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## NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635  
**DEPARTMENT OF FISH AND WILDLIFE**

**FILED**

04/15/2025 10:17 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amend Rules for Coastal Pelagic Species Fisheries for consistency with federal regulations

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/13/2025 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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4034 Fairview Industrial Dr SE  
Salem, OR 97302

Filed By:  
Linda Spansel  
Rules Coordinator

### HEARING(S)

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

DATE: 06/13/2025

TIME: 8:00 AM - 5:00 PM

OFFICER: Michelle Tate

### IN-PERSON HEARING DETAILS

ADDRESS: Pendleton Convention Center, Vert Annex, 480 SW Dorion, Pendleton, OR 97801

### 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/](http://www.dfw.state.or.us/agency/commission/minutes/). The meeting can be viewed at [www.youtube.com/user/IEODFW](https://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)

This rule is needed to modify state regulation for commercial Coastal Pelagic Species (CPS) fisheries in order to be consistent with federal regulations. Consistency with federal regulations established under the Magnuson-Stevens Fisher 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 management entities.

### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 06/13/2025, including the presentation and all provided materials.

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 Linda Spansel 503-947-6233, [Linda.D.Spansel@odfw.oregon.gov](mailto:Linda.D.Spansel@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.

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#### 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>

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#### FISCAL AND ECONOMIC IMPACT:

No major fiscal or economic impacts are expected to result from the amended rules for Commercial Pelagic Species Fisheries.

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#### 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. 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 2025-26, 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 (2016). Overall, no significant changes in these agencies' operations or expenditures are expected as a result of this rule change.

b. Units of local government may be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

c. The public could be affected by the adoption of these rules, as discussed below:

The proposed rules will affect state agencies, units of local government, and the public, respectively, 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 2025-2026, the PFMC will adopt an annual catch target and accountability measures for incidental catch and the live bait fishery (active primarily in California). This annual catch target and the accountability measures have not yet been determined by the PFMC, but at this point are expected to be more strict than last year's.

The following annual catch target and accountability measures were adopted last year for the 2024-2025 season:

- o An incidental sardine catch allowance of 30% 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 3,000 mt;
- o If the annual catch target of 5,500 mt is attained, a 1 mt per trip limit of Pacific sardine would apply to commercial CPS fisheries;
- o An incidental per-trip allowance of 2 mt of sardines applies to non-CPS fisheries.

While the exact harvest specifications and incidental catch accountability measures for the 2025-2026 season have not yet been determined by the PFMC, ODFW anticipates that the new incidental sardine catch allowance for commercial coastal CPS fisheries will be no higher than 20%. The 2025-2026 annual catch limit is expected to be no more than 2,200 mt, with the annual catch target likely lower than that. These expectations are based on the latest draft of the Pacific Sardine Rebuilding Plan developed by the PFMC and National Marine Fisheries Service.

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 remain closed for the 2025-2026 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 2016).

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

2. 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 2024.

- a. 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.

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#### 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. Representatives of small businesses participated in that process.

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#### 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.

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AMEND: 635-004-0375

**RULE SUMMARY:** These amended rules will set harvest specification and management measures consistent with federal regulations for Pacific Sardine commercial fisheries.

The Commission may decide to adopt staff recommended proposed rule and rule amendments as proposed in

attachment 3, or the Commission may decide to modify the proposed rules or not adopt some or any of the proposed rule amendments.

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 1, (October 1, 2022~~24~~ ed.); and¶¶

~~(b) Federal Register Vol. 88, no. 120, dated June 23, 2023 (88 FR 41040).~~¶¶

(b) 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~~75~~ 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