



State of Oregon

**OREGON DEPARTMENT OF FISH AND WILDLIFE**

**Commercial Fisheries Regulation**



**Audits Division**

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*Auditing for a Better Oregon*

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This report contains the results of our audit of the Oregon Department of Fish and Wildlife. As a result of a risk assessment we completed of the department in June 1999, we identified the issue of commercial fishing regulation as key to both Oregon's tax on the harvest of commercial fish and to Oregon's management of commercial fish species. Data from commercial fish harvests is used to help set catch limits and season dates on commercial fisheries. In conjunction with the department, we concluded that an audit of commercial fish processing regulation could add value to public accountability and decision-making.

We also identified other risk areas, which we reported to the department in a management letter.

Our audit found that data on commercial fish is subject to corruption from many influences. In this report, we describe how commercial fish landings can be misreported, and we discuss the impact of this issue.

Generally, the department, in conjunction with Department of Oregon State Police commercial fisheries enforcement personnel, has done a good job in its oversight and monitoring of the state's commercial fisheries, given the limited resources devoted to these activities. This report makes recommendations to further improve these efforts.

## OREGON AUDITS DIVISION

John N. Lattimer  
Director

Fieldwork Completion Date:  
October 29, 1999



# TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY.....	vii
BACKGROUND AND INTRODUCTION.....	1
AUDIT RESULTS.....	5
OBJECTIVES, SCOPE AND METHODOLOGY.....	21
COMMENDATION .....	23
AGENCY'S RESPONSE TO THE AUDIT REPORT .....	25



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# EXECUTIVE SUMMARY

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***Most commercial fish processing is in a state-regulated environment.***

Most of Oregon's commercial fish processing is conducted in facilities regulated by the state. Oregon regulates commercial fish processing primarily through the Oregon Department of Fish and Wildlife (department) and the Department of Oregon State Police (state police). The department and state police sample, weigh, and observe some fish landings to ensure that the correct landing tax is collected and a proper accounting of fish species and weights is made.

***Some illegal activities occur outside of the regulated environment.***

The department and state police have observed black market and illegal activities that circumvent this structure, and other problems that affect the accurate recording of fish species and weights. These problems affect both the tax collected and the department's ability to manage fish seasons and catch limits, which is complicated if processing facilities provide inaccurate or incomplete data. In addition, participants of the fishing industry that comply with laws and regulations are disadvantaged by illegal or black market activities.

We found that the commercial fish enforcement structure contains some weaknesses that allow illegal acts and misreporting to occur. These weaknesses, coupled with economic pressures on fishermen and processors, such as declining fish populations, declining wholesale prices, and increased competition for available fish, increase the risk that fishermen or processors may misreport fish catches to improve their profits. These activities can occur without detection because only a small percentage of commercial fish landings are monitored and because other monitoring activities have been curtailed in recent years. In addition, other deterrents, such as stiff fines for violations or progressive penalties for repeat violations, have not been routinely used.

## **Agency Response**

The Oregon Department of Fish and Wildlife generally concurs with the findings and recommendations in this report. Its complete response to the audit is included in this report.



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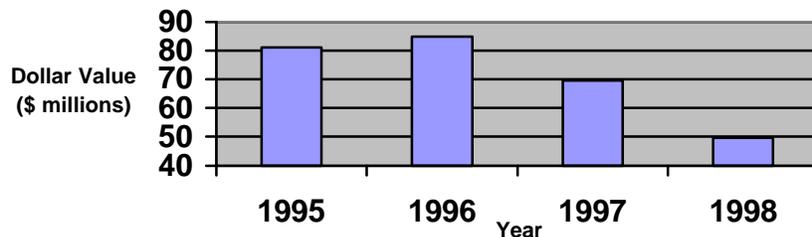
# Background and Introduction

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***Commercial fishing is a major industry in Oregon, landing hundreds of millions of pounds of seafood annually.***

Commercial fishing operations landed over 230 million pounds of commercial products at Oregon ports, worth nearly \$49 million at the ex-vessel level in 1998.<sup>1</sup> Major fish species caught and processed in Oregon include salmon, shellfish such as shrimp and crab, groundfish such as rockfish and bocaccio, and deep ocean fish such as cod and halibut. These products generated 1997 personal income of \$139 million for coastal communities and \$173 million for the state. By pounds produced, Oregon ranks 7th in the United States as a seafood-producing state. Figure 1 shows that the ex-vessel values of Oregon's commercial fish harvests have declined significantly since 1995, from a high of \$84 million in 1996 to a low of \$49 million in 1998.<sup>2</sup>

**Figure 1  
Oregon Commercial Fishing  
Ex-Vessel Landing Values  
1995 to 1998**



According to a report prepared for the department profiling Oregon's 180 seafood processors in 1997, the three largest and four medium-sized processor groups in Oregon processed 64 percent and 24 percent of the state's total value of landed fish, respectively. The report also states that Oregon's processing community has experienced consolidation of ownership.

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<sup>1</sup> Ex-vessel value is the amount received by fishermen upon selling their catch to a licensed wholesale fish dealer or directly to the public.

<sup>2</sup> Department officials stated that this decline might be the result of oceanic or other biological conditions, not necessarily the result of commercial fishing practices.

Commercial fish processing activities generally include several key steps:

1. Commercial fishermen harvest fish using lines, hooks, nets, or other equipment.
2. Retained fish are delivered to state licensed wholesale fish dealer plants, where they are generally unloaded to totes and weighed using certified scales (see Figures 2 and 3). The dealer completes a state fish ticket documenting the species of fish landed and the total weight of the catch by species. This information is sent by the dealer to the department, along with an ad valorem tax based on fish ticket information.<sup>3</sup>
3. The plant then processes the fish, which could include filleting, cooking, skinning, or peeling, based on the species of fish. The fish is then sold to the wholesale or retail markets.

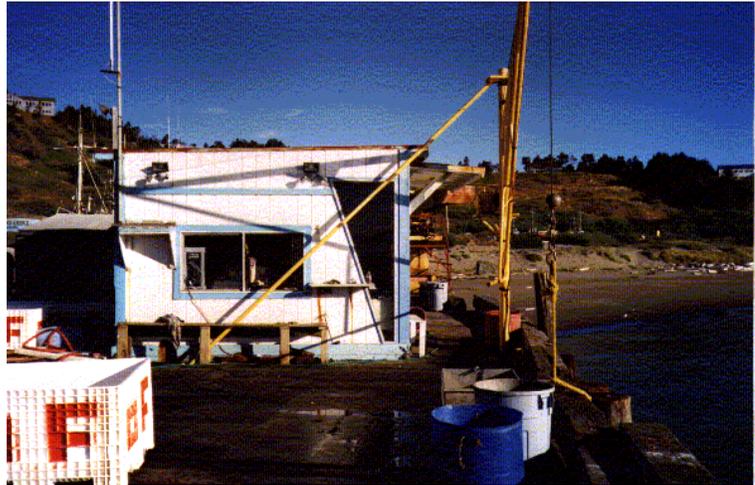


**Figure 2 – Totes**

Containers used by fishermen and dealers to transport fish. In most cases, there are many totes filled with offloaded fish, which makes it difficult for enforcement personnel to monitor species.

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<sup>3</sup> Ad valorem taxes are calculated based upon value.



**Figure 3 – Fish Landing Dock and Crane**

**Fishermen offload at this dock using the crane shown. A scale is attached to the end of the crane to weigh landed fish.**

***Fish tickets are a critical component of state oversight.***

State fish tickets are a critical component of the department's oversight of the commercial fishing industry. Oregon law requires that all commercial fish dealers document commercial fish landings using a fish ticket; therefore, the fish ticket is the key document establishing a paper trail for landed fish.

### **Commercial Fishing Taxes and Fees**

In 1998, Oregon collected \$693,000 in ad valorem tax and \$92,000 in salmon and steelhead restoration and enhancement program taxes. Currently, the ad valorem tax on salmon and steelhead landings is calculated by multiplying the wholesale market value of the landing by 3.15 percent. The ad valorem tax on all other food fish and shellfish is 1.09 percent of the wholesale market value. Finally, the salmon and steelhead restoration and enhancement program tax is based on pounds and the rate is \$.05, \$.0575, and \$.065 per pound depending upon whether the fish is weighed in the round (with the head on), dressed, or dressed with the head off, respectively.

All landing taxes, license, and other fees collected from commercial fisheries are deposited in the Commercial Fisheries Fund for use by Oregon's Department of Fish and Wildlife.

## **Department Roles and Interactions with Other State and Federal Agencies**

***The department monitors fish harvests and regulates commercial fish processing.***

The Oregon Department of Fish and Wildlife (department) is responsible for managing Oregon fisheries. The department monitors harvests and observes, regulates, and licenses commercial fish processing activities. The department cooperates with federal, state, and independent fisheries organizations, including the National Marine Fisheries Service (an agency of the U.S. Department of Commerce); the Pacific Fishery Management Council; the U.S. Fish and Wildlife Service; and other Oregon agencies, including the Department of Oregon State Police, which conducts enforcement activities related to the licensing of fishermen and the regulation of fish processors.

***Oregon State Police provides commercial fish enforcement.***

The Department of Oregon State Police (state police) provides fish and wildlife enforcement. The 1999-2001 biennial funding amount for state police enforcement activities was \$23.5 million. Of that total, the department paid the state police \$10.6 million. The department, because of its funding relationship with the state police for fish and game enforcement, helps plan and prioritize the state police's fish and wildlife enforcement activities.

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# Audit Results

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***Oregon's commercial fish industry is licensed and regulated.***

Most of Oregon's fish products are caught by licensed fishermen and then processed in major, regulated wholesale fish dealer plants. However, an unknown portion of Oregon's fish products are caught, landed, or processed outside of this structured, regulated environment. These activities and other intentional and accidental misstatements in commercial fish processing records hamper the Oregon Department of Fish and Wildlife's (department) ability to properly monitor and regulate the fishing industry, ultimately affecting its ability to manage species and ensure continued economic benefits to the State of Oregon.

***Some activities hamper the department's ability to manage the fishing industry.***

This chapter describes those activities that hamper the department's ability to effectively manage the fishing industry and lists possible actions the department can take to address those activities.

## **Unreported Live Fish Sales**

***State police report illegal activities in the developing live fish market.***

One area in which the Department of Oregon State Police (state police) reports a growing trend in illegal activities is in the developing live fish markets. In the live fish market, fish are caught and immediately placed in water tanks with the intent to keep the fish alive (see Figure 4). Fishermen then take the live fish to port and sell the catch to dealers who load the fish to transports, such as trucks or vans equipped with water tanks (see Figure 5). The live fish are then transported to retail markets. Businesses, such as restaurants, purchase and display the live fish in tanks where customers select the fish they will consume.



**Figure 4 – Live Fish Holding Tank**

**Live fish, floating in an aerated holding tank aboard a fisherman's vessel, await transport.**

***The live fish market is difficult to monitor and easy access means that anyone can participate in the industry.***

Live fish harvests have increased in recent years because of the development of live fish retail markets and the high prices paid for live fish. Fishermen often sell live fish to dealers for three to six dollars per pound, while they sell dead, or fresh, fish for less than a dollar per pound to wholesale fish dealers.

In addition, easy access to the live fish industry could motivate people to participate. Anyone with a valid commercial fishing license and commercial fish boat license can catch and sell live fish. The fee for a commercial fishing license for an Oregon resident is \$50. The fee for an Oregon resident commercial fish boat license is \$200. Additionally, the fishing vessels used in live fishing do not need to be large like those used in traditional commercial fishing. Some live fish fishermen use kayaks and other small vessels.

Restaurant patrons are now demanding live fish in some metropolitan areas. In San Francisco, for example, many restaurants display a live fish tank from which patrons personally select live fish, which is then prepared and served to them. The department and state police officials stated that they had knowledge of illegal shipments of unweighed and unreported fish to restaurants, including shipments to San Francisco and Portland.

It is important to note that many legal and licensed vessels and fish processors are now engaged in selling live fish. While many live fisheries are operating legally, there are a number of fisheries cited each year for illegal activity.

An example of an unreported live fish sale cited by the state police recently occurred in Coos Bay. According to state police officials, an individual caught approximately 750 pounds of fish that were kept alive and brought to port. The individual contacted and sold the fish to a fish dealer from California. The California dealer took possession of the fish and completed a California fish ticket, but not an Oregon fish ticket. Additionally, the California dealer did not have an Oregon commercial fish processor license. The state police cited the fisherman for selling fish to a dealer not licensed in Oregon. Additionally, because an Oregon fish ticket was not prepared for the sale, the department's records for fish landings were understated.



**Figure 5 – “White Van Fleets”**

**Vans and trucks, like this one, are used to transport live fish to restaurants and retailers.**

***The live fish market is difficult to monitor.***

The live fish market is difficult to monitor because live fish are intentionally processed quickly to reduce their mortality rate, and the volume of live fish in a single landing is generally significantly less than the volume landed for other types of processing. The emphasis on quick processing and smaller volumes means that landings occur in less time; therefore, enforcement personnel have a smaller window of opportunity to observe transactions and ensure compliance with laws and regulations.

## Black Market Sales

***Black market sales occur completely outside the regulated commercial fish structure.***

State police report that black market sales occur completely outside the prescribed and regulated commercial fish structure. These activities are extremely difficult for department and state police personnel to identify.

Examples of black market cases concluded by the state police are detailed below. Prosecution of these cases is complete. State police officials told us that at least five cases currently under investigation include issues similar to these examples. The cases illustrated in this report are generally several years old because the details of current cases are not available until resolution.

- During a night observation in 1994, a patrol officer observed a fishing vessel tying to the docks. Within a few minutes, crewmen transferred seven five-gallon buckets and four garbage bags from the boat to a van. The officer seized more than 250 pounds of lingcod fillets, fillets from approximately 20 halibut, and four whole salmon. Information indicated that the illegal fish was destined for a restaurant where a crewmember's spouse worked.
- In a 1997 case, 87 pounds of halibut fillets were seized after reports were received that a vessel was repeatedly bringing in large quantities of halibut fillets and unloading them at night. During an interview with a crewmember, it was confirmed that illegal fish were being transacted and that the landings had been occurring for some time. The crewmember said that his share of money received was enough to cover his monthly car payments.

## Overages

***Overages are fish catches that exceed species catch limits.***

Overages are fish catches that exceed Oregon or federal species' catch limits. Overages can be accidental or intentional, but always involve a total catch of one or more species that exceeds catch limits. For example, a fishing vessel is allowed to catch 16,000 pounds of yellowtail rockfish during the months of June and July. Fishermen typically do not weigh fish as they are caught; they estimate the total weight of their catch during the fishing trip.

***Fishermen have concealed overages.***

Historically, methods that fishermen have used to handle overages include one or more of the following:

- Offloading overages with the legal catch. The processor then completes a separate fish ticket in the department's name for the over-limit species. The processor pays the department the value of the fish overage.
- Underreporting by species, or catch shifting. Concealing an overage by combining a species whose catch limit has been exceeded with another species that is within its catch limit.
- Splitting the species whose catch limit has been exceeded on two separate fish tickets.
- Throwing the excess fish overboard while still at sea.

If fishermen choose to underreport or split loads to multiple fish tickets, they could be cited and prosecuted.

Examples of overages detected by the state police enforcement officers are detailed below:

- A fisherman pled guilty in 1998 to falsification of business records after citation by the state police. The fisherman tried to conceal \$19,000 of sablefish that exceeded catch limits. State courts assessed the fisherman fines of \$619 and two years probation for the offense.
- A 1994 inspection during an unloading of a vessel revealed a 775-pound overage of the sablefish landing limit. After a closer inspection, enforcement officials also determined that the vessel exceeded the allowable small sablefish limit by 2,076 pounds. The vessel captain has at least one previous federal and three previous state overage prosecutions on record.
- An 800 pound perch overage was discovered at a plant in 1994. The plant employee responsible for weighing fish made attempts to conceal the overage by recording false entries on a delivery weight sheet. State police recommended federal prosecution against the fish plant and the vessel. The vessel skipper had at least one previous federal prosecution.

***Overages were identified involving the collusion of processing plant personnel and fishermen.***

Overage cases involving collusion between the processor and the fishermen attempting to conceal catch are listed below, as reported by the state police:

- A plant was cited in 1994, after it was determined that the plant employee responsible for weighing fish had accepted an overage of nearly twice the legal limit of perch and simply not recorded it on the delivery ticket in an attempt to protect the fisherman from detection of the overage. The Fishermen Association Weighmaster, present in the vessel's behalf and to ensure that the processor accurately weighed landings, also concealed the overage. The plant and the vessel were referred for federal prosecution.
- A case in 1993, which resulted in the state police prosecuting a wholesale fish plant, began with a department groundfish biologist noting a large volume of yellowtail rockfish in totes at a processing plant. The biologist realized that the volume of fish exceeded the 1,500 pounds per day limit and recorded the tote label information including weights as fish were transferred to the fillet line. When the fish tickets did not coincide with the weight the biologist recorded, an investigation proceeded into plant records. Plant recovery weights revealed that almost 8,000 pounds of yellowtail rockfish were omitted from the delivery weight sheet and fish ticket. The plant manager ultimately admitted to concealing the overage.
- Another case during 1993 involved a shrimp vessel that exceeded its allowable groundfish catch by more than 10,000 pounds and resulted in federal prosecution against both the fish plant and the vessel. A biologist noted a large quantity of full totes, labeled with one vessel's name, but plant delivery paperwork indicated that two different vessels landed the fish. Inspection of plant documents revealed a single vessel made the landing and that the plant reported the landing on two fish tickets in an attempt to conceal the overage.
- A case in 1994 occurred in which a plant misreported several thousand pounds of groundfish to cover up an overage. This was accomplished by misreporting the species type on the fish ticket. A copy of the delivery weight sheet showed discrepancies, and the copy provided to the fisherman did not match. The plant copy of the document showed that the plant used typewriter correction fluid to conceal the actual numbers and merely moved several entries to a species type without a trip limit. A fish ticket was submitted to the

department based on the erroneous weights. Both the plant and the fisherman were federally prosecuted for the violation.

- During a routine inspection in 1993, a delivery sheet noted an apparent overage of yellowtail rockfish. The overage was noted by the enforcement officer and during a subsequent contact with the fishing vessel, the skipper denied the overage and produced an altered copy of the delivery sheet supporting his claim. The skipper also produced an altered trawl logbook as proof that no overage had occurred. This led to further investigation and the state police determined that plant office personnel had altered the delivery sheet and the state fish ticket shifting yellowtail rockfish to red rockfish. After obtaining admission from all parties involved, the case was referred to federal prosecution with charges for landing and receiving the overage and falsification of documents.

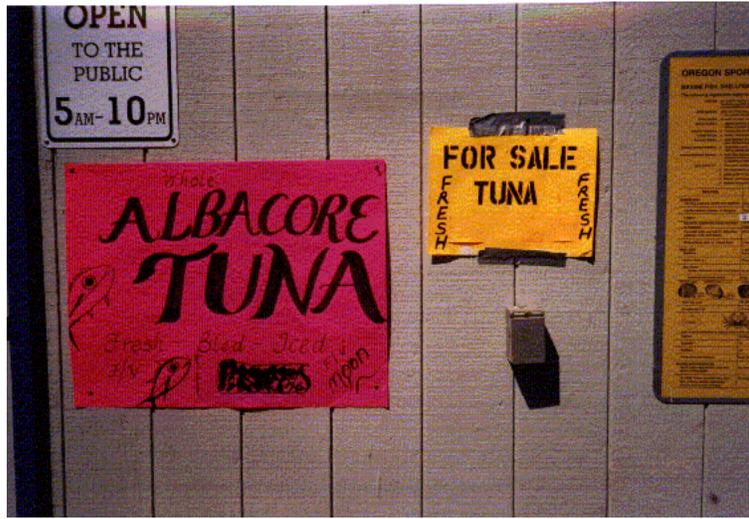
## Unreported Limited Fish Sales

***Limited fish sales occur between fishermen and the public.***

Limited fish sales, or sales directly from fishermen to consumers, are a significant portion of Oregon's commercial fishing industry. Like black market and illegal activities, *unreported* limited fish sales hamper the department's ability to effectively monitor the industry. The department issued 120 limited fish seller licenses in 1998 and 40 endorsements for salmon sales. Limited fish sales totaled \$721,618 (1.5 percent) of Oregon's 1998 commercial landings. In recent years, commercial fishermen have opted to sell some of their catch directly from their vessels to consumers instead of selling their catch to fish processors. Department officials stated that the limited fish seller process allows fishermen to have an outlet to sell their catch without having to sell directly to a processor community that has consolidated in the recent past.

***The limited fish sales structure creates enforcement concerns.***

The limited fish sales structure creates enforcement concerns with reporting of poundage, fish transportation, and accountability. Limited fish sellers trade directly from their docked vessels to the public. Department rules require limited fish sellers to issue a sequentially numbered receipt for each individual sale and accumulate these sales to a fish ticket on a daily basis.

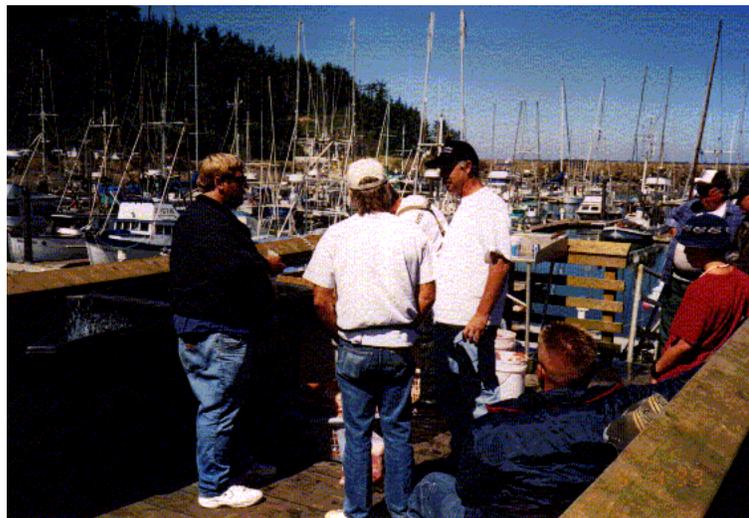


**Figure 6 – Limited Fish Sellers**

**Vessel to buyer transactions are difficult for the department and state police to monitor.**

***Limited fish sellers are difficult to monitor.***

Limited fish sellers are difficult for the department and the state police to monitor because of their "vessel-to-buyer" business structure. Limited fish sellers may sell their catch from a single fishing trip over several days, to numerous public buyers, making department and state police verification of accurate catch and sales reporting time consuming and difficult.



**Figure 7 – Limited Fish Sellers at Work**

**Transactions between fish sellers and the public occur daily.**

The sheer number of individual transactions and the inability of the department and the state police to ensure that each sale was included

on the fish ticket prepared by the limited fish seller increases the opportunity to misreport catch information.

## Weight Shaving

### ***Wholesale fish dealers may reduce fish weight from a catch by deducting the weight of ice.***

Wholesale fish dealers may reduce catch weights and payments to fishermen by deducting “ice” or other “waste” weight from the actual scale weight of a catch. Inaccurate weighing procedures can be the result of estimating the weight of fish and ice, or intentional procedures used by dealers and fishermen to avoid commercial fish taxes and catch limits.

Ad valorem taxes are based on the total value of the fish landed. Because the per pound price paid by a wholesale fish dealer is generally posted for fishermen to observe, the only method remaining for processors to reduce the total value of the landing, which reduces the subsequent payment to fishermen and the state in taxes, is to minimize the total poundage landed. This creates an incentive for dealers to underreport fish poundage and the calculated landing value to fishermen and the department.

Dealers seeking to minimize the amount owed to fishermen and the state in tax use primarily two methods to shave weights from a catch:

*Misestimating the amount of ice within a fish load.* Fish are iced and stored in a vessel’s hold until landing occurs at a port. Icing fish helps prolong freshness. During the landing process, fish are unloaded and mixed with ice in totes to keep them cool and fresh while awaiting processing. Some dealers estimate the weight of the ice mixed with landed fish and subtract this weight to calculate a net fish weight. Because the payments owed fishermen are based on the net weight of fish landings, dealers may intentionally overestimate the weight of ice to reduce the fish weight, subsequent landing values, and ad valorem taxes. Overestimation of ice weight can also be an unintentional mistake.

*Inaccurate scales.* Fish are landed and weighed at dealer processing plants. According to state police personnel, dealers have in the past manipulated scales to underreport the weight of fish unloaded. The most common method used by processors is to “pad” scales. We were informed that in many scale padding cases identified by the state police, fishermen had no knowledge of the scale padding. In these situations, the dealer avoids taxes and the fish purchasing costs.

## Inappropriate Weigh-backs

***Opportunities exist for processors to increase profit margins by classifying saleable fish as worthless.***

Weigh-backs are a legitimate method used by dealers to deduct fish that have no market value from a landed catch. Dealers claim that damaged or small fish have no value or demand in wholesale or retail markets. Because weigh-backs are declared by the dealers to have no market value, the dealer avoids paying fishermen for the catch and also avoids paying ad valorem tax for the catch. The opportunity for dealers to increase their profitability by classifying landed fish as weighbacks, and therefore worthless, increases dealers' profitability.

## Effect of Misreporting

***The precise extent of illegal activities remains unknown.***

The precise extent of these illegal activities remains unknown. Department and state police officials told us that their monitoring and enforcement activities cannot detect all illegal activities, and that the relatively low staffing levels may make detecting more illegalities difficult.

***Accurate reporting of weight and species will affect the tax collected and management of fisheries.***

Illegal fishing and the accompanying lack of proper record-keeping impacts Oregon's commercial fisheries in three ways:

- The department's ability to regulate fisheries and provide accurate information to other regulatory entities is compromised when the full extent of fish harvest by species is unknown.

The department may incorrectly over- or under-regulate a species if state law controls harvest, or provide inaccurate data to other regulatory bodies because of incomplete information.

- The department is unable to collect commercial fish taxes when fish caught and processed are not reported.

Oregon is unable to collect the full and proper amount of tax if fish harvests are not reported. For example, if 5,000 pounds of salmon is harvested and not reported, Oregon loses ad valorem tax of \$157.50 and poundage tax of \$250.

- Fishermen and processors who abide by the commercial fishing laws and regulations are negatively impacted when others conduct illegal acts.

***Overfishing can lead to severe economic effects.***

Finally, the end effect of overfishing, which can occur when a species is extensively fished and inaccurately reported, can be seen in New England, where overfishing of some species led to severe economic effects.

As New England fishermen were unable to meet their economic needs from the available fish they traditionally harvested; they pressured other fish species and caused overfishing to spread. The ensuing lack of fish resources and the resulting harvest restrictions caused significant economic problems in the region. According to a series of newspaper articles published in the Portland (Maine) *Telegraph* describing the declining fisheries, fishing incomes were down, and some fishermen strove just to break even, while many fishermen quit fishing to go back to school or start new careers. The *Telegraph* also stated that this crisis could be the last straw for many of Maine’s fishing communities.

Oregon fisheries officials told us that Oregon might face a similar situation as fisheries pressure increases on limited species resources. Oregon officials told us that fishermen are currently expanding their fishing from traditionally harvested species such as shrimp, to species previously overlooked, such as pacific whiting. Additionally, fishermen who historically harvested a single species are now changing their boats’ riggings in midyear to participate in other species’ seasons, often to make economic ends meet.

***Misreporting may cause depletion of fisheries.***

Misreporting may cause the depletion of fisheries, which has economic costs. Regulators may impose new limitations, often in the form of catch and season limits, which in turn reduce the harvests available to legitimate fishermen. Decreased fishing opportunities may impact local tax bases and economies.

**Causes of Misreporting**

***Economic pressures may incline fishermen or processors to misreport catches to improve their profits.***

We found that the commercial fish enforcement structure contains some weaknesses that allow illegal acts and misreporting to occur. These weaknesses, coupled with economic pressures on fishermen and dealers, such as declining fish populations, declining wholesale prices, and increased competition for available fish, increase the risk that fishermen or dealers may misreport fish catches to improve their profits. These activities can occur without detection because only a small percentage of commercial fish landings are monitored and because other monitoring activities have been curtailed in recent years. In addition, other deterrents, such as stiff fines for violations or progressive penalties for repeat violations, have not been routinely used.

***The number of commercial fisheries enforcement personnel has decreased over the past several years.***

The ability of the department and state police to manage commercial fisheries is affected by the number of officials assigned to monitoring and enforcement activities. The commercial fishery enforcement staff for state police is currently four-and-a-half positions, down from six officials four years ago. Additionally, in 1997, the National Marine Fisheries Service eliminated its four-agent presence on the Oregon coast, reducing the total number of federal and state commercial fish enforcement personnel by half.

**Figure 8  
Oregon State Police  
Regulatory Visits and Citations  
1995 to 1998**

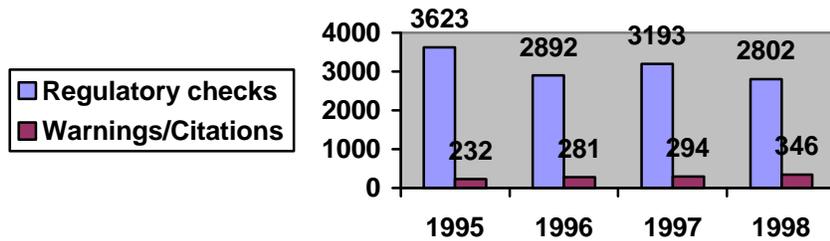
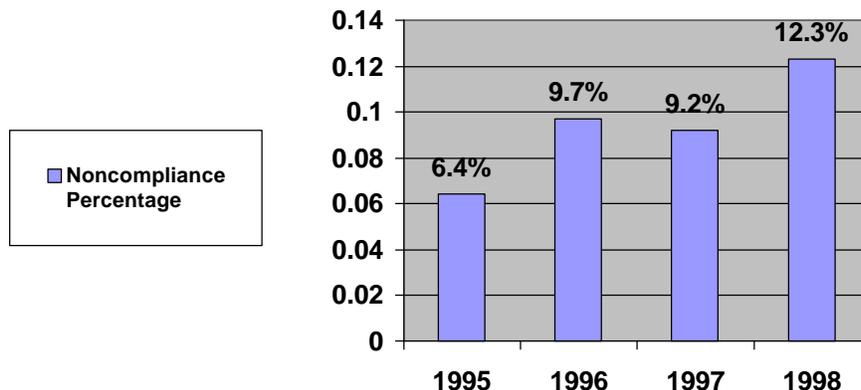


Figure 8 illustrates the declining enforcement presence of the commercial fishing industry as measured by the number of regulatory checks conducted by the state police over the last four years. During 1998, state police monitored only 11 percent of the commercial fish landings, which is 23 percent fewer landings than it monitored during 1995. However, during this same time period, the percentage of regulatory visits that resulted in a warning or citation increased by almost 50 percent (see Figure 9).

**Figure 9**  
**Oregon State Police**  
**Percentage of Regulatory Checks**  
**with a Warning or Citation Issued**  
**1995 to 1998**



***The number of regulatory site visits has declined while warnings and citations have increased.***

***Several states have limited enforcement presence.***

In addition, department personnel no longer conduct routine wholesale fish dealer or limited fish seller site visits with the intent of spot-checking compliance with commercial fishing regulations, nor do they periodically audit the underlying support for fish tickets. Department officials stated that they have performed such activities in the past, but that the visits and fish ticket reviews did not generally identify discrepancies. Ceasing these activities, coupled with the reduction in other regulatory checks, has limited the department's and state police's enforcement visibility, thus reducing the deterrent effect of such activities.

Oregon is not the only state on the West Coast with a limited enforcement presence. We interviewed state fish and wildlife officials from Alaska, California, and Washington. Officials from all three states commented on a shortage of enforcement officers. In Alaska, the fish and game department's goal is to be visible. Officials there stated that their way of dealing with a shortage of enforcement officials is to project to the public that there is a chance that troopers could be there at any time. Patrols of the docks vary in schedule, keeping regulatory checks unpredictable. They also issue press releases that inform the public of what is happening in the industry.

***State police should consider making regulatory visits more unpredictable.***

State police officials told us that they do vary enforcement officer schedules in an effort to be unpredictable to fishermen and processors. We found, however, there are ways that state police can reduce their predictability and enhance their enforcement presence with existing resources. Currently, enforcement officers have permanent territory that they are responsible for monitoring. For example, one state police officer is responsible for monitoring commercial fishing for the entire Southern Oregon coast south of Port Orford. This area has three major ports and many other areas where commercial fish landings can occur. The same officer also has duties enforcing wildlife and hunting regulations for this area, so this officer's time is not dedicated fulltime to fisheries regulation. Officers rarely travel outside their assigned territory to saturate other ports for any length of time. In addition, officers from other sections of state police do not rotate in and out of the division to further increase enforcement presence. State police should review its scheduling to ensure that regulatory visits truly are unpredictable, and should consider saturating ports and using other state police officers for limited periods to increase unpredictability and enforcement presence.

***Currently imposed fine amounts may not deter misreporting.***

Another technique used by various enforcement entities to make up for limited enforcement presence is imposing stiff fines or penalties on violators when they do get caught. Oregon's imposed fines and penalties for illegal fish sales and misreporting may be inadequate to prevent such activities. According to state police officials, violators of commercial fishing regulations can be charged with a Class-A misdemeanor, with fines of up to \$5,000. These officials also said that courts often reduce these citations to a fine of \$100 and state seizure of the proceeds from the illegal catch.

***The department is not revoking commercial licenses to the maximum extent allowed by law.***

In addition, the department is not imposing commercial fishing license revocations to the maximum extent allowed under Oregon law. Authority to revoke a license requires only a single conviction for breaking the state's commercial fishing laws (ORS 508.485). According to the Oregon Department of Justice, however, the department has limited this ability to revoke licenses in its administrative rules (OAR 635-006-0235). This rule requires three convictions under the commercial fishing laws to revoke a license. According to department personnel who process commercial fish licenses, the department has not revoked a fisherman's license for at least several years. State police officials told us that many fishermen have accumulated three or more convictions under commercial fishing laws and are still licensed by the department. There are many more fishermen who have between one and three convictions

***Oregon should consider a point system for violations.***

under commercial fishing laws and are still licensed by the department and participate in the commercial fishing industry.

We question whether the deterrent effect of such small fines without eventual license revocation is effective, considering the value of the fish. Other states, including California, Washington, and Alaska, have similar penalties in place, but the courts may impose higher actual fines than typically assessed in Oregon. In Washington, for example, the average fine after prosecution, according to an official from Washington's Fish and Game Department, is \$500.

Another technique for Oregon to consider is one that Alaska is implementing to deal with repeat violators. An Alaskan official told us that Alaska is experimenting with a point system in an effort to deter misreporting. In Alaska's system, points are assigned to fishermen when citations of any kind are issued. Once a fisherman accumulates a certain number of points, his license is revoked.

## **Recommendations**

**We recommend** that the department:

1. Increase its enforcement presence by varying enforcement schedules and types of enforcement. One way to do this more effectively is to deploy department employees, state police officials, or both into monitoring and enforcement roles from other regions or other divisions on a temporary basis in order to saturate ports and increase the unpredictability of enforcement.
2. Consider increasing its state fish ticket audit function in order to vary enforcement activities. Audits can be random or targeted to dealers and limited fish sellers with a history of reporting problems or inaccuracies.
3. Propose increases to the civil and criminal penalties for underreporting and illegal acts. Increasing penalties and designating more violations as felonies might deter potential underreporting or criminal acts.
4. Follow its established rule and revoke licenses after three convictions. Also, consider whether earlier revocation, as allowed by Oregon law, would improve compliance. As an alternative, the department should consider implementing a "point system" similar to Alaska's, if its point-based system proves to reduce misreporting activity.



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## Objectives, Scope and Methodology

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We conducted a risk assessment of the department to determine whether we could add value to public accountability and/or management decision-making by auditing issues related to the department. Our risk assessment, completed in June 1999, concluded that a review of commercial fisheries (specifically the issue of fish processing record-keeping and the quality and extent of the department's and state police's monitoring of fisheries) would be an appropriate and value-added audit.

The objectives of our audit were to determine the:

- Extent of errors (intentional or unintentional) in the records pertaining to commercial fish harvests in Oregon,
- Effect of any errors on Oregon's tax collection and fisheries management, and
- Extent and effect of total non-compliance (illegal or black market activities).

To accomplish these objectives, we:

- Interviewed officials and staff of the Oregon Department of Fish and Wildlife, including the management team of Marine Programs;
- Visited five commercial wholesale fish dealer plants, obtaining information, suggestions, and general input on fish processing and the role of the department in monitoring this industry;
- Observed port operations at five Oregon seaports, then validated our observations by matching observed fishing activity with the department's records;
- Interviewed Department of Oregon State Police officials in six cities responsible for monitoring compliance with commercial fishing regulations; and
- Reviewed police reports on prior investigations related to commercial fisheries.

## Objectives, Scope and Methodology

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Our audit did not review the actual fish population, nor did we reach a conclusion about catch limits established by regulating bodies.

We conducted our audit from August to October 1999 in accordance with generally accepted government auditing standards.

## **Commendation**

The courtesies and cooperation extended by the officials and staff at the Oregon Department of Fish and Wildlife, Department of Oregon State Police, and the commercial fish processing plants at Oregon ports were commendable and much appreciated.

## **Audit Team**

Drummond E. Kahn, MS, CGFM, Audit Administrator

Craig M. Stroud, CPA

Jason M. Stanley, CPA

Daniel M. Smith

Thomas A. Payne



## **AGENCY'S RESPONSE TO THE AUDIT REPORT**





# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Fish and Wildlife

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February 15, 2000

John N. Lattimer, State Auditor  
Secretary of State Audits Division  
255 Capitol Street NE, Ste 500  
Salem, OR 97310

Dear Mr. Lattimer,

This letter is in response to the Oregon's Secretary of State Audits Division's draft report on Commercial Fisheries Regulations. This response was coordinated with the Oregon Department of State Police (OSP). Attached to the response is the February 10, 2000 letter I received from Captain Lindsay Ball responding to this audit. The response from OSP has been incorporated into the Department of Fish and Wildlife response, which you will find enclosed with this letter.

I commend the work performed by the Secretary of State Auditors who conducted this audit. Their cooperative attitude and approach throughout this audit is noteworthy.

Thank you for the opportunity to review and respond to your draft report.

Sincerely,

James W. Greer  
Director



# RESPONSE TO RECOMMENDATIONS

## COMMERCIAL FISHERIES REGULATION AUDIT

### Recommendation 1

*Increase its enforcement presence by varying enforcement schedules and types of enforcement. One way to do this more effectively is to deploy department employees, state police officials, or both into monitoring and enforcement roles from other regions or other divisions on a temporary basis in order to saturate ports and increase the unpredictability of enforcement.*

### Response to Recommendation 1

The auditors' recommendation to vary enforcement patrol schedules is a valid recommendation. Oregon Department of Fish and Wildlife (ODFW) supports the idea that varying enforcement schedules and types of enforcement could improve compliance. Enforcement actions are a function of the Oregon State Police and not initiated by ODFW employees. As indicated by their letter to you (attached) varying enforcement schedules and types of enforcement have been a longstanding patrol tactic of general law enforcement and the Oregon State Police (OSP). Varied patrol scheduling is included in the patrol technique of the OSP Fish and Wildlife Division who enforce fish and wildlife laws. The OSP Fish and Wildlife Division does not use a patrol schedule with specific patrol times but an itinerary which allows the field officer and the supervisor to adjust work hours, creating a varied schedule. Each week the fish and wildlife officer submits his or her work itinerary to the supervisor for approval. In addition, the field officer or his or her supervisor can change the itinerary on a daily basis, thus changing work times and days off. This type of patrol scheduling by the OSP Fish and Wildlife Division facilitates varied patrol schedules.

Included in the auditors' recommendation is to saturate commercial fish ports with law enforcement officers to increase unpredictability of enforcement efforts. This is a valid recommendation by the auditors. Saturation patrols of commercial fish ports for the most part have only occurred when a suspected violation of law exists. Saturation patrols of commercial fish ports as a routine patrol effort has not been a tactic employed by the OSP Fish and Wildlife Division. The OSP Fish and Wildlife Division will evaluate the effectiveness of a saturation patrol as a matter of routine patrol tactics.

Concerns limiting the saturation of a commercial fish port with law enforcement officers are as follows:

- ◆ Cost of moving enforcement personnel from outside patrol areas (per diem, travel, overtime).
- ◆ Training of personnel. Commercial fish enforcement, as identified by the auditors' document, is a specialized industry with laws and administrative rules specific to the industry, and knowledge of such laws and administrative rules is only known to a few OSP fish and wildlife officers and certainly not known by law enforcement generally.

- ◆ Diverting OSP law enforcement employed for traffic safety enforcement and criminal investigation to ensure compliance of the commercial fish industry laws and administrative rules on a random or routine basis can and has been viewed as an act contrary to legislative direction of funding and purpose.

The OSP Fish and Wildlife Division will review itinerary scheduling to officers are adhering to a varied work schedule, not only in commercial fish enforcement but also with respect to all fish and wildlife enforcement patrol schedules. This has been scheduled for discussion at the OSP fish and wildlife supervisors' meeting scheduled for February 23, 2000.

Routine saturation patrols of commercial fish ports by members assigned to the OSP Fish and Wildlife Division will be discussed on February 23, 2000.

The Captain of the OSP Fish and Wildlife Division will contact the Department of State Police's Operations Services Bureau and discuss using sworn officers from other divisions of the Department (not specifically funded nor specifically assigned to enforce fish and wildlife laws) to determine if a routine diversion of personnel will prove a hardship on their assigned public safety roles.

## **Recommendation 2**

*Consider increasing its state fish ticket audit function in order to vary enforcement activities. Audits can be random or targeted to processors and limited fish sellers with a history of reporting problems or inaccuracies.*

## **Response to Recommendation 2**

ODFW agrees that increasing the audit capability of the Oregon Department of Fish and Wildlife would uncover reporting problems and inaccuracies. ODFW believes that just auditing fish tickets will only scratch the surface and will not justify the cost or the benefit to the agency. The need is thorough in-depth audits of all transaction and business records that will uncover blatant underreporting of taxes. These kinds of audits were common in the 1970's but as positions were reduced, the ability to conduct such audits was eliminated. ODFW agrees that random and targeted audits are probably the most cost effective and result in a deterrent effect.

## **Recommendation 3**

*Propose increases to the civil and criminal penalties for underreporting and illegal acts. Increasing penalties and designating more violations as felonies might deter potential underreporting or criminal acts.*

## **Response to Recommendation 3**

The auditors' recommendation for increasing criminal penalties is valid, as severity of penalty is a method to deter violations of law and create compliance. ODFW believes that aggressive implementation of current civil and criminal authorities will serve to deter potential underreporting and criminal acts. As of this date, most fish and wildlife violations are Class A misdemeanors, which carry a maximum penalty of \$5,000 monetary fine and up to one year in

jail. Records indicate that Oregon's courts are not imposing penalties close to the maximum allowed by law. Sentences of jail time are almost nonexistent and monetary fines rarely exceed \$200. The Oregon State Police cannot support raising commercial fish violations to felony crimes until we observe the Oregon courts using a higher penalty phase, which is granted them under the present Class A misdemeanor classification. ODFW agrees with OSP assessment.

The Captain of the OSP Fish and Wildlife Division will direct his Division supervisors to contact local district attorneys and judges to inform them of the importance that compliance with the commercial fish laws is directly linked to penalties imposed by Oregon's courts as indicated by the auditors. OSP Fish and Wildlife personnel will remind them that the fabric of the highly regulated commercial fishing industry is held together by the seasons and harvest methods set forth by our fishery managers. Compliance of these laws and rules will maintain a sustainable fishery, thereby maintaining a stable coastal commercial fish economy.

#### **Recommendation 4**

*Follow its established rule and revoke licenses after three convictions. Also, consider whether earlier revocation, as allowed by Oregon law, would improve compliance. As an alternative, the department should consider implementing a "point system" similar to Alaska's, if its point-based system proves to reduce mis-reporting activity.*

#### **Response to Recommendation 4**

ODFW agrees that current rules allow revocation of Commercial Fishing Licenses after 3 convictions and such revocations would serve to deter future occurrences. ODFW is hampered by several things. Often, we are not aware of convictions. This may also be true of the State Police since there is not a single tracking system in Oregon courts for commercial fishing violations. Also, because of the lack of enforcement officers, few individuals are arrested and convicted within a 3-year period as required by the rules. When this happens, there is not a reporting mechanism to alert the Department to such a third conviction so proceedings can be initiated for license revocation.

In some cases, violations that could be prosecuted under Oregon law are forwarded to the National Marine Fisheries Service for prosecution under their civil authority. These are made on a case by case basis and generally result in significantly higher civil penalty than would occur under Oregon law. These violations are not considered when determining the number of violations for purposes of license revocation.

While convictions in the State of Washington (of an offense which was a violation of Columbia River commercial fishing rules adopted by the Columbia River Compact) may also be considered there is no communication network with the state of Washington to identify these violations for purposes of license revocation.

A new procedure ODFW intends to implement is a commitment to work with the State Police to track commercial fish that are seized and to follow-through with suits for the recovery of damages (ORS 506.720). This will result in increased revenue to ODFW and increased

compliance with trip limits. This may be followed by a refusal to issue licenses for persons who have not paid these court-ordered restitutions.

With respect to the Alaska system of points, revocation of any occupational license in Oregon requires a contested case hearing. Such a point system might be used in determining to take a case to a contested case hearing, but the ultimate decision would need to be decided on a case-by-base basis. Decisions to move forward with a license revocation are constrained by a need to receive initial information on convictions through the Oregon State Police.



# Oregon

John A. Kitzhaber, M.D., Governor

## Department of State Police

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(503) 378-2360  
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February 10, 2000

James Greer, Director  
Oregon Department of Fish and Wildlife  
P. O. Box 59  
Portland, OR 97207

Following is the Oregon State Police, Fish and Wildlife Division response to the Commercial Fisheries Regulation Audit of the Oregon Department of Fish and Wildlife by the Audits Division of the Oregon Secretary of State, February 2000. Not all of the audit recommendations are specific to the Oregon State Police. This response is only for those issues specific to enforcement.

### Recommendations by Audits Division:

- 1. Increase its enforcement presence by varying enforcement schedules and types of enforcement. One way to do this more effectively is to deploy department employees, state police officials, or both into monitoring and enforcement roles from other regions or other divisions on a temporary basis in order to saturate ports and increase the unpredictability of enforcement.**

**Response:** The auditors' recommendation to vary enforcement patrol schedules is a valid recommendation which has been a longstanding patrol tactic of general law enforcement and the Oregon State Police. Varied patrol scheduling is included in the Department's patrol technique of the Fish and Wildlife Division. The Fish and Wildlife Division does not use a patrol schedule with specific patrol times but an itinerary which allows the field officer and the supervisor to adjust work hours, creating a varied schedule. Each week the fish and wildlife officer submits his or her work itinerary to the supervisor for approval. In addition, the field officer or his or her supervisor can change the itinerary on a daily basis, thus changing work times and days off. This type of patrol scheduling by the Fish and Wildlife Division facilitates varied patrol schedules.

Included in the auditors' recommendation is to saturate commercial fish ports with law enforcement officers to increase unpredictability of enforcement efforts. This is a valid recommendation by the auditors. Saturation patrols of commercial fish ports for the most part have only occurred when a suspected violation of law exists. Saturation patrols of commercial fish ports as a routine patrol effort has not been a tactic employed by the Fish and Wildlife Division. We will evaluate the effectiveness of a saturation patrol as a matter of routine patrol tactics.



Concerns limiting the saturation of a commercial fish port with law enforcement officers are as follows:

- Cost of moving personnel from outside patrol areas (per diem, travel, overtime).
- Training of personnel. Commercial fish enforcement, as identified by the auditors' document, is a specialized industry with laws and administrative rules specific to the industry, and knowledge of such laws and administrative rules is only known to a few fish and wildlife officers and certainly not known by law enforcement generally.
- Diverting law enforcement employed for traffic safety enforcement and criminal investigation to ensure compliance of the commercial fish industry laws and administrative rules on a random or routine basis can and has been viewed as an act contrary to legislative direction of funding and purpose.

**Recommendation #1 - Action Taken:**

The Fish and Wildlife Division will review itinerary scheduling to ensure the Fish and Wildlife Division is adhering to a varied work schedule, not only in commercial fish enforcement but also with respect to all fish and wildlife enforcement patrol schedules. This has been scheduled for discussion at the fish and wildlife supervisors' meeting scheduled for February 23, 2000.

Routine saturation patrols of commercial fish ports by members assigned to the Fish and Wildlife Division will be discussed on February 23, 2000.

The Captain of the Fish and Wildlife Division will contact the Department of State Police's Operations Services Bureau and discuss using sworn officers from other divisions of the Department not specifically funded nor specifically assigned to enforce fish and wildlife laws. We will determine if a routine diversion of personnel will prove a hardship on their assigned public safety roles.

2. **Consider increasing its state fish ticket audit function in order to vary enforcement activities. Audits can be random or targeted to processors and limited fish sellers with a history of reporting problems or inaccuracies.**

Response: All auditing is done by the Oregon Department of Fish and Wildlife (ODFW); they will respond to recommendation #2.

3. **Propose increases to the civil and criminal penalties for underreporting and illegal acts. Increasing penalties and designating more violations as felonies might deter potential underreporting or criminal acts.**

Response: Statute prohibits the Oregon State Police from initiating civil restitution processes. Therefore, ODFW will respond to the civil penalties recommendation.

The auditors' recommendation for increasing criminal penalties is valid as severity of penalty is a method to deter violations of law and create compliance. As of this date, most fish and wildlife violations are Class A misdemeanors, which carry a maximum penalty of \$5,000 monetary fine and up to one year in jail. Records indicate that Oregon's courts are

not imposing penalties close to the maximum allowed by law. Sentences of jail time are almost nonexistent and monetary fines rarely exceed \$200. The Oregon State Police cannot support raising commercial fish violations to felony crimes until we observe the Oregon courts using a higher penalty phase, which is granted them under the present Class A misdemeanor classification.

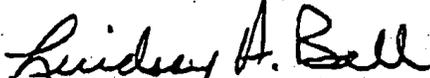
**Recommendation #3 - Action Taken:**

The Captain of the Fish and Wildlife Division will direct the Division supervisors to contact local district attorneys and judges to inform them of the importance that compliance with the commercial fish laws is directly linked to penalties imposed by Oregon's courts as indicated by the auditors. We will remind them that the fabric of the highly regulated commercial fishing industry is held together by the seasons and harvest methods set forth by our fishery managers. Compliance of these laws and rules will maintain a sustainable fishery, thereby maintaining a stable coastal commercial fish economy.

4. Follow its established rule and revoke licenses after three convictions. Also, consider whether earlier revocation, as allowed by Oregon law, would improve compliance. As an alternative, the department should consider implementing a "point system" similar to Alaska's, if its point-based system proves to reduce misreporting activity.

Response: ODFW will respond to Recommendation #4.

Sincerely,

  
Lindsay A. Bell, Captain  
Fish and Wildlife Division

LAB:njs  
cc: Major Willeford, Operations Services Bureau  
Audits Division, Secretary of State's Office

## AUDITING TO PROTECT THE PUBLIC INTEREST AND IMPROVE OREGON GOVERNMENT

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<i>Deputy Director</i>	Catherine E. Pollino, CGFM
<i>Deputy Director</i>	Sharron E. Walker, CPA, CFE

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