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ARCHIVES DIVISION

MARY BETH HERKERT
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SALEM, OR 97310
503-373-0701**NOTICE OF PROPOSED RULEMAKING**
INCLUDING STATEMENT OF NEED & FISCAL IMPACTCHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE**FILED**04/05/2019 9:31 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend Rules for Commercial Coastal Pelagic Species Fisheries

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/06/2019 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.*CONTACT: April Mack
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Salem, OR 97302Filed By:
April Mack
Rules Coordinator

HEARING(S)

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

DATE: 06/06/2019

TIME: 8:00 AM - 5:00 PM

OFFICER: Oregon Department of Fish
& Wildlife CommissionersADDRESS: Oregon Department of Fish
& Wildlife Headquarters4034 Fairview Industrial DR SE
Salem, OR 97302

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. 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.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

1. Staff Report prepared for the Oregon Fish and Wildlife Commission hearing on 06/06/2019.

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

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):

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

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

No. The proposed rule changes needed for federal consistency were developed through the Pacific Fishery Management Council process, which involves advisory committees and public comment.

NOTE: Additional PDF filed with this filing not included in this document. Please contact Department of Fish and Wildlife for a copy of this document.

AMEND: 635-004-0375

RULE SUMMARY: These rules modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries in order to be consistent with federally adopted regulations. Specifically, federal rules governing Pacific sardine harvest specifications and management measures for the July 2019-June 2020 fishing season are adopted by reference into state rule. 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.

CHANGES TO RULE:

635-004-0375

Scope, Inclusion, and Modification of Rules ¶¶

(1) The commercial coastal pelagic species fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking coastal pelagic species. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:¶¶

(a) Code of Federal Regulations, Part 660, Subpart I, (October 1, 2017~~8~~ ed.); and¶¶

(b) Federal Register Vol. 83, No. 31, dated February 14, 2018 (83 FR 6472); and¶¶

(c) Federal Register Vol. 83, No. 122, dated June 25, 2018 (83 FR 29461). Insert reference when available¶¶

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable coastal pelagic species fishing requirements. Where federal regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.¶¶

(3) The Commission may adopt additional or modified regulations that are more conservative than federal

regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0380 through 635-004-0545 for additions or modifications to federal coastal pelagic species regulations.¶

[Publications: Publications referenced are available from the Department.]

Statutory/Other Authority: ORS 496.138, ORS 496.162, ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.129

Statutes/Other Implemented: ORS 496.162, ORS 506.109, ORS 506.129

Fiscal and Economic Impact Statement for the June 6th, 2019 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.

Pacific Sardine.

NOTE: Final numbers for 2019-2020 won't be available until mid-April. The numbers included here for the draft 2019 sardine stock assessment are preliminary and incomplete, therefore numbers for the 2018-2019 period are also presented for comparison and are provisional for the 2019-2020 fiscal impact.

For 2019-2020, the preliminary sardine stock assessment estimates the population biomass (27,547 metric tons) to be below the biomass cutoff level for directed commercial fishing (150,000 mt) and below the Minimum Stock Size Threshold (50,000 mt) which will likely result in a status determination of Overfished. The Pacific Fishery Management Council (PFMC) will recommend management reference points and set limits for incidental fisheries in mid-April. For comparison, the 2018-2019 season population biomass was estimated to be 52,062 mt and the PFMC set reference points including an Overfishing Limit of 11,324 mt, an Acceptable Biological Catch of 9,432 mt, and an Annual Catch Limit of 7,000 mt. For the July 2018 – June 2019 period, PFMC recommended management measures that close directed nontreaty commercial fishing (other than minor amounts authorized for small-scale fisheries) and set limits for incidental catch in other fisheries similar to 2017-2018 limits, as follows:

- An incidental per landing allowance of 40 percent Pacific sardine in non-treaty CPS fisheries until a total of 2,500 mt of Pacific sardine are landed.
- When 2,500 mt have been landed, the incidental per landing allowance would be reduced to 20 percent for the remainder of the 2018-2019 fishing year.
- A 2 mt incidental per landing allowance in non-CPS fisheries.

Reference points and incidental catch limits for 2019-2020 fishing year are likely to be more conservative than in 2018-2019 due to the lower estimated biomass and likely status of Overfished.

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 probable directed Pacific sardine fishery and limited incidental landings on the Pacific coast again in 2019-20, Ad Valorem revenues to ODFW from sardine landings will be substantially lower than have been historically and will likely be similar to those since the directed fishery has been closed. 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 |
| 2018-2019 | 11,324 | 9,436 | 7,000 |
| 2019-2020 | 5,816* | TBD | TBD |

*Preliminary

In addition to not allowing a directed sardine fishery for 2018-2019, the PFMC has adopted the following accountability measures for incidental catch of sardine for the 2018-19 period:

- o 40% sardine allowed until 2,500 mt tons landed
- o 20% for remainder of fishing year (July 2018 – Jun 2019)
- o 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 2 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 directed commercial sardine fishery will almost certainly be canceled again for the 2019-2020 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

| 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 | 7,778 | \$3,522,051 | \$0.21 |
| 2015 | 4,698,943 | 2,131 | \$812,686 | \$0.17 |
| 2016 | 8,816 | 4 | \$318 | \$0.04 |
| 2017 | 2,553 | 1 | \$248 | \$0.10 |
| 2018 | 20,573 | 9 | \$3,535 | \$0.17 |

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 (3 resident and 21 nonresident) in 2018.

Wholesale dealers/processors who buy Pacific sardine would be affected and there were 7 in 2015, the last year that directed commercial fishing was open. 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.