293	11,933

The National Marine Fisheries Service (NMFS) will take automatic in-season actions to adjust allocations in a subsequent period resulting from actual harvests over or under the allowed harvest during a fishing period. The federal regulations published on February 20, 2009 adopted an early closure of the directed sardine fishery for the first period (January 1-June 30) because the allowable harvest for that period was projected to have been taken.

Federal in-season regulatory actions, such as an early closure for the sardine fishery during a fishing period, were implemented in 2008 and are likely to become more routine. Presently there is no Oregon Administrative Rule (OAR) to make in-season modifications to the sardine fishery similar to what is in place for the Groundfish Fishery. The proposed new OAR 635-004-0017 is a housekeeping measure to provide for in-season modifications.

**OPTIONS**

1. Adopt the federal harvest plan, including HG with set-asides and season structure, and new OAR for inclusions and modifications (proposed OARs 635-004-0016; 635-004-0017).
2. Adopt more conservative measures.

**STAFF RECOMMENDATION**

Option 1.

## ISSUE 2

## MODIFICATIONS TO PERMIT REQUIREMENTS (i.e., landing requirements, owner/operator requirements, and landing requirement waiver)

### ANALYSIS

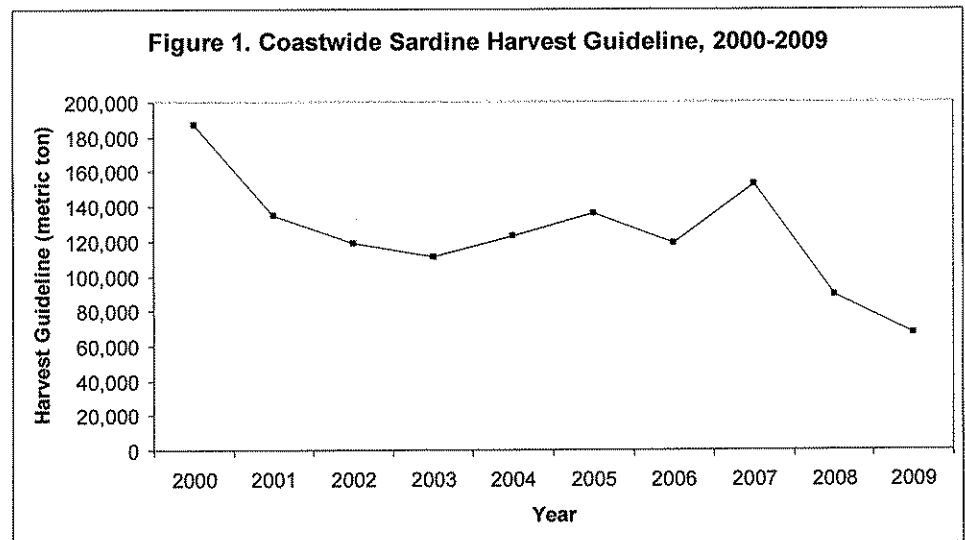
The issues of changing landing requirements for permit renewal, changing the owner/operator permit requirement, and issuing an industry-wide waiver of the present landing requirements for 2008 are interrelated and adjustments to all three have been requested by industry. Recommended adjustments to these regulations have been precipitated by the following:

- Greatly reduced HG
- Extremely short and intermittent seasons
- Uncertain or reduced buyer/processor activity

### LANDING REQUIREMENTS

Currently, Oregon sardine permit holders are required to make a minimum of 10 landings of at least five mt each, or landings totaling \$40,000 in ex-vessel value, to renew their permits for the following year. When adopted at the April 2006 Commission meeting, Commissioners stated their goal was to assure that permits are actively used and not held for speculative purposes.

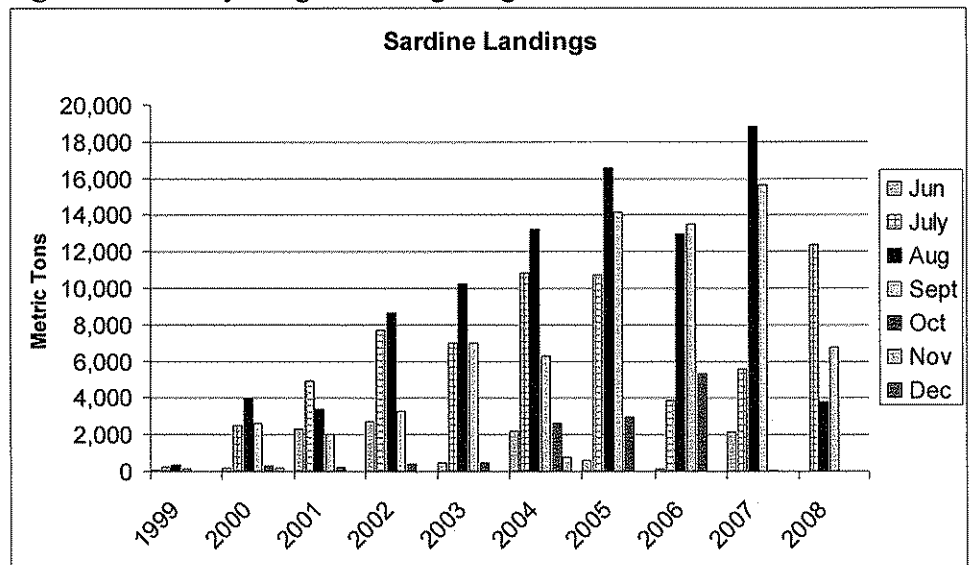
Last fall, the industry requested that the issue of landing requirements for permit renewal be re-examined in light of recent declines in the annual HG. From the time of its inception in 2000 through 2007, the annual federal coastwide maximum HG has exceeded 110,000 mt. (see Attachment 7, Table 1). These levels of allowable harvest afforded fishing opportunity throughout the period that sardine were present in waters off Oregon and Washington. However, the recent significant reductions in the HG (Figure 1) have resulted in considerably less fishing opportunity for the Oregon fleet. For 2008, the coastwide maximum HG was set at 89,093 mt; a 42 percent reduction from 2007. The 2009 coastwide maximum HG was further reduced from that in 2008 by 25 percent.



Recent lower HGs resulted in early closures of the coastwide fishery in all three allocation periods in 2008 and an early closure in the first period in 2009. It is expected that the second and third periods in 2009 will also close early. Projections based on 2008 daily landing rates suggest that the Oregon fishery for 2009 may be limited to 23 days in the second period and five days in the third period, perhaps less. The projection for the first allocation period in 2009 was 122 days based on 2008 daily landing rates, but it actually closed after only 50 days due to a marked increase in fishing activity off California.

Fishing activity by Oregon vessels has declined in proportion to fishing opportunity over the last two years. In most years the fishery has started in June and ended in October, with majority of sardine usually landed from July through September during the second and third harvest period allocations (Figure 2). Sardines were landed in five separate months in nine of the past 10 years; however in 2008, sardines were landed in only three separate months. While the number of vessels making landings of sardines in Oregon remained at an all time high of 22 over the last two years, the number of landings in 2008 declined by 45 percent from 2007, essentially mirroring the 42 percent decline in the HG in those two years (Attachment 7, Table 1).

Figure 2. Monthly Oregon landing weights of sardines.



Under these circumstances, many permit holders find it much more difficult, both operationally and economically, to meet the landings requirements to renew their Oregon permits. In deciding whether to make a sardine trip, Oregon permit holders are faced with uncertainties over the length of the season, weather conditions, vessel breakdowns, and sardine availability, and whether or not processors will be ready to offload and buy their catch. Some processors may not operate during short openings because it is too costly and too difficult to keep experienced plant workers during the long closed periods. Eliminating the landing requirements altogether or when the federal coastwide maximum HG falls below 100,000 mt would allow participants in the fishery that have substantial

capital investment in the fishery greater flexibility to make decisions to participate based on economics, safety, and resource availability.

Public input gathered from Sardine Advisory Board members, processors, fishers, and the public at the three recent public meetings unanimously favored elimination of the landing requirements for permit renewal primarily due to economic and safety concerns. When faced with the concerns expressed previously by the Commission and given the alternative of a two-tiered system based on the level of the federal coastwide maximum HG, there was a consensus that eliminating landing requirements for permit renewal when the HG was less than 100,000 mt was a reasonable alternative. The concept was thought to maximize available permits during times that the HG could accommodate the effort. Proposed OAR 635-006-1075(1)(k)(A)(iii) accomplishes this effect.

#### OWNER/OPERATOR REQUIREMENT

Beginning in 2008, permit holders were required to be either owner or operator of the vessel. This requirement is unique to the sardine fishery.

Although not in the OAR related to permit transfers, this requirement impacted permit transferability making it more difficult and potentially costly to transfer permits for this fishery. The option to lease a permit to another vessel would allow fishermen to make better business decisions rather than making them choose between losing a more lucrative fishing opportunity or risk losing a sardine permit. This may be especially important if the sardine resource is more limited, as in recent years, and other fishing opportunities exist.

Public input gathered at the recent public meetings was also unanimously in favor of eliminating the owner/operator permit requirement. Although other restrictions on permit transfers including the limitation of two transfers per year were discussed, the unique owner/operator permit requirement was seen as the most onerous by industry. Reasons given were primarily economic and related to the option of leasing a vessel to meet landing requirements for permit renewal.

Subsequent to the public meetings, the department's Licensing section expressed concerns about eliminating the owner/operator permit requirement if landing requirements for permit renewal were in place. The proposed rule modification ties the owner/operator permit requirement to the coastwide maximum HG in conjunction with landing requirements. This was determined by Licensing to be viable.

Eliminating this requirement (proposed OAR 635-006-1015(1)(m)(E)) when the HG is less than 100,000 mt should limit the possibility of permit speculation while allowing permit holders more flexibility in balancing business decisions without risking loss of their permit when the sardine resource is lower.

### INDUSTRY WIDE WAIVER FOR 2009

The Commission may waive landings requirements for all permit holders due to unusual market conditions (OAR 635-006-1075(1)(k)(C)). The Commercial Fishery Permit Review Board (CFPRB) may also waive landings requirements, on a case-by-case basis, for illness, injury or circumstances beyond the control of the permit holder. Waiver issues for permit renewal have been put before the Commission every year since the fishery was converted to limited entry. In January 2007, the Commission granted an industry wide waiver of the landings requirements for 2006 which resulted in eight permit holders that did not meet the landing requirements being able to renew their permits for 2007. Four permit holders, who did not meet landings requirements in 2008, are seeking waivers of the landing requirements to renew their permits for 2009.

Public input at the recent meetings overwhelmingly supported an industry-wide waiver due to market conditions. However, some maintained that the CPFRB should consider individual waiver requests. Market conditions in 2008 are described in the section below for Commission consideration.

It is important to note that a decision to modify the landing requirements for permit renewal as recommended by staff without the industry-wide waiver would penalize the four permit holders that did not meet the landing requirements for permit renewal in 2008 when the HG was less than 100,000 mt.

### **2008 Market Conditions**

Viewed from one perspective, the market conditions for 2008 were unusual, in that what occurred last July were conditions never seen before by the fishery. The season began in July with many processors expecting to be in the midst of the Pacific whiting season. This places limits on up to seven of the Oregon sardine buying operations that bought sardines in either 2007 or 2008. Once these plants are geared up to do whiting, it takes time to change direction. Last year processors attempted to start whiting on several occasions but due to lack of whiting, small whiting, and high by-catch rates they started, stopped, and delayed multiple times. In order to be ready to process whiting, these plants were not able to recruit sardine boats to the degree that they have in past years. Looking at processing whiting with a shoreside whiting allocation of 97,000+ mt and sardines with a severely reduced quota, whiting appeared to be the best bet for many processors. This was especially true as some estimates were that the July release quota of sardines would be harvested in 14 to 21 days. Processors did not recruit sardine boats to the extent possible.

Many permit holders were aware that the season might only last weeks in July. Others were unsure about what they were facing for season length as normally July is not a month when California catches many sardines. Several boats were still enjoying good squid catches off California and were reluctant to run North with fuel at nearly \$5 per gallon until they absolutely had to. Others were involved in Alaska salmon programs in July and knew that many processors would be processing whiting under

normal conditions. They thought they would have ample chance in September (after whiting was over) to prove up their permits. This made sense as potentially sitting idle for 2 months when they could be fishing salmon did not make economic sense.

Viewed from another perspective, the market conditions for 2008 are what might be expected for a fishery that continues to develop and may be considered normal market conditions. It is in the nature of markets in our economic system to fluctuate from year to year and resource variability and global economics are integral parts of that system. If the Commission believes that even under normal market conditions, some permit holders may not get contracts with processors, or may choose, for other reasons, not to participate in the fishery, the rule precludes the Commission from granting a waiver of the landing requirements. The supply and end markets for sardines will always be subject to annual fluctuation which has and will affect the market as a whole.

In short, both the fishermen and the processors had to make business plans around the projected quotas, projected length of seasons, high fuel costs, overlapping seasons of sardines and whiting, and projected processing capacity, and then place their boats or plants in the best position to prosecute a business plan that was best suited for their operation.

## OPTIONS

1. Remove annual landing requirements for permit renewal; remove owner/operator requirement; and waive landing requirements for permit renewal industry-wide due to unusual market conditions in 2008.
2. Suspend status quo landing requirements (10 landings  $\geq$  5mt each or \$40,000 total ex-vessel value) and the owner/operator requirement when the annual federal coastwide harvest guideline is equal to or less than 100,000 mt; and waive landing requirements for permit renewal industry-wide due to unusual market conditions in 2008.
3. Retain status quo regulations for landing requirements (minimum of 10 landings  $\geq$  5mt each or \$40,000 total ex-vessel value) and owner/operator requirements; and do not waive landing requirements for permit renewal.

## STAFF RECOMMENDATION

Option 2.

## ISSUE 3

## WHETHER TO INSTITUTE A PERMIT LOTTERY SYSTEM

## ANALYSIS

The current number of permits available for the sardine fishery is 25. One of the original 26 limited-entry permits did not meet qualifying landing

requirements and was not renewed in 2008. There is presently no mechanism for issuing new permits to participate in the sardine fishery if permits are not renewed and the number of available permits declines. Oregon has a lottery system in place for many other limited-entry fisheries that allows for issuing new permits should the number of permits available fall below a specified number.

Public input on this topic was unanimously in favor of instituting a permit lottery system although there was no consensus on how low the number of available permits should be before allowing a lottery. A variety of opinions ranging from 20 to 26 permits were expressed by industry participants. Processors felt that keeping the greatest number of permits available would help ensure enough fishing capacity to fully utilize the resource even if some permit holder vessels decided to pursue other opportunities.

Allowing for a lottery (proposed OAR 635-006-1035(11)(e); 635-006-1085(1),(1)(j)) if the number of permits fell below 24 was thought to be a workable compromise. This would provide a mechanism to keep the number of permits close to the maximum number (26) and thus allow efficient harvesting of the resource. The department would not be expected to hold a lottery every time a permit is not renewed.

## OPTIONS

1. Establish a lottery system to allow the issuance of new permits when the number of available permits falls below 24.
2. Status Quo. (No lottery system, any non-renewed permits are not available for reissue.)

## STAFF RECOMMENDATION

Option 1.

## ISSUE 4

## TENDERING

## ANALYSIS

Historically vessels fishing for sardines have cooperated with each other by sharing the catch in a pursed seine of one vessel. For example, when one vessel purses its seine around a school of sardines, it may purse more sardines than the vessel has capacity to hold. In these cases, operators of two permitted vessels each pump fish from a single pursed seine onto their own vessel. Each vessel lands the fish it pumped, and the landed fish have been credited to that vessel on a fish ticket. This practice is ecologically beneficial in that it reduces discard mortality and is economically beneficial for the vessel pumping fish from another vessel's net and the fishery as a whole.

Concern has been expressed by some members of the industry that a permitted vessel is allowed to land sardines caught by another permitted catching vessel without carrying a net on board, solely for the purpose of



transporting sardines to a port of landing. This practice has the potential to dramatically escalate the current derby style fishery.

The consensus view expressed at recent public meetings was that it is important to preserve the historic practice of catching vessels occasionally sharing catch, while prohibiting vessels from participating in the fishery with the sole purpose of transporting fish. Consultation with a Sardine Advisory Board member and examination of logbooks indicate that the practice of catching vessels sharing the catch occurs infrequently.

Consultation with OSP and industry representatives at recent public meetings and subsequent written communication suggested that prohibiting tendering as defined in OAR 635-004-0020 would not adequately resolve the issue for the sardine fishery and changes to the definition of tender might inadvertently affect other fisheries. Industry representatives provided input on this issue and left the meeting with the understanding that the department and OSP would modify rules as needed. The proposed new OAR applicable to the sardine fishery (OAR 635-004-0012) defines a catching vessel and allows limited sharing of catch only by catching vessels. This rule was discussed with a Sardine Advisory Board member and was developed jointly by the department and OSP (OAR 635-004-0012).

## OPTIONS

1. Adopt a new OAR that defines catching vessel in the sardine fishery. This option allows limited sharing of fish caught by catching vessels and requires documentation of shared catches in logbooks.
2. Status Quo. Permitted vessels not equipped to catch Sardines can tender.

## STAFF RECOMMENDATION

Option 1.

<b>DRAFT MOTION</b>	I move to adopt the recommendations for the 2009 sardine fishery as proposed in Attachment 6.
<b>EFFECTIVE DATE</b>	May 1, 2009