

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

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ARCHIVES DIVISION
SECRETARY OF STATE

Department of Fish and Wildlife

635

Agency and Division

Administrative Rules Chapter Number

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RULE CAPTIONAmend and Adopt Rules for Commercial Coastal Pelagic Species Fisheries and Inspection Authority

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

Hearing Date	Time	Location	Hearings Officer
6-10-16	8:00 a.m.	ODFW Hqtrs Commission Room, 4034 Fairview Industrial Dr. SE, Salem,	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, 006, and 012 as determined justified.

AMEND:

OAR Chapter 635, Divisions 004, 005, 006, and 012 as determined justified.

REPEAL:

OAR Chapter 635, Divisions 004, 005, 006, and 012 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, 506.550, 506.620, 506.755

Other Authority:**Statutes Implemented:**

ORS 195.540-195.555, 496.162, 506.109, 506.129, 506.550, 506.620, 506.755

RULE SUMMARY

Amendments to Oregon's regulations for Coastal Pelagic Species (CPS) fisheries will bring the State concurrent with federally adopted regulations. CPS includes Pacific sardine, Pacific mackerel, market squid, jack mackerel, northern anchovy, and krill. Proposed rule modifications establish Pacific sardine seasons and/or quotas for the period of July 1, 2016 to June 30, 2017 and multi-year harvest specifications (e.g., annual catch limits) for certain monitored and prohibited stocks. Final federal regulations have not been adopted as of the filing of this Notice. However, it is highly likely that directed commercial sardine fisheries will not be allowed based on the latest stock assessment. Closing the directed sardine fishery will likely shift fishing effort to targeting other CPS stocks, and sardines are likely to be taken incidentally to those operations. Therefore, new rules are needed to extend several state sardine management measures to some or all other CPS fisheries and to add mackerels to the list of prohibited species within the Cape Perpetua Seabird Protection Area. Finally, due to recent case law a new rule is needed to clarify Oregon State Police and Department inspection authority for commercial fishing licenses, gear, and vessels. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Note: The Commission will meet beginning on Thursday, June 9, 2016 at 1:00 p.m. On June 10, the meeting will begin at 8:00 a.m. Rulemaking agenda items for Fish Division exhibits will be heard on Friday, June 10.

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.

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.

06-10-2016 Close of Hearing	Michelle Tate	michelle.l.tate@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

*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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Department of Fish and Wildlife
Agency and Division

635
Administrative Rules Chapter Number

Amend and Adopt Rules for Commercial Coastal Pelagic Species Fisheries and Inspection Authority

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 012 related to commercial Coastal Pelagic Species fisheries in the Pacific Ocean and inspection authority for all commercial fisheries.

Statutory Authority:

ORS 496.138, 496.162, 506.036, 506.109, 506.119, 506.129, 506.550, 506.620, 506.755

Other Authority:

Statutes Implemented:

ORS 195.540-195.555, 496.162, 506.109, 506.129, 506.550, 506.620, 506.755

Need for the Rule(s):

These rules are needed to modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries in order to be concurrent with federally adopted regulations and to establish additional state management measures. Federally adopted regulations include Pacific sardine and Pacific mackerel seasons and/or quotas for the period of July 1, 2016 to June 30, 2017; and multi-year harvest specifications (e.g., annual catch limits) for certain monitored and prohibited stocks. Final Federal Regulations have not been adopted as of the filing of the Notice of Proposed Rulemaking for this action. However, it is highly likely that directed commercial sardine fisheries will not be allowed based on the latest stock assessment. Closing the directed sardine fishery will likely shift fishing effort to targeting other CPS stocks, and sardines are likely to be taken incidentally to those operations. Therefore, new rules are needed to extend several state sardine management measures to some or all other CPS fisheries and to add mackerels to the list of prohibited species within the Cape Perpetua Seabird Protection Area. Finally, due to recent case law a new rule is needed to clarify Oregon State Police and Department inspections authority for commercial fishing licenses, gear, and vessels.

Documents Relied Upon, and where they are available:

Staff Report for the Oregon Fish and Wildlife Commission hearing of June 9-10, 2016.

A copy of the rules and the other documents relied upon for this rulemaking [the above documents] 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)):

See attached FIS.

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 FIS.

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

See attached FIS.

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

See attached FIS.

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

The proposed rule changes 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. The rule changes needed to extend state sardine management measures to other CPS fisheries were adopted via temporary rule during part of 2016. Small business owners were consulted directly by the Department as part of that process.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

The proposed rule changes needed to conform with federal regulations were developed through the Pacific Fishery Management Council process, which involves advisory committees and public comment.

<u>06-10-2016 Close of Hearing</u>	<u>Michelle Tate</u>	<u>michelle.l.tate@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

Fiscal and Economic Impact Statement for the June 10, 2016 Hearing In the Matter of Rules Relating to Coastal Pelagic Species Fisheries

Amendments to Oregon's regulations for Coastal Pelagic Species (CPS) fisheries will bring the State concurrent with federally adopted regulations. Coastal Pelagic Species include Pacific sardine, Pacific mackerel, market squid, jack mackerel, northern anchovy, and krill.

Proposed amendments include the adoption of several regulations that currently apply to sardine, but not other Coastal Pelagic Species (CPS) such as anchovy, herring, mackerel and market squid. With the current closure for the commercial sardine fishery, effort may shift to targeting other CPS.

- All Coastal Pelagic Species
 - No directed reduction fisheries allowed – Currently 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.); Director's exception to avoid wastage.
 - CPS catching vessels may pump fish onboard from the seine of another catching vessel; several limitations apply.
- Coastal Pelagic Species except market squid
 - Bycatch - All groundfish and salmon must be returned to the water immediately. Every effort must be made to dip net salmon out of the seine net before they go through a pump system.
 - 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.

Another proposed rule change is to add mackerel to the list of species prohibited in the 'sea bird protection area' of the Cape Perpetua Marine Reserve.

It is proposed that permanent rules are adopted to conform to federal regulations for the period July 1, 2016 through June 30, 2017. National Marine Fisheries Service (NMFS) intends to address each species separately in its rulemaking process.

- Due to low estimated abundance of Pacific sardine, Pacific Fisheries Management Council (PFMC) has decided that no directed fishery will be allowed but incidental allowances for other fisheries will be set for the 2016-2017 fishery season. This is the second year running of such measures.
- For Pacific mackerel, the PFMC recommended 2016-2017 management measures to NMFS, although NMFS has not yet published proposed rules in the federal register.

Proposed amendments also include the adoption of Multi-year Specifications for Monitored and Prohibited Species Stocks from NMFS. NMFS proposes to implement annual catch limits (ACL) and, where necessary, other annual reference points (overfishing limits (OFL) and acceptable biological catches (ABC) for certain stocks in the monitored and prohibited harvest species categories under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). These species include Jack mackerel, northern anchovy, and krill. Final rules will likely be published by the June OFWC meeting.

Another proposed rule is to strengthen Oregon State Police's (OSP) inspection authority. It would establish implied consent to inspection when a commercial license is purchased and make it explicitly unlawful to fail to allow an inspection of gear, licenses, or fish (similar to sport rules).

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 would be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP) for enforcement costs. With no directed Pacific sardine fishery and limited incidental landings on the Pacific coast again in 2016-17, Ad Valorem revenues to ODFW from sardine landings will be substantially lower than in recent years.

With regard to the inspection authority rule, ODFW will need to update the commercial licensing process to inform licensees that they consent to inspection when purchasing a license, either by a statement on the license or a separate document. Updating licensing documentation is standard day-to-day business and would not represent a fiscal impact to ODFW. The rule will likely result in cost savings, in the form of staff time, for OSP. It will streamline its inspection authority and will obviate the need of OSP's spending time to obtain signed search warrants or affidavits from local courts.

Overall, no significant changes in these agencies' operations or expenditures are expected as a result of this rule change.

B. Units of local government may be affected by these rules. There could be time savings for local court systems because the proposed inspection authority rule would obviate the need of OSP to obtain signed search warrants or affidavits from local courts to inspect commercial operations. The magnitude of the time savings cannot be determined, though is expected to be small since there are few cases of this sort each year. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

C. The public could be affected by the adoption of these rules, as discussed below:

Commercial Pacific Sardine

The Harvest Guideline (HG) is set annually for the entire harvest area (Pacific Ocean off of CA, OR and WA), based on available biomass estimated by the sardine stock assessment and a predetermined harvest control rule. To determine the amount of the HG that is available to the directed fishery, the HG is reduced by various "set-asides." In the past, some amount of harvest has been set-aside for research, incidental catch, and a "management uncertainty" buffer. For the 2012 fishery, "management uncertainty" was eliminated and the addition of a tribal fishery set aside was added. Tables 1, 2, and 3 detail the HG levels, set asides, and allowable directed fishery harvest levels (termed "adjusted allocation") for 2012, 2013, and 2014. Note that starting in 2014, there is slightly different terminology, where HG is now termed "Annual Catch Limit/Annual Catch Target" (ACL/ACT). The ACL and ACT for 2015 were only 7,000 mt and 4,000 mt, respectively, substantially lower than any recent year.

In addition to not allowing a directed sardine fishery, the PFMC has adopted the following accountability measures for incidental catch of sardine for the 2016-17 period:

- 40% sardine allowed until 2,000 mt tons landed
- 20% sardine allowed until 5,000 mt landed
- 10% for remainder of fishing year (July 16 – Jun 17)
- 2 mt per trip for non-CPS fisheries

These stringent measures will continue the low level of economic benefit accruing to Oregon businesses involved with sardine harvest relative to recent years. It is difficult to quantify the exact magnitude of the decrease in benefits because the fish migrate annually along the entire U.S. West Coast and beyond, and incidental sardine catch may be landed in any of the three states.

Table 1. 2012 Pacific Sardine Harvest Guideline (HG) and allocations

HG (aka ACT) = 109,409 mt; tribal set-aside = 9,000 mt; EFP (Exempted Fisheries Permit) set-aside=3,000 mt; Adjusted HG=97,409 mt				
	Jan 1- Jun 30	Jul 1- Sep 14	Sep 15 – Dec 31	Total
Seasonal Allocation (mt)	34,093 (35%)	38,964 (40%)	24,352 (25%)	97,409
Incidental Set Aside (mt)	1,000	1,000	1,000	3,000
Adjusted Allocation (mt)	33,093	37,964	23,352	94,409

Table 2. 2013 Pacific Sardine Harvest Guideline (HG) and allocations

HG (aka ACT) = 66,495 mt; tribal set-aside = 6,000 mt; EFP (Exempted Fisheries Permit) set-aside = 3,000 mt; Adjusted HG = 57,495 mt				
	Jan 1- Jun 30	Jul 1- Sep 14	Sep 15 – Dec 31	Total
Seasonal Allocation (mt)	20,123 (35%)	22,998 (40%)	14,374 (25%)	57,495
Incidental Set Aside (mt)	1,000	1,000	1,000	3,000
Adjusted Allocation (mt)	19,123	21,998	13,374	54,495

Table 3. Allocations based on ACL/ACT (with CalCOFI index) for the 2014-2015 Pacific sardine fishery. Values in metric tons (mt)

ACL/ACT = 23,293 mt; tribal set-aside = 4,000 mt; Adjusted HG = 19,293 mt				
	Jan 1- Jun 30	Jul 1- Sep 14	Sep 15 – Dec 31	Total
Seasonal Allocation (mt)	6,752 (35%)	7,718 (40%)	4,823 (25%)	19,293
Incidental Set Aside (mt)	500	500	500	1,500
Adjusted Allocation (mt)	6,252	7,218	4,323	17,793

Commercial Pacific sardine landings in Oregon are outlined in Table 4 below. The value of sardine landed in Oregon depends on many factors including the coast-wide harvest guideline, availability and quality of sardine, and market conditions. Data and models to predict the availability and quality of sardine or market conditions do not exist. However, given that the sardine fishery is canceled for the 2016-17 season and the allowed incidental sardine catch is limited, it is clear that the value of the fishery will be quite low relative to the last 10 years.

Table 4. Pounds and Value of Pacific Sardines Landed in Oregon

Year	Pounds	Metric Tons (mt)	Total Value	Price per Pound
2005	99,449,714	45,110	\$5,872,272	\$0.06
2006	78,633,884	35,668	\$3,790,418	\$0.05
2007	92,910,549	42,144	\$4,632,700	\$0.05
2008	50,593,285	22,949	\$5,764,316	\$0.11
2009	47,357,065	21,481	\$5,426,396	\$0.11
2010	45,970,905	20,852	\$5,516,507	\$0.12
2011	24,302,389	11,023	\$3,402,334	\$0.14
2012	93,957,315	42,618	\$9,234,653	\$0.10
2013	57,817,000	26,225	\$6,283,000	\$0.11

2014	17,170,662	7,788	\$3,522,051	\$0.21
2015	4,698,943	2,131	\$812,686	\$0.17

Commercial Pacific Mackerel

The PFMC adopted the stock assessment with an estimated biomass of 118,968 mt, overfishing limit (OFL) of 24,983 mt, and annual specifications for the 2016-17 fishing years. The Council also adopted the following management measures: for each separate fishing year, should the directed fishery realize the annual catch target (ACT), which is 20,161 mt, the Council should recommend that NMFS close the directed fishery and shift to an incidental-catch-only fishery for the remainder of the fishing season, with a 45 percent incidental landing allowance when Pacific mackerel are landed with other coastal pelagic species (CPS), with the exception that up to 3 mt of Pacific mackerel per landing could be landed in non-CPS fisheries. Proposed rules are expected to be published in the Federal Register by the June OFWC meeting.

The state of Washington is considering allowing a directed Pacific mackerel fishery, which could change either shift potential landings to WA or change the economic efficiency of fishing for Pacific mackerel. Because mackerel is not typically an important fishery for Oregon, significant impacts would not be expected.

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 fishermen targeting pelagic species. The department issued 24 sardine limited entry permits (8 resident and 16 nonresident) in 2015.

Wholesale dealers who buy Pacific sardine would be affected and there were 7 in 2015.

Other small businesses affected would 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 to 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:

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 for CPS fisheries except market squid. Most of the boats that would be expected to participate in CPS fisheries are sardine boats and as such already have the grate. The grate would be a de minimus cost for any vessel gearing up to seine fish from scratch (nets, haulers, etc would far outweigh the grate cost). The grate may be a cost to seine vessels that currently participate in seine fisheries outside of Oregon which don't have grate requirement and wish to enter Oregon CPS fisheries, but relative to the cost of operating a seine vessel, this would be a minor cost.

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.