

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
 A Statement of Need and Fiscal Impact accompanies this form

**FILED**  
 11-10-14 4:21 PM  
 ARCHIVES DIVISION  
 SECRETARY OF STATE

Department of Fish and Wildlife 635  
 Agency and Division Administrative Rules Chapter Number  
Therese Kucera (503) 947-6033  
 Rules Coordinator Telephone  
Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302  
 Address

**RULE CAPTION**

Amendments to Rules for Commercial and Recreational Groundfish Fisheries.  
 Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
1-9-15	8:00 a.m.	Oregon Department of Fish and Wildlife, 4034 Fairview Industrial Drive	Oregon Fish and Wildlife

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

OAR Chapter 635, Divisions 004, 006, and 039 as determined justified.

**AMEND:**

OAR Chapter 635, Divisions 004, 006, and 039 as determined justified.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 496.138, 496.146, 496.162, 497.121, 506.036, 506.109, 506.119, 506.129, 508.530

**Other Authority:**


**Statutes Implemented:**

ORS 496.004, 496.009, 496.162, 506.109, 506.129, 508.025, 508.535, 508.505, 508.550

**RULE SUMMARY**

These amended rules, as determined justified, will establish annual groundfish management measures and harvest limits for 2015 commercial and sport groundfish fisheries. Housekeeping and technical corrections to the regulations will occur to ensure rule consistency.

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.

01-09-2015 Close of Business  Therese Kucera Teri.Kucera@state.or.us  
 Last Day (m/d/yyyy) and Time Rules Coordinator Name Email Address  
 for public comment

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form.

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ARCHIVES DIVISION  
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Department of Fish and Wildlife  
Agency and Division

635  
Administrative Rules Chapter Number

Amendments to Rules for Commercial and Recreational Groundfish Fisheries.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendment of OAR Chapter 635, Divisions 004, 006 and 039 to incorporate changes to rules governing commercial and recreational groundfish fisheries in 2015.

**Statutory Authority:**

ORS 496.138, 496.146, 496.162, 497.121, 506.036, 506.109, 506.119, 506.129, 508.530

**Other Authority:**

**Statutes Implemented:**

ORS 496.004, 496.009, 496.162, 506.109, 506.129, 508.025, 508.535, 508.505, 508.550

**Need for the Rule(s):**

These amended rules are needed to modify commercial and recreational groundfish fisheries and to establish annual groundfish management measures for 2015.

**Documents Relied Upon, and where they are available:**

1. Staff report for the Oregon Fish and Wildlife Commission hearing of January 9, 2015.

A copy of the rules and the other documents relied upon for this rulemaking (the above document) are available from the Oregon Department of Fish and Wildlife, Fish Division, Second Floor, 4034 Fairview Industrial Drive SE, Salem, Oregon, between 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

**Fiscal and Economic Impact:**

[ See attached document. ]

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E));

[ See attached document. ]

2. Cost of compliance effect on small business (ORS 183.336):

- a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

[ See attached document. ]

- b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

[ See attached document. ]

- c. Equipment, supplies, labor and increased administration required for compliance:

[ See attached document. ]

**How were small businesses involved in the development of this rule?**

The Department held several public meetings in 2014 to discuss state groundfish regulations for 2015 and federal harvest specifications and management measures proposed by the Pacific Fishery Management Council (Council) for groundfish fisheries in 2015 and 2016. Representatives of small businesses participated in those meetings.

**Administrative Rule Advisory Committee consulted?: No**

**If not, why?:**

The alternatives for federal groundfish harvest specifications (e.g., Annual Catch Limits) were developed through the Council process, which involves advisory committees and public comment. Department staff also conducted several public meetings to discuss proposed changes to state groundfish regulations in order to conform to changes in federal specifications. These rules were developed in direct consultation with

the affected industry, Oregon State Police, and the Oregon Department of Fish and Wildlife.

<u>01-09-2015 Close of Business</u>	<u>Therese Kucera</u>	<u>Teri.Kucera@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007

**Economic and Fiscal Impact Statement for the January 9, 2015  
Hearing Relating to the Adoption of Regulations for  
2015 Commercial and Recreational Groundfish Fisheries**

These amended rules will establish annual groundfish management measures and harvest limits for 2015 commercial and recreational groundfish fisheries.

**Statement of Cost of Compliance**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

The proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. The state agencies that could be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP). No significant changes in costs to ODFW or to OSP are expected from these rule changes. There is potential for slightly reduced Ad Valorem (AV) revenues from more restrictive rockfish harvest limits, but the potential decrease would be very small relative to overall AV revenues collected annually by ODFW.

B. We do not have enough information or suitable methodology to predict the extent to which units of local government will be affected by these rule changes. Some Oregon port districts may be impacted, but significant impacts are not anticipated for either the commercial or the recreational fisheries. More detailed consideration of impacts is not possible because of data constraints.

C. The public will be affected by the adoption of these rules. The proposed rules are necessarily consistent with actions of the Pacific Fishery Management Council (PFMC), which establishes federal harvest levels for groundfish. Adoption of commercial regulations that exceed these harvest levels would likely result in preemption of state management authority. The harvest levels will limit commercial fishers' and processors' income, but significant changes relative to the current situation are not anticipated. No significant impact to recreational groundfish fishers is expected to result from adoption of these rules.

**Adoption of Federal Regulations**

Standard procedure is for the state of Oregon to adopt federal regulations by reference for both recreational and commercial fisheries in state waters each year. The state can be more conservative but not more liberal than the federal regulations. Changes in most federal regulations are made on a two-year cycle.

Detailed economic analyses are required under federal law (NEPA), and are part of the Environmental Impact Statement (FEIS) filed by the PFMC. The FEIS contains additional information on the economic and social effects of the 2014 regulations. That document is incorporated into this statement by reference.

## Commercial Groundfish

In 2013, the commercial groundfish fishery in Oregon had about 31.1 thousand pounds of onshore landings, valued at over \$22 million. The 2013 landings and ex-vessel value were about 2.5% and 10% below the 10-year averages (2004-2013), respectively. At \$0.72, price per pound landed was somewhat below the 10-average of \$0.78 per pound.

**Table 1. Onshore landings, ex-vessel value, and average price for landings for commercial groundfish fishery in Oregon, 2004 to 2013 (TRG 2014).**

	Onshore Landings (000's lbs.)	Ex-vessel value (2013 \$000's)	Price per lb. (2013 \$)
2004	25,590	\$19,525	\$0.76
2005	27,231	\$21,387	\$0.79
2006	27,395	\$22,386	\$0.82
2007	30,881	\$22,424	\$0.73
2008	37,922	\$28,920	\$0.76
2009	41,400	\$29,960	\$0.72
2010	36,855	\$26,964	\$0.73
2011	28,936	\$29,344	\$1.01
2012	28,475	\$24,170	\$0.85
2013	31,106	\$22,386	\$0.72
10-yr Avg	31,579	\$24,747	\$0.78

In recent years, commercial seasons have been constrained by a combination of harvest caps and period limits. Since fleet size and efficiency are sufficient to harvest entire harvest caps within several months, period limits were implemented to extend the season. These measures combine to affect the timing, volume, and associated price of landings. Impacts of management measures on individual vessels differ depending on location or port, product form, and target species mixes. The scale of vessel operations, and associated fixed and variable costs, determine whether a management measure will affect profitability and provide a comparative advantage or disadvantage relative to other vessels in the fishery. For the commercial nearshore fishery in 2015, there are several proposed adjustments to cumulative period limits (cumulative periods are two-month periods per vessel).

Overall, using more restrictive cumulative period limits, the commercial harvest of blue rockfish and other nearshore rockfish will be reduced to a target of about 10 mt in 2015. This compares to a 2008-2013 annual average landings of 15.1 mt. The average annual ex-vessel value was about \$150,000 for that time period. With a harvest reduction of about 1/3, the expected ex-vessel for these rockfish species in 2015 would be approximately \$100,000. This would mean an annual loss in ex-vessel value of about \$50,000. This potential loss is expected to be partially offset by increases in the allowable harvest of lingcod. With \$154.8 million in commercial onshore harvest value in 2013, this impact would be insignificant for the commercial fishing fleet as a whole. It is possible that individual commercial fishermen could be more acutely impacted by the rule changes, but these specific impacts cannot be predicted because the cost structures of individual commercial fishing vessels are not known and fishermen will likely redistribute their effort to other fisheries (or to other economic pursuits) in response to the rule changes. The goals of establishing the cumulative trip limits for specific rockfish are to keep the

fisheries open year-round, to allow access to key target stocks of black rockfish, lingcod, kelp greenling, and cabezon, and to provide consistency and stability to the commercial fishing industry (i.e., avoid mid-year closures).

One other rule change involves the establishment a new conversion factor for gutted/head-on rockfish. Conversion factors allow vessels to land dressed fish, then convert the dressed weights to round weights for records and reporting. Without a conversion factor for a species or species group, the fish must be landed whole and cannot be dressed at sea. The conversion factor will 1.14 (e.g., dressed weight \* 1.14 = round weight). Implementing this could result in some 'value-added' landings, but the economic impact would likely be very modest due to the limited number of vessels that may use it (perhaps only one). In addition, the conversion factor does not currently exist in federal IFQ program and thus would only be available to open access or fixed gear limited entry vessels, which limit its overall impact.

Ex-vessel prices depend in part on the quantity of product available at a given point in time. If management measures spread landings over a greater period of time, ex-vessel prices should be more stable and on average higher than if landings are taken over a shorter period. However, prices are also dependent on processors' needs and the scale of processing operations.

Potential changes in harvest patterns may also impact businesses that process fish or purchase live fish. Management measures that extend the season may have a positive impact on this sector by providing product to processors and consumers for a longer period. Product volume and timing will also impact this sector. At times the volume of landings may not be sufficient for large processors because of the scale of their operations.

### **Recreational Groundfish**

For 2015, it is proposed that the retention of China, copper, and quillback rockfishes will be prohibited year-round. The current seven-fish marine fish bag limit will continue, with some changes within it. Blue rockfish will still be part of the seven-fish limit, but now be managed under a sub-bag limit of one fish. New federal regulations allowing the retention of one canary rockfish will be implemented in 2015, which will also be an sub-bag limit with the marine fish category. As before, no more than one cabezon may be kept (when cabezon is open).

For 2015, it is proposed that Cabezon retention continue to begin July 1, as has been done in 2013 and 2014. In 2013, pushing back the retention date from April 1 to July 1 helped to ensure that the season lasted beyond August. Prohibited retention of Cabezon had occurred early every year since 2004 (this fishery generally closes in July but has gone into early August a time or two); however, delaying retention of Cabezon in 2013 allowed this fishery to remain open into October. Cabezon is primarily a bycatch species and thus inherently difficult to manage. Continuing to delay retention until July 1 should continue to provide more opportunity during the highest effort months.

In 2012, there were about 70,000 recreational fishing trips targeting groundfish (Table 2), accounting for about 41% of the ocean recreational trips that year. The groundfish trips translated into economic contribution of \$6.59 million in personal income at the coastwide economic level (TRG 2013). Overall, the effect of new rockfish regulations on angling trips (and the concomitant expenditures), but expected to be small as long as fishing for other groundfish species (primarily black rockfish and lingcod) remains open.

**Table 2. Ocean recreational fisheries trips, 2007 to 2012, in thousands (TRG 2013).**

	2007	2008	2009	2010	2011	2012
Salmon	88.3	30.4	84.5	53.3	48.8	67.3
Halibut	18	17.5	10.8	13.8	16.5	18
Tuna	12.1	7.1	10.4	11.4	10.8	16
Groundfish	60.8	64.8	64	71.3	69.2	69.9
<b>Total</b>	<b>179.2</b>	<b>119.8</b>	<b>169.7</b>	<b>149.8</b>	<b>145.3</b>	<b>171.2</b>

### Commercial and Recreational Fisheries

For both commercial and recreational fisheries, the state harvest caps that are currently in rule will be re-worded to become triggers. Upon reaching those caps, impacts to these stocks as a whole (e.g., sport and commercial together, where Washington and California fisheries are) will be considered to determine if there is enough room on the federal harvest levels to continue fishing as is, or if additional measures are needed. The most extreme measure would be closure of the entire sport groundfish fisheries and/or the entire commercial nearshore fishery.

### Miscellaneous

General housekeeping will correct some errors in the commercial and recreational regulations.

Although harvest restrictions reduce positive economic impacts in the short run, conservation through restrictive regulations and Optimum Yields set at the federal level are intended to perpetuate these groundfish resources at higher levels in the long run. Failure to restrict harvests to appropriate levels to allow for rebuilding of stocks may result in more severe adverse economic impacts in the future. The proposed regulations are intended to strike a balance between present and future consumption that sustains fishery resource benefits over time.

#### 2. Cost of compliance effect on small business (ORS 183.336):

##### a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The main types of small business subject to the rules are commercial groundfish fishermen and businesses that provide goods and services to commercial and recreational groundfish fishers. In 2012, there were 277 commercial vessels making landings equal to or greater than \$500 in value. In 2013, there were 51 Black/Blue Rockfish permits and 70 Nearshore-endorsed Black/Blue Rockfish permits sold, two separate permit types that exist for the limited-entry commercial nearshore fishery.

Wholesale dealers who buy groundfish will be affected and there were 55, in 2012 (excluding processors or buyers whose activities were less than \$500 in 2012).

Other small businesses affected will be gas stations, tackle shops, charter boat owners, restaurants/cafes/bars, food stores, and places of lodging (hotels, campgrounds, etc.). Information is not available to estimate accurately the number of those types of small businesses affected.

##### b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No significant changes in these costs are expected for the small businesses subject to the rule.

##### c. Equipment, supplies, labor and increased administration required for compliance:

No significant changes in these costs are expected for the small businesses subject to the rule.

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

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.

### **References**

The Research Group, LLC with assistance from the Coastal Oregon Marine Experiment Station. Oregon Commercial Fishing Industry in 2013, Briefing Report. Prepared for the Oregon Dept of Fish & Wildlife, and Oregon Coastal Zone Management Association. March 2014.

The Research Group, LLC. Oregon Marine Recreational Fisheries Economic Contributions in 2011 and 2012. Prepared for the Oregon Dept of Fish & Wildlife and Oregon Coastal Zone Management Association. July 2013.