

30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final comprehensive monitoring report.

#### **§ 217.17 Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to these regulations, CRC must apply for and obtain a LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, CRC must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, CRC must apply for and obtain a modification of the LOA as described in § 217.18 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a LOA shall be published in the **Federal Register** within 30 days of a determination.

#### **§ 217.18 Renewals and Modifications of Letters of Authorization.**

(a) A LOA issued under § 216.106 and § 217.17 of this chapter for the activity identified in § 217.11(a) of this chapter shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 217.18(c)(1) of this chapter), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding

changes made pursuant to the adaptive management provision in § 217.18(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) A LOA issued under § 217.106 and § 217.17 of this chapter for the activity identified in § 217.11(a) of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with CRC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from CRC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.13(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 660**

[Docket No. 120312182-2170-01]

RIN 0648-XA882

### **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 to implement the annual catch limit (ACL), harvest guideline (HG), and associated annual reference points for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2012, through December 31, 2012. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2012 maximum HG for Pacific sardine is 109,409 metric tons (mt). The proposed initial overall commercial fishing HG that is to be allocated across the three allocation periods for sardine management is 97,409 mt. This amount would be divided across the three seasonal allocation periods for the directed fishery the following way: January 1–June 30—33,093 mt; July 1–September 14—37,964 mt; and September 15–December 31—23,352 mt with an incidental set-aside of 1,000 mt for each of the three periods. This rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

**DATES:** Comments must be received by May 3, 2012.

**ADDRESSES:** You may submit comments on this document identified by NOAA–NMFS–2012–0055 by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA–NMFS–2012–0055 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Mail:** Submit written comments to Rodney R. McInnis, Regional Administrator, Southwest Region,

NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

• Fax: (562) 980-4047.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will 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 or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report "Assessment of Pacific Sardine Stock for U.S. Management in 2012" and the Environmental Assessment/Regulatory Impact Review for this action may be obtained from the Southwest Regional Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

**SUPPLEMENTARY INFORMATION:** During public meetings each year, the estimated biomass for Pacific sardine is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species (CPS) Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with the

calculated overfishing limit (OFL) and available biological catch (ABC), annual catch limit (ACL) and harvest guideline (HG) recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

The purpose of this proposed rule is to implement the 2012 ACL, HG and other annual catch reference points, including an OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. The HG is based, in large part, on the current estimate of stock biomass. The harvest control rule in the CPS FMP is  $HG = [(Biomass - Cutoff) * Fraction * Distribution]$  with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above for the 2012 management season is 988,385 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.

At the November 2011 Council meeting, the Council adopted the 2012 Assessment of the Pacific sardine resource and a Pacific sardine biomass estimate of 988,385 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NOAA Fisheries (NMFS) is proposing, an overfishing limit of 154,781 mt, an acceptable biological catch (ABC) of 141,289 mt, an annual catch limit of 141,289 mt (equal to the ABC) and a maximum harvest guideline (HG) (HGs under the CPS FMP are operationally similar to annual catch targets (ACT)) of 109,409 metric tons (mt) for the 2012 Pacific sardine fishing year. These catch specifications are based on the most recent stock assessment and the control rules established in the CPS FMP.

The Council also recommended, and NMFS is proposing, that 97,409 mt be used as the initial overall commercial fishing HG to be allocated across the three allocation periods for sardine management. This number has been reduced from the maximum HG by 12,000 mt: (i) for potential harvest by the Quinault Indian Nation of up to 9,000 mt; and (ii) 3,000 mt, which is initially reserved for potential use under an exempted fishing permit(s) (EFPs). The Council also recommended and NMFS is proposing that incidental catch set asides be put in place for each allocation period. The purpose of the incidental set-aside allotments and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed to reduce bycatch and allow for continued prosecution of other important CPS fisheries. These incidental set asides are allocated as shown in the following table, which also shows the adjusted directed harvest levels for each period in metric tons:

	January 1–June 30	July 1–September 14	September 15–December 31	Total
Total Seasonal Allocation .....	34,093 (35%)	38,964 (40%)	24,352 (25%)	97,409
Incidental Set Aside .....	1,000	1,000	1,000	3,000
Adjusted Directed Harvest Allocation .....	33,093	37,964	23,352	94,409

Although the 2012 HG is well below that of the ACL, additional inseason accountability measures are in place to ensure the fishery stays within the HG. 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 30 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, the incidental fishery will be closed 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 upward or downward accordingly 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 the 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 until it re-opens either per the allocation scheme or at the beginning of the next fishing season. The NMFS Southwest Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure.

The Council will hear proposals and comments on any potential EFPs at the March 2012 Council meeting, and at the April 2012 Council meeting it will make a final recommendation to NMFS on whether or not all or a portion of the 3,000 mt EFP set-aside should be allocated for use under any EFP(s). NMFS will likely make a decision on whether to issue an EFP for Pacific sardine sometime prior to the start of the second seasonal period (July 1, 2012). Any of the 3,000 mt that is not issued to an EFP will be rolled into the third allocation period's directed fishery. Any set-aside attributed to an EFP designed to be conducted during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period's directed fishery. Any set-aside attributed to an EFP designed to be conducted during closed fishing times in the third allocation, but not utilized, will not be re-allocated.

In response to a request by the Quinault Indian Nation for the exclusive right to harvest Pacific sardine in 2012 in their Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to their rights to fish under the 1856 Treaty of Olympia (Treaty with the Quinault), the Council recommended and NMFS approved an allocation of 9,000 mt of sardine to the Quinault in 2012. NMFS will consult with Quinault Department of Fisheries staff and Quinault Fisheries Policy representatives on or near September 1, 2012 to review Quinault catch to-date, Oregon and Washington catch to-date and any other relevant information in an attempt to project tribal catch for the remainder of the season. The purpose of this consultation will be to determine whether any part of the 2012 Quinault

Pacific sardine set-aside of 9,000 mt will be moved into the non-tribal third period allocation that begins September 15.

Detailed information on the fishery and the stock assessment are found in the report "Assessment of the Pacific Sardine Resource in 2011 for U.S. Management in 2012" (see **ADDRESSES**).

#### Classification

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

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

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), 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 2012 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an OFL, ABC, ACL and HG or ACT for the Pacific sardine fishery based on the harvest control rules in the FMP. The specific harvest control rule is applied to the current stock biomass estimate to derive the annual HG which is used to manage the directed commercial take of Pacific sardine.

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 will close 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 U.S. Small Business Administration defines small businesses engaged in fishing as those vessels with annual revenues of or below \$4 million. The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finfish fleet. Approximately 108 vessels are permitted to operate in the sardine fishery component of the CPS fishery off the U.S. West Coast; 64 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. The average annual per vessel revenue in 2010 for the West Coast CPS finfish fleet was well below \$4 million; therefore, all of these vessels therefore are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact these small entities in the same manner. Accordingly, 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 2011 fishing year the HG was set at 50,526 mt. Approximately 47,000 mt (28,000 in California and 19,000 in Oregon and Washington) of this HG were harvested during the 2011 fishing season, for an estimated ex-vessel value of \$10 million. Using these figures, the average 2011 ex-vessel price per mt of Pacific sardines was approximately \$200.

The proposed HG for the 2012 Pacific sardine fishing season (January 1, 2012 through December 31) is 109,409 metric tons (mt). This HG is 66 percent higher than the HG for 2011. If the fleet were to take the entire 2012 HG, and assuming a coastwide average ex-vessel price per mt of \$190 (average of 2010 and 2011 ex-vessel), the potential revenue to the fleet would be approximately \$21 million. Therefore the proposed rule will increase small entities' profitability compared to last season, due to the much higher HG this fishing season. Whether this will occur will depend somewhat 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 rate 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 which, in turn, would reduce the potential total revenue to the fleet from Pacific sardine. However, due to the large increase in the HG compared to last year, even if changes in the market value occur, the fishery is likely to see an increase in total revenue compared last season. Additionally, unused sardine from the potential EFP or from the 9,000-mt set-aside for use by the Quinault Indian Nation, might be used to supplement the amount available to the directed fishery of the third allocation period (September 15 through December 31).

The revenue derived from harvesting Pacific sardine is also only one factor determining the overall revenue for a majority of the vessels in the CPS fleet, and, therefore, the economic impact to

the fleet from the proposed action cannot be viewed in isolation. CPS finfish vessels typically harvest a number of other species, including anchovy, mackerel, squid, and tuna, making Pacific sardine only one component of a multi-species CPS fishery. Vessels rely on multiple species for profitability because each CPS stock is highly associated with different ocean conditions and different time periods, and so are harvested at various times throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore as abundance levels and markets fluctuate, the CPS fishery as a whole relies on a group of species for annual revenues. Accordingly, even if sardine prices drop, such a drop will have only a small impact, if at all, on the profits of CPS fishery vessels.

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.

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.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

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

Dated: March 29, 2012.

**Alan D. Risenhoover,**

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

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