

TABLE 2.—TEST REQUIREMENTS AND REPORTING DATES—Continued

CAS No.	Chemical name and type of testing	Required tests	Testing specifications (all references are to § 799.5100(h)(3))	Number of interim 6-month reports required per test	Final report per test (months after effective date)
	Reproduction and fertility effects	§ 799.9380	(i)(C), (ii)(B)	4	29
	Neurotoxicity screening battery	§ 799.9620	(i)(C), (ii)(B), (iii)(A), (iii)(B), (iii)(C)	3	21
	Schedule-controlled operant behavior	§ 798.6500	(i)(C), (ii)(B), (iii)(C), (iii)(D)	6	36
143–33–9	Cyanide: Sodium cyanide				
	Prenatal developmental toxicity	§ 799.9370	(i)(C), (i)(D), (ii)(A)	1	12
75–09–2	Methylene chloride:				
	Prenatal developmental toxicity	§ 799.9370	(i)(C), (i)(D), (ii)(B)	2	15
	Schedule-controlled operant behavior	§ 798.6500	(i)(C), (ii)(A), (iii)(C), (iii)(D)	6	36
	Developmental neurotoxicity	§ 799.9630	(i)(C), (ii)(B)	3	21

(k) *Effective date.* This section is effective on [insert date 30 days after date of publication of the final rule in the **Federal Register**].

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket NO. 061003253–6253–01; I.D. 092606A]

RIN 0648–AU27

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 mackerel in the U.S. exclusive economic zone off the Pacific coast for the fishing season of July 1, 2006, through June 30, 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 mackerel off the Pacific coast.

DATES: Comments must be received by November 20, 2006.

ADDRESSES: You may submit comments on this proposed rule, identified by [092606A] by any of the following methods:

- E-mail: 0648–AU27.SWR@noaa.gov

Include the I.D. number in the subject line of the message.

- Federal e-Rulemaking portal: <http://www.regulations.gov>. Follow 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 *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2006–2007 Fishing Year* may be obtained from the Southwest Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT:

Joshua B. 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).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews the reports from the Team, Subpanel, and SSC, provides time for public comment, and then

makes its recommendation to NMFS. The annual harvest guideline and season structure are then written and published by NMFS in the **Federal Register**. The Pacific mackerel season begins on July 1 and ends on June 30 of each year.

Public meetings of the Team and Subpanel, as well as a subcommittee of the SSC, were held at NMFS Southwest Fisheries Science Center (SWFSC), in La Jolla, CA on May 16, 17, and 18, 2006 (71 FR 25152). During these meetings the current stock assessment update for Pacific mackerel, which included a preliminary biomass estimate and harvest guideline, were reviewed in accordance with the procedures of the FMP. These meetings are designed to allow a review of the biomass and harvest guideline, and are required by the FMP.

The Team supported the conclusions from the Pacific mackerel stock assessment and recommended to the Council at its June 2006 Council meeting that based on the total stock biomass estimate of 112,700 mt, the Council adopt a harvest guideline (HG) for the 2006/2007 management season (i.e., July 1, 2006, through June 30, 2007) of 19,845 mt. The Council adopted this HG, as well as the Subpanel's guideline on the management of the fishery by dividing the harvest guideline into a directed fishery with a guideline of 13,845 metric tons and set-aside of 6,000 metric tons to accommodate incidental landings of Pacific mackerel in other CPS fisheries. The set-aside is intended to prevent a reoccurrence of the 2000/ 2001 Pacific mackerel season where early attainment of the entire harvest guideline in the directed fishery curtailed the Pacific sardine fishery which incidentally lands mackerel.

The proposed incidental fishery would be constrained to a 40–percent

incidental catch rate when Pacific mackerel are landed with other CPS, except that up to one metric ton of Pacific mackerel can be landed without landing any other CPS. The Council recommended a review of the Pacific mackerel fishery at the March 2007 Council meeting with the understanding that NMFS will consider releasing some or all of the incidental fishery set-aside if a sufficient amount of the guideline remains available for harvest.

Stock assessment modeling of Pacific mackerel was conducted using a forward-simulation, maximum likelihood-based Age-structured Assessment Program (referred to as ASAP). The final ASAP model was based on both fishery-dependent and fishery-independent data. The fishery-dependent data was collected from a single fishery (i.e., combined landings from California's commercial and recreational fisheries, and the fishery off Baja California, Mexico). Fishery-independent data used in the model consisted of relative abundance time series (indices) developed from three research surveys: an index ('proportion positive') of spawning abundance based on ichthyoplankton data collected through the ongoing California Cooperative Oceanic Fisheries Investigations (CalCOFI) survey; a standardized, catch per unit effort index from California-based commercial passenger fishing vessel logbooks; and an index of total abundance from aerial spotter plane survey data.

Parameterization of the ASAP (2006) baseline model was identical to the 2005 stock assessment. Based on this approach, the biomass for July 1, 2006, is 112,700 metric tons (mt). Applying the formula from the FMP results in a harvest guideline of 19,845 mt.

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

1. *The biomass of Pacific mackerel.* For 2006, this estimate is 112,700 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt. The cutoff is subtracted from the biomass, leaving 94,500 mt.

3. *The portion of the Pacific mackerel biomass that is in U.S. waters.* This estimate is 70 percent, based on the historical average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters. Therefore, the harvestable biomass in

U.S. waters is 70 percent of 94,500 mt (66,150 mt.)

4. *The harvest fraction.* This is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent. The harvest fraction is multiplied by the harvestable biomass in U.S. waters (66,150 mt), which results in 19,845 mt.

Information on the fishery and the stock assessment are found in the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2006–2007 Fishing Season*, which may be obtained at the address above (see ADDRESSES).

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 specifications are authorized under 50 CFR 660.508 and 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 the proposed rule is to implement the 2006–2007 harvest guideline for Pacific mackerel 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 Pacific mackerel fishery based on the formula in the FMP. The harvest guideline is derived by a formula applied to the current biomass estimate.

The harvest guideline would apply to approximately 90 small fishing vessels coastwide that fish for Pacific mackerel within U.S. waters. 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 fish for small pelagic fish (Pacific sardine, Pacific mackerel) all year and for market squid in the winter, and may harvest tuna in the U.S. EEZ seasonally when they are available, usually late in the summer and early fall. 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 \$3.5 million. Therefore, there would be no economic impacts resulting from disproportionality between small and large business entities under the proposed action.

There is no limit on the amount of catch that any single vessel can take; the harvest guideline is 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 finfish fleet. The profitability of these vessels as a result of this proposed rule is based on the average Pacific mackerel ex-vessel price per metric tons (mt). NMFS used average Pacific mackerel average ex-vessel price per mt to conduct a profitability analysis because it lacked cost data for the harvesting operations of CPS finfish vessels.

For the July 1, 2005, through June 30, 2006, fishing year, the harvest guideline was set at 17,419 mt with an estimated ex-vessel value of \$2.8 million. Approximately only 4,545 mt of this harvest guideline was harvested during the 2005/2006 fishing season valued at an estimated \$732 thousand, reflecting the relatively poor market conditions for Pacific mackerel relative to other species of interest (e.g., Pacific sardine, market squid) and the lack of market orders.

The 2006–2007 Pacific mackerel season begins on July 1, 2006, and ends on June 30, 2007, or when the harvest guideline is caught and the fishery is closed. The proposed harvest guideline for the 2006–2007 fishing season is 19,845 mt, which is roughly 14% higher than the 17,419 mt harvest guideline for the prior year. If the fleet were to take the entire 2006–2007 harvest guideline, and assuming no change in the coastwide average ex-vessel price per mt of \$129, the potential revenue to the fleet could be approximately \$2.5 million. However, if there is no change in market conditions (i.e., a lack in demand for Pacific mackerel product), it is not likely that the full harvest guideline will be taken in the 2006–2007 fishing year in which case profits may be lower than if the entire harvest guideline were to be landed. Additionally, the full harvest guideline may not be taken because of the lack of availability of the Pacific mackerel resource in the area of the fishery. The potential lack of availability of the resource to the fishing fleet could also cause a reduction in the amount of Pacific mackerel 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: October 13, 2006.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

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