

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

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635

Department of Fish and Wildlife

Agency and Division

Administrative Rules Chapter Number

Michelle Tate

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Rules Coordinator

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RULE CAPTIONGroundfish and Coastal Pelagic Species Fisheries Regulations.

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

Hearing Date	Time	Location	Hearings Officer
1-15-16	8:00 a.m.	4034 Fairview Industrial Dr. SE, Salem, OR 97302	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, 005, 012 and 039 as determined justified.

AMEND:

OAR Chapter 635, Divisions 004, 005, 012 and 039 as determined justified.

REPEAL:

OAR Chapter 635, Divisions 004, 005, 012 and 039 as determined justified.

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, 496.162, 506.036, 506.109, 506.119, 506.129.

Other Authority:

Oregon Senate Bill 1510 (2012).

Statutes Implemented:

ORS 196.540-196.555, 496.162, 506.109, 506.129.

RULE SUMMARY

These rules establish annual groundfish management measures and harvest limits for 2016 commercial and sport groundfish fisheries. Modifications to coastal pelagic species (CPS) regulations bring Oregon concurrent with federally adopted regulations for Pacific mackerel and expand existing Oregon sardine regulations for: fishing gear, bycatch, reduction processing and pumping fish from another vessel's seine to apply to a number of other coastal pelagic species. In addition, mackerels are added to the list of species for which harvest is prohibited inside the Cape Perpetua Seabird Protection Area. Coastal pelagic species include: Pacific sardine, Pacific mackerel, market squid, jack mackerel, northern anchovy, and krill.

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 the negative economic impact of the rule on business.

01-15-2016 Close of HearingMichelle Tatemichelle.l.tate@state.or.us

Last Day (m/d/yyyy) and Time

Rules Coordinator Name

Email Address

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
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Department of Fish and Wildlife

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Agency and Division

Administrative Rules Chapter Number

Groundfish and Coastal Pelagic Species Fisheries Regulations.

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, 005, 012 and 039 to incorporate changes to rules governing commercial and recreational groundfish and commercial coastal pelagic species fisheries in 2016.

Statutory Authority:

ORS 496.138, 496.162, 506.036, 506.109, 506.119, 506.129.

Other Authority:

Oregon Senate Bill 1510 (2012).

Statutes Implemented:

ORS 196.540-196.555, 496.162, 506.109, 506.129.

Need for the Rule(s):

These amended rules are needed to modify Oregon's regulations for commercial and recreational groundfish and commercial coastal pelagic species (CPS) fisheries, and to establish annual groundfish management measures for 2016.

Documents Relied Upon, and where they are available:

Staff report for the Oregon Fish and Wildlife Commission hearing of January 15, 2016.

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 97302-1142, between the hours of 8:00 a. m. and 4:00 p.m., on normal working days, Monday through Friday.

Fiscal and Economic Impact:

See attached FIS.

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 increased Ad Valorem (AV) revenues from somewhat less restrictive rockfish harvest limits, but the potential increase 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.

Groundfish: Proposed increases in 2-month period limits for several nearshore species may result in somewhat increased commercial harvest of those species, but that will be within adopted harvest levels and is not expected to have a significant impact on the landings or profits of commercial fish outfits targeting those species.

Coastal Pelagic Species: Proposed CPS fisheries rule changes would be unlikely to impact landings or pricing of those species in a significant way. The requirement of the use of a grate when targeting for finfish CPS would increase costs of fishing for at least one existing vessel and could affect other vessels in the future. The impact to costs is not expected to be significant for those fishing outfits.

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 every one or two years, depending on the fish species class. The state can be more conservative but not more liberal than the federal regulations.

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 business and types of businesses 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 2014, there were 50 Black/Blue Rockfish permits and 69 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 these rules.

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

Vessels targeting finfish CPS will be required to use a grate, but no significant changes in costs are expected for the small businesses subject to the rule.

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

Department staff conducted several public meetings to discuss and develop proposed changes to groundfish regulations and representatives of small businesses attended those meetings. Coastal pelagic species rules were previously adopted via temporary rule and were developed in direct consultation with the affected industry, including small businesses. The proposed changes in Pacific mackerel harvest regulations needed to conform with federal regulations were developed through the Pacific Fishery Management Council's public process which involves advisory committees and public comment. Representatives of small businesses participated in that process.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

Department staff conducted several public meetings to discuss and develop proposed changes to state regulations. Coastal pelagic species rules were previously adopted via temporary rule and were developed in direct consultation with the affected industry and Oregon State Police, Fish and Wildlife Division. The proposed rule changes for Pacific mackerel harvest were developed through the Pacific Fishery Management Council process, which involves advisory committees and public comment.

01-15-2016 Close of Hearing	Michelle Tate	michelle.l.tate@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

**Economic and Fiscal Impact Statement for the January 15, 2016 Hearing
Relating to Adoption of Regulations for 2016 Commercial and Recreational
Groundfish Fisheries and Commercial Coastal Pelagic Species Fisheries**

Groundfish: The 2016 harvest guidelines for the commercial and recreational groundfish fisheries are unchanged from 2015 since 2016 is the second year of a two-year cycle for groundfish and the 2015-16 federal harvest levels were already adopted in January 2015. The proposed rulemaking is to adjust the ‘more conservative’ state regulations that the Department uses to stay within those harvest specifications.

- **Commercial Nearshore:** Regarding commercial nearshore regulations for 2016, the only recommendations are adjustments to the 2-month period limits (aka, ‘trip limits’). The intent of all period limit changes is to achieve but not exceed harvest guidelines. Many of these species are expected to be substantially under-harvested under 2015 limits and thus limits are to be adjusted accordingly. The status quo period limits would be maintained for black rockfish and cabezon. Proposed changes are:
 - Other Nearshore Rockfish - increasing from 100 lbs/period to 200 lbs/period.
 - Blue Rockfish - increasing from 15 lbs/period to 30 lbs/period.
 - o The newly recognized and described Deacon Rockfish will be added to this limit. This is a ‘new’ species that had previously been identified as Blue Rockfish, so by default they were already being managed as a group. Some new OAR language will be required.
 - Greenling species - increasing from 300 lbs/period to 400 lbs/period.

Coastal Pelagic Species: Proposed rules would adjust regulations for the mackerel fishery and would expand several regulations, which currently apply only to the sardine fishery, to other commercial Coastal Pelagic Species (CPS) (e.g., anchovy, herring, mackerel, and market squid). These recommendations break down into two categories; those that apply to all CPS and those that apply to all CPS except market squid (i.e., finfish CPS).

- All CPS:
 - o No more than 10% of CPS landings may be converted to products for purposes other than human consumption or fishing bait (e.g., fish meal, fertilizer, etc.) (OAR 635-004-0440 for sardine rule).
 - o CPS catching vessels may pump fish onboard from the seine of another catching vessel; several limitations apply (OAR 635-004-0430 for sardine rule).
- All CPS except market squid:
 - o Regarding bycatch, all bycaught groundfish and salmon, as defined by OAR 635-004-0215, must be returned to the water immediately. Every effort must be made to dipnet salmon out of the seine net before they go through a pump system. (OAR 635-004-0435 for sardine rule).
 - o Regarding fishing gear, a grate with spacing no larger than 2-3/8 inches between the bars must be placed over the intake of the hold of the vessel to sort out larger species of fish (OAR 635-004-0425 for sardine rule).
- **Pacific Mackerel:** Proposed rules would add mackerel to the list of species prohibited in the ‘sea bird protection area’ of the Cape Perpetua Marine Reserve and would adopt of the

federal harvest specifications for Pacific Mackerel for the 2015-16 and 2016-17 fishing years.

Statement of Cost of Compliance

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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.

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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:

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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.