

harvested and landed ashore prior to the effective date of the closure.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 030721177-3234-02; I.D. 060903C]

RIN A648-AQ96

#### Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement the annual harvest guideline for Pacific mackerel in the exclusive economic zone off the Pacific coast. The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. This action adopts allowable harvest levels for Pacific mackerel off the Pacific coast.

**DATES:** Effective November 3, 2003.

**ADDRESSES:** The report *Stock Assessment of Pacific Mackerel with Recommendations for the 2003-2004 Management Season* may be obtained from Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. An environmental assessment/regulatory impact review/final regulatory flexibility analysis (FRFA) may be obtained at this same address.

**FOR FURTHER INFORMATION CONTACT:** James J. Morgan, Southwest Region, NMFS, (562) 980-4036.

**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 the categories of actively managed and monitored. Harvest guidelines of 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 reports from the Team, Subpanel, and SSC, then, after providing time for public comment, makes its recommendations to NMFS. The annual harvest guideline and season structure is published by NMFS in the *Federal Register* as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season begins on July 1 of each year and ends on June 30 the following year.

The Team and Subpanel meetings took place at the NMFS Southwest Regional Office in Long Beach, CA on May 21, 2003 (68 FR 23703, May 5, 2003). The SSC meeting took place in conjunction with the June 16-20, 2003, Council meeting in Foster City, CA.

A modified virtual population analysis stock assessment model is used to estimate the biomass of Pacific mackerel. The model employs both fishery dependent and fishery independent indices to estimate abundance. The biomass was calculated through the end of 2002, then estimated for the fishing season that begins July 1, 2003, based on: (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2003, (2) modeled estimates of fishing mortality during 2002, (3) assumptions for natural and fishing mortality through the first half of 2003, and (4) estimates of age-specific growth. Based on this approach, the biomass for July 1, 2003, is 68,924 metric tons (mt). Applying the formula in the FMP results in a harvest guideline of 10,652 mt, which is lower than last year but similar to low harvest guidelines of recent years.

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

1. *The biomass of Pacific mackerel.* For 2003, this

estimate is 68,924 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 50,724 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 50,724 mt, that is, 35,507 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 (35,507 mt), which results in 10,652 mt.

Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Mackerel with Recommendations for the 2003-2004 Management Season*, which may be obtained at the address above (see **ADDRESSES**).

Following recommendations of the fishing industry and Subpanel for the 2002/2003 fishing season, NMFS established (1) a 9,500-mt directed fishery for Pacific mackerel beginning July 1, 2002, and (2) an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS, which would be imposed only if the 9,500 mt were harvested. A 1-mt landing of Pacific mackerel per trip would have been allowed if no other CPS (northern anchovy, Pacific sardine, jack mackerel, market squid) were landed during a trip. NMFS implemented a directed and incidental fishery last season in response to concerns about how a low harvest guideline for mackerel might interfere with the sardine fishery. Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch of mackerel. As of June 30, 2003, the end of the 2002/2003 fishing season, only 3,884 mt of Pacific mackerel had been landed in the directed fishery; therefore, imposition of an incidental allowance was not necessary.

At its meeting on May 21, 2003, the Subpanel recommended for the 2003/2004 fishing season implementation of a 7,500-mt directed fishery, leaving the remaining 3,152 mt in the event of an incidental fishery. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective only after 7,500 mt of Pacific mackerel is estimated to have been harvested. The Subpanel also recommended to allow 1 mt of mackerel to be landed per trip by any fishing vessel during the incidental fishery without landing any other CPS. The

Subpanel recommended that an inseason review of the mackerel season be completed for the March 2004 Council meeting, with the possibility of reopening the directed fishery as an inseason action if sufficient amount of the harvest guideline reserved for the incidental fishery remains unharvested. At its June 2003 meeting, the Council made these recommendations to NMFS. A proposed rule was published on July 29, 2003 (68 FR 44518). The public comment period ended on August 13, 2003. No comments were received.

In view of the above, the following would be implemented for the fishing season that began on July 1, 2003, and continuing through June 30, 2004.

Based on the estimated biomass of 68,924 mt and the formula in the FMP, a harvest guideline of 10,652 mt will be in effect for the fishery that began on July 1, 2003. This harvest guideline will be available for harvest for the fishing season that began at 12:01 a.m. on July 1, 2003, and continues through June 30, 2004, unless the harvest guideline is attained and the fishery is closed before June 30, 2004. All landings made after July 1, 2003, will be counted toward the 2003/2004 harvest guideline of 10,652 mt. There shall be a directed fishery, followed by an incidental fishery of 3,152 mt. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS will become effective after the date 7,500 mt of Pacific mackerel is estimated to have been harvested. A landing of 1 mt of Pacific mackerel per trip will be permitted during the incidental fishery for trips in which no other CPS is landed.

#### Classification

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

NMFS prepared an initial regulatory flexibility analysis that describes the economic impact the proposed rule, if adopted, would have on small entities. No comments were received on the economic impacts of the proposed rule. NMFS prepared a FRFA for this final rule. The FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** of this final rule. A harvest guideline is required by the FMP to protect the resource while providing a source of revenue for the fishing industry and other benefits to society. The FMP requires that the harvest guideline be calculated by a specific formula applied to the current estimated biomass.

Separating the harvest guideline into a directed and incidental fishery is done to minimize the potential of restricting fishing for other species, such as Pacific sardine, which may occur in mixed schools with Pacific mackerel. If the harvest guideline of Pacific mackerel is reached, a prohibition on landings of Pacific mackerel will hinder the Pacific sardine fishery, increasing the cost of fishing and increasing bycatch of Pacific mackerel. If the Pacific mackerel harvest guideline is large enough to be unlikely to interfere with harvesting other species, there is no need to have an incidental fishery. When the harvest guideline is small, many alternatives to the specific amounts of the harvest guideline allocated to the directed and incidental fisheries are possible, but the amounts essential for an efficient fishery are not predictable because market demand, species availability, and the market for species other than Pacific mackerel vary widely from year to year. The preferred alternative for incidental harvest allowance of 40 percent for the current fishing season was based on experience in recent years. Although changes to the incidental harvest allowance during the fishing season can be made, the Council reserved a significant amount of Pacific mackerel for an incidental fishery and recommended a high incidental harvest rate, which would minimize the need for in-season management actions, thereby minimizing costs and potential interference with the CPS fishery.

This final rule does not duplicate overlap, or conflict with other Federal rules. There are no reporting, record-keeping, or other compliance requirements of the rule.

Approximately 83 vessels harvest Pacific mackerel off the U.S. West Coast. This includes 65 vessels with limited entry permits, which are authorized to fish south of 39° N. lat. (a point north of Monterey, CA). Approximately 18 vessels harvest CPS species in southern California for bait; however, little Pacific mackerel is used for bait. The primary harvesters of Pacific mackerel are the vessels with limited entry permits from Monterey, CA south. Some of the vessels in Monterey may move south to harvest CPS, but may not relocate to harvest Pacific mackerel in all years. All of these vessels would be considered small businesses under the Small Business Administration standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. CPS vessels typically harvest a number of other species, including anchovy, Pacific sardine, and market squid.

Cost data are not available for the 65 vessels with limited entry permits; therefore, average gross revenue per vessel is used as a proxy for changes in profitability. With an estimated increase of \$960,000 in gross revenue, the average gross revenue per vessel would be \$14,769. Setting a harvest guideline is required by the FMP and Federal regulations. However, for the purposes of measuring impacts, if there is sufficient biomass to allow a fishery, the fishing season begins on July 1 even if a harvest guideline is not determined. Unless action were taken to curtail the fishery, unlimited amounts of Pacific mackerel could be harvested. With such a low biomass, exceeding the MSY would be likely, which would lower the biomass estimate the following year along with the harvest guideline. This would reduce potential future revenue to the fleet. Nevertheless, market conditions and availability of Pacific mackerel in the area of the fishery have a strong effect on landings. Since 1994, fleet revenue has averaged \$29.9 million and revenue obtained from Pacific mackerel has averaged 7.8 percent of that revenue. Based on the final harvest guideline, revenue from Pacific mackerel is likely to average less than 7.8 percent because squid landings contribute substantial revenue to the fleet, and squid availability is not expected to be depressed by an El Nino during the 2003–2004 Pacific mackerel season as it was in 1998. In an unrestricted Pacific mackerel fishery, average revenue would be more likely to approach 7.8 percent. In view of the above, the relatively low harvest guideline for the 2003–2004 fishing season will provide a slight increase in revenue and will not have a substantial effect on overall vessel profitability.

The average annual revenue from Pacific mackerel in 2002 in the last 10 years, from 1993 through 2002, is almost \$1.8 million. This is the revenue the industry might expect on average given the amount of mackerel available for harvest and market demand. With a harvest guideline of 10,652 mt and an average ex-vessel price per ton of \$144.55, potential revenue could be \$1.5 million. The harvest guideline for the 2002–2003 fishing season was 12,535 mt; however, only 3,884 mt was landed, primarily because of the lack of availability of the resource in the area of the fishing fleet. Therefore, if the harvest guideline is reached during the 2003–2004 fishing season, there will be an increase of more than \$978,000 in ex-vessel revenue above that of the 2002–2003 fishing season. The increase would be beneficial for fishermen and

processors, and will benefit the fishing communities in southern California, where virtually all Pacific mackerel is landed. Enforcement and administrative costs (primarily port sampling) remain unchanged because calls at ports of landing are designed not only to assess the status of Pacific mackerel but all species harvested during the year by the CPS fleet. Average conditions are likely to prevail during the 2003–2004 fishing season, that is, ex-vessel revenue derived from Pacific mackerel will fall between \$1.8 million and \$1.4 million based on a real ex-vessel price that has varied between \$172.59/mt and \$126.98/mt from 1993 to 2002.

The final action will yield potentially lower revenue from Pacific mackerel than what otherwise might be possible under environmental conditions more favorable to recruitment of Pacific mackerel; however, the low harvest guideline for the 2003–2004 fishing season will provide a small increase in revenue above that of the 2002–2003 fishing season and will not have a substantial effect on overall vessel profitability.

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

Dated: September 29, 2003.

**Rebecca Lent,**

*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 679

[Docket No. 021122286–3036–02; I.D. 092903C]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for Statistical Area 630 of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2003, through 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The pollock TAC in Statistical Area 630 is 10,339 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the pollock TAC in Statistical Area 630 has been reached.

Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,289 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC in Statistical Area 630, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 29, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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