

fishers will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. However, effective monitoring will rotate observers among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. Therefore, the potential indirect costs to individual fishers are expected to be minimal since observer coverage would only be required for a small percentage of an individual's total annual fishing time. In addition, section 118 of the MMPA states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648-0292 (0.15 hours per report). 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. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of

information displays a currently valid OMB control number.

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

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA in June 1995. NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 2005 EA. If NMFS takes a management action, for example, through the development of a TRP, NMFS will first prepare an environmental document, as required under NEPA, specific to that action.

This proposed rule will not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under ESA section 7 for that action.

This proposed rule will have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This proposed rule will not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

References

Atlantic States Marine Fisheries Commission. 2006. Draft Report. Characterization of Georgia Commercial and Recreational Fisheries by Gear Type: The Potential for Interaction with Sea Turtles.

Burgess, G. and A. Morgan. 2003A. Final Report NA97FF0041. Renewal of

an observer program to monitor the directed commercial shark fishery in the Gulf of Mexico and South Atlantic.

Burgess, G. and A. Morgan. 2003B. Final Report NA16FM1598, National Marine Fisheries Service Award. Renewal of an observer program to monitor the directed commercial shark fishery in the Gulf of Mexico and South Atlantic: 2002(2) and 2003(1) fishing seasons.

Burgess, G. and A. Morgan. 2007. Personal Communication.

Califf, J. 2007. Personal Communication.

Dated: June 21, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070607119-7119-01]

RIN 0648-AV11

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2007, through December 31, 2007. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

DATES: Comments must be received by July 30, 2007.

ADDRESSES: Submit comments on this proposed rule, identified by 0648-AV11, by any of the following methods:

- E-mail: 0648-AV11.SWR@noaa.gov. Include the identifier "0648-AV11" in the subject line of the message.
- Federal e-Rulemaking portal: <http://www.regulations.gov>. Following the instructions for submitting comments.

• Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

• Fax: (562) 980-4047.

Copies of the report *Assessment of Pacific Sardine Stock for U.S. Management in 2007* may be obtained from the Southwest Regional Office (see ADDRESSES).

FOR FURTHER INFORMATION CONTACT:

Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid)./P≤

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team) and the Council's CPS Advisory Subpanel (Subpanel). At that time, the biomass, the harvest guideline (HG), and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comments, the Council makes its recommendation to NOAA's National Marine Fisheries Service (NMFS). The annual HG is published in the **Federal Register** as close as practicable to the start of the fishing season.

Public meetings of the Team, Subpanel and CPS Subcommittee of the Scientific and Statistical Committee (SSC) were held in October 2006. During these meetings the current stock assessment update for Pacific sardine, which included a preliminary biomass estimate and HG, was presented and reviewed in accordance with the procedures of the FMP. In November, the Council held a public meeting in San Diego, California (71 FR 62998) during which time the Council reviewed the current stock assessment, biomass numbers and proposed harvest guideline. Following the Team and Subpanel reports and hearing public comments, the Council adopted the Team's recommended harvest guideline for the 2007 Pacific sardine fishing

season (January 1, 2007 through December 31, 2007) of 152,564 metric tons (mt). Although this HG is 28 percent higher than the HG for 2006, it is over 50,000 mt greater than the largest recent harvest by U.S. west coast fisheries. The Council also adopted the Subpanel recommendation of an incidental catch allowance for Pacific sardine of up to 45 percent by weight in other CPS fisheries in the event that the coastwide harvest of Pacific sardine exceeds a seasonal allocation prior to the next scheduled reallocation.

The size of the sardine population was estimated using the Age-Structured-Assessment-Program (ASAP) stock assessment model. ASAP was recommended as the most appropriate framework for conducting future Pacific sardine assessments by the stock assessment review (STAR) panel which met in June of 2004 at the Southwest Fisheries Science Center in La Jolla, California. The ASAP model uses a forward-projection that evaluates the relationship between the species' population dynamics and associated fishery operations. Information on the fishery and the stock assessment are found in the report *Assessment of Pacific Sardine Stock for U.S. Management in 2007* (see ADDRESSES).

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *Biomass.* The estimated July 1, 2006, stock biomass of Pacific sardine age one and above 1,319,072 metric tons (mt).

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *Distribution.* The portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures; a higher fraction for warmer ocean temperatures and a lower fraction for cooler temperatures. Warmer ocean temperatures favor the production of Pacific sardine. For 2007, the fraction used was 15 percent, based on three seasons of sea surface temperature at Scripps Pier, California.

Based on the estimated biomass of 1,319,072 mt and the formula in the FMP, a harvest guideline of 152,564 mt was determined.

The Pacific sardine HG is apportioned based on the following allocation scheme established by Amendment 11 (71 FR 36999) to the CPS FMP: 35 percent (53,397 mt) is allocated coastwide on January 1; 40 percent (61,025 mt), plus any portion not harvested from the initial allocation is reallocated coastwide on July 1; and on September 15 the remaining 25 percent (38,141 mt), plus any portion not harvested from earlier allocations is released.

If the total harvest guideline or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery shall be closed until either it re-opens per the allocation scheme or the beginning of the next fishing season. The Regional Administrator shall publish in the **Federal Register**, through appropriate rulemaking procedures, the date of the closure of the directed fishery for Pacific sardine.

Classification

These proposed specifications are issued under the authority of, and NMFS has preliminarily determined that it is in accordance with, the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and the regulations implementing the FMP.

These proposed specifications are exempt from review under Executive Order 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 purpose of this proposed rule is to implement the 2007 harvest guideline for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual harvest guideline for the Pacific sardine fishery based on the formula in the FMP. The harvest guideline is derived by a formula applied to the current biomass estimate.

The HG is apportioned based on the following allocation scheme: 35% of the harvest guideline is allocated coastwide on January 1; 40% of the harvest guideline, plus any portion not harvested from the initial allocation is then reallocated coastwide on July 1; and on September 15 the remaining 25%, plus any portion not harvested from earlier allocations will be released. If the total harvest guideline or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery is closed until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during

an allocation period or the year; the harvest guideline and seasonal allocations are available until fully utilized by the entire CPS fleet.

The harvest guideline would apply to approximately 86 small fishing vessels (105 permits) coastwide that fish for Pacific sardine within U.S. waters; 61 permits in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 44 permits in Oregon and Washington's state Pacific sardine fisheries. This proposed rule has an equal effect on all of these small entities and therefore will impact a substantial number of these small entities in the same manner. These vessels are considered small business entities by the U.S. Small Business Administration since the vessels do not have annual receipts in excess of \$4.0 million. Therefore, there would be no economic impacts resulting from disproportionality between small and large business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel price per mt to conduct a profitability analysis

because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2006 fishing year, the harvest guideline was set at 118,937 mt with an estimated ex-vessel value of approximately \$15 million. Around 90,000 mt (49,000 in California and 41,000 in Oregon and Washington) of this harvest guideline was actually harvested during the 2006 fishing season valued at an estimated \$10 million.

The proposed harvest guideline for the 2007 Pacific sardine fishing season (January 1, 2007 through December 31, 2007) is 152,564 metric tons (mt). This HG is 28 percent higher than the HG for 2006, but is over 50,000 mt greater than the largest recent harvest by U.S. west coast fisheries. If the fleet were to take the entire 2007 harvest guideline, and assuming no change in the coastwide average ex-vessel price per mt of \$116, the potential revenue to the fleet would be approximately \$18 million. Whether this occurs depends greatly on market forces within the fishery and on the regional availability of the resource to the fleets and the fleets ability to find pure schools of Pacific sardine. A change in the market and/

or the potential lack of availability of the resource to the fleets could cause a reduction in the amount of Pacific sardine that is harvested, in turn, reducing the total revenue to the fleet.

NMFS does not anticipate a drop in profitability based on this rule due to the fact that it allows fishermen to harvest more than last year. Based on the disproportionality and profitability analysis above, this rule if adopted, will not have a significant economic impact on a substantial number of these small entities.

As a result, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

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

Dated: June 22, 2007.

Samuel D. Rauch III,

*Deputy Assistant Administrator For
Regulatory Programs, National Marine
Fisheries Service.*

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