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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED
01/12/2018 4:21 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Modifications to the Recreational Abalone Fishery

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/16/2018 5:00 PM

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.

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Filed By:
April Mack
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 03/16/2018

TIME: 8:00 AM - 5:00 PM

OFFICER: Oregon Department of Fish
& Wildlife Commissioners

ADDRESS: Oregon Department of Fish
& Wildlife Headquarters

4034 Fairview Industrial DR SE
Salem, OR 97302

NEED FOR THE RULE(S):

Protect red abalone from increased harvest while environmental conditions are not favorable.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- 1. Staff Report for the Oregon Fish & Wildlife Commission hearing of December 8, 2017

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:

Fiscal and Economic Impact Statement for the March 16, 2016 Hearing in the Matter of the Recreation Red Abalone Fishery.

We propose changes to the boutique (~300 permits/year) recreational red abalone fishery in Oregon. Oregon's abalone population may be at risk given 1) its small size and low density, 2) recent environmental conditions (warm water leading to low kelp abundance) and 3) increasing harvest pressure. California's much larger fishery (>25,000 permits/year) was recently suspended based on annual monitoring which revealed population levels have quickly reduced to half of their target minimum threshold. Similar monitoring took place in Oregon in 2015 where we found 1/10th of the densities expected to be sustainable. In this way, we expect Oregon's red abalone population and the sustainability of the fishery to be at risk.

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. State agencies that could be affected by these rules are the Oregon Department of Fish & Wildlife (ODFW) and the Oregon State Police (OSP). No significant changes from the current levels of these agencies' staffing, expenditures, or revenues are expected to result from the adoption of these particular rules. A small, but increasing number of out-of-state shellfish licenses would not be sold. However, out-of-state licenses contribute a small amount toward management of the fishery.

b. No units of local government are expected to be significantly affected by these rules.

c. The public is affected by the loss of a small, boutique fishery. The consequences of this action have low effect in the realm of statewide fisheries. Since the nature of the red abalone fishery in Oregon is small (280 permits/140 abalone harvested annually) and the fishery is specifically designed for day trips (possession limit =1 daily limit), we expect low economic impact on a regional scale.

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:

Dive shops and outdoor shops in Medford (1) and Brookings (1) may have fewer dive trips by customers. Hotels and camping locations in southwest Oregon may have fewer customers because California trophy anglers that would have come, no longer need accommodations.

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

None.

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

None.

The rule is 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.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

See Fiscal Impact Statement

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

See Fiscal Impact Statement

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

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

AMEND: 635-039-0090

RULE SUMMARY: We propose to prohibit recreational take of abalone, twenty four hours a day, in all Oregon waters, although we expect to develop and present three other options at OFWC on March 16, 2018. These options are still in development but will likely include, but may not be limited to: 1) suspension of the fishery for a limited period of time, 2) allowing the fishery with more restrictive regulations than status quo, and 3) status quo.

CHANGES TO RULE:

635-039-0090

Inclusions and Modifications ¶¶

PLEASE NOTICE THE PROPOSED TEXT BELOW IS PRELIMINARY AND SUBJECT TO CHANGE. UP TO DATE VERSIONS OF THIS DRAFT RULE ARE AVAILABLE UPON REQUEST TO THE DEPARTMENT AND WILL BE POSTED ON THE COMMISSION WEBSITE 11 DAYS PRIOR TO THE COMMISSION MEETING.¶¶

635-039-0090 ¶¶

Inclusions and Modifications ¶¶

(1) The 2018 Oregon Sport Fishing Regulations provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2018 Oregon Sport Fishing Regulations.¶¶

(2) For the purposes of this rule, a "sport harvest guideline" is defined as a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not automatically close a fishery. Upon attainment of a sport harvest guideline, the Department shall initiate consultation to determine if additional regulatory actions are necessary to achieve management objectives. The following sport harvest guidelines include the combined landings and other fishery related mortality by the Oregon sport fishery in a single calendar year:¶¶

(a) Black rockfish, 395.2 metric tons.¶¶

(b) Cabezon, 16.8 metric tons.¶

(c) Blue rockfish, deacon rockfish, and other nearshore rockfish combined, 32.8 metric tons.¶

(d) Greenling, 47.9 metric tons.¶

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastrelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serriceps*).¶

(4) In addition to the regulations for Marine Fish in the 2018 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone:¶

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.¶

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the 2018 Oregon Sport Fishing Regulations in the Marine Zone, located under the category of Finfish Species, General Marine Species: 5 fish daily bag limit in aggregate (total sum or number), of which no more than one may be a cabezon, when retention of cabezon is allowed. Retention of the following species is prohibited:¶

(A) Yelloweye rockfish; and¶

(B) Cabezon from January 1 through June 30.¶

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).¶

(d) Retention of all marine fish listed under the category of Finfish Species, General Marine Species, except Pacific cod, sablefish, flatfish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.¶

(e) Harvest methods and other specifications for marine fish in subsections (4)(a), (4)(b) and (4)(c) including the following:¶

(A) Minimum length for lingcod, 22 inches.¶

(B) Minimum length for cabezon, 16 inches.¶

(C) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.¶

(D) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.¶

(E) When angling for groundfish or Pacific halibut in the Pacific Ocean or when in possession of groundfish or Pacific halibut, all watercraft shall have a functional descending device on board and shall use a descending device when releasing any rockfish outside of the 30-fathom curve (defined by latitude and longitude) as shown in Title 50 Code of Federal Regulations Part 660 Section 71. Upon request, a descending device shall be presented for inspection by any person authorized to enforce the wildlife laws or a representative of the Department. In this subsection, "descending device" means a device capable of returning a rockfish back to a depth of at least 100 feet to assist the fish in recompression and to improve the fish's chance of survival.¶

(F) Long-leader gear means fishing gear with the following: one fishing line, deployed with a sinker and no more than three hooks, with a minimum of 30 feet (9.14 meters) between the sinker and the lowest hook, and a non-compressible float attached to the line above the hooks. The hooks can only be equipped with artificial lures or molded soft plastic or rubber imitations of worms, eggs, insects, bait fish, crayfish, etc. 5 inches or less in length and/or artificial flies. Natural bait may not be used.¶

(f) Sport fisheries for species in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections 4(b) and (4)(d). Ocean waters are closed for these species, with the exception of flatfish species, during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown in Title 50 Code of Federal Regulations Part 660 Section 71, except as provided in subsection 4(d) or when fishing with long-leader gear during such times and in such areas as allowed in federal rule. A 20-fathom, 25-fathom, or 30-fathom curve, as shown in Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management

line as inseason modifications necessitate. In addition, the following management lines may be used to set area specific regulations for inseason action only:¶

(A) Cape Lookout (45°20'30" N latitude); and¶

(B) Cape Blanco (42°50'20" N latitude).¶

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 70 (October 1, 2015⁷ ed.). Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.¶

(h) Notwithstanding any other provisions of this rule, on any fishing trip where fishing with long-leader gear (as defined in subsection (4)(e)(F)) occurs seaward of the 40-fathom curve (defined by latitude and longitude) as shown in Title 50 Code of Federal Regulations Part 660 Section 71, the following apply:¶

(A) It is unlawful to retain any species in the Groundfish Group other than yellowtail rockfish (*Sebastes flavidus*), widow rockfish (*S. entomelas*), canary rockfish (*S. pinniger*), redstripe rockfish (*S. proriger*), greenstriped rockfish (*S. elongatus*), chilipepper rockfish (*S. goodei*), bocaccio rockfish (*S. paucispinis*), or silvergray rockfish (*S. brevispinis*);¶

(B) The daily bag limit is 10 fish in aggregate for the species listed in section (4)(h)(A);¶

(C) A long-leader fishing trip must be separated from any other fishing trip where groundfish are retained by returning to the dock and offloading fish;¶

(D) It is unlawful for an angler who retained fish on a long-leader fishing trip to retain more than 10 fish in aggregate of the species listed in (4)(b) in the same day;¶

(E) It is unlawful to fish for any species in the Groundfish Group, including those listed in section (4)(h)(A), inside of the 40-fathom curve or with gear that is not long-leader gear as defined in section (4)(e)(F); and¶

(F) Federal rules governing the long-leader fishery will supersede these rules to the extent of any inconsistency, including the definition of long-leader gear.¶

(5) Take of abalone prohibited, twenty four hours per day, in all Oregon waters.¶

Publications: Publications referenced are available from the agency.

Statutory/Other Authority: ~~496.146~~, 497.121, 506.119, 496.146, ORS 496.138

Statutes/Other Implemented: ORS 496.004, 496.009, 496.162, 506.129