

Dated: December 29, 2008.

**John Oliver,**

*Deputy Assistant Administrator for  
Management and Administration, National  
Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 0812171612-81615-01]

RIN 0648-XM21

#### 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 (HG) for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2009, through December 31, 2009. This HG is proposed 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. The proposed initial HG for the 2009 fishing year is 65,732 mt and is proposed to be divided across the seasonal allocation periods in the following way: January 1–June 30, 22,006 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14, 25,293 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31, 11,933 mt would be allocated for directed harvest with an incidental set-aside of 4,500 mt. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed.

**DATES:** Comments must be received by February 4, 2009.

**ADDRESSES:** You may submit comments on the Initial Regulatory Flexibility Analysis (IRFA) prepared for this rule or on this proposed rule identified by 0648-XM21 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

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

- Fax: (562)980-4047

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you prefer to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the IRFA or the report “Assessment of Pacific Sardine Stock for U.S. Management in 2009” may be obtained from the Southwest Regional Office (see the Mailing address above).

**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).

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) Coastal Pelagic Species Management Team (Team) and the Council’s Coastal Pelagic Species Advisory Subpanel (Subpanel). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comment, the Council makes its HG recommendation to NMFS.

In November 2008, the Council held a public meeting in San Diego, California (73 FR 60680), and recommended an acceptable biological catch (ABC) or maximum harvest guideline (HG) of 66,932 mt for the 2009 Pacific sardine fishing year. This ABC is the result of applying a biomass estimate of 662,886 mt to the harvest control rule established in the CPS FMP. This ABC/HG is 25 percent less than the ABC/HG adopted by the Council for the 2008 fishing season. The Council recommended that 1,200 mt of this available ABC/HG be initially subtracted from the ABC and reserved for a potential industry-based research project. NMFS would need to issue an Exempted Fishing Permit (EFP) for such an activity to occur. A decision on whether to issue an EFP will be made prior to the start of the second seasonal period (July 1, 2009). If it is determined that an EFP cannot be issued then the 1,200 mt will be added to the third period’s directed harvest allocation prior to the start of that period.

The Council recommended that the remaining 65,732 mt be used as the initial overall HG and be allocated across the seasonal periods established by Amendment 11 (71 FR 36999). The Council also recommended an incidental catch set-aside of 6,500 mt. Subtracting this set-aside from the initial overall HG establishes an initial directed harvest fishery of 59,232 mt and an incidental fishery of 6,500 mt. The purpose of the incidental fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, if and when a seasonal directed fishery is closed. The larger set aside in the third and final period is intended to adequately account for incidental harvest by the winter market squid fishery and to also help ensure that sardine harvests do not exceed the ABC.

The directed harvest levels and incidental set-aside would be initially allocated across the three seasonal allocation periods in the following way: January 1–June 30, 22,006 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14, 25,293 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31, 11,933 mt would be allocated for directed harvest with an incidental set-aside of 4,500 mt. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed. For the

remainder of the period, any incidental Pacific sardine landings would be counted against that period's incidental set-aside. The proposed incidental fishery would also be constrained to a 20 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine. In the event that an incidental set aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period would automatically be adjusted to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period's directed harvest total would be adjusted to account for this discrepancy as well.

If the total HG or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery would be closed via appropriate rulemaking until it re-opens either per the allocation scheme or the beginning of the next fishing season. The Regional Administrator would publish a notice in the **Federal Register** announcing the date of such closures.

Detailed information on the fishery and the stock assessment are found in the report "Assessment of Pacific Sardine Stock for U.S. Management in 2009" (see **ADDRESSES**).

The formula in the CPS FMP uses the following factors to determine the HG:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above for the 2009 management season is 662,886 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 2009, the fraction used was 15 percent, based

on three seasons of sea surface temperature at Scripps Pier, California.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. note. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The results of the analysis are stated below. For copies of the IRFA, and instructions on how to send comments on the IRFA, please see the **ADDRESSES** section above.

The purpose of this proposed rule is to implement the 2009 HG for Pacific sardine in the U.S. EEZ off the Pacific coast. The HG is proposed according to the regulations implementing the CPS FMP and establishes allowable harvest levels for Pacific sardine off the Pacific coast. The HG is determined using an environmentally-based formula accounting for the effect of ocean conditions on stock productivity.

The HG is apportioned based on the following allocation scheme: 35 percent of the HG is allocated coastwide on January 1; 40 percent of the HG, plus any portion not harvested from the initial allocation is then reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations will be released. If the total HG 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 HG and seasonal allocations are available until fully utilized by the entire CPS fleet.

The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finish fleet. Approximately 107 vessels are permitted to operate in the sardine fishery component of the CPS fishery off the U.S. West Coast; 63

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 2008 fishing year the HG was set at 89,093 mt. Approximately 87,000 mt (58,000 in California and 29,000 in Oregon and Washington) of this HG was harvested during the 2008 fishing season with an estimated ex-vessel value of \$14.5 million. Although the 2008 HG was 42 percent lower than the HG for 2007, due to an increase in average annual ex-vessel price per pound annual ex-vessel revenue for 2008 was similar to that in 2007.

The proposed HG for the 2009 Pacific sardine fishing season (January 1, 2009 through December 31, 2009) is 65,732 metric tons (mt). This HG is 25 percent lower than the HG for 2008. If the fleet were to take the entire 2009 HG, and assuming a coastwide average ex-vessel price per mt of \$168, the potential revenue to the fleet would be approximately \$11 million. This would be similar to the average total coastwide ex-vessel value achieved from 2002–2007. Whether this will occur 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 from Pacific sardine.

There will likely be a drop in profitability based on this rule compared to last season due to the lower HG this year. However, from 2002 through 2007 the average coastwide annual ex-vessel revenue was \$11 million, therefore at current ex-vessel

price per mt, the harvest guideline for 2009 should provide similar revenue as seen from 2002 through 2007.

No significant alternatives to this proposed rule exist that would accomplish the stated objectives of the applicable statutes and which would minimize any significant economic impact of this proposed rule on the affected small entities. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the ABC, from which the HG is then derived. Determining the annual HG merely implements the established procedures of the FMP with the goal of continuing to provide expected net benefits to the nation, regardless of what the specific annual allowable harvest of Pacific sardine is determined to be.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

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

Dated: December 29, 2008.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0809031176-81596-01]

RIN 0648-AX25

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands and Gulf of Alaska Groundfish; Limited Access Privilege Programs

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

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

**SUMMARY:** NMFS proposes regulations implementing Amendment 90 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 78 to the Fishery

Management Plan for Groundfish of the Gulf of Alaska. This proposed regulation would amend the Bering Sea and Aleutian Islands Amendment 80 Program and the Central Gulf of Alaska Rockfish Program to allow post-delivery transfers of cooperative quota to cover overages. This action is necessary to mitigate potential overages, reduce enforcement costs, and provide for more precise total allowable catch management. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plans, and other applicable law.

**DATES:** Comments must be received no later than February 19, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AX25," by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>.
- **Mail:** P.O. Box 21668, Juneau, AK 99802.
- **Fax:** (907) 586-7557.
- **Hand delivery to the Federal Building:** 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendments 90 and 78, and the Regulatory Impact Reviews/Initial Regulatory Flexibility Analyses (RIR/IRFAs) prepared for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. This proposed action was categorically excluded from the need to prepare an environmental assessment under the National Environmental Policy Act.

The Council has submitted Amendments 90 and 78 for review by

the Secretary of Commerce, and a Notice of Availability (NOA) of the FMP amendments was published in the **Federal Register** on December 17, 2008 with comments on the FMP amendments invited through February 17, 2009. All written comments received by February 17, 2009, whether specifically directed to the FMP amendments, this proposed rule, or both, will be considered in the approval or disapproval decision on the FMP amendments.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, (907) 586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone off Alaska are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act. Amendment 80 to the BSAI FMP implemented the Amendment 80 Program. Amendment 68 to the GOA FMP implemented the Central GOA Rockfish Program (Rockfish Program). Regulations implementing Amendment 80 were published on September 14, 2007 (72 FR 52668), and regulations implementing Amendment 68 were published on November 20, 2006 (71 FR 67210). These regulations are located at 50 CFR part 679.

#### Background

NMFS issued quota share (QS) under the Amendment 80 Program and the Rockfish Program. Under the Amendment 80 Program, NMFS issued QS to persons based on their qualifying harvest histories using specific trawl catcher/processor vessels in six BSAI non-pollock groundfish fisheries during 1998 through 2004. Under the Rockfish Program, NMFS issued QS to persons based on their qualifying harvest histories using trawl catcher vessels and trawl catcher/processors in several Central GOA (CGOA) rockfish fisheries and associated species that were harvested during those rockfish fisheries during 1996 through 2002. These two programs are commonly known as limited access privilege programs (LAPPs) because the participants in these fisheries may receive exclusive access to fishery resources if specific conditions are met. Each year, the person issued QS may choose to participate in either a fishery cooperative with other QS holders, or to