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Attachment 2

ARCHIVES DIVISION
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503-373-0701

NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED

04/17/2023 10:57 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: 06/16/2023 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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Salem, OR 97302

Filed By:
Steven Emerson
Rules Coordinator

HEARING(S)

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

DATE: 06/16/2023

TIME: 8:00 AM - 5:00 PM

OFFICER: Michelle Tate

HEARING LOCATION

ADDRESS: Best Western Plus Agate Beach, 3019 N Coast Hwy, Newport, OR 97365

SPECIAL INSTRUCTIONS:

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person or virtually. Additional information regarding participation will be posted on our website at www.dfw.state.or.us/agency/commission/minutes/. The meeting can be viewed at www.youtube.com/user/IEODFW. Any changes to the meeting format (to virtual only if emergency arises) will be posted to our website as soon as possible.

NEED FOR THE RULE(S)

These rules are needed to modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries to be consistent 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. In addition, the scientific name for Pacific sand lance has changed and the rules defining that species scientific name needs to be amended to conform.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Pacific Fishery Management Council Decision Summary Document March 31-April 7, 2023.
2. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 06/16/2023.
3. Systematics of North Pacific sand lances of the genus *Ammodytes* based on molecular and morphological evidence, with the description of a new species from Japan. Orr et al. 2015.

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 Steven Emerson at 503-947-6211 or Steven.C.Emerson@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:

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 2023-24, Ad Valorem revenues to ODFW from sardine landings will be lower than historical levels and will likely be similar to those since the directed fishery has been closed (2015). 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 adopted annually by the PFMC for the entire harvest area (Pacific Ocean off 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).

See Table 1. Pacific sardine harvest specifications (attached to notice filing).

In addition to continuing the closure of the directed Pacific sardine fishery for 2023-2024, the PFMC has adopted an annual catch target of 3,800 mt, and the following accountability measures for incidental catch and the live bait fishery (active primarily in California):

- o An incidental sardine catch allowance of 20% for commercial coastal CPS fisheries, except live bait and minor directed fishing;
- o Directed take of sardines in the live bait fishery will be allowed. A per-trip limit of 1 mt of Pacific sardine will apply if the live bait fishery attains 2,5000 mt;
- o If the annual catch target of 3,800 mt is attained, a 1 mt per trip limit of Pacific sardine would apply to live bait, and a 1 mt per trip limit of incidentally caught Pacific sardine would apply to commercial CPS fisheries;
- o An incidental per-trip allowance of 2 mt of sardines applies to 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. 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 remain closed for the 2023-2024 season and the allowed incidental sardine catch is limited, it is clear that the value of the fishery will be quite low relative to years when the directed fishery was open (prior to 2015).

See Table 2. Pounds and Value of Pacific Sardines Landed in Oregon (attached to notice filing).

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) It is not expected that compliance with proposed regulations will increase the effect of compliance costs, as adoption of the Pacific sardine 2023-2024 fishery closure, annual catch target of 3,800 mt, and the accountability measures for incidental catch and the live bait fishery are very similar to the PFMC federal guidelines for 2022-2023, in terms of potential impacts to Oregon businesses.

(2) (a) The main types of small business subject to the rules are commercial fishermen targeting coastal pelagic species. The department issued 20 sardine limited entry permits (3 resident and 17 nonresident) in 2022.

Wholesale dealers/processors who buy Pacific sardine would be affected; 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, and restaurants/cafes/bars. Information is not available to estimate the number of those types of small businesses affected.

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

(c) No 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):

The proposed sardine fishery rule changes 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?

The proposed rule changes 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.

RULES PROPOSED:

635-004-0215, 635-004-0375, 635-005-0240

AMEND: 635-004-0215

RULE SUMMARY: These amendments modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries

in order to be consistent with federal regulations governing Pacific sardine harvest specifications and management measures for the July 2023-June 2024 fishing season. Federal rules recommended by the Pacific Fishery Management Council (PFMC) for the 2023-2024 season include a continued closure of the Pacific sardine directed commercial fishery along the entire West Coast due to low stock biomass, and limits on incidental sardine harvest in other commercial fisheries. Federal rules have not been published at the time of this filing but are expected to reflect PFMC recommendations and will be published prior to the rulemaking hearing. In addition, the amendments modify the definition of the common name for Pacific sand lance to update the new scientific name for the species.

CHANGES TO RULE:

635-004-0215

Definitions

As used in Division 004 regulations:¶

- (1) "Animals living intertidally on the bottom" means any benthic animal with a natural range that includes intertidal areas, regardless of where harvest occurs, and includes but is not limited to, starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates, and crabs except Dungeness crab.¶
- (2) "Board" means the Commercial Fishery Permit Board.¶
- (3) "Buy" includes offer to buy, barter, exchange or trade.¶
- (4) "Coastal Pelagic Species" means all species of ocean food fish and shellfish defined as Coastal Pelagic Species in the Fishery Management Plan for U.S. West Coast Fisheries for Coastal Pelagic Species and in the Federal Coastal Pelagic Species Regulations, Title 50, Part 660, and include:¶
 - (a) Jack mackerel (*Trachurus symmetricus*);¶
 - (b) Jack smelt (*Atherinopsis californiensis*);¶
 - (c) Krill (all species in order Euphausiacea);¶
 - (d) Market squid (*Loligo opalescens*);¶
 - (e) Northern anchovy (*Engraulis mordax*);¶
 - (f) Pacific herring (*Clupea harengus pallasi*);¶
 - (g) Pacific mackerel (*Scomber japonicus*); and¶
 - (h) Pacific sardine (*Sardinops sagax*).¶
- (5) "Commercial harvest cap" means the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries.¶
- (6) "Commercial landing cap" means the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries.¶
- (7) "Commercial purposes" means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels, as specified in ORS 506.006.¶
- (8) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.¶
- (9) "Department" means the State Department of Fish and Wildlife.¶
- (10) "Director" means the Director of the Oregon Department of Fish and Wildlife appointed pursuant to ORS 496.112.¶
- (11) "Dive gear" means gear used while a fisher is submerged underwater in order to take food fish, and includes but is not limited to one or more of the following pieces of equipment: SCUBA or other surface supplied air source (hookah gear), dive mask, snorkel, air cylinders, weight belt, wetsuit and fins.¶
- (12) "Exclusive Economic Zone" means the zone between 3-200 nautical miles offshore of the United States.¶
- (13) "Fishing gear" means, as specified in ORS 506.006, any appliance or device intended for or capable of being used to take food fish for commercial purposes, and includes:¶
 - (a) "Fixed gear" means longline, trap or pot, set net, and stationary hook-and-line (including vertical hook-and-line) gears;¶
 - (b) "Gillnet" has the meaning as set forth in OAR 635-042-0010;¶
 - (c) "Hook-and-line" means one or more hooks attached to one or more lines;¶
 - (d) "Lampara net" means a surrounding or seine net with the sections of netting made and joined to create bagging, and is hauled with purse rings;¶
 - (e) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;¶
 - (f) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;¶
 - (g) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;¶

- (h) "Purse seine" means a floated and weighted encircling net that is closed by means of a purse line threaded through rings attached to the bottom of the net. Purse seine gear includes, but is not limited to, ring net, drum purse seine, and lampara nets;¶
- (i) "Seine" means any non-fixed net other than a trawl net or gillnet and includes all types of purse seines;¶
- (j) "Setline" means a bottom longline used in rivers and estuaries for targeting white sturgeon;¶
- (k) "Set net" means a stationary, buoyed and anchored gillnet or trammel net which takes fish commonly by gilling and is not free to move or drift with the current or tide;¶
- (l) "Spear" means a sharp, pointed, or barbed instrument on a shaft;¶
- (m) "Trammel net" means a gillnet made with two or more walls joined to a common float line;¶
- (n) "Trawl gear" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels, and includes but is not limited to beam trawl, bobbin or roller trawl, bottom trawl, pelagic trawl and Danish and Scottish seine gear;¶
- (o) "Troll" means fishing gear that consists of one or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation; and¶
- (p) "Vertical hook and line" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.¶
- (14) "Fishing trip" means a period of time between landings when fishing is conducted.¶
- (15) "Food Fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction, pursuant to ORS 506.036.¶
- (16) "Groundfish" means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50, Part 660 and includes:¶
- (a) All species of rockfish, thornyheads, and scorpionfish that occur off Washington, Oregon, or California (genera *Sebastes*, *Scorpaena*, *Scorpaenodes*, and *Sebastolobus*);¶
- (b) All species of grenadiers in the family Macrouridae that occur off Washington, Oregon, or California, including but not limited to Giant grenadier, (*Albatrossia pectoralis*) and Pacific grenadier (*Coryphaenoides acrolepis*);¶
- (c) All species of skates in the family Arhynchobatidae that occur off Washington, Oregon, or California, including but not limited to Aleutian skate (*Bathyraja aleutica*), Bering/sandpaper skate (*B. interrupta*), big skate (*Raja binoculata*), California skate (*R. inornata*), longnose skate (*R. rhina*), and rougtail/black skate (*B. trachura*);¶
- (d) Arrowtooth flounder (*Atheresthes stomias*);¶
- (e) Butter sole (*Isopsetta isolepis*);¶
- (f) Cabezon (*Scorpaenichthys marmoratus*);¶
- (g) Curlfin sole (*Pleuronichthys decurrens*);¶
- (h) Dover sole (*Microstomus pacificus*);¶
- (i) English sole (*Parophrys vetulus*);¶
- (j) Finescale codling (*Antimora microlepis*);¶
- (k) Flathead sole (*Hippoglossoides elassodon*);¶
- (l) Kelp greenling (*Hexagrammos decagrammus*);¶
- (m) Leopard shark (*Triakis semifasciata*);¶
- (n) Lingcod (*Ophiodon elongatus*);¶
- (o) Pacific cod (*Gadus macrocephalus*);¶
- (p) Pacific sanddab (*Citharichthys sordidus*);¶
- (q) Pacific whiting (*Merluccius productus*);¶
- (r) Petrale sole (*Eopsetta jordani*);¶
- (s) Ratfish (*Hydrolagus colliei*);¶
- (t) Rex sole (*Glyptocephalus zachirus*);¶
- (u) Rock sole (*Lepidopsetta bilineata*);¶
- (v) Sablefish (*Anoplopoma fimbria*);¶
- (w) Sand sole (*Psettichthys melanostictus*);¶
- (x) Soupfin shark (*Galeorhinus zyopterus*);¶
- (y) Spiny dogfish (*Squalus acanthias*); and¶
- (z) Starry flounder (*Platichthys stellatus*).¶
- (17) "Harvest guideline" means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not automatically close a fishery.¶
- (18) "Highly Migratory Species" means all species of ocean food fish defined as highly migratory species in the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species and in the Federal Highly Migratory Species Regulations, Title 50, Part 660, and includes:¶
- (a) Bigeye thresher shark (*Alopias superciliosus*);¶
- (b) Bigeye tuna (*Thunnus obesus*);¶

- (c) Blue shark (*Prionace glauca*);¶
- (d) Common thresher shark (*Alopias vulpinus*);¶
- (e) Common Mola (*Mola mola*);¶
- (f) Dorado (*Coryphaena hippurus*);¶
- (g) Escolar (*Lepidocybium flavobrunneum*);¶
- (h) Lancetfishes (*Alepisauridae* species);¶
- (i) Louvar (*Luvarus imperialis*);¶
- (j) North Pacific albacore tuna (*Thunnus alalunga*);¶
- (k) Northern bluefin tuna (*Thunnus thynnus*);¶
- (l) Pacific swordfish (*Xiphias gladius*);¶
- (m) Pelagic sting ray (*Dasyatis violacea*);¶
- (n) Pelagic thresher shark (*Alopias pelagicus*);¶
- (o) Shortfin mako shark (*Isurus oxyrinchus*);¶
- (p) Skipjack tuna (*Katsuwonus pelamis*);¶
- (q) Striped marlin (*Tetrapturus audax*);¶
- (r) Wahoo (*Acanthocybium solandri*); and¶
- (s) Yellowfin tuna (*Thunnus albacares*).¶
- (19) "Inland waters" means all waters of the state except the Pacific Ocean.¶
- (20) "Intertidal" means the area in Oregon coastal bays, estuaries, and beaches between mean extreme low water and mean extreme high water boundaries.¶
- (21) "Land, landed, or landing" means either of the following:¶
 - (a) For fisheries where food fish were taken by use of a vessel, "land, landed or landing" means to begin transfer of food fish from a vessel. Once transfer begins, all food fish aboard the vessel are counted as part of that landing, except:¶
 - (A) Anchovies being held live on a vessel for the purpose of using for bait in that vessel's commercial fishing operation; and¶
 - (B) For vessels participating in the federal trawl rationalization program, the portion of catch that is intended to be delivered to Washington or California is not considered part of that landing.¶
 - (b) For fisheries where food fish were taken without use of any vessel, "land, landed or landing" means to begin transfer of food fish from a harvester to a wholesale fish dealer, wholesale fish bait dealer, or food fish canner, under which the following provisions apply:¶
 - (A) When the harvester and the wholesale fish dealer, wholesale fish bait dealer, or food fish canner are the same person or entity, transfer occurs when the food fish arrive at the licensed premises of the wholesale fish dealer, wholesale fish bait dealer, or food fish canner; and¶
 - (B) Once transfer begins, all food fish from the harvest area are counted as part of that landing.¶
- (22) "Length" or "Length Overall" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions such as a dive step or platform.¶
- (23) "Length, total" of a fish is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length.¶
- (24) "Nearshore species" includes (See ORS 506.011):¶
 - (a) Black and yellow rockfish (*Sebastes chrysomelas*);¶
 - (b) Brown Irish lord (*Hemilepidotus spinosus*);¶
 - (c) Brown rockfish (*Sebastes auriculatus*);¶
 - (d) Buffalo sculpin (*Enophrys bison*);¶
 - (e) Cabezon (*Scorpaenichthys marmoratus*);¶
 - (f) Calico rockfish (*Sebastes dalli*);¶
 - (g) China rockfish (*S. nebulosus*);¶
 - (h) Copper rockfish (*S. caurinus*);¶
 - (i) Gopher rockfish (*S. carnatus*);¶
 - (j) Grass rockfish (*S. rastrelliger*);¶
 - (k) Kelp greenling (*Hexagrammos decagrammus*);¶
 - (l) Kelp rockfish (*Sebastes atrovirens*);¶
 - (m) Olive rockfish (*S. serranoides*);¶
 - (n) Painted greenling (*Oxylebius pictus*);¶
 - (o) Quillback rockfish (*Sebastes maliger*);¶

- (p) Red Irish lord (*Hemilepidotus hemilepidotus*);¶
- (q) Rock greenling (*Hexagrammos lagocephalus*);¶
- (r) Tiger rockfish (*Sebastes nigrocinctus*);¶
- (s) Treefish (*S. serriceps*);¶
- (t) Vermillion rockfish (*S. miniatus*); and¶
- (u) White spotted greenling (*Hexagrammos stelleri*).¶
- (25) "Ocean food fish" means all saltwater species of food fish except salmon, halibut, and shellfish whether found in fresh or salt water.¶
- (26) "Other nearshore rockfish" includes:¶
- (a) Black and yellow rockfish (*Sebastes chrysomelas*);¶
- (b) Brown rockfish (*S. auriculatus*);¶
- (c) Calico rockfish (*S. dalli*);¶
- (d) China rockfish (*S. nebulosus*);¶
- (e) Copper rockfish (*S. caurinus*);¶
- (f) Gopher rockfish (*S. carnatus*);¶
- (g) Grass rockfish (*S. rastrelliger*);¶
- (h) Kelp rockfish (*S. atrovirens*);¶
- (i) Olive rockfish (*S. serranoides*);¶
- (j) Quillback rockfish (*S. maliger*); and¶
- (k) Treefish (*S. serriceps*).¶
- (27) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except the Columbia River boundary with the Pacific Ocean is as specified in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.¶
- (28) "Permit holder" means a person or entity that owns an individual permit or owns the vessel to which a vessel permit is attached. A lessee of a permit is not a permit holder.¶
- (29) "Possession" means holding any food fish, shellfish or parts thereof in a person's custody or control.¶
- (30) "Process or Processing" means fresh packaging requiring freezing of food fish, or any part thereof, or any type of smoking, reducing, loining, steaking, pickling or filleting.¶
- (31) "Resident" means an actual bona fide resident of this state for at least one year, as specified in ORS 508.285.¶
- (32) "Rockfish" includes all species in the following genera:¶
- (a) *Sebastes*; and¶
- (b) *Sebastolobus*.¶
- (33) "Salmon" means all anadromous species of salmon, including but not limited to:¶
- (a) *Oncorhynchus gorboscha*, commonly known as humpback, humpies or pink salmon.¶
- (b) *Oncorhynchus keta*, commonly known as chum or dog salmon.¶
- (c) *Oncorhynchus kisutch*, commonly known as coho or silver salmon.¶
- (d) *Oncorhynchus nerka*, commonly known as sockeye, red or blueback salmon.¶
- (e) *Oncorhynchus tshawytscha*, commonly known as Chinook salmon.¶
- (34) "Shared Ecosystem Component Species" means those ecosystem component species shared between all of the Pacific Fishery Management Council's Fishery Management Plans which occur in the Pacific Ocean off Oregon and include:¶
- (a) Mesopelagic fishes of the families Myctophidae, Bathylagidae, Paralepididae, and Gonostomatidae;¶
- (b) Pacific sand lance (*Ammodytes personatus*, previously *Ammodytes hexapterus*);¶
- (c) Pacific saury (*Cololabis saira*);¶
- (d) Silversides of the family Atherinopsidae;¶
- (e) Smelts of the family Osmeridae; and¶
- (f) Pelagic squids of the families Cranchiidae, Gonatidae, Histioteuthidae, Octopoteuthidae, Ommastrephidae except Humboldt squid (*Dosidicus gigas*), Onychoteuthidae, and Thysanoteuthidae.¶
- (35) "Security interest" means an interest in a vessel or permit granted by the owner of the vessel or permit to a third party under a security agreement, pursuant to ORS chapter 79, another state's laws enacted to implement Article 9 of the Uniform Commercial Code or equivalent federal statutory provisions for federally documented vessels.¶
- (36) "Seine skiff" means an open vessel which travels with a larger fishing vessel at all times and is used solely at the direction of the operator of the larger fishing vessel to assist that larger fishing vessel in the deployment and retrieval of seine nets to take fish.¶
- (37) "Sell" includes to offer or possess for sale, barter, exchange or trade.¶
- (38) "Smelt" means all species in the family Osmeridae.¶
- (39) "Take" means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.¶

(40) "Transport" means transport by any means, and includes offer or receive for transportation.¶¶

(41) "Trip limit" means the total amount of fish that may be taken and retained, possessed, or landed per vessel from a single fishing trip or cumulatively per unit of time. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period. Trip limits may be:¶¶

(a) "Bi-monthly cumulative trip limit" means the maximum amount of fish that may taken and retained, possessed or landed per vessel in specified bi-monthly periods. There is no limit on the number of landings or trips in each period, and periods apply to calendar months. The specified periods are as follows:¶¶

(A) Period 1: January through February;¶¶

(B) Period 2: March through April;¶¶

(C) Period 3: May through June;¶¶

(D) Period 4: July through August;¶¶

(E) Period 5: September through October; and¶¶

(F) Period 6: November through December.¶¶

(b) "Daily trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 00:01 hours local time. Only one landing of groundfish may be made in that 24-hour period;¶¶

(c) "Monthly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel during the first day through the last day of any calendar month.¶¶

(d) "Weekly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in seven (7) consecutive days, starting at 00:01 hours local time on Sunday and ending at 24:00 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.¶¶

(42) "Undue hardship" means death, serious illness requiring extended care by a physician, permanent disability, or other circumstances beyond the individual's control.¶¶

(43) "Unlawful to buy" means that it is unlawful to buy, knowing or having reasonable cause to believe that the fish have been illegally taken or transported within this state, or unlawfully imported or otherwise unlawfully brought into this state.¶¶

(44) "Vessel" means any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish for commercial purposes, and has the same meaning as 'boat' as specified in ORS 506.006.¶¶

(45) "Vessel operator" means the person onboard a fishing vessel who is responsible for leading a fishing vessel in fishing or transit operations, and who signs the corresponding fish ticket from that fishing trip. A vessel operator may be a vessel owner or permit holder or both, individual hired to operate a vessel, or lessee of a vessel, permit or both. Although more than one person may physically operate a vessel during a fishing trip or transit, there may only be one person identified as a vessel operator (commonly referred to as a captain or skipper) on a fishing vessel during any one fishing trip or transit.¶¶

(46) "Vessel owner" means any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. A vessel owner does not include a leasehold interest.¶¶

(47) "Waters of this state" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.¶¶

(48) "Week" means the period beginning at 00:01 hours local time on Sunday and ending at 24:00 hours local time on the following Saturday.

Statutory/Other Authority: ORS 506.119, ORS 506.129

Statutes/Other Implemented: ORS 506.109

AMEND: 635-004-0375

RULE SUMMARY: These amendments modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries in order to be consistent with federal regulations governing Pacific sardine harvest specifications and management measures for the July 2023-June 2024 fishing season. Federal rules recommended by the Pacific Fishery Management Council (PFMC) for the 2023-2024 season include a continued closure of the Pacific sardine directed commercial fishery along the entire West Coast due to low stock biomass, and limits on incidental sardine harvest in other commercial fisheries. Federal rules have not been published at the time of this filing but are expected to reflect PFMC recommendations and will be published prior to the rulemaking hearing. In addition, the amendments modify the definition of the common name for Pacific sand lance to update the new scientific name for the species.

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, 2020~~2~~ ed.); and ¶¶

(b) Federal Register ~~Vol. 87, no. 126, dated July 1, 2022 (87 FR 39384)~~ INSERT CITATION 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.

Statutory/Other Authority: ORS 506.119

Statutes/Other Implemented: ORS 506.109, ORS 506.129

RULE SUMMARY: These amendments modify state regulations for commercial Coastal Pelagic Species (CPS) fisheries in order to be consistent with federal regulations governing Pacific sardine harvest specifications and management measures for the July 2023-June 2024 fishing season. Federal rules recommended by the Pacific Fishery Management Council (PFMC) for the 2023-2024 season include a continued closure of the Pacific sardine directed commercial fishery along the entire West Coast due to low stock biomass, and limits on incidental sardine harvest in other commercial fisheries. Federal rules have not been published at the time of this filing but are expected to reflect PFMC recommendations and will be published prior to the rulemaking hearing. In addition, the amendments modify the definition of the common name for Pacific sand lance to update the new scientific name for the species.

CHANGES TO RULE:

635-005-0240

Definitions ¶¶

As used in Division 005 regulations:¶¶

- (1) "Animals living intertidally on the bottom" means any benthic animal with a natural range that includes intertidal areas, regardless of where harvest occurs, and includes but is not limited to, starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates, and crabs except Dungeness crab.¶¶
- (2) "Bait" means food fish not harvested for human consumption.¶¶
- (3) "Board" means the Commercial Fishery Permit Board.¶¶
- (4) "Buy" includes offer to buy, barter, exchange or trade.¶¶
- (5) "Catastrophic loss" means direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports.¶¶
- (6) "Commercial landing cap" means the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries.¶¶
- (7) "Commercial purposes" means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels, as specified in ORS 506.006.¶¶
- (8) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.¶¶
- (9) "Crab pot" means any portable, enclosed device used to take crab with one or more gates or entrances that allows crab restricted entry and exit, and has a line attached to surface floats.¶¶
- (10) "Crab ring" means any fishing device used to take crab that allows crab unrestricted entry or exit while fishing, and has a line attached to surface floats.¶¶
- (11) "Department" means the State Department of Fish and Wildlife.¶¶
- (12) "Derelict Dungeness crab gear" means Dungeness crab gear which was lost, forgotten, damaged, abandoned or otherwise deserted.¶¶
- (13) "Director" means the Director of the Oregon Department of Fish and Wildlife appointed pursuant to ORS 496.112.¶¶
- (14) "Dive gear" means gear used while a fisher is submerged underwater in order to take food fish, and includes but is not limited to one or more of the following equipment: SCUBA or other surface supplied air source (hookah gear), dive mask, snorkel, air cylinders, weight belt, wetsuit and fins.¶¶
- (15) "Dungeness crab gear" means crab pots, crab rings or a combination thereof used for taking Dungeness crab.¶¶
- (16) "Exclusive Economic Zone" means the zone between 3-200 nautical miles offshore of the United States.¶¶
- (17) "Fishing gear" means, as specified in ORS 506.006, any appliance or device intended for or capable of being used to take food fish for commercial purposes, and includes:¶¶
 - (a) "Fixed gear" means longline, trap or pot, set net, and stationary hook-and-line (including vertical hook-and-line) gears;¶¶
 - (b) "Gillnet" has the meaning as set forth in OAR 635-042-0010;¶¶
 - (c) "Hook-and-line" means one or more hooks attached to one or more lines;¶¶
 - (d) "Lampara net" means a surrounding or seine net with the sections of netting made and joined to create bagging, and is hauled with purse rings;¶¶
 - (e) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;¶¶
 - (f) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance

- allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;¶
- (g) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;¶
- (h) "Purse seine" means a floated and weighted encircling net that is closed by means of a purse line threaded through rings attached to the bottom of the net. Purse seine gear includes, but is not limited to, ring net, drum purse seine, and lampara nets;¶
- (i) "Seine" means any non-fixed net other than a trawl or gillnet and includes all types of purse seines;¶
- (j) "Setline" means a bottom longline used in rivers and estuaries for targeting white sturgeon;¶
- (k) "Set net" means a stationary, buoyed and anchored gillnet or trammel net which takes fish commonly by gilling and is not free to move or drift with the current or tide;¶
- (l) "Spear" means a sharp, pointed, or barbed instrument on a shaft;¶
- (m) "Trammel net" means a gillnet made with two or more walls joined to a common float line;¶
- (n) "Trawl gear" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels, and includes but is not limited to beam trawl, bobbin or roller trawl, bottom trawl, pelagic trawl and Danish and Scottish seine gear;¶
- (o) "Troll" means fishing gear that consists of one or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation; and¶
- (p) "Vertical hook and line" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.¶
- (18) "Fishing trip" means a dock-to-dock transit during which fishing for commercial purposes occurs, and is followed by a landing.¶
- (19) "Food Fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction pursuant to ORS 506.036.¶
- (20) "Groundfish" means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50, Part 660 (See OAR 635-004-0240).¶
- (21) "Intertidal" means the area in Oregon coastal bays, estuaries, and beaches between mean extreme low water and mean extreme high water boundaries.¶
- (22) "Land, Landed or Landing" means either of the following:¶
- (a) For fisheries where food fish were taken by use of a vessel, "land, landed or landing" means to begin transfer of food fish from a vessel. Once transfer begins, all food fish on board the vessel are counted as part of that landing, except anchovies being held live on a vessel for the purpose of using for bait in that vessel's commercial fishing operation; and¶
- (b) For fisheries where food fish were taken without use of any vessel, "land, landed or landing" means to begin transfer of food fish from a harvester to a wholesale fish dealer, wholesale fish bait dealer, or food fish canner, under which the following provisions apply:¶
- (A) When the harvester and the wholesale fish dealer, wholesale fish bait dealer, or food fish canner are the same person or entity, transfer occurs when the food fish arrive at the licensed premises of the wholesale fish dealer, wholesale fish bait dealer, or food fish canner; and¶
- (B) Once transfer begins, all food fish from the harvest area are counted as part of that landing.¶
- (23) "Length" or "Overall Length" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions as in a dive step or platform.¶
- (24) "Ocean Dungeness Crab fishing season" means the period normally from December 1 of one year through August 14 of the next year and is specific to the ocean Dungeness crab fishery. In periods where a season delay occurs, "ocean Dungeness crab fishing season" means from the date the fishery opens to the following August 14.¶
- (25) "Oyster" includes oysters, oyster seed, oyster cultch, and oyster shell.¶
- (26) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except the Columbia River boundary with the Pacific Ocean is as specified in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.¶
- (27) "Permit holder" means a person or entity that owns an individual permit or owns the vessel to which a vessel permit is attached. A lessee of a permit is not a permit holder.¶
- (28) "Possession" means holding any food fish, shellfish or parts thereof in a person's custody or control.¶
- (29) "Process or Processing" means fresh packaging requiring freezing of food fish, or any part thereof, or any type

- of smoking, reducing, loining, steaking, pickling or filleting. Cooking crab is not considered processing.¶
- (30) "Replacement vessel" is a vessel purchased to replace a Limited Entry permitted vessel which has been lost due to fire, capsizing, sinking or other event.¶
- (31) "Resident" means an actual bona fide resident of this state for at least one year, as specified in ORS 508.285.¶
- (32) "Salmon" means all anadromous species of salmon, including but not limited to:¶
- (a) *Oncorhynchus gorboscha*, commonly known as humpback, humpies or pink salmon.¶
 - (b) *Oncorhynchus keta*, commonly known as chum or dog salmon.¶
 - (c) *Oncorhynchus kisutch*, commonly known as coho or silver salmon.¶
 - (d) *Oncorhynchus nerka*, commonly known as sockeye, red or blueback salmon.¶
 - (e) *Oncorhynchus tshawytscha*, commonly known as Chinook salmon.¶
- (33) "Security interest" means an interest in a vessel or permit granted by the owner of the vessel or permit to a third party under a security agreement, pursuant to ORS chapter 79, another state's laws enacted to implement Article 9 of the Uniform Commercial Code or equivalent federal statutory provisions for federally documented vessels.¶
- (34) "Seine skiff" means an open vessel which travels with a larger fishing vessel at all times and is used solely at the direction of the operator of the larger fishing vessel to assist that larger fishing vessel in the deployment and retrieval of seine nets to take fish.¶
- (35) "Sell" includes to offer or possess for sale, barter, exchange or trade.¶
- (36) "Shared Ecosystem Component Species" means those ecosystem component species shared between all of the Pacific Fishery Management Council's Fishery Management Plans which occur in the Pacific Ocean off Oregon and include:¶
- (a) Mesopelagic fishes of the families Myctophidae, Bathylagidae, Paralepididae, and Gonostomatidae;¶
 - (b) Pacific sand lance (*Ammodytes personatus*, previously *Ammodytes hexapterus*);¶
 - (c) Pacific saury (*Cololabis saira*);¶
 - (d) Silversides of the family Atherinopsidae;¶
 - (e) Smelts of the family Osmeridae; and¶
 - (f) Pelagic squids of the families Cranchiidae, Gonatidae, Histiotteuthidae, Octopoteuthidae, Ommastrephidae except Humboldt squid (*Dosidicus gigas*), Onychoteuthidae, and Thysanoteuthidae.¶
- (37) "Shellfish Sanitation Certificate" means a license required by Oregon Department of Agriculture to engage in business of harvesting, distributing or processing of oysters, clams, mussels and scallops for human consumption.¶
- (38) "Special Regulation Marine Areas" means specific areas described in OAR 635-039-0090 and the "Oregon Sport Fishing Regulations," which includes all Marine Gardens, Subtidal Research Reserves, Intertidal Research Reserves, Habitat Refuges, and other areas closed to designated activities.¶
- (39) "Take" means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.¶
- (40) "Transport" means transport by any means, and includes offer or receive for transportation.¶
- (41) "Trip limit" means the total amount of fish that may be taken and retained, possessed, or landed per vessel from a single fishing trip or cumulatively per unit of time. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period. Trip limits may be:¶
- (a) "Bi-monthly cumulative trip limit" means the maximum amount of fish that may taken and retained, possessed or landed per vessel in specified bi-monthly periods. There is no limit on the number of landings or trips in each period, and periods apply to calendar months. The specified periods are as follows:¶
 - (A) Period 1: January through February;¶
 - (B) Period 2: March through April;¶
 - (C) Period 3: May through June;¶
 - (D) Period 4: July through August;¶
 - (E) Period 5: September through October; and¶
 - (F) Period 6: November through December.¶ - (b) "Daily trip limit" means the maximum amount of shellfish that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 00:01 hours local time;¶
 - (c) "Monthly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel during the first day through the last day of any calendar month.¶
 - (d) "Weekly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 7 consecutive days, starting at 00:01 hours local time on Sunday and ending at 24:00 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.¶
- (42) "Undue hardship" means death, serious illness requiring extended care by a physician, permanent disability,

or other circumstances beyond the individual's control.¶¶

(43) "Unlawful to buy" means that it is unlawful to buy, knowing or having reasonable cause to believe that the fish have been illegally taken or transported within this state, or unlawfully imported or otherwise unlawfully brought into this state.¶¶

(44) "Vessel" means any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish for commercial purposes.¶¶

(45) "Vessel operator" means the person onboard a fishing vessel who is responsible for leading a fishing vessel in fishing or transit operations, and who signs the corresponding fish ticket from that fishing trip. A vessel operator may be a vessel owner or permit holder or both, individual hired to operate a vessel, or lessee of a vessel, permit or both. Although more than one person may physically operate a vessel during a fishing trip or transit, there may only be one person identified as a vessel operator (commonly referred to as a captain or skipper) on a fishing vessel during any one fishing trip or transit.¶¶

(46) "Vessel owner" means any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. A vessel owner does not include a leasehold interest.¶¶

(47) "Waters of this state" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.

Statutory/Other Authority: ORS 506.119, ~~ORS 506.129~~

Statutes/Other Implemented: ORS 506.129, ORS 506.109