

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED

10/18/2022 10:49 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: 2023 Commercial and Recreational Groundfish Fisheries Regulations

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/16/2022 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: Lisa Kingsley

503-947-6233

Lisa.M.Kingsley@ODFW.Oregon.gov

4034 Fairview Industrial Dr SE

Salem, OR 97302

Filed By:

Lisa Kingsley

Rules Coordinator

HEARING(S)

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

DATE: 12/16/2022

TIME: 8:00 AM - 5:00 PM

OFFICER: Oregon Fish and Wildlife Commission

ADDRESS: Sheraton Portland Airport Hotel

8235 NE Airport Way

Portland, OR 97220

SPECIAL INSTRUCTIONS:

Because of the rapidly changing situation with COVID-19, all or portions of this hearing may be conducted virtually.

Information will be posted on our website at <https://www.dfw.state.or.us/agency/commission/minutes/>

NEED FOR THE RULE(S)

These rules are needed to implement the Pacific Coast Groundfish Fishery Management Plan (FMP), including federal harvest levels established by the Pacific Fishery Management Council (PFMC). The FMP largely describes current resource management goals, harvest policy, and management measures for commercial and recreational fisheries.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 12/16/2022.

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, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142. Contact Lisa Kingsley at 503-947-6233 or lisa.m.kingsley@odfw.oregon.gov to view by appointment between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department has solicited input from representatives of underrepresented communities likely to be affected on

whether the proposed rule will have a fiscal impact on the community, the extent of the fiscal impact, and whether the rules will have significant impact on underrepresented communities. <https://www.dfw.state.or.us/OARs/index.asp>

FISCAL AND ECONOMIC IMPACT:

No major fiscal and economic impacts are expected from these rule changes.

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).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

The proposed rules will affect state agencies, units of local government, and the public, as discussed below:

A. The state agencies that could be affected by the 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 changes in recreational groundfish regulations to affect recreational angler license sales (ODFW) and enforcement costs (OSP), but the potential changes are likely to be small relative to statewide angler license sales and enforcement costs. There is potential for slight changes in Ad Valorem (AV) revenues from changes to commercial nearshore period limits, but the potential changes are likely to be very small relative to overall AV revenues collected annually by ODFW.

B. Economic impacts to local governments are expected to be minor. There may be potential for some Oregon port districts to be impacted, but significant impacts are not anticipated. A more detailed consideration of impacts is not possible because of data constraints.

C. The public will be affected by the adoption of these rules. The proposed rules are consistent with actions of the Pacific Fishery Management Council (PFMC), which establishes federal harvest levels for groundfish. Adoption of regulations that exceed these harvest levels would likely result in preemption of state management authority. Detailed economic analyses are required under federal law (NEPA) and are part of the Environmental Impact Statement (EIS) filed by the PFMC. The EIS contains additional information on the economic and social effects of the 2023-2024 regulations. That document is incorporated into this statement by reference.

State Harvest Guidelines (HGs)

State HGs are harvest objectives and attainment does not necessarily close a fishery but may result in further in-season restrictions to meet objectives such as not exceeding federal Annual Catch Limits (ACLs) or state HGs.

HGs are set separately for commercial and recreational fisheries, establishing sector-specific harvest objectives.

Proportional allocations to each sector were established in the mid-2000's based on historical sector utilization of each species; no changes to the proportional sector allocations are proposed. The department recommends adjusting recreational and commercial state HGs within each sector for blue and deacon rockfish, nearshore rockfish, cabezon, and greenling based on changes in federal harvest specifications, which are founded on projections of sustainable yield from the most recent assessment of each stock.

Table 1 presents adopted HGs in recent years and recommended HGs for 2023. The proposed HG for black rockfish, the most important target species in both sectors, is the same as in 2020-2022 because there is no change in the federal annual catch limit for this stock. The proposed HG for Nearshore Rockfish, a group of similar species that are managed together, is higher than recent years due to new stock assessments for some component species. Both quillback rockfish and copper rockfish were assessed in 2021 with results implemented in federal management for 2023-2024 fisheries. While both stocks were estimated to be healthy and above target biomass, the potential long-term yield was estimated

to be quite low for quillback and relatively high for copper rockfish. These results increase to the federal ACL, and thus proposed HGs, for the management group but necessitate restrictions for the quillback rockfish stock component. Modest reductions in all other HGs are recommended to stay within lower federal guidelines. In recent years, attainment of cabezon in recreational fisheries has been high, and lower HGs are likely to reduce opportunity. Attainment of blue and deacon rockfish and greenling has consistently been low in both recreational and commercial fisheries, and the proposed decreases are not expected to impact opportunity.

See Attachment Table 1. State harvest guidelines for commercial and recreational groundfish management groups

Harvest restrictions may reduce short-term economic benefits, but they are necessary to preserve the ability of groundfish resources to sustain fishing opportunities and contribute to healthy ocean ecosystems in the long term. Failure to constrain harvest to appropriate levels may result in more severe adverse economic impacts in the future. The proposed regulations are intended to strike a balance between present and future use that sustains fishery resource benefits over time.

Recreational Groundfish Regulations

Regulation amendments proposed for 2023 include changes in the seasonal depth restriction and removal of the sub-bag limit for China and copper rockfish to optimize recreational groundfish opportunities and reduce the risk of exceeding state or federal harvest guidelines to an acceptably low level.

The following changes to recreational groundfish regulations are proposed for 2023 based on federal ACLs or HGs and public input:

Open all months, to fishing at all depths (expand the all-depth groundfish season from September through May to year-round)

Remove the one fish sub-bag limit for copper rockfish and China rockfish, will be part of the general marine fish daily bag limit

In 2021, quillback rockfish was included with copper and China rockfishes in a one fish sub-bag limit. However, new information from the 2021 stock assessment of quillback rockfish in Oregon indicates that harvest should be reduced from recent levels to ensure sustainability of the stock and retention was prohibited in 2022 and a prohibition on retention is recommended to continue in 2023.

These recommendations increase recreational bottomfish opportunity where possible, decrease opportunity where necessary, and maintain low to moderate risk of exceeding federal or state harvest limits. As always, ODFW will monitor harvest rates during the year and adjust regulations as needed in consultation with the marine Sportfishing Advisory Committee.

From 2016-2021, anglers took between 96,300 and 109,800 recreational fishing trips targeting groundfish, accounting for just over one-half of total ocean recreational trips during that time (Table 2). Using the most recent recreational expenditure data-based multipliers from the NMFS IOPAC Model for charter and private angler trips, \$246.69 and \$83.84 respectively (Leonard, J. and P. Watson. 2011), adjusting these values from January 2015 dollars to December 2021 dollars, results in multipliers of (\$294.29) for charter trips and (\$100.02) for private angler trips. Applying these multipliers to the number of charter and private groundfish trips in 2021 provides an estimated economic impact of recreational groundfish fishing in Oregon of \$19.94 million for 2021.

See Attachment Table 2. Ocean recreational fishing effort by trip-type (target species), 2016 to 2021, in thousands of angler-trips. Data from the ODFW Ocean Recreational Boat Survey.

While impacts on catch per species can be estimated with existing data and models, it is not possible to estimate how the proposed modifications might impact the total number of angler trips targeting bottomfish; therefore, it is not

possible to estimate the fiscal impact at this time.

Commercial Groundfish Regulations

In Oregon's commercial nearshore sector, harvesters use small vessels and hook and line gear to target nearshore groundfish, including black rockfish and other species, generally in state waters. In 2021, commercial nearshore groundfish landings totaled about 330 thousand pounds, valued at over \$970 thousand.

The following modifications to commercial nearshore vessel limits in 2023 are proposed based on changes to federal ACLs or HGs, evaluation of recent harvest and effort data, and public input:

Increase Other Nearshore Rockfish bi-monthly vessel limits from 350 pounds per period to 450 pounds per period.

Increase Greenling bi-monthly vessel limits from 1,000 pounds per period to 1,200 pounds per period.

Suspend trip limits for Black Rockfish Management Areas (BRMAs) through 2025 (bi-monthly limits still apply).

In the commercial fishery, quillback rockfish is included with copper, China and several other rockfishes in the Other Nearshore Rockfish management group for setting HGs and bi-monthly vessel limits. However, the 2021 stock assessment of quillback rockfish in Oregon indicates that harvest should be reduced from recent levels to ensure sustainability of the stock; therefore, the prohibition on retention implemented in 2022 is recommended to continue for 2023.

Until recently, regulations limited the amount of black rockfish that may be landed in each fishing trip if any fishing occurred in a BRMA. The limit has fluctuated between 200 and 500 pounds over time. Four BRMAs were adopted in 1995 to address concerns about rapidly developing commercial nearshore fishing in areas important to the recreational fishery. At that time, BRMAs were the only limitation on the commercial nearshore fishery; however, in 2003-2004 the current commercial nearshore management structure was established, implementing a suite of effort and catch controls including a limited number of permits, sector-specific harvest guidelines, and bi-monthly vessel limits. BRMAs may no longer be necessary to achieve management goals, and this additional layer of regulation creates inefficiencies for commercial harvesters who must take more trips than would otherwise be the necessary to attain their bi-monthly vessel limit. For 2022, a one-year suspension was adopted to allow ODFW to evaluate the impacts of removing BRMA trip limits, and to recommend continuation or modification for 2023. Available data for 2022 indicates little change in the amount of black rockfish harvested by the commercial fishery from inside BRMAs. However, the 2022 fishing year is not complete, and available data is limited to fish tickets. Logbook data, which give more precise location information, is generally not available until the following year due to data processing and entry time. Therefore, continued suspension of BRMA trip limits is recommended through 2025 to allow a more thorough evaluation of impacts.

These changes are designed to balance opportunity for commercial nearshore permit holders to attain but not exceed the commercial HG with the goal of maintaining year-round harvest opportunity. Increases in Other Nearshore Rockfish and Greenling limits will provide some economic benefits for harvesters that take advantage of them. Gains are expected to be modest since few harvesters have reached bi-monthly vessel limits on a regular basis in recent years.

References

Leonard, J. and P. Watson. 2011. Description of the input-output model for Pacific Coast fisheries. U.S. Dept. Commer., NOAA Tech. Memo. NMFS-NWFSC-111, 64p.

Oregon Department of Fish and Wildlife. Landing Statistics 2021.

https://www.dfw.state.or.us/fish/commercial/landing_stats/2021/index.asp. Retrieved September 20, 2022

US Bureau of Labor Statistics. CPI Inflation Calculator. <https://data.bls.gov/cgi-bin/cpicalc.pl>. Retrieved September 23, 2022.

(2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s);

The main types of small business subject to the rules are commercial and recreational harvesters landing nearshore groundfish and businesses that provide goods and services to those commercial and recreational groundfish harvesters.

In 2021 there were 84 commercial vessels, making nearshore groundfish landings equal to or greater than \$500 in value. There were 43 Black/Blue Rockfish permits and 67 Nearshore-endorsed Black/Blue Rockfish permits sold, two separate permit types that exist for the limited-entry commercial nearshore fishery.

Wholesale dealers who buy nearshore groundfish will be affected and there were 34 in 2021 (excluding processors or buyers whose activities were less than \$500).

Other small businesses that have the potential to be affected include 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) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

No significant changes in these costs are expected for the small businesses subject to the rule.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Suspension of trip limits for BRMAs for 2023-2025 has the potential to reduce costs and increase revenues for nearshore groundfish commercial fishers, because this could allow commercial fishers to catch their bi-monthly limit in fewer fishing trips and/or more fully attain their bi-monthly limit. No other significant changes in these costs are expected for the small businesses subject to the rule.

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

Public meetings were conducted in fall of 2022 to allow impacted parties to participate in the rule making process. The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

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

The alternatives for federal groundfish regulations and harvest limits were developed through the Pacific Fishery Management Council process, which involves advisory committees and public comment. Department staff conducted public meetings to discuss and develop proposed changes to state regulations that are in addition to federal regulations.

RULES PROPOSED:

635-004-0275, 635-004-0350, 635-004-0355, 635-004-0365, 635-039-0080, 635-039-0090

AMEND: 635-004-0275

RULE SUMMARY: These amended rules will modify annual groundfish management measures and harvest limits for 2023 commercial and recreational groundfish fisheries, including but not limited to, state harvest guidelines for commercial and recreational fisheries (e.g., sector allocations), recreational regulations (e.g., bag limits, length limits, and seasons), and nearshore commercial regulations (e.g., bi-monthly period vessel limits). Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

CHANGES TO RULE:

635-004-0275

Scope, Inclusion, and Modification of Rules ¶¶

(1) The commercial groundfish 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 groundfish. 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, Subparts C, D, and E (October 1, 2021~~2~~ ed.) as amended; and ¶¶

(b) Federal Register Vol. 86, no. 207, dated October 29, 2021 (86 FR 59876) ¶¶

(c) Federal Register Vol. 86 no. 235, dated December 10, 2021 (86 FR 70413) INSERT CITATION WHEN AVAILABLE. ¶¶

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable groundfish 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 635-004-0280 through 635-004-0365 for additions or modifications to federal groundfish regulations.

Statutory/Other Authority: ~~ORS 496.138, ORS 496.162, ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.129~~ ORS 506.119, ORS 506.775

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

AMEND: 635-004-0350

RULE SUMMARY: These amended rules will modify annual groundfish management measures and harvest limits for 2023 commercial and recreational groundfish fisheries, including but not limited to, state harvest guidelines for commercial and recreational fisheries (e.g., sector allocations), recreational regulations (e.g., bag limits, length limits, and seasons), and nearshore commercial regulations (e.g., bi-monthly period vessel limits). Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

CHANGES TO RULE:

635-004-0350

Harvest Guidelines and Landing Caps ¶¶

(1) Upon attainment of a harvest guideline in the Black Rockfish / Blue Rockfish / Nearshore Fishery, the Department shall initiate consultation to determine if additional regulatory actions are necessary to achieve management objectives.¶¶

(2) The following commercial harvest guidelines include the combined landings and other fishery related mortality by all Oregon commercial fisheries in a single calendar year:¶¶

(a) Black rockfish: 122.9 metric tons;¶¶

(b) Blue rockfish and deacon rockfish combined: ~~16.35.7~~ 16.35.7 metric tons;¶¶

(c) Other Nearshore Rockfish combined: ~~14.16.6~~ 14.16.6 metric tons;¶¶

(d) Cabezon: ~~33.52.4~~ 33.52.4 metric tons; and¶¶

(e) Greenling: ~~103.80.7~~ 103.80.7 metric tons.

Statutory/Other Authority: ~~ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.121~~ ORS 506.129

Statutes/Other Implemented: ORS 506.109, ORS 506.129

AMEND: 635-004-0355

RULE SUMMARY: These amended rules will modify annual groundfish management measures and harvest limits for 2023 commercial and recreational groundfish fisheries, including but not limited to, state harvest guidelines for commercial and recreational fisheries (e.g., sector allocations), recreational regulations (e.g., bag limits, length limits, and seasons), and nearshore commercial regulations (e.g., bi-monthly period vessel limits). Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

CHANGES TO RULE:

635-004-0355

Trip Limits ¶

(1) The trip limits outlined in this rule are set at the beginning of each calendar year based on commercial harvest caps and projected fishing effort, and are subject to in-season adjustments and closures. Fishers should refer to Nearshore Commercial Fishery Industry Notices on the Marine Resources Program Commercial Fishing Rules and Regulations webpage for the most up-to-date information regarding trip limits and other regulations affecting the Nearshore Commercial Fishery. ¶

(2) Vessels with a Black Rockfish / Blue Rockfish / Nearshore Fishery Permit, with or without a Nearshore Endorsement, may land no more than the following bi-monthly cumulative trip limits: ¶

(a) Black rockfish: ¶

(A) 1800 pounds in period 1; ¶

(B) 1800 pounds in period 2; ¶

(C) 2400 pounds in period 3; ¶

(D) 2400 pounds in period 4; ¶

(E) 1800 pounds in period 5; ¶

(F) 1800 pounds in period 6; and ¶

(b) 1500 pounds of blue rockfish and deacon rockfish combined in each period. ¶

(3) ~~Effective September 1,~~ for all other nearshore species, vessels with a Black Rockfish / Blue Rockfish / Nearshore Fishery Permit with Nearshore Endorsement may land no more than the following bi-monthly cumulative trip limits: ¶

(a) ~~3450~~ 450 pounds of other nearshore rockfish combined in each period; ¶

(b) 1500 pounds of cabezon in each period; and ¶

(c) ~~10200~~ 200 pounds of greenling species in each period. ¶

(4) It is unlawful to retain or land quillback rockfish for commercial purposes, except by vessels participating in the federal Pacific coast groundfish limited entry trawl fishery.

Statutory/Other Authority: ~~ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.121~~ 119

Statutes/Other Implemented: ORS 506.109, ORS 506.129

AMEND: 635-004-0365

RULE SUMMARY: These amended rules will modify annual groundfish management measures and harvest limits for 2023 commercial and recreational groundfish fisheries, including but not limited to, state harvest guidelines for commercial and recreational fisheries (e.g., sector allocations), recreational regulations (e.g., bag limits, length limits, and seasons), and nearshore commercial regulations (e.g., bi-monthly period vessel limits). Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

CHANGES TO RULE:

635-004-0365

Black Rockfish Management Areas ¶¶

In addition to catch restrictions set forth in the Code of Federal Regulations, Title 50 Part 660, OAR 635-004-0355 and OAR 635-004-0360, the following trip limit applies to black rockfish taken with all commercial gears except trawl: ¶¶

(1) It is unlawful to take, retain, possess, or land more than the following trip limit of black rockfish per vessel from a single fishing trip when fishing occurs for any species of fish within one of the Black Rockfish Management Areas defined in section (2) of this rule: ¶¶

(a) 500 pounds from November 1 of any year through February 28 of the following year; and ¶¶

(b) 300 pounds from March 1 through October 31. ¶¶

(2) Black Rockfish Management Areas are defined as: ¶¶

(a) Tillamook Head (45°56'45" N latitude) to Cape Lookout (45°20'15" N latitude); ¶¶

(b) Cascade Head (45°03'50" N latitude) to Cape Perpetua (44°18' N latitude); ¶¶

(c) From a point (43°30' N latitude), approximately 8 1/2 nautical miles north of the Coos Bay north jetty, to a point (43°03' N latitude) adjacent to the mouth of Four-mile Creek; ¶¶

(d) Mack Arch (42°13'40" N latitude) to the Oregon-California border (42°00' N latitude). ¶¶

(3) Notwithstanding any other part of this rule, trip limits described in section (1) of this rule are suspended from January 1, 2023 through December 31, 2025. Therefore, vessels may land up to the period trip limit for black rockfish described in OAR 635-004-0355(2)(a) from a single fishing trip during that time.

Statutory/Other Authority: ~~ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.121~~119

Statutes/Other Implemented: ORS 506.109, ORS 506.129

AMEND: 635-039-0080

RULE SUMMARY: These amended rules will modify annual groundfish management measures and harvest limits for 2023 commercial and recreational groundfish fisheries, including but not limited to, state harvest guidelines for commercial and recreational fisheries (e.g., sector allocations), recreational regulations (e.g., bag limits, length limits, and seasons), and nearshore commercial regulations (e.g., bi-monthly period vessel limits). Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

CHANGES TO RULE:

635-039-0080

Purpose and Scope ¶¶

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.¶¶

(2) Division 039 incorporates into Oregon Administrative Rules, by reference:¶¶

(a) The sport fishing regulations of the State, included in the document entitled 2022~~23~~ Oregon Sport Fishing Regulations;¶¶

(b) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 201~~9~~22 ed.), as amended; ~~and~~¶¶

(c) Title 50 of the Code of Federal Regulations, Part 660, Subpart G (October 1, 201~~9~~22 ed.), as amended; ~~and~~¶¶

(d) INSERT CITATION WHEN AVAILABLE.¶¶

(3) Therefore, persons must consult all publications referenced in this rule in addition to Division 011 and Division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.¶¶

~~Publications: Publications referenced are available from the agency.~~

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

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

AMEND: 635-039-0090

RULE SUMMARY: These amended rules will modify annual groundfish management measures and harvest limits for 2023 commercial and recreational groundfish fisheries, including but not limited to, state harvest guidelines for commercial and recreational fisheries (e.g., sector allocations), recreational regulations (e.g., bag limits, length limits, and seasons), and nearshore commercial regulations (e.g., bi-monthly period vessel limits). Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

CHANGES TO RULE:

635-039-0090

Inclusions and Modifications ¶¶

(1) The 2022~~3~~ 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 2022~~3~~ 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, 389.1 metric tons;¶¶

(b) Blue rockfish and deacon rockfish combined: ~~71.268.8~~ metric tons;¶¶

(c) Other Nearshore Rockfish combined: ~~10.55.8~~ metric tons;¶¶

(d) Cabezon, 18.6~~0~~ metric tons; and¶¶

(e) Greenling, 34~~3~~.4 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 2022~~3~~ 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 2022~~3~~ 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 ~~China rockfish or copper rockfish in aggregate, and no more than one may be a~~ cabezon, when retention of cabezon is allowed. Retention of the following species is prohibited:¶¶

(A) Yelloweye rockfish;¶¶

(B) Cabezon from January 1 through June 30; and¶¶

(C) Quillback rockfish.¶¶

(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) Except as specified in subsection (4)(d)(A), 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 when the sport fishery for general marine species (other than flatfish species) is closed outside of the 40 fathom curve as specified in subsection (4)(f).¶¶

(A) Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.¶¶

(B) When the all-depth sport fishery for Pacific halibut is open and the sport fishery for general marine species (other than flatfish species) is closed outside of the 40-fathom curve as specified in subsection (4)(f), fishing with long-leader gear is allowed on the same trip as all-depth halibut fishing as follows:¶¶

(i) When rockfish are onboard the vessel, anglers are only allowed to retain the species listed under subsection (4)(h)(A) and must use longleader gear as defined in subsection (4)(e)(F);¶¶

(ii) Pacific cod, sablefish, flatfish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark) may be retained while all-depth halibut fishing, prior to

retaining any rockfish species;¶

(iii) It is not required to separate all-depth halibut fishing from long-leader fishing by returning to the dock and offloading fish. 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; and¶

(iv) All other requirements and prohibitions contained within subsection (4)(h) apply.¶

(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 July 1 through August 31, outside of the 40-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 20A 20-fathom, 25-fathom, 2530-fathom, or 340-fathom curve, as shown in Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line as for depth-based inseason modifications as necessitateary.~~ 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, 2018 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) 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*), deacon rockfish (*S. diaconus*), blue rockfish (*S. mystinus*), 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, except as specified in subsection (4)(d)(B)(iii);¶

(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 subsection (4)(b) in the same day;¶

(E) It is unlawful to fish for any species in the Groundfish Group, including those listed in subsection (4)(h)(A), inside of the 40-fathom curve or with gear that is not long-leader gear as defined in subsection (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 until March 17, 2024.¶

~~(6) Take of all species of seastars is prohibited. ¶~~

~~(7) The daily limit for European Green Crab is 35 per day.~~

Statutory/Other Authority: ORS 496.138, ORS 496.146

Statutes/Other Implemented: ~~ORS 497.121, ORS 496.146, ORS 496.004, ORS 496.009, ORS 496.162, ORS 496.012, ORS 497.016, ORS 497.026.162~~

Table 1. State harvest guidelines in metric tons for commercial and recreational groundfish management groups

Management Group	2019	2020	2021	2022	2023
Black Rockfish					
Commercial HG (24.0%)	123.8	122.9	122.9	122.9	122.9
Recreational HG (76.0%)	392.2	389.1	389.1	389.1	389.1
Blue and Deacon Rockfish					
Commercial HG (18.6%)	18.9	18.3	16.8	16.3	15.7
Recreational HG (81.4%)	82.6	80.1	73.7	71.2	68.8
Nearshore Rockfish					
Commercial HG (51.3%)	12.3	12.2	11.3	11.1	16.6
Recreational HG (48.7%)	11.7	11.6	10.8	10.5	15.8
Cabazon					
Commercial HG (64.3%)	30.2	30.2	35.0	33.5	32.4
Recreational HG (35.7%)	16.8	16.8	19.4	18.6	18.0
Greenling					
Commercial HG (75.1%)	128.5	118.3	108.1	103.8	100.7
Recreational HG (24.9%)	42.6	39.2	35.8	34.4	33.4

Table 2. Ocean recreational fishing effort by trip-type (target species), 2016 to 2021, in thousands of angler-trips. Data from the ODFW Ocean Recreational Boat Survey.

	*2017	2018	2019	2020	2021
Salmon	35.6	51.2	73.8	57.0	98.7
Halibut	21.8	19.9	16.0	20.2	12.8
Tuna	5.7	5.9	15.3	2.6	5.8
Bottomfish (Groundfish)	103.1	109.8	100.1	103.4	98.8
Combo (Salmon + Other)	6.7	12.6	20.4	14.6	18.8
Total	172.8	199.4	225.6	197.8	234.9

* Bottomfish closure in effect from 9/18/2017 through 12/31/2017.