

Tombigbee Rivers Coalition, requested a public hearing within the allotted time period. Public hearings are designed to gather relevant information that the public may have that we should consider in determining the status of and threats to this species. During the hearing, we will present information about the proposed action of listing the Alabama sturgeon as endangered. We invite the public to submit information and comments either at the hearing on June 24, 1999, or in writing.

The hearing will be at the Montgomery Civic Center in Montgomery, Alabama, on Thursday, June 24, 1999, from 7:00 p.m. to 10:00 p.m. We may have to limit the time allotted for oral statements, if the number of people who wish to comment necessitates such a limitation. We encourage persons wishing to comment at the hearing to provide a written copy of their statement at the start of the hearing. There is no limit on the length of written comments. Persons may also send written comments to our office in the ADDRESSES section at any time during the open comment period. We will give equal consideration to oral and written comments. We are publishing legal notices announcing the date, time, and location of the hearing in newspapers, concurrently with this **Federal Register** notice. The comment period on the proposal initially closed on May 26, 1999. To accommodate the hearing, we are extending the public comment period upon publication of this notice. The public comment period will close on July 5, 1999.

**Author:** The primary author of this notice is Paul Hartfield (see ADDRESSES section).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 18, 1999.

**H. Dale Hall,**

*Acting Regional Director, Fish and Wildlife Service.*

[FR Doc. 99-13143 Filed 5-24-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 990430115-9115-01; I.D. 030299B]

RIN 0648-AL48

#### Fisheries Off West Coast States and in the Western Pacific; Northern Anchovy Fishery; Amendment 8

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 8 to the Northern Anchovy Fishery Management Plan (FMP), which has been submitted by the Pacific Fishery Management Council (Council) to NMFS for review and approval by the Secretary of Commerce. This proposed rule to implement Amendment 8 would: Change the name of the FMP to the Fishery Management Plan for Coastal Pelagic Species (CPS); remove jack mackerel north of 39° N. lat. from the Pacific Coast Groundfish FMP and add four species to the management unit of the CPS FMP; define a new fishery management area and divide it into a limited entry zone and two new subareas; establish a procedure for setting annual specifications including harvest guidelines and quotas; provide for closure of the directed fishery when the directed portion of a harvest guideline or quota is taken; identify fishing seasons for Pacific sardine and Pacific mackerel; establish catch restrictions in the limited entry zone and, when the directed fishery for a CPS is closed, limit harvest of that species to an incidental trip limit set by the Southwest Regional Administrator, NMFS (Regional Administrator); implement a limited entry program; authorize the Regional Administrator to issue exempted fishing permits for the harvest of CPS that otherwise would be prohibited; and establish a framework process by which management decisions could be made without amending the FMP.

As discussed here in the preamble to this proposed rule, Amendment 8 would also: Establish Maximum Sustainable Yield (MSY) control rules and define optimum yield (OY) and overfishing; and address requirements in the Magnuson-Stevens Fishery Conservation and Management Act

regarding Essential Fish Habitat (EFH), bycatch, and fishing communities. No changes in the regulations implementing the FMP are required to implement these measures, if approved by NMFS.

**DATES:** Comments must be submitted in writing by July 9, 1999.

**ADDRESSES:** Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Copies of the FMP, which includes the final supplemental environmental impact statement (FSEIS)/regulatory impact review/initial regulatory flexibility analysis may be obtained from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, Oregon, 97201. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 00503 (Attn: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** James Morgan, Sustainable Fisheries Division, NMFS, at 562-980-4036 or Julie Walker, Pacific Fishery Management Council, at 503-326-6352.

**SUPPLEMENTARY INFORMATION:** On September 4, 1998 (63 FR 47288), a notice of availability of a Draft Environmental Impact Statement (DSEIS) on Amendment 8 to the FMP was published in the **Federal Register**. The Council held public hearings on the amendment from September 8 to 11 in Washington, Oregon, and California. On September 15, 1998, at its meeting in Sacramento, California, the Council reviewed public comments received on the amendment at the hearings, considered written comments, adopted preferred options and voted to submit Amendment 8 for Secretarial review. The Council submitted Amendment 8 for Secretarial review by a letter dated December 11, 1998. On March 12, 1999, a notice of availability of the FSEIS on Amendment 8 was published in the **Federal Register** (64 FR 12279).

The impetus for Amendment 8 and this proposed rule is the increasing abundance of Pacific sardine, which now extends from Mexico to Canada, and the recent high demand for squid. Pacific sardine was overfished in the

1930s, leading to the collapse of the fishery in the 1950s. Little is known about the abundance of squid. The high variability of coastal pelagic resources and the amount of fishing power that could be employed to their harvest require a comprehensive management approach.

### Species in the FMP

Amendment 8 and this proposed rule would place Pacific mackerel (*Scomber japonicus*), Pacific sardine (*Sardinops sagax*), Jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*) in a management unit with northern anchovy (*Engraulis mordax*). All of these small CPS are harvested by a fleet of vessels using mainly roundhaul nets (e.g., purse seines). Managed species would be divided into two categories: "Actively managed" and "monitored." Actively managed species would be subject to annual harvest limits based on estimated biomass. Monitored species would not be subject to mandatory harvest limits, although other management measures such as area closures could apply. Initially, Pacific sardine and Pacific mackerel would be actively managed, while jack mackerel, northern anchovy, and market squid would be monitored. This proposed rule would remove jack mackerel from the Pacific Coast Groundfish FMP.

### Fishery Management Areas and Subareas

The fishery management area is the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, bounded in the north by the Provisional International Boundary between the United States and Canada, and bounded in the south by the International Boundary between the United States and Mexico. The fishery management area is divided into subareas for the regulation of fishing for CPS, with the following boundaries: The CPS Limited Entry Zone means the EEZ between the northern boundary at 39°00'00" N. lat. off California, and the southern boundary at the U.S. Mexico-International Boundary. Subarea A means the EEZ between the U.S.-Canada Provisional International Boundary and the southern boundary at Pt. Piedras Blancas, California. Subarea B means the EEZ between the northern boundary at Pt. Piedras Blancas, California 35°40'00" N. lat. and the southern boundary at the U.S.-Mexico International Boundary.

### Limited Entry System

The limited entry system would be established in the commercial fishery for CPS finfish (squid is not included) south of 39° N. latitude (Pt. Arena, California). Open access would continue north of 39° N. latitude. Historically, 99 percent of the sardine resource has been harvested south of Pt. Arena. When abundance is high, fishermen in more northern areas would still be able to gain benefits from the high abundance through the open access fishery. When abundance declines, the resource tends to disappear from the north and move south.

To qualify for a limited entry permit, a vessel would have had to land at least 100 metric tons (mt) of CPS finfish during the period January 1, 1993, through November 5, 1997. The estimated number of vessels that would qualify for a limited entry permit is 70. These vessels are responsible for approximately 99 percent of the harvest of CPS.

The limited entry program would take effect on January 1, 2000. Permits would be issued to the owner of the qualifying vessel and could be transferred once only during the year 2000. This one-time transfer would afford the owner of a qualifying vessel the opportunity to upgrade his/her fishing vessel and would allow those who wish to enter the fishery a 1-year opportunity to buy a permit. After the year 2000, a permit could not be transferred to another person, but could be registered for use with another vessel only if the permitted vessel was lost, stolen, or was removed from all federally managed fisheries. Currently, there is no way to ensure that a vessel that is able to fish will not operate in another federally regulated fishery. Therefore, the only way a permit may be transferred to a different vessel after December 31, 2000, will be if the permitted vessel has been totally lost, stolen, or scrapped. NMFS will investigate whether there is another way to ensure a vessel may not be used in another fishery, such as through documentation restrictions.

Under the amendment, vessels fishing for CPS in the limited entry fishery could land no more than 125 mt tons of CPS from any fishing trip. This limit is designed to curtail increases in harvest capacity. Under the proposed system, vessel owners may make changes in fishing gear, engines, or refrigeration, to adapt to changing conditions in the fishery. Vessels harvesting CPS for live bait or in small amounts (as described below) would be exempt from permit requirements.

In an effort to focus public comment, NMFS is highlighting two aspects of Amendment 8: first, failing to include under-construction exceptions to the limited entry criteria and, second, allowing vessels to land small amounts of CPS in the Limited Entry Zone without a permit.

Amendment 8 and this proposed rule would not except vessels that were under construction or were contracted for construction during the limited entry qualifying period (January 1, 1993, through November 5, 1997). A vessel falling into this category would not qualify for a permit. NMFS is interested in receiving information from owners of vessels that would be affected by the lack of an exception.

Many vessels that would not qualify for a limited entry permit have landed small amounts of CPS for dead bait or for small speciality markets. Under the framework provisions of Amendment 8, the Council could recommend landings between 1 and 5 mt by vessels without a permit. Any change in the exempted trip limit would be implemented through rulemaking. The proposed regulations would initially set the exempted trip limit at 5 mt. NMFS request comments on the appropriate level for the exempted trip limit.

### Framework Process

A framework process similar to that used in the Council's groundfish fishery would allow for management actions without amending the plan. This proposed rule would establish a framework process to set and adjust fishery specifications and management measures in accordance with procedures and standards described in section 2 of Amendment 8. The framework process consists of two procedural categories, the point-of-concern framework procedure and the socio-economic framework procedure, according to which the Council may recommend and NMFS approve the establishment and adjustment of management measures. The point-of-concern framework procedure would be used in response to resource conservation and ecological issues, while the socio-economic framework procedure would be used to address socio-economic issues in the fishery. Under both of these procedures, the Council and NMFS may carry out four types of actions: (1) Automatic actions for non-discretionary actions, which would become effective upon publication of a **Federal Register** notice without prior public notice and opportunity for comment, and without a prior Council meeting; (2) notice actions, which would be used for all

management actions, except automatic action, intended to have temporary affect that are either non-discretionary or have probable impacts that were previously analyzed and which would require at least one Council meeting and publication of one **Federal Register** notice; (3) abbreviated rulemaking actions; which would be used for all discretionary management actions intended to have permanent effect, the impacts of which have not been previously analyzed, and which would require at least one Council meeting and publication of one rule in the **Federal Register**; and (4) full rulemaking actions, which would require at least two Council meetings and publication of proposed and final rules in the **Federal Register** with an opportunity for public comment.

Under the framework system, many different types of actions could be taken to respond quickly to changes in the fishery. For example, actively managed and monitored species could be moved between categories as circumstances require. Other actions include trip frequency limits, area or subarea closures, seasons, size limits, gear limitations, and other appropriate measures. Amendment 8 and this proposed rule authorize the Council to designate certain management measures as "routine management measures." This designation would enable the Council to modify the measure through the single meeting notice procedure described here.

#### Harvest Guidelines

Annually, the Regional Administrator would calculate the harvest guidelines for actively managed CPS based on the estimated biomass and the standards set in the FMP. This is the same process that has been used in the northern anchovy fishery and would be adapted for actively managed CPS. The formulas used to set harvest guidelines for CPS are straightforward and provide little latitude for judgement; therefore, there is little discretion involved in setting annual specifications for CPS.

Harvest guidelines for CPS would be calculated using the current biomass estimate multiplied by a fixed harvest rate. The portion of the resource in U.S. waters may change year to year; the harvest guidelines would be calculated using the best estimate available. The amount of the harvest guideline needed for incidental trip limits when the fishery is nearing closure will vary depending on when the harvest guideline is projected to be achieved, but the sum of the incidental amount and the amount harvested directly must equal the total harvest guideline.

Following the determination of the estimated biomass, a public meeting would be held, where the Coastal Pelagics Management Team and Advisory Subpanel would review the biomass estimate and resultant harvest guideline. Public comments and comments of the Advisory Subpanel would be reported to the Council. After hearing public comments at its meeting, the Council would either adopt the harvest guideline for the upcoming fishing season or recommend a different harvest guideline, accompanied by a justification for the recommendation. There is little flexibility in setting harvest guidelines, but errors in calculations and in the way the specific factors were used in determining the biomass are elements that could be examined.

The annual process for calculating harvest guidelines would include public review of the estimated biomass and harvest guidelines before the fishing season begins; however, the Regional Administrator is not precluded from announcing the harvest guideline in the **Federal Register** before the process is completed so that fishermen may plan their activities and begin harvesting when the fishing season begins.

#### Fishing Seasons

This proposed rule would set the Pacific sardine season at January 1 to December 31, unless closed earlier, and the Pacific mackerel season at July 1 to June 30, unless closed earlier.

#### Other Elements of Amendment 8

The SFA amended section 303(a) of the Magnuson-Stevens Act, which describes the required components of each FMP. The SFA established a 2-year deadline (ending October 11, 1998) by which each Regional Fishery Management Council was required to submit amendments to NMFS to bring all FMPs into compliance with the new provisions of section 303(a). Amendment 8 seeks to make the FMP consistent with the Magnuson-Stevens Act, as amended by the SFA, by defining, OY, overfishing, and levels at which managed stocks are considered overfished and by addressing EFH, bycatch in the fisheries for CPS, and social and economic data on fishing communities.

#### MSY, OY, and Overfishing Definitions

Harvest strategies for CPS would take into account uncontrolled harvests in the Mexican fishery, natural variability in the stocks, and the importance of coastal pelagics as forage for other fish, marine mammals, and birds. The harvest strategies are established

through the definition of OY, MSY control rules, and levels at which species would be considered overfished. Amendment 8 contains a default CPS MSY control rule and default overfishing definitions for northern anchovy, jack mackerel, and market squid. It also contains specific MSY control rules and overfishing definitions for Pacific sardine and Pacific (chub) mackerel.

#### Bycatch

Bycatch, as defined in the Magnuson-Stevens Act, is minimal in the CPS fisheries. Any bycatch issues that might arise if a high volume fishery occurred in the northern portion of the management area are unknown. Amendment 8 authorizes the Council to set incidental catch allowances as a percentage of landed weight or as an allowable incidental trip limit.

#### EFH

Presence/absence data were used to determine EFH for CPS and are based on a thermal range bordered within the geographic area where a CPS species occurs at any life stage, where the CPS species has occurred historically during periods of similar environmental conditions, or where environmental conditions do not preclude colonization by the CPS species. The amendment discusses non-fishing and fishing impacts on CPS EFH, and conservation and enhancement measures. No new management measures are proposed to address fishing impacts on EFH.

#### Fishing Communities

Amendment 8 describes the commercial and recreational CPS fisheries. It also profiles several fishing communities.

#### Classification

At this time, NMFS has not determined that Amendment 8, which this rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a DSEIS for Amendment 8; a notice of availability was published in the **Federal Register** on September 4, 1998 (63 FR 47288), inviting public comment. The comments are addressed in the FSEIS. The FSEIS for Amendment 8 was filed with the Environmental Protection Agency on March 19, 1999. A notice of availability of the FSEIS was published in the **Federal Register** on March 26, 1999 (64 FR 14720).

The environmental impacts of the various measures contained in Amendment 8 are expected to be neutral or positive. These impacts are summarized below by key management measures. *Limited entry*—The effects of limited entry and open access management are primarily socioeconomic although some positive environmental effects may arise if the tendency to overfish in open access fisheries is reduced by limited entry. Environmental effects in the open access fishery are expected to be neutral unless fishing effort increases and overfishing occurs. *OY, MSY, and Overfishing definitions*—Harvest of forage fish like sardine involves direct, indirect, and cumulative impacts on the environment. Species specific control rules are recommended for Pacific sardine and Pacific mackerel. Allowable harvest is based on MSY and the importance of each species as forage for other fish, marine mammals, and birds. This approach is expected to minimize environmental impacts. The default MSY control rules proposed for northern anchovy and jack mackerel (which are underutilized species with low levels of catch) are conservative and will have minimal environmental impacts. There is not enough information available to evaluate impacts of the default MSY control rule for market squid because there is little information available for this species. However, an aggressive research program is underway to define the status of the resource, develop a management program, and minimize any possible impacts resulting from the harvest of market squid. *Framework management*—Impacts of establishing a framework management procedure are procedural and not environmental. *EFH*—The identification and description of EFH for coastal pelagic species *per se* is expected to have no effect on the environment, because NMFS is making an administrative designation. However, given the fact that once EFH is designated, the effect of fishing and non-fishing activities on CPS EFH must be analyzed, there is a greater chance of habitat protection. *Bycatch and Incidental Catch*—There are no direct, indirect, or cumulative impacts from the recommended options for managing incidental catch. There are no recommended options for managing bycatch.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this

proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The National Marine Fisheries Service (NMFS) considers an impact to be "significant" if it results in a reduction in annual gross revenues by more than 5 percent, an increase in compliance costs at least 10 percent higher for smaller entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business. NMFS considers a "substantial number" of small entities to be more than 20 percent of those small entities affected by the regulation engaged in the fishery.

Coastwide, 811 vessels landed at least some CPS finfish or squid, or both, during the 1993–1997 window period. All vessels are small entities. Of these 811 vessels, 640 had CPS finfish landings south of 39° N. latitude. This is the population affected by limited entry. The other 171 vessels are expected to experience minimal or no economic impact as a result of this proposed rule. A total of 570 vessels would not qualify for a limited entry permit. Of these non-qualifying vessels, only 122 vessels depended on CPS finfish landings for at least 5 percent of their total exvessel revenues, which is 19 percent of the affected population. However, average aggregate CPS finfish landings for these 122 vessels was 10 mt for the 1993–1997 period, or 2 mt per year. Even at one trip per year at 2 mt per trip, the 122 non-qualifying vessels would be allowed to continue landing CPS finfish under the proposed 5 mt exempted landing limit. If the exempted landing limit were lowered to 1 mt, then up to 12 of the 122 vessels could be forced to reduce harvests south of 39° N. latitude and, depending on per trip costs, could be forced out of business, because with annual total exvessel revenues less than \$2,000, they would not be able to afford the purchase of a limited entry permit. These vessels would comprise less than 2 percent of the affected population.

A total of 70 vessels accounted for 99 percent of all finfish landings during the qualifying period.

Because of this certification, an Initial Regulatory Flexibility Analysis was not required and one was not prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 30 minutes for a limited entry permit application, 30 minutes for requesting the transfer of a permit, 2 hours to prepare a request for the appeal of the decision to deny a permit, and 45 minutes to affix the official number of a vessel to its bow and weather deck. The additional permit qualification evidence and burden of proof is

estimated to take 1 hour per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Southwest Region (see **ADDRESSES**), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

An informal consultation under the Endangered Species Act has been initiated with the U.S. Fish and Wildlife Service (FWS) with regard to the possible effects of the fishery on endangered and threatened seabirds under FWS jurisdiction that forage on coastal pelagic species. Consultation is also underway within NMFS with regard to the possible effects of the fishery on endangered or threatened marine mammals, Pacific salmon, and steelhead.

#### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 18, 1999.

**Andrew A. Rosenberg,**

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

## PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

### § 660.302 [Amended]

2. In § 660.302, under the definition of "Groundfish" and under the term "Roundfish," remove the text "jack mackerel (north of 39° N. lat.), *Trachurus symmetricus*".

3. In § 660.337, paragraph (a)(1) is revised to read as follows:

### § 660.337 Limited entry permits—"designated species B" endorsement.

(a) \* \* \*

(1) *General. Designated species* means Pacific whiting and shortbelly rockfish. Bycatch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries in the PCGFMP.

\* \* \* \* \*

4. Revise Subpart I to read as follows:

### Subpart I—Coastal Pelagics Fisheries

- 660.501 Purpose and scope.
- 660.502 Definitions.
- 660.503 Management subareas.
- 660.504 Vessel identification.
- 660.505 Prohibitions.
- 660.506 Gear restrictions.
- 660.507 Closed areas to reduction fishing.
- 660.508 Annual specifications.
- 660.509 Closure of directed fishery.
- 660.510 Fishing seasons.
- 660.511 Catch restrictions.
- 660.512 Limited entry fishery.
- 660.513 Permit conditions.
- 660.514 Transferability.
- 660.515 Renewal of limited entry permits.
- 660.516 Exempted fishing.
- 660.517 Framework for revising regulations.

**Figure 1** to Subpart I of Part 660—Existing California Area Closures

### Subpart I—Coastal Pelagics Fisheries

#### § 660.501 Purpose and scope.

This subpart implements the Fishery Management Plan for Coastal Pelagic Species (FMP). These regulations govern commercial fishing for CPS in the EEZ off the coasts of Washington, Oregon, and California.

#### § 660.502 Definitions.

In addition to the definitions in the Magnuson-Stevens Act and in § 610.10 of this chapter, the terms used in this subpart have the following meanings:

*Actively managed species* (AMS) means those CPS for which the Secretary has determined that harvest guidelines or quotas are needed by Federal management according to the provisions of the FMP.

*Advisory Subpanel* (AP) means the Coastal Pelagic Species Advisory Subpanel that comprises members of the fishing industry and public appointed by the Council to review proposed actions for managing the coastal pelagic fisheries.

*Biomass* means the estimated amount, by weight, of a coastal pelagic species population. The term biomass means total biomass (age 1 and above) unless stated otherwise.

*Coastal pelagic species* (CPS) means northern anchovy (*Engraulis mordax*), Pacific mackerel (*Scomber japonicus*), Pacific sardine (*Sardinops sagax*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*).

*Coastal Pelagic Species Management Team* (CPSMT) means the individuals appointed by the Council to review, analyze, and develop management measures for the CPS fishery.

*Council* means the Pacific Fishery Management Council, including its CPSMT, AP, Scientific and Statistical Committee (SSC), and any other committee established by the Council.

*Finfish* means northern anchovy, Pacific mackerel, Pacific sardine, and jack mackerel.

*Fishery Management Area* means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, bounded in the north by the Provisional International Boundary between the United States and Canada, and bounded in the south by the International Boundary between the United States and Mexico.

*Fishing trip* means a period of time between landings when fishing is conducted.

*Harvest guideline* means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require complete closure of a fishery.

*Harvesting vessel* means a vessel involved in the attempt or actual catching, taking or harvesting of fish, or any activity that can reasonably be expected to result in the catching, taking or harvesting of fish.

*Land* or *Landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

*Limited entry fishery* means the commercial fishery consisting of vessels fishing for CPS in the CPS Management Zone under limited entry permits issued under § 660.512.

*Live bait fishery* means fishing for CPS for use as live bait in other fisheries.

*Monitored species* (MS) means those CPS the Secretary has determined not to need management by harvest guidelines or quotas according to the provisions of the FMP.

*Nonreduction fishery* means fishing for CPS for use as dead bait or for processing for direct human consumption.

*Owner*, as used in this subpart, means a person who is identified as the current owner in the Certificate of Documentation (CG-1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel.

*Person*, as used in this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

*Processing or to process* means preparing or packaging coastal pelagic species to render the fish suitable for human consumption, pet food, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless there is additional preparation.

*Quota* means a specified numerical harvest objective for a single species of CPS, the attainment (or expected attainment) of which causes the complete closure of the fishery for that species.

*Reduction fishery* means fishing for CPS for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or byproducts for purposes other than direct human consumption.

*Regional Administrator* means the Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, or a designee.

*Reserve* means a portion of the harvest guideline or quota set aside at the beginning of the year for specific purposes, such as for individual harvesting groups to ensure equitable distribution of the resource or to allow for uncertainties in preseason estimates of DAP and JVP.

*Sustainable Fisheries Division* (SFD) means the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, or a designee.

*Totally lost* means that the vessel being replaced no longer exists *in specie*, or is absolutely and irretrievably

sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

*Trip limit* means the total allowable amount of a CPS species by weight or by percentage of weight of fish on board the vessel that may be taken and retained, possessed, or landed from a single fishing trip by a vessel that harvests CPS.

#### **§ 660.503 Management subareas.**

The fishery management area is divided into subareas for the regulation of fishing for CPS, with the following designations and boundaries:

(a) *CPS Limited Entry Zone* means the EEZ between:

(1) Northern boundary—at 39°00'00" N. lat. off California; and

(2) Southern boundary—the United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35'22" N. lat., 117°27'49" W. long.  
32°37'37" N. lat., 117°49'31" W. long.  
31°07'58" N. lat., 118°36'18" W. long.  
30°32'31" N. lat., 121°51'58" W. long.

(b) *Subarea A* means the EEZ between:

(1) Northern boundary—the United States-Canada Provisional International Boundary, which is a line connecting the following coordinates:

48°29'37.19" N. lat., 124°43'33.19" W. long.  
48°30'11" N. lat., 124°47'13" W. long.  
48°30'22" N. lat., 124°50'21" W. long.  
48°30'14" N. lat., 124°54'52" W. long.  
48°29'57" N. lat., 124°59'14" W. long.  
48°29'44" N. lat., 125°00'06" W. long.  
48°28'09" N. lat., 125°05'47" W. long.  
48°27'10" N. lat., 125°08'25" W. long.  
48°26'47" N. lat., 125°09'12" W. long.  
48°20'16" N. lat., 125°22'48" W. long.  
48°18'22" N. lat., 125°29'58" W. long.  
48°11'05" N. lat., 125°53'48" W. long.  
47°49'15" N. lat., 126°40'57" W. long.  
47°36'47" N. lat., 127°11'58" W. long.  
47°22'00" N. lat., 127°41'23" W. long.  
46°42'05" N. lat., 128°51'56" W. long.  
46°31'47" N. lat., 129°07'39" W. long.; and

(2) Southern boundary—at 35°40'00" N. lat. (Pt. Piedras Blancas).

(c) *Subarea B* means the EEZ between:

(1) Northern boundary—35°40'00" N. lat. (Pt. Piedras Blancas); and

(2) Southern boundary—the United States-Mexico International Boundary described in paragraph (a)(2) of this section.

#### **§ 660.504 Vessel identification.**

(a) *Official number*. Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals*. The official number must be affixed to each vessel subject to this subpart in block Arabic numerals at least 14 inches (35.56 cm) in height. Markings must be legible and of a color that contrasts with the background.

#### **§ 660.505 Prohibitions.**

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) In the CPS Limited Entry Zone, take and retain, possess or land more than 5 mt of CPS finfish, other than live bait, on a harvesting vessel without a limited entry permit.

(b) In the CPS Limited Entry Zone, take and retain, possess or land more than 125 mt of CPS finfish on a harvesting vessel.

(c) Sell CPS without an applicable commercial state fishery license.

(d) Fish in the reduction fishery for CPS in any closed area specified in § 660.507.

(e) Fish in the reduction fishery for northern anchovy using gear not authorized under § 660.506.

(f) When fishing for CPS, not to return a prohibited species to the sea as soon as practicable with a minimum of injury.

(g) Falsify or fail to affix and maintain vessel markings as required by § 660.504.

(h) Fish for CPS in violation of any terms or conditions attached to an exempted fishing permit issued under § 600.745 of this chapter.

(i) When a directed fishery has been closed, take and retain, possess or land more than the incidental trip limit announced in the **Federal Register**.

(j) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(k) Falsify or fail to make and/or file any and all reports of fishing, landing, or any other activity involving CPS, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.3.

(l) Fail to carry aboard a vessel that vessel's limited entry permit issued under § 660.512 or exempted fishing permit issued under § 660.516.

(m) Make a false statement on an application for issuing, renewing, transferring, or replacing a limited entry permit for the CPS fishery.

#### **§ 660.506 Gear restrictions.**

Only authorized fishing gear may be used in the reduction fishery for northern anchovy off California. Authorized fishing gear is round haul

nets that have a minimum wet-stretch mesh size of  $1\frac{1}{16}$  of an inch (1.59 cm) excluding the bag portion of a purse seine. The bag portion must be constructed as a single unit and must not exceed a rectangular area, adjacent to 20 percent of the total corkline of the purse seine. Minimum mesh size requirements are met if a stainless steel wedge can be passed with only thumb pressure through 16 of 20 sets of 2 meshes each of wet mesh. The wedges used to measure trawl mesh size are made of 20 gauge stainless steel, and will be no wider than  $1\frac{1}{16}$  of an inch (1.59 cm) less one thickness of the metal at the widest part.

#### **§ 660.507 Closed areas to reduction fishing.**

The following areas are closed to reduction fishing:

(a) *Farallon Islands closure* (see Figure 1 to this subpart). The portion of Subarea A bounded by—

(1) A straight line joining Pigeon Point Light (37°10.9' N. lat., 122°23.6' W. long.) and the U.S. navigation light on Southeast Farallon Island (37°42.0' N. lat., 123°00.1' W. long.); and

(2) A straight line joining the U.S. navigation light on Southeast Farallon Island (37°42.0' N. lat., 123°00.1' W. long.) and the U.S. navigation light on Point Reyes (37°59.7' N. lat., 123°01.3' W. long.).

(b) *Subarea B closures*. Those portions of Subarea B described as—

(1) *Oxnard closure* (see Figure 1 to this subpart). The area that extends offshore 4 miles from the mainland shore between lines running 250° true from the steam plant stack at Manadaley Beach (34°12.4' N. lat., 119°15.0' W. long.) and 220° true from the steam plant stack at Ormond Beach (34°07.8' N. lat., 119°10.0' W. long.).

(2) *Santa Monica Bay closure* (see Figure 1 to this subpart). Santa Monica Bay shoreward of that line from Malibu Point (34°01.8' N. lat., 118°40.8' W. long.) to Rocky Point (Palos Verdes Point) (33°46.5' N. lat., 118°25.7' W. long.).

(3) *Los Angeles Harbor closure* (see Figure 1 to this subpart). The area outside Los Angeles Harbor described by a line extending 6 miles 180° true from Point Fermin (33°42.3' N. lat., 118°17.6' W. long.) and then to a point located 3 miles offshore on a line 225° true from Huntington Beach Pier (33°39.2' N. lat., 118°00.3' W. long.).

(4) *Oceanside to San Diego closure* (see Figure 1 to this subpart). The area 6 miles from the mainland shore south of a line running 225° true from the tip of the outer breakwater (33°12.4' N. lat., 117°24.1' W. long.) of Oceanside Harbor

to the United States-Mexico International Boundary.

#### **§ 660.508 Annual specifications.**

(a) The Regional Administrator will determine the harvest guidelines or quotas for all AMS from the estimated biomass and the formulas in the FMP.

(b) Harvest guidelines or quotas, including any apportionment between the directed fishery and set-aside for incidental harvest, will be published in the **Federal Register** before the beginning of the fishing season for each CPS.

(c) The announcement of each harvest guideline or quota will contain the following information:

(1) A summary of the status of AMS and MS;

(2) The estimated biomass on which the harvest guideline or quota was determined;

(3) The portion, if appropriate, of the harvest guideline or quota set aside to allow for incidental harvests after closure of the directed fishery;

(4) The estimated level of the incidental trip limit that will be allowed after the directed fishery is closed; and

(5) The allocation, if appropriate, between Subarea A and Subarea B.

(d) Harvest guidelines and quotas will receive a public review according to the following procedure:

(1) A meeting will be held between the Council's CPSMT and AP, where the estimated biomass and the harvest guideline or quota will be reviewed and public comments received. This meeting will be announced in the **Federal Register** before the date of the meeting.

(2) All materials relating to the biomass and harvest guideline or quota will be forwarded to the Council and its Scientific and Statistical Committee and will be available to the public from the Regional Administrator.

(3) At a regular meeting of the Council, the Council will review the estimated biomass and harvest guideline or quota and offer time for public comment. If the Council requests a revision, justification must be provided.

(4) The Regional Administrator will review the Council's recommendations, justification, and public comments and base his or her final decision on the requirements of the FMP.

#### **§ 660.509 Closure of directed fishery.**

When the directed fishery portion of the harvest guideline or quota is estimated to be taken, the Regional Administrator will announce in the **Federal Register** the date of closure of the directed fishery for CPS and the amount of the incidental trip limit that will be allowed.

#### **§ 660.510 Fishing seasons.**

(a) All seasons will begin at 0001 hours and terminate at 2400 hours local time. Fishing seasons for the following CPS species are:

(1) *Pacific sardine*. January 1 to December 31, or until closed under § 660.509.

(2) *Pacific mackerel*. July 1 to June 30, or until closed under § 660.509.

#### **§ 660.511 Catch restrictions.**

(a) All CPS harvested shoreward of the outer boundary of the EEZ (0–200 nautical miles off shore) will be counted toward the catch limitations specified in this section.

(b) The trip limit for harvesting vessels fishing in the CPS Limited Entry Zone for CPS other than live bait without a limited entry permit is 5 mt tons of all CPS finfish combined.

(c) The trip limit for vessels with a limited entry permit on a fishing trip in which the vessel fishes or lands fish in the Limited Entry Zone is 125 mt of all CPS finfish combined.

(d) After the directed fishery for a CPS is closed under § 660.509, no person may take and retain, possess or land more of that species than the incidental trip limit set by the Regional Administrator.

(e) While fishing for CPS, all species of trout and salmon (*Salmonidae*) and Pacific halibut (*Hippoglossus stenolepis*) are prohibited species and must be released immediately with a minimum of injury.

#### **§ 660.512 Limited entry fishery.**

(a) *General*. (1) This section applies to fishing for or landing CPS finfish in the limited entry fishery in the Limited Entry Zone.

(2) Effective January 1, 2000, the owner of a vessel with more than 5 mt of CPS finfish on board in the CPS Limited Entry Zone, other than live bait, must have a limited entry permit registered for use with that vessel.

(3) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or hold, by ownership or otherwise, a limited entry permit.

(b) *Initial qualification*. (1) SFD will issue a limited entry permit only for a vessel that landed 100 mt tons of CPS finfish from January 1, 1993, through November 5, 1997.

(2) A limited entry permit will be issued only to the current owner of the vessel, unless:

(i) The previous owner of a vessel qualifying for a permit, by the express terms of a written contract, reserved the right to the limited entry permit, in which case the limited entry permit will

be issued to the previous owner based on the catch history of the qualifying vessel, or

(ii) A vessel that would have qualified for a limited entry permit was totally lost prior to issuance of a limited entry permit. In this case, the owner of the vessel at the time it was lost retains the right to a permit for a replacement vessel, unless the owner conveyed the right to another person by the express terms of a written contract. The lost vessel must be replaced within 2 years of the date that the qualifying vessel was lost, and the replaced vessel must be of equal or less net tonnage.

(c) *Evidence and burden of proof*. A vessel owner (or person holding limited entry rights under the express terms of a written contract as specified in paragraph (a)(2) of this section) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(1) A certified copy of the vessel's documentation as a fishing vessel of the United States (U.S. Coast Guard or state) is the best evidence of vessel ownership;

(2) A certified copy of a state fish landing receipt is the best evidence of a landing of a vessel;

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights; and

(4) Other relevant, credible evidence that the applicant may submit or that the SFD may request or require may also be considered.

(d) *Fees*. The Regional Administrator may charge fees to cover administrative expenses related to issuing limited entry permits, as well as renewing, transferring, and replacing permits. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Initial decisions*. (1) The SFD will make initial decisions regarding issuing, renewing, transferring, and registering limited entry permits.

(2) Adverse decisions shall be in writing and shall state the reasons for the adverse decision.

(3) The SFD may decline to act on an application for issuing, renewing, transferring, or registering a limited entry permit if the permit sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing



regulations at 15 CFR part 904, subpart D, apply.

(f) *Initial issuance.* (1) The SFD will issue limited entry permits.

(2) In order to receive a final decision on a limited entry permit application before January 1, 2000, an applicant must submit the application to the SFD on or before August 1, 1999.

(3) A separate, complete, and accurate application form, accompanied by any required supporting documentation and the appropriate fee, must be submitted for each vessel for which a limited entry permit is sought.

(4) Upon receipt of an incomplete or improperly executed application, the SFD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered void.

(5) The SFD may request further documentation before acting on an application.

(6) The SFD will not accept applications for a limited entry permit after July 1, 2000.

(g) *Appeals.* (1) Any applicant for an initial permit may appeal the initial issuance decision to the Regional Administrator. To be considered by the Regional Administrator, such appeal must be in writing and state the reasons for the appeal, and must be submitted within 30 days of the action by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

(3) Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the permit eligibility criteria set forth in this section and in the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information submitted to or obtained by the Regional Administrator, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the Regional Administrator deems appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(4) If a hearing is requested, or if the Regional Administrator determines that

one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant, and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(5) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's decision will constitute the final administrative action by NMFS on the matter.

(6) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

#### **§ 660.513 Permit conditions.**

(a) A limited entry permit expires on failure to renew the limited entry permit as specified in § 660.515.

(b) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will be registered for use with a particular vessel at the time the permit is issued, renewed, or transferred.

(c) Limited entry permits issued or applied for under this subpart are subject to sanctions pursuant to the Magnuson-Stevens Act, 16 U.S.C. 1858(g), and 15 CFR part 904, subpart D.

#### **§ 660.514 Transferability.**

(a) Upon application by the permit holder, the SFD will process applications for transferring limited entry permits according to this section.

(b) Before January 1, 2001, a limited entry permit may be transferred only one time to a different owner and/or for use with a different vessel. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(c) After December 31, 2000, a permit may not be registered for use with a vessel other than the vessel for which it

was registered on December 31, 2000, except as follows:

(1) The vessel to which the permit was registered on December 31, 2000 (the replaced vessel), is totally lost, stolen, or scrapped, such that it cannot be used in a Federally regulated commercial fishery, and

(2) The replacement vessel to which the permit will be registered is of equal or less net tonnage than the replaced vessel, and

(3) The replaced vessel is owned by the permit holder.

(d) After December 31, 2000, a limited entry permit may not be transferred to another permit holder.

#### **§ 660.515 Renewal of limited entry permits.**

(a) Each limited entry permit must be renewed by January 1 of even numbered years.

(b) The SFD will send notices to renew limited entry permits to the most recent address of the permit holder.

(c) The permit owner must provide SFD with notice of any address change within 15 days of the change.

(d) The permit holder must submit applications for renewal of a permit on forms available from the SFD.

(e) The permit owner is responsible for renewing a limited entry permit.

(f) An expired permit cannot be used to fish for CPS in the limited entry fishery.

#### **§ 660.516 Exempted fishing.**

(a) *General.* In the interest of developing an efficient and productive fishery for CPS, the Regional Administrator may issue exempted fishing permits (EFP) for the harvest of CPS that otherwise would be prohibited.

(b) No exempted fishing for CPS may be conducted unless authorized by an EFP issued for the participating vessel in accordance with the criteria and procedures specified in § 600.745 of this chapter.

#### **§ 660.517 Framework for revising regulations.**

(a) *General.* NMFS will establish and adjust specifications and management measures in accordance with procedures and standards in Amendment 8 to the FMP.

(b) *Annual actions.* Annual specifications are developed and implemented according to § 660.508.

(c) *Routine management measures.* Consistent with sec. 2.1 of Amendment 8 to the FMP, management measures designated as routine may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register**.

(d) *Changes to the regulations.* Regulations under this subpart may be



promulgated, removed, or revised. Any such action will be made according to the framework measures in section 2 of Amendment 8 to the FMP and will be published in the **Federal Register**.

Figure 1 to Subpart I of Part 660—Existing California Area Closures (hatched areas extend to 3 miles offshore; cross-hatched areas extend beyond 3 miles offshore) and optional

Catalina Channel foreign vessel closure (outlined by dashed lines)

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