



Oregon

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To: The Honorable Ken Helm, Chair
House Committee on Agriculture, Land Use, Natural
Resources, and Water



Senate Bill 887

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The Oregon Department of Fish and Wildlife (ODFW) appreciates this opportunity to provide background on Senate Bill 887 and support for this bill to streamline current processes for pursuing civil penalties for commercial fishing violations.

Under current statute, every January, the Fish and Wildlife Commission must establish by rulemaking the average market value for each species of food fish for the year [ORS 506.720(3)]. These values are used to calculate a “schedule of damages” for commercial fishing violations where the agency seeks civil damages for unlawful taking, possession, or killing of food fish. In the rare instance that civil penalties are pursued, they are in addition to any fines assessed by the court as part of a violation issued by Oregon State Police or other enforcement agency. This schedule is also used for paying someone for fish that were seized but not subsequently forfeited under ORS 506.690(3).

The current statutory approach for calculating damages is complicated and time consuming. First, Department staff must calculate the prior year’s average market value for more than 70 different commercially landed species using fish tickets reported from commercial fish dealers. This takes significant time to compile, publish through a rulemaking procedure, and present to the Commission for approval.

Once these average values are established through rulemaking, the statute then lays out a formula for calculating damages. The formula ranges from two times the average market value for certain species to a percent of market value for other species (and for certain salmon a set amount per fish) and can vary depending on whether it is a first or subsequent violation.

The current statutory approach results in values that do not reflect current market values at the time of a violation. The time lag resulting from using the prior year’s average market value as well as the annual rulemaking process means that the values assessed can be significantly out of synch with current market values at the time of a violation. Commercial values can vary from year to year depending on market trends.

SB 887 would reduce agency workload by removing the need to establish average market values for Commission approval and would set out a simplified method for calculating damages. Under this bill, the Department would use two times the fair market value as defined in administrative rule by the Commission to assess damages under ORS 506.720(3) for all species. Under the Commission's current rules, fair market value is based on the market price of food fish or shellfish at the same time and place that the fish are landed. Using fair market value as proposed under SB 887 provides a more fair and equitable way to identify damages in civil damage suits and would help avoid annual price discrepancies.

The current statutory approach is inefficient – creating a schedule of damages for food fish for which the Department rarely, if ever, seeks civil damages. The proposed approach under SB 887 is more efficient since the Department would calculate and seek civil penalties for the specific instance when needed, rather than creating a schedule for all possible species, the majority of which are never used.

The Department appreciates the Committee's consideration of this bill and would be happy to provide any additional information.

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