

## Agenda Item Summary

### BACKGROUND

Current permanent regulations do not allow for commercial harvest of baitfish (also known as forage fish) in Oregon inland waters with gear other than hook and line, except for the Columbia and Umpqua rivers, a small herring fishery in Yaquina Bay, and an exception for an allowance for vessels to catch anchovies to be used in commercial fishing operations on the catching vessel. Oregon Revised Statutes (ORS) prohibit commercial fishing in select inland waters such as Nestucca Bay (ORS 511.606) and waters of Curry County (ORS 511.206 and ORS 511.306).

In August, 2009, the Oregon Fish and Wildlife Commission (Commission) adopted rules allowing vessels to harvest anchovies in Tillamook, Yaquina, Umpqua, and Coos estuaries to be used by the catching vessel as live bait in commercial fishing operations. A petition was received on October 23, 2009 seeking to amend the Commission's rule and gain additional opportunity to harvest anchovies in Yaquina Bay to be sold as live bait. The Commission reviewed and denied the petition at the January, 2010 meeting. The petitioner re-submitted the petition with few changes on February 15, 2010 (gear, permit status/duration) which substantially complies with the APA requirements for these petitions. On April 20, 2010 the petitioner withdrew the petition (Attachment 3) and re-submitted the same petition (see Attachment 2) on April 22, 2010. The Commission must respond to the petition within 90 days.

The decision before the Commission under this exhibit item is whether or not to accept the petition and initiate rulemaking to amend the current rule, or deny the petition and leave the anchovy harvest rules as they are.

### PUBLIC INVOLVEMENT

The APA requires the Commission to solicit public input on whether to accept the petition and initiate rulemaking. If the Commission decides to accept the petition, it will seek additional public comment as part of the normal rulemaking process.

### ANALYSIS

The Attorney General has adopted a uniform rule regarding disposition of rulemaking petitions, Oregon Administrative Rule (OAR) 137-001-0070. All agencies must apply this rule as written. The petition received from Mr. Richard Wood substantially complies with the rule requirements.

While the petition proposes new rule language, staff understands the petition to seek an amendment of the current OAR's governing commercial harvest of anchovies, and thus analyzes the petition and seeks public comment on the following key elements:

- a) Options for achieving the current rules substantive effects while reducing negative impacts on businesses.  
*Analysis:* The current rule and the proposed amendment would all equally affect small businesses.

- b) Continued need for the existing rule.  
*Analysis:* The existing rule must continue to allow limited harvest of anchovy for use as bait from Oregon's bays and estuaries.
- c) Complexity of the current rule.  
*Analysis:* The current system is no more complex than most commercial fishery rules, and the amendments would not simplify the system.
- d) Whether the rule overlaps or duplicates other agency or government rules.  
*Analysis:* No other agency regulates anchovy harvest.
- e) The degree to which technology or economic conditions have changed since the existing rules were adopted.  
*Analysis:* Neither the technology nor the economics have changed since the Commission originally adopted this system in August 2009.

Overall, staff believes these factors neither favor nor undercut the petition.

## ISSUE 1

### CONSIDER ALLOWING ANCHOVY HARVEST FROM INLAND WATERS FOR A RETAIL MARKET

#### ANALYSIS

The petitioner is requesting to be allowed to harvest anchovies for commercial purposes under a limited permit system. This system would allow one permit to be issued to a licensed bait company and used in Yaquina Bay to harvest and sell anchovies as live bait from May 15 through October 31 using a lampara net. The permit would have temporary status and be in effect for three years.

Concerns with the activity remain the same as those discussed in January, 2010. The most frequently raised concern of allowing this activity is potential impacts to juvenile salmonids rearing or migrating through the estuary. The proposed time period (May 15 through October 31) occurs within the peak out-migration period for juvenile Chinook and coho in coastal systems. Funding and staff resources are not available to monitor this activity.

As with the previous petition, staff is recommending the Commission deny the petition. This action would not prohibit the petitioner from conducting a viable business by harvesting anchovies in the ocean.

**OPTIONS**

1. Accept the petition and direct the staff to initiate rulemaking consistent with Commission direction.
2. Deny the petition.

**STAFF  
RECOMMENDATION**

Option 2.

DRAFT MOTION	I move to deny the petition submitted by Mr. Richard Wood and direct the Director to notify the petitioner of the Commission's decision in writing.
EFFECTIVE DATE	N/A.