

Agenda Item Summary

BACKGROUND

Over the years, many managers and other Oregon Department of Fish and Wildlife (Department) staff have written or amended commercial fishing regulations. While the Department does have guidelines for writing or amending regulations, none exist for style, structure, grammar, or consistency. Additionally, many rules are written to address temporary or one-time issues, leaving outdated regulations in rule or creating inconsistencies. Regulations for fisheries are located in multiple divisions in the Oregon Administrative Rules (OAR). Regulations for a specific fishery may exist in multiple divisions, which forces industry, enforcement, and management to review all applicable divisions to give or obtain accurate information. It also means when future rule changes are considered, there is an increased possibility of one or more regulations being omitted from updates, causing further inconsistency and confusion.

This project is intended to eliminate, as much as possible, the negative implications listed above in a two-fold approach: a restructuring of regulations within Divisions 004 (Fisheries Other Than Salmon and Shellfish) and 005 (Commercial Shellfish Fishery), and a reorganization of regulations across applicable divisions to consolidate regulations for specific fisheries to the extent possible. The overall goal of this project is to create a more consistent, readable, easily searchable, and better organized structure that industry, enforcement, and management can understand and use.

The Oregon Fish and Wildlife Commission (Commission) received an informational briefing on the proposed commercial fishery rule restructure and reorganization in March 2012. Since that time, the draft rules have undergone a final round of review and editing by Department and Oregon State Police (OSP) staff. Project staff also met with the Department's Assistant Attorney General to clarify specific legal aspects of the draft rules, and consulted the commercial fishing community to obtain their input.

PUBLIC INVOLVEMENT

Although this is a housekeeping exercise with little or no change to the intent of the rules, Department staff undertook a two pronged process to inform and solicit input from the commercial fishing community.

Staff formed a focus group made up of 13 commercial fishery participants, processors, and organizations representing a wide range of fisheries and fishery related businesses. Focus group participants were provided with a draft copy of the regulations and asked to review them for clarity, consistency, and ease of use. Participants provided feedback in a variety of forms including specific written comments and edits on a number of rules, general written comments on the entire draft (Attachment 4), and verbal comments. Specific focus group comments and edits were incorporated into the draft rules whenever possible, and when not possible, an explanation was provided to the commenter.

Staff also reached out to the commercial fishing industry through

commercial fishery commodity commissions including the Oregon Trawl Commission (pink shrimp and groundfish) and the Oregon Dungeness Crab Commission. Staff gave presentations on the project and made draft regulations available to anyone interested at regularly scheduled meetings of these bodies.

ISSUE 1

CHANGES TO THE STRUCTURE AND ORGANIZATION OF CURRENT DIVISIONS 004, 005 AND 006 OF OREGON ADMINISTRATIVE RULES

ANALYSIS

The restructure portion of this project involves restructuring Divisions 004 (Fisheries Other Than Salmon and Shellfish) and 005 (Commercial Shellfish Fishery), into related fishery sections, instead of the current loosely organized individual fishery sections. For example, in Division 004 there are currently nine specific fisheries and one non-titled general regulation section. Additionally, various regulations are intertwined among these ten sections, some of which apply to other fisheries or regulations outside of their specific location. Restructuring within Division 004 reduces the number of unique regulation sections to an organizational and general regulations section, and four general fishery sections. The organization and general regulations section includes regulations which apply to all fisheries within Division 004. Each of the general fishery sections first describe regulations which apply to each fishery in that section, then describe detailed regulations, fishery by fishery.

The restructure will also modify the incorporation by reference of federal regulations into Division 004. The Commission has annually incorporated federal regulations for groundfish fisheries into Division 004 by reference for a number of years. However, many federal groundfish regulations are also repeated in Division 004, and these have not always been modified to match changes at the federal level. The restructured Division 004 eliminates repetition of federal groundfish regulations, relying instead on incorporation by reference, but leaves in place any state groundfish regulations that modify or are in addition to federal regulations. This approach clarifies for users that federal regulations are the primary basis for regulating groundfish in Oregon waters, while also clearly stating that the Commission may adopt additional, more conservative regulations, and provides references to those where they exist. The restructure adds incorporation of federal rules by reference for Coastal Pelagic Species and Highly Migratory Species, which are also subject to extensive federal regulation. These changes will prevent any inconsistencies when federal rules are updated.

Divisions 004 and 005 will also have a revised, broad definitions rule encompassing all commonly used defined terms in each division. Finally, outdated or incorrect regulations and references have been deleted or revised.

The reorganization portion of this project focuses on moving Restricted Participation System Fisheries (Limited Entry) regulations for all fisheries other than Columbia River gillnet and ocean troll salmon fisheries, from Division 006 (Commercial Gear; Licenses, Poundage Fees, Records and

Reports), into their respective fishery sections in Divisions 004 and 005. The major benefit of this reorganization approach is that each specific fishery section in Divisions 004 and 005 will house all its related regulations. This means that industry, management, and enforcement will only need to review one or two sections of a single division, rather than multiple parts of multiple divisions. General licensing regulations will remain in Division 006.

As part of the reorganization component of this project, the Developmental Fisheries Program and Species List will officially be removed from regulation (Division 006), and species formerly belonging to that list will be managed under their related fishery sections in Divisions 004 and 005.

The project is large-scale, involving major changes to Divisions 004, 005, and 006. Schematics of the current and proposed organizations for Divisions 004 and 005 can be found in Attachments 5 and 6. The Commission is asked to adopt the staff recommended reorganization and restructure of commercial fishing regulations as shown in Attachment 3.

OPTIONS

1. Adopt staff recommended reorganization and restructure of commercial fishing regulations as shown in Attachment 3.
2. Status quo.

STAFF RECOMMENDATION

1. Option 1.

DRAFT MOTION

I move to adopt the staff recommended reorganization and restructure of commercial fishing regulations as shown in Attachment 3.

EFFECTIVE DATE

Upon filing