

bluefin tuna landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer Atlantic bluefin tuna without the appropriate valid Federal Atlantic tunas dealer permit issued under § 635.4. Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks without the appropriate valid dealer permit issued under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements specified in § 635.5. This prohibition does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

* * * * *

(55) Fail to electronically submit an Atlantic HMS dealer report through the HMS electronic dealer reporting system to report BAYS tunas, swordfish, and sharks to NMFS in accordance with § 635.5, if issued, or required to be issued, a Federal Atlantic HMS dealer permit pursuant to § 635.4.

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(d) * * *
(11) First receive or attempt to first receive Atlantic sharks without a valid Federal Atlantic shark dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

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(14) First receive or attempt to first receive Atlantic sharks without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receives Atlantic sharks, an original, valid dealer or proxy Atlantic shark identification workshop certificate issued by NMFS to the dealer or proxy in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

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(16) First receive or attempt to first receive a shark or sharks or part of a shark or sharks landed in excess of the retention limits specified in § 635.24(a).

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[FR Doc. 2012-19457 Filed 8-7-12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120312182-2239-02]

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: Final rule.

SUMMARY: NMFS issues this final rule 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. These specifications were determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2012 maximum HG for Pacific sardine is 109,409 metric tons (mt). The initial overall commercial fishing HG, that is to be allocated across the three allocation periods for sardine management, is 97,409 mt. This amount has been 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: Effective August 8, 2012 through December 31, 2012.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: During the Pacific Fishery Management Council's (Council) annual public meetings, the NMFS Southwest Fisheries Science Center presents the estimated biomass for Pacific sardine to the Council's CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel), the Council's Scientific and Statistical Committee (SSC) and the Council. After the biomass and the status of the fisheries are reviewed and discussed, the SSC and other advisory bodies then provide the calculated overfishing limit (OFL), available biological catch (ABC), ACL and ACT

(and/or HG) recommendations.

Following review by the Council and after considering public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

After review of the Council's recommendations from the November 2011 Council meeting, NMFS implements in this rule 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. This level is reduced from the Maximum Sustainable Yield/OFL level for economic and ecological considerations. The HG is based, in large part, on the current estimate of stock biomass for the northern subpopulation of Pacific sardine. 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 northern subpopulation of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent. This parameter is used to prorate the biomass used to calculate the target harvest level to account for the transboundary nature of the resource.

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 NMFS is implementing, 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 implementing, establishment of an the initial overall commercial fishing HG of 97,409 mt Pacific sardine and allocation of that HG across the

three allocation periods. 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). Additionally, incidental catch set asides are 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.

For the 2012 Pacific sardine fishing season, the incidental set asides and adjusted directed harvest levels for each period are shown in the following table 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 will be closed to directed harvest and only incidental harvest will be allowed. For the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set-aside. The incidental fishery will 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 either not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period will automatically be adjusted upward or downward accordingly to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is either not fully attained or is exceeded, then the following period's directed harvest total will 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 will 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 will publish a notice in the **Federal Register** announcing the date of any such closure.

At the April 2012 Council meeting the Council approved and subsequently made a recommendation to NMFS to

approve an EFP for all of the 3,000 mt EFP set-aside. 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. 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 unused portion of the 2012 Quinault Pacific sardine set-aside of 9,000 mt can 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**).

Comments and Responses

On April 3, 2012 NMFS published a proposed rule for this action and solicited public comments (77 FR 19991). NMFS received two comments from one commenter regarding the Pacific sardine annual specifications.

Comment 1: The commenter requested that the proposed action be disapproved because the harvest guideline (HG) control rule does not reflect the best available science for setting catch levels and results in a catch level that is too risky, fails to prevent overfishing, and does not account for the role of sardine as forage. As such, the commenter recommends a different approach to setting the catch level referring extensively to a report by the Lenfest Forage Fish Task Force. This report recommends that the fishing mortality rate for forage species be set at one-half the species' natural mortality rate, a rate said to have been traditionally used in some forage fisheries as a proxy for fishing at MSY (F_{MSY}). The commenter references the Lenfest Report and a July 2011 article in the journal *Science* to suggest the harvest guideline should be set at $\frac{1}{2}$ of F_{MSY} , but does not offer a specific suggestion for determining F_{MSY} ; the commenter then cites an F_{MSY} rate of 0.12 pulled from modeling conducted for Amendment 8 to the CPS FMP and an F_{MSY} rate of 0.18 developed through modeling as part of the 2011 sardine stock assessment. The comment also states that the best available information is not being used for the FRACTION parameter of the HG control rule and that the DISTRIBUTION parameter does not reflect current catch levels.

Response: To the extent this comment is directed to the setting of 2012 Pacific sardine ACL, HG, and associated annual reference points based on the HG

control rule and ABC control rule of the FMP, the 2012 specifications are based on the best available science. As explained above under **SUPPLEMENTARY INFORMATION**, this year's biomass estimate used to establish the 2012 specifications went through extensive review and along with the resulting OFL and ABC, was endorsed by the Council's SSC and NMFS as the best available science. Disapproving this action, as requested by the commenter, would allow the fishery to take place without any HG or quota. The HG and seasonal allocations being put in place by this action are important for preventing overfishing and managing the fishery at a level that will achieve optimum yield while allowing all sectors of the Pacific sardine fishery fair and equitable opportunities to harvest the resource. To the extent that the comment is directed at the HG control rule established in Amendment 8 to the CPS FMP, this rulemaking is not intended to revise the parameters of the existing HG control rule, and so the comment is beyond the scope of this rulemaking.

Although reconsideration of the existing HG control rule is beyond the scope of this rulemaking, NMFS will respond to some aspects of the comment that relate to the HG control rule itself, such as the FRACTION and DISTRIBUTION parameters. The CPS FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule established by Amendment 8 to the FMP, and continued in Amendment 13, that determines the maximum HG, the primary management target for the fishery, for the current fishing season (HGs are operationally similar to annual catch targets) based on the current year's estimated biomass.

NMFS agrees that Pacific sardine is an important prey component of the California Current ecosystem and as such the current harvest control rule formula used to determine the harvest guideline takes into account Pacific sardine's ecological role as forage. The current harvest control established in Amendment 8, developed after 15 public meetings, was chosen from a wide range of FMP harvest policies based on analysis of a variety of measures of performance. Of these performance measures, or OY considerations, six were chosen as priority considerations for determining which harvest policy to choose; three related specifically to sardine's role as forage in the California Current ecosystem, and three stemmed from an

interest in maintaining a predictable and constant flow of catch and revenues over the long term. The current harvest policy was chosen because it is the most precautionary as related to conserving sardine as forage, while still providing long-term consistent fishing yields for the fishing industry, ultimately resulting in OY over the long term.

Thus, the HG control rule includes a variety of OY considerations as well as explicit precautions intended to prevent the stock from becoming overfished, prevent overfishing and continuously reduce harvest levels as biomass decreases (low harvest fraction and a 150,000 mt threshold below which fishing is prohibited). These considerations and precautions are based on the environmentally driven dynamic nature of the Pacific sardine stock as well as its importance in the ecosystem as forage for other species. The outcome of this control rule are catch levels more conservative than MSY-based management strategies (OFL/ABC), because the focus for CPS management is oriented primarily towards biomass versus catch, leaving adequate forage in the ocean and maintaining long-term, consistent catch levels for the fishing industry.

Due to past shifts in sardine productivity being linked with warm or cold ocean regimes, the CPS FMP uses a correlation between Scripps Pier sea surface temperature and sardine productivity to determine the FRACTION parameter of the HG rule. Recent work has shown that the strength of the direct correlation between Scripps Pier sea surface temperature and sardine productivity is likely not as strong or defined as previously thought. However, this work did not infer that there was no relationship between sardine productivity and the physical environment (including ocean temperature). It is well established that environmental forcing plays a strong role in Pacific sardine recruitment, with temperature likely being an important factor. However, NOAA recognizes that based on this recent work showing that the explicit relationship underlying the harvest FRACTION parameter may not be as strong as previously thought, it should be reassessed. To that end, the Council is planning a future workshop to determine what key fishery management parameters, such as F_{MSY} or components of the HG control rule, in particular the temperature-based harvest FRACTION, should be reviewed and/or revised. Until the review process is completed, however, NOAA still considers the current control rule as the best available science for setting harvest levels for Pacific sardine. Additionally,

on its own, a FRACTION at 15 percent would be considered conservative based on the below discussion of fishing mortality rates, but when used in concert with the other formula parameters it is particularly cautious. Fifteen percent is also less than the F_{MSY} of 18 percent used in the OFL and ABC calculations, therefore adding further protection to the stock.

With regard to the DISTRIBUTION parameter of the sardine HG control rule, which is also used in the MSY type control rules (OFL and ABC), it is a measure of the average "distribution" of biomass for the northern subpopulation of Pacific sardine, not "catch." The Distribution parameter is not intended to reflect the proportion of coastwide catch that Canada and Mexico actually catch, or are entitled to catch. The HG control rule was not developed with the assumptions that the entire biomass is readily available to the fleet, that there are no other fishing restrictions, or that U.S. fishing restrictions match those of other countries. Obviously, these assumptions are not correct. For example the U.S. fishery was only open for 83 days in 2011, while Mexico and Canada were not bound by this restriction. Additionally, the majority of the sardine biomass typically is outside the fishing area of the U.S. fleet, as sardines occur up to 300 nautical miles offshore and fisherman typically fish within 5 miles from shore. Therefore, the DISTRIBUTION factor is not incorrect on the basis that it does not reflect current catch levels between the three countries that harvest the northern subpopulation of Pacific sardine, because it was never intended to reflect catch levels. Additionally, due to mixing of the southern and northern subpopulations of Pacific sardine off of northern Baja Mexico, a significant amount of the Mexican catch referenced by the commenter is actually from the southern subpopulation of Pacific sardine not the northern subpopulation; only the northern subpopulation is monitored and managed under the CPS FMP.

Additionally, the commenter states that the information used to develop the current percentage used for the Distribution parameter (87%) came from data collected during low biomass years and that it is a greater percentage than was used by the State of California (59%) to set the state quota in 1998. Although it is correct that the State of California used a distribution factor of 59% in setting California quotas in 1998, this proportion was based on a regional biomass estimate that included sardine only off the area between Baja California and San Francisco. This 59%

figure was probably a reasonable estimate of the fraction of sardine biomass in the region surveyed (the southern distribution of the stock), however the currently used 87% is based on the entire distribution of the stock which extends from the U.S./Canada border to U.S./Mexico border). Additionally, because the data used to calculate the currently used 87% came from low biomass years, this actually results in an underestimate for years with medium to high biomass.

With respect to the commenter's suggestion that catch levels should not be set based on the existing HG control rule but rather be set in accordance with recommendations in the Lenfest Report, it is illustrative to play out what this might mean. The Lenfest Report recommends that harvest be set at $\frac{1}{2}$ the natural mortality rate for forage species; since the estimated natural mortality rate for Pacific sardine is 0.4 of biomass, therefore, based on the Lenfest recommendation, the harvest rate for Pacific sardine should be 0.2 of biomass. Under the MSY control rule in the CPS FMP, the F_{MSY} for the sardine in 2012 is 0.18 (i.e. the OFL), which is a fishing rate below 0.2, and the result of this year's HG control rule is well below this rate at 0.11. Therefore, even if this rulemaking included reconsideration of the HG control rule itself, following the $\frac{1}{2}$ -natural-mortality recommendation would be less precautionary than the fishing level for 2012 under the HG control rule of the CPS FMP. To further highlight the current conservative nature of the management in place for Pacific sardine, due to the existing HG control rule and other management measures such as the 200,000 mt maximum catch level in place, annual fishing mortality rates can never exceed .12. Second, NMFS also notes that there is a very large difference (approximately 45,000 mt and 32,000 mt respectively) between the higher OFL and ABC/ACL levels and the lower HG catch level (which is the maximum directed fishing level) for the 2012 fishing year. The lower HG is the result of OY considerations and the management strategy in the CPS FMP that limits Pacific sardine to catch levels more conservative than needed to simply avoid overfishing as described under National Standard 1 or a risk of exceeding the ACL due to management uncertainty.

The commenter's recommendation to use a static management approach apparently does not include precautionary parameters that account for natural variability of the Pacific sardine stock as does the HG formula of the FMP. Furthermore, the commenter

offered no clear standard for this approach; instead, commenter referenced an F_{MSY} of 0.12 that appeared in a table in the environmental impact statement for Amendment 8 to the CPS FMP; commenter also references the estimated F_{MSY} of 0.18 from a modeling exercise in Appendix 4 of the 2011 sardine stock assessment prepared by the NMFS Southwest Fisheries Science Center; the intent this estimate was for use in the calculation of OFL and intent of preventing overfishing. Neither modeling exercise was intended to result in an estimate of actual F_{MSY} in the context of the recommendations presented by the commenter.

NMFS recognizes that management of trans-boundary stocks, such as Pacific sardine, is one of the more difficult issues in managing CPS. The current approach in the CPS FMP sets sardine harvest levels for U.S. fisheries by prorating the biomass used to calculate the target harvest level according to the portion of the stock estimated to be in U.S. waters on average over time. The primary advantage of prorating the total target harvest level is that U.S. fisheries can be managed unilaterally in a responsible manner that is consistent with the MSA. Mexican and Canadian landings are not considered explicitly when harvest levels for U.S. waters are determined. However, the allowable harvest level in U.S. waters depends on current biomass estimates, so U.S. harvest will be reduced if the stock is depleted by fishing in either Mexico or Canada. Additionally, fishery data from both Mexico and Canada is used in the U.S. stock assessment to ensure the best available information is used to assess the stock. In practice, this approach is similar to managing the U.S. and other portions of a stock separately since harvest for the U.S. fishery in a given year depends ultimately on the biomass in U.S. waters.

Prorating total harvest by the portion in U.S. waters may not protect CPS stocks against high combined U.S., Mexican and Canadian harvest, but harvest in U.S. waters will automatically decrease if biomass decreases. In any given year, combined harvest rates may be higher than desirable, and biomass and fishery yields may be reduced due to too much fishing. However, the total exploitation rate on the stock has averaged approximately only 13% over the last 10 years and is currently about 14.5%. The U.S. exploitation rate has averaged 7.6% since 2000 and is currently about 6.6%.

Comment 2: The same commenter also stated that an Environment Impact Statement (EIS) should have been

prepared instead of an Environmental Assessment (EA), the range of alternatives analyzed in the EA was not adequate, and alternative methods for determining the annual specifications should have been analyzed.

Specifically, the commenter suggested that the EA should have analyzed the setting of catch limits based on half of F_{MSY} , in addition to alternatives based on the existing HG and ABC control rules. In connection with their NEPA comment, the commenter does not indicate what F_{MSY} would be. Based on discussion in another part of the comment letter, the commenter apparently supports using an F_{MSY} of 0.12 used in an (unselected) alternative for the environmental analysis for Amendment 8 to the CPS FMP or perhaps an F_{MSY} of 0.18 that was used as part of the 2011 sardine stock assessment.

Response: Regarding the comments about the National Environmental Policy Act (NEPA) analysis for this action, the EA completed for this action demonstrates that the implementation of these annual catch levels for the Pacific sardine fishery based on the HG and ABC control rules in the FMP will not significantly adversely impact the quality of the human environment. Therefore an EIS is not necessary to comply with NEPA for this action.

With regard to the scope and range of alternatives, the six alternatives analyzed in the EA was a reasonable number and covered an appropriate scope based on the limited nature of this action, which is the application of a set formula in the FMP's HG and ABC control rules to determine harvest levels of Pacific sardine for one year and the allocation of that level between allocation periods, with a set-aside for an exempted fishing permit and an Indian nation. The six alternatives analyzed (including the proposed action) were objectively evaluated in recognition of the purpose and need of this action and the framework process in place based on the HG and ABC control rules for setting catch levels for Pacific sardine. The CPS FMP describes a specific framework process for annually setting required catch levels and reference points. Within this framework are specific control rules used for determining the annual OFL, ABC, ACL, and HG/ACT. Although there is some flexibility built into this process in terms of determinations of scientific and management uncertainty, there is little discretion in the control rules for the OFL (level for determining overfishing) and the HG (level at which directed fishing is stopped), with the annual biomass estimate being the

primary determinant in both these levels. Therefore, the alternatives in the EA covered a range of higher and lower ABC and ACL levels in the context of the OFL and HG levels.

With regard to the suggestion by the commenter to analyze as an alternative in this EA one-half F_{MSY} (a static percentage applied to the biomass estimate) as the basis from which to set the annual specifications, this would not have been a pertinent alternative for an EA on the 2012 annual specifications. The annual specifications implement the FMP, which uses a harvest guideline control rule with a specific, ecosystem-sensitive formula. To analyze such an alternative would have been outside the scope of the rulemaking. The purpose of this EA was to analyze alternative approaches to implementing the existing FMP, not alternatives for changing the FMP.

Furthermore, even if this were an EA considering amendments to the existing FMP, as stated above, fishery management approaches for small pelagic species based on equilibrium or steady-state concepts, such as those suggested by the commenter (i.e., MSY or B_{MSY}), which ignore natural variability in abundance, are not the most appropriate or reasonable and therefore the current approach—which accounts for natural variability—is used. Although the commenter cites an F_{MSY} of 0.12 from an alternative not chosen in the environmental impact statement for Amendment 8 to the CPS FMP as well as an F_{MSY} of 0.18 from modeling conducted as part of the 2011 sardine stock assessment, neither value was intended even in those documents to be used as part of an actual static MSY harvest strategy because biomass and productivity of most CPS change in response to environmental variability on annual and decadal time scales. These numbers were postulated as modeling exercises, or for the sake of considering a range of alternatives or other specific purposes. The harvest strategy in the FMP accounts for environmental variability and requires annual estimates of biomass rather than using a static harvest strategy.

The commenter is welcome to recommend that the Council and NMFS amend the FMP to manage Pacific sardine using a steady-state formula that would not account for natural fluctuations or conditions, but the EA for the 2012 annual specifications was not the appropriate place to conduct the analysis of that alternative.

Classification

The Administrator, Southwest Region, NMFS, determined that this action is

necessary for the conservation and management of the Pacific sardine fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the establishment of the harvest specifications for the 2012 Pacific sardine fishing season. For the reasons set forth below, the immediate implementation of this measure is necessary for the conservation and management of the Pacific sardine resource. This rule establishes seasonal harvest allocations and the ability to restrict fishing when these allocations are approached or reached. These allocations are important mechanisms in preventing overfishing and managing the fishery at optimum yield while allowing fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery. A delay in effectiveness is likely to prevent the ability to close the fishery when necessary and cause the fishery to exceed the second seasonal allocation. The directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel. Because the directed harvest allocation for the second allocation period is approximately 30,000 mt greater than the level in 2011, NMFS did not expect that it would be necessary to close the directed fishery prior to the start of the third allocation period. However, based on current landings information, which are significantly higher than anticipated, NMFS expects the directed fishery will need to be closed during the current allocation period, which began on July 1. Delaying the effective date of this rule is contrary to the public interest because additional reduction of Pacific sardine beyond the incidental take limit set out in this action would decrease the future harvest limits, thereby reducing future potential catch of the stock along with the profits associated with those harvests. Therefore, NMFS finds that there is good cause to waive the 30-day delay in effectiveness in this circumstance. To help keep the regulated community informed of this final rule NMFS will also announce this action through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies. Additionally, NMFS will advise the CPS Advisory

Subpanel, which is comprised of representatives from all sectors and regions of the sardine industry, including processors, fishermen, user groups, conservation groups, and fishermen association representatives, of current landings as they become available and for the public at-large also post them on NMFS' Southwest Regional Office Web site, <http://swr.nmfs.noaa.gov/>.

This final rule is exempt from Office of Management and Budget 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 during the proposed rule stage that this action would not have significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: August 3, 2012.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
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. 100804324–1265–02]

RIN 0648–BC36

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast