

Secretary of State

**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form

**FILED**4-13-17 9:51 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Department of Fish and Wildlife

635

Agency and Division

Administrative Rules Chapter Number

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**RULE CAPTION**Amend Rules for Commercial Coastal Pelagic Species Fisheries

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

Hearing Date	Time	Location	Hearings Officer
6-9-17	8:00 a.m.	ODFW Headquarters 4034 Fairview Industrial Dr. SE Salem OR 97302	Oregon Fish & Wildlife

**RULEMAKING ACTION**

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

**ADOPT:**

OAR Chapter 635, Divisions 004 and 042 as determined justified.

**AMEND:**

OAR Chapter 635, Divisions 004 and 042 as determined justified.

**REPEAL:**

OAR Chapter 635, Divisions 004 and 042 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 496.118, 496.138, 496.162, 506.036, 506.109, 506.119 and 506.129.

**Other Authority:****Statutes Implemented:**

ORS 496.162, 506.109, 506.129 and 507.030.

**RULE SUMMARY**

Coastal Pelagic Species (CPS) include Pacific sardine, Pacific mackerel, market squid, jack mackerel, northern anchovy, and krill. Amendments to Oregon's regulations for CPS fisheries will bring the State concurrent with federally adopted CPS regulations and establish additional state regulations for commercial anchovy fishing in the Columbia River area. Final federal regulations have not been published as of the filing of this Notice, but they are expected to conform to recommendations made by the Pacific Fishery Management Council (Council) in April 2017 to close the directed commercial sardine fishery and specify incidental catch limits for sardine in other CPS fisheries for the period July 1, 2017 to June 30, 2018. The Council also recommended allowing up to one metric ton per day of directed commercial harvest of finfish CPS (i.e., excluding market squid and krill) when directed fishing for a particular species is otherwise closed. Additional state regulations for commercial anchovy fishing in the Columbia River area will establish trip limits designed to maintain harvest from the area near historical levels. Housekeeping and technical amendments may occur to ensure rule interpretation 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.

06-09-2017 Close of Hearing

Michelle Tate

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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**  
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Amend Rules for Commercial Coastal Pelagic Species Fisheries

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

In the Matter of:

OAR Chapter 635, Divisions 004 and 042 related to commercial Coastal Pelagic Species fisheries.

**Statutory Authority:**

ORS 496.118, 496.138, 496.162, 506.036, 506.109, 506.119 and 506.129.

**Other Authority:**

**Statutes Implemented:**

ORS 496.162, 506.109, 506.129 and 507.030.

**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. Consistency with federal regulations established under the Magnuson-Stevens Fishery Conservation and Management Act is needed to provide orderly fisheries and enhance the ability of the State to enforce regulations necessary for conservation of CPS stocks in conjunction with other regional, state, and federal fishery management entities. Additional state regulations for commercial anchovy fishing in the Columbia River area are needed to reduce potential bycatch of non-target species, including ESA-listed salmonids and prevent potentially negative localized impacts on the anchovy stock and dependent predators such as seabirds and marine mammals. Anchovy landings into Oregon substantially increased in 2016 from recent years, with the majority of the 5,313 metric ton (mt) catch coming from the Columbia River. From 2000 through 2015, the total annual harvest into Oregon averaged around 67 mt. The magnitude of anchovy landings, and potential impacts to salmon stocks and other predators, have been a point of concern for all management entities involved and a variety of stakeholders, including both fishing industry and environmental groups.

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

1. Staff Report for the Oregon Fish and Wildlife Commission hearing of June 9, 2017.
2. Joint ODFW, WDFW, and Quinault Indian Nation Supplemental Report on the Northern Subpopulation of Northern Anchovy, Pacific Fishery Management Council Agenda Item G.4.a, November 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

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 Department held a public meeting to discuss management of the commercial anchovy fishery in the Columbia River on February 15, 2017 in Astoria Oregon. Small business owners participated in that meeting, and were also consulted directly by the Department throughout 2016 and 2017.

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

**If not, why?:**

The proposed rule changes needed for federal consistency were developed through the Pacific Fishery Management Council process, which involves advisory committees and public comment. Affected individuals, environmental groups, and business owners were consulted throughout development of additional state regulations for commercial anchovy fishing.

<u>06-09-2017 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 9, 2017 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. Additional amendments to Oregon's regulations are recommended to restrict commercial anchovy fishing in the Columbia River area. Coastal Pelagic Species include Pacific sardine, Pacific mackerel, market squid, jack mackerel, northern anchovy, and krill.

**Pacific Sardine.** For the third fishing year in a row, the sardine stock assessment estimates the population biomass (86,586 metric tons) to be below the biomass cutoff level for directed commercial fishing (150,000 mt). The Pacific Fishery Management Council (PFMC) has recommended management reference points including an Overfishing Limit of 16,957 mt, an Acceptable Biological Catch of 15,479 mt, and an Annual Catch Limit of 8,000 mt. For the July 2017 – June 2018 period, PFMC recommended management measures that close directed non-treaty commercial fishing (other than the minor amounts under the small-scale fisheries authorization described below) and set limits for incidental catch in other fisheries consistent with 2016-2017 limits, as follows:

- An incidental per landing allowance of 40 percent Pacific sardine in non-treaty CPS fisheries until a total of 2,000 mt of Pacific sardine are landed.
- When the 2,000 mt is achieved the incidental per landing allowance would be reduced to 20 percent until a total of 5,000 mt of Pacific sardine have been landed.
- When 5,000 mt have been landed, the incidental per landing allowance would be reduced to 10 percent for the remainder of the 2017-2018 fishing year.
- A 2 mt incidental per landing allowance in non-CPS fisheries.

**Small scale fisheries.** The PFMC recommended an FMP amendment to allow minor directed fishing ( $\leq 1.0$  metric ton per vessel or person per day) of CPS finfish species (i.e., excluding market squid and krill) when directed fishing for a particular species is otherwise closed. This modification addresses specialized operations (e.g., bait, direct-to-restaurant) that have been prohibited from harvesting sardine under the directed fishing closure for the last two years, although it applies to CPS more broadly. In Oregon, this primarily affects the Umpqua Bait Company, which has historically used beach seines to harvest small volumes of CPS within the Umpqua estuary for sale as bait to anglers, although any commercial fisher using legal gears in open areas could avail themselves of the opportunity. The federal regulations authorizing small scale CPS fisheries are not expected to be final until late 2017.

**Northern anchovy fishery.** There was a large increase in commercial anchovy harvest in the summer of 2016, primarily from the Columbia River, and the department adopted a temporary rule to implement restrictive trip limits in the fall (to match Washington's). The rules are needed to reduce potential bycatch of non-target species, particularly ESA-listed salmonids, and to prevent potentially negative localized impacts on the anchovy stock and dependent predators such as seabirds and marine mammals. Therefore, the staff proposal is for the Commission to adopt permanent rules similar to the temporary rule in June in order to maintain anchovy harvest near historical levels. While this approach will likely eliminate any anchovy landings into Oregon from the Columbia River area, the fishery will remain largely unrestricted in the ocean, leaving the door open for fishers/processors to prosecute a fishery in the ocean if deemed potentially profitable.

## **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 2017-18, Ad Valorem revenues to ODFW from sardine landings will be substantially lower than have been historically and likely similar to those in 2016. 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. 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. When biomass is estimated below the cutoff for directed commercial fishing as it is this year, the HG is set at zero but harvest specifications and management measures are still set to account for small-scale fisheries, tribal fisheries, and incidental catch in other fisheries (Table 1).

**Table 1. Pacific sardine harvest specifications**

Fishing year (July 1 – June 30)	Overfishing Limit (OFL)	Acceptable Biological Catch (ABC)	Annual Catch Limit (ACL)
2014-2015	39,210	35,792	23,293
2015-2016	13,227	12,074	7,000
2016-2017	23,085	19,236	8,000
2017-2018	16,957	15,479	8,000

In addition to not allowing a directed sardine fishery, the PFMC has adopted the following accountability measures for incidental catch of sardine for the 2017-2018 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 2017 – Jun 2018)
- 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.

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 again for the 2017-18 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 2. Pounds and Value of Pacific Sardines Landed in Oregon**

<b>Year</b>	<b>Pounds</b>	<b>Metric Tons (mt)</b>	<b>Total Value</b>	<b>Price per Pound</b>
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
2016	8,816	4	\$318	\$0.04

### **Commercial Pacific Mackerel**

Pacific Fisheries Management Council will not have recommendations until June so commercial Pacific mackerel are not included in this rulemaking.

### **Commercial Northern Anchovy**

Anchovy landings into Oregon substantially increased in 2016 from recent years, with the majority of the 5,313 metric ton (mt) catch coming from the Columbia River. From 2000 through 2015, the total annual harvest into Oregon averaged around 67 mt. The proposed rules would restrict trips in the Columbia River, though likely leave open fishing activity in the Pacific Ocean. Anchovy landings in Oregon in 2017 are likely to be closer to the historical average than on the scale seen in 2016. Since anchovy landings in 2016 were unexpectedly high, it is fair to say that most Oregon processors have not built them into their business models and therefore the likely return of anchovy landings to historical level would represent a reduction to income from 2016, but not from years prior to 2016. However, the cumulative effect of the continued closure of a directed commercial sardine fishery and restrictions on the anchovy fishery may be weighing on the profitability of some Oregon processors of CPS products.

## **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 23 sardine limited entry permits (2 resident and 21 nonresident) in 2016.

Wholesale dealers/processors who buy Pacific sardine would be affected and there were 7 in 2015. Two Oregon processors bought anchovy in 2016.

Other small businesses affected would be marine fuel providers, commercial fishing businesses that use large volumes of sardine as bait, marine service and supply businesses, tackle shops, restaurants/cafes/bars,. 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:**

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.