

## Agenda Item Summary

### BACKGROUND

Oregon law requires the Oregon Fish and Wildlife Commission (Commission) to adopt angling regulations annually. Issues 1 and 2 of this Agenda Item Summary deal with adoption of these rules. The 2011 angling regulation proposals development takes place during the second "Interim Year" following the extensive public process used to develop the 2009 Oregon Sport Fishing Regulations. Oregon Department of Fish and Wildlife (department) staff followed Commission "Interim Year" guidelines, outlined below, for development of 2011 angling regulation proposals.

These proposals (displayed in Attachment 4) were developed by staff through consultation with Department of Justice (DOJ), Oregon State Police (OSP) and key constituent groups. The department proposes changes to the 2011 regulations that fall into one or more of the following categories:

- Critical conservation needs
- Housekeeping and error corrections
- Inadvertent restrictions
- Regulation changes directed by basin plan adoption
- New or expanded non-controversial angling opportunities

In addition, proposals for expanded angling opportunities are being proposed as part of the department's emphasis on increasing recruitment and retention of anglers and implementation of the 25-Year Angling Enhancement Plan. Several proposed angling regulations address fishery enhancement actions identified in the 25-Year Angling Enhancement Plan and provide for expanded or diversified angling opportunities.

### PUBLIC INVOLVEMENT

The department distributed news releases in late July summarizing key issues associated with the proposed 2011 angling regulations and soliciting public comments. We distributed a complete set of proposals and briefing documents to interested citizens and anyone else who asked for a packet as a result of our news releases and also posted angling regulation development information on website. Regulation proposals were also discussed at public meetings of the Inland Sports Fishing Advisory Committee, the Warmwater Working Group, and at public meetings on McKenzie River trout management.

**ISSUE 1****ADOPT THE 2011 OREGON SPORT FISHING REGULATIONS AS ADMINISTRATIVE RULES; CHANGES OF UNIVERSAL DATES FOR FISHING SEASON OPENERS****ANALYSIS**

Staff proposes that the Commission essentially re-adopt the 2010 Oregon Sport Fishing Regulations with three sets of changes. Issue 1 concerns the first two sets of changes, which are merely technical and noncontroversial:

- The first change deals with changing all references in the OARs concerning the “2010 Sport Fishing Regulations” to refer to the “2011 Sport Fishing Regulations,” as shown in Attachment 3.
- The second set of changes will effect a uniform change of date for the fishing season openers to reflect that the fourth Saturdays of April and May 2011 are different dates than the fourth Saturdays of April and May 2010. Other date changes specific to days of the year have been changed, as described in Attachment 3.

We expect the first two tasks to be non-controversial; therefore we have included action on both of these items in one draft motion.

**OPTIONS**

1. Accept the proposed regulation changes.
2. Modify the proposed regulation changes.
3. Reject the proposed regulation changes.

**STAFF RECOMMENDATION**

Accept changes to the printed version of the 2010 rules and make universal changes to the 2010 Oregon Sport Fishing Regulations pamphlet to reflect calendar dates of opening of the 2011 fishing season as proposed by staff.

**DRAFT MOTION**

I move to amend OAR Chapter 635 Divisions 008, 011, 013, 014, 016, 017, 018, 019, 021, 023 and 039 as proposed by staff in Attachment 5, and to uniformly reflect the calendar dates for trout season openers as described in Attachment 3 and shown in Attachment 4 [with the following exceptions . . .].

**EFFECTIVE DATE**

January 1, 2011.

**ANALYSIS**

This issue relates to actual proposed changes in the angling rules for 2011. Development of the 2011 Oregon Sport Fishing Regulations takes place in an interim year, the second interim year after the more extensive public process that was used to develop the 2009 Oregon Sport Fishing Regulations. Staff proposals again this year follow interim year guidelines with a focus on error correction, housekeeping and clarification changes. In addition to interim changes, staff has proposed several rules for expanded or diversified angling opportunities including rule changes related to the implementation of the 25-Year Recreational Angling Enhancement Plan's related rule changes (see Key Issue 4 below).

Proposed changes are highlighted in Attachment 4 which lays out in table format, all proposed rule changes for the 2011 Oregon Sport Fishing Regulations pamphlet. Current proposals have been given a proposal number and are highlighted in yellow. Rules previously adopted by the Commission are also included in Attachment 4 for pamphlet development purposes and are highlighted in grey, but have no proposal numbers.

**Key Issues**

Staff have identified several "Key Issues" to highlight in the August 6<sup>th</sup> Commission meeting presentation to provide further analysis on the conservation or utilization issues related to the regulation proposal as well as provide expanded background material on the proposals. These key issues are summarized below with additional information presented in Attachment 3.

Key Issue 1- Two-rod language clarifications: There are several clarifications related to the adoption of the two-rod rules in 2010. These clarifications are designed to address staff and public comment on needed areas of clarification including which waterbodies are not included under two-rod rules; that the two-rod endorsement is not a license (it is a validation), how the two-rod validation impacts anglers assisting disabled anglers and other clarifications. Expansions of the two-rod angling areas are limited to the Alton Baker Canoe Canal (primarily a series of impounded waters) but there is building interest to expand the two-rod endorsement to flowing waters of the state. Public proposals for expanded two-rod angling will be taken up as part of the 2013 Public Process for angling regulation development.

Key Issue 2 - Closure of Eulachon or "smelt" harvest in Oregon's inland waters: Eulachon were listed under the Endangered Species Act (ESA

as threatened in March of 2010. Staff is proposing a restriction on the harvest of “smelt” in inland waters including bays, estuaries, and rivers, as a general statewide and Zone Regulation. The proposal will restrict the harvest of eulachon but still allow for harvest of the four other “smelt” species found in Oregon inland and coastal waters including Whitebait (*Allosmerus elongates*), Longfin (*Spirinchus thaleichthys*), Surf (*Hypomesus pretiosus pretiosus*), and Night smelt (*Spirinchus starksi*). These species of smelt are not easily distinguished by anglers so in order to protect listed Eulachon; a statewide restriction is being proposed prohibiting harvest of all smelt species in Oregon’s inland waters.

Rationale for Listing. On November 8, 2007, National Marine Fisheries Service (NMFS) received a petition from the Cowlitz Indian Tribe to list southern eulachon (populations in Washington, Oregon, and California) under the ESA. The Cowlitz Indian Tribe's petition sought delineation of a southern eulachon "Distinct Population Segment" (DPS) extending from the U.S.-Canada border south to include populations in Washington, Oregon, and California. In March 2008, NMFS determined that the petition presented substantial scientific and commercial information indicating the petitioned action may be warranted, and initiated a status review. In March 2010, NMFS listed the Southern DPS of eulachon as threatened under the ESA. The final rule became effective on May 17, 2010. Staff will present information on factors affecting eulachon abundance, and historical and current eulachon fisheries.

Key Issue 3 - McKenzie River Redside Trout: Staff is proposing two regulatory changes for the McKenzie River that address fishery issues that will affect trout angling opportunities. These proposed changes are intended to reduce angler impacts on native “Redside” (rainbow) and cutthroat trout in the McKenzie River in response to public concerns on the status of native trout and impacts from stocked hatchery trout. The first proposed rule change will create a new 5-mile section of the McKenzie River; Hayden Bridge upstream to Hendricks Bridge where trout would not be stocked and use of bait for trout fishing would be prohibited; thereby reducing hooking mortality on wild trout in this non-stocked area. Retention of hatchery trout that drift down the river from above Hendricks Bridge would be allowed along with continuing to allow salmon and steelhead anglers to use bait during the peak of these anadromous fish runs. The second set of proposed rule changes will close a winter fishery for trout in the Leaburg Dam to Forest Glen Boat Landing reach where OSP has found an extraordinary number of anglers fishing illegally with bait and retaining wild trout.

These proposed changes are part of a more comprehensive department effort to evaluate the McKenzie River hatchery trout fishery in terms of angler benefits and impacts to native trout. Staff will be presenting an

overview of these studies and evaluation as part of the proposed 2011 McKenzie River angling regulation changes.

In addition to these proposed rule changes, new formatting (similar to the Rogue River) is being proposed which should allow anglers to better understand specific regulations for trout, salmon and steelhead in each section of the McKenzie River.

Key Issue 4 - Tualatin and Yamhill trout fisheries: In 2010 temporary rules were put in place to reinstate limited consumptive native trout angling in the Tualatin and Yamhill river basins which were curtailed in the late 1990's as part of winter steelhead ESA conservation and recovery efforts. Recent NOAA Fisheries findings have determined that streams on the east-slope of the Coast mountain range are not part of critical winter steelhead recovery area; therefore the department can consider rescinding some of the winter steelhead conservation measures implemented in 1999 which reduced consumptive trout angling in the Willamette Valley. The angling public has expressed interest in reinstating some level of consumptive trout angling in this geographic region through various public venues including the 2006 Angler Survey, 25-Year Recreational Angling Enhancement Plan, Angling Regulation Processes, and through direct contact with the department. There was wide public support for the 2010 temporary rule including support from fish conservation groups. Staff will present information on implementation and monitoring of these reinstated fisheries.

Key Issue 5 - Consideration of crappie limits statewide and for specific waterbodies: Assessments of the biological and/or social support for crappie daily bag or length limits were completed following the 2009 Public Process for angling regulation development where a public proposal for restrictive statewide (excluding boundary waters on Columbia and Snake rivers) daily catch limits on crappie was considered but rejected by the Commission. The Commission directed staff to continue to work with the warmwater angling community, within the Warmwater Working Group, on potential regulations for crappie limits. ODFW Warmwater Fish Biologists, working with members of the Warmwater Working Group developed angler and biological surveys for five key waterbodies in Eastern Oregon; Prineville, Owyhee, Bully Creek, Willow Creek and Brownlee reservoirs. Objectives of biological and angler surveys were to assess the need for restrictive crappie limits (daily bag limits or length limits) in order to provide a better "quality" crappie fishery (more, or larger fish), or to address social concerns raised by the warmwater angling community (no limit devalues the fishery, anglers harvesting too many crappie and potential for fish being sold, waste of game fish, etc). Staff will present an overview of actions taken in consideration of restrictive crappie regulations on a statewide, regional, and specific water body basis including consideration of restrictive crappie limits on Brownlee

Reservoir and a staff proposal for a 25 crappie per day, 8 inch minimum length regulation for Willow Creek Reservoir.

Key Issue 6 - Washington has proposed barbless hook regulation for Columbia River; mouth to McNary Dam: The Washington Fish and Wildlife Commission adopted a barbless hook regulation for salmon and steelhead fisheries on the Columbia River (mouth to McNary Dam) contingent on Oregon adopting this rule in 2011. Based on the department's previous analysis of the benefits of barbless hook restrictions, we recommend that this proposal be rejected and use of barbless hook continues to be an angler's choice. Washington Department of Fish and Wildlife's (WDFW) assessment of the barbless hook proposal for the Columbia River is that it will facilitate easier release of fish legally hooked in the mouth. The department's assessment of barbless hooks presented in 2009 supports the fact that use of barbless hooks have been shown to facilitate release of fish, but other key factors are far more important related to post-hooking and release mortality. Hook location, use of bait, water temperatures, handling procedures (fish-fighting methods and time, netting practices, atmospheric exposure, release practices etc.) are far more important factors than whether the hook is barbed or not.

Key Issue 7 - On July 13, 2010, the Northwest Environmental Defense Center (NEDC) filed a petition asking the Commission to amend the angling regulation OARs to prohibit the use of baits cured with sulfites (Attachment 7). Because this agenda item was already on the Commission's schedule, the petition was denied as moot, and therefore NEDC's petition is found in Attachment 8 (public correspondence). Staff included the proposed rule into the set of angling regulations being considered by the Commission for the development of the 2011 Oregon Sport Fishing Regulations as proposal 61P.

ODFW is currently working with egg cure manufactures on non-regulatory approaches to phase out the use of sodium sulfite in egg cures. Specific timelines have been developed to phase out the sale of egg-cures containing sodium sulfite to allow for the sale of existing inventories of egg cures and development of replacement cures. Although studies have shown that that eggs treated with sodium sulfite can cause mortality in juvenile salmonid in laboratory studies, there is no critical conservation issue with the current use of eggs cured with sodium sulfite. Additionally, the enforcement of the proposed ban on eggs containing sodium sulfite would be problematic since specific tests for sodium sulfite would need to be conducted in the field by state police. Therefore, staff recommends that this public proposal be rejected and that non-regulatory actions are allowed to continue to phase out use of sodium sulfite treated eggs.

Staff has also proposed several formatting changes, typographical or grammatical corrections to improve the readability of the 2011 Oregon Sport Fishing Regulations. Additional information on the nature of these changes is contained in Attachment 3.

In anticipation that the Commission will approve the universal date change to reflect season openers for 2011 in its action on Issue 1, staff has also shown those date changes in Attachment 4 as they will appear in the Sport Fishing Regulations pamphlet.

## **OPTIONS**

1. Accept the proposed regulation changes.
2. Modify the proposed regulation changes.
3. Reject the proposed regulation changes.

## **STAFF RECOMMENDATION**

Accept the proposed regulation changes as recommended by staff.

### **DRAFT MOTION**

I move to adopt the 2011 Sport Fishing Regulations pamphlet as proposed by staff in Attachment 4 to reflect changes made to the 2010 rules [with the following changes] and authorize staff to make text or formatting changes to correct typographical or grammatical errors, correct inadvertent inconsistencies, improve readability or to meet publishing needs.

### **EFFECTIVE DATE**

January 1, 2011.

**ANALYSIS**

Staff will provide an overview of the proposed revisions to the Public Process for Angling Regulation Development. Revisions of the process were initiated following the adoption of the 2009 Oregon Sport Fishing Regulations, which was the third year the Public Process was used. Staff have completed an initial revision of the Public Process designed to address coordination issues and the high volume of public proposals which are ultimately rejected by the Commission primarily due to lack of staff and/or public support. The revised process continues to incorporate a review of public proposals by a public advisory group made up of interested anglers, but this group's role is proposed to be only advisory to staff. A draft of the revised Public Process along with background and supporting information has been completed and included in Attachment 6. This draft has been distributed to department staff for peer review, comments and revisions and to two public advisory groups for comments; the Inland Sports Fishing Advisory Committee and Warmwater Working Group.

The staff presentation at the August 6, 2010 Commission meeting will highlight key issues that are addressed in revisions, rationale for revisions, and how revisions may impact the angling public, department staff, and the Commission deliberations and actions.

The next major Public Process is scheduled to be implemented after revisions to the current process are completed, and if keeping to the four-year cycle, will be initiated in the fall or winter of 2011 for development of the 2013 Angling Regulations. It is expected that final adoption of revised Public Process Oregon Administrative Rules (635-011-0050) will take place as part of the August 2011 meeting in conjunction with adoption of the 2012 Oregon Sport Fishing Regulations. Prior to adoption in August, the Commission will be provided with an information briefing on the revised process and draft administrative rules, tentatively scheduled for June 2011.

**OPTIONS**

1. Provide input and guidance and make changes to the current process.
2. Status Quo

**STAFF  
RECOMMENDATION**

Option 1.