

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD is proposing to revise the DFARS to clarify the contract term for contracts awarded under the statutory authority of 10 U.S.C. 2913. Section 2913 requires DoD to develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of such contracts. DoD is authorized by section 2913 to contract with utility service providers to implement energy conservation measures on military bases. Section 2913 does not indicate a term limit for contracts executed under this authority.

**II. Discussion and Analysis**

The proposed rule revises DFARS 241.103 by adding paragraph (2) to state that contracting officers may enter into a shared energy savings contract under 10 U.S.C. 2913 for a period not-to-exceed 25 years. Experience has indicated that a period of less than 25 years is frequently insufficient to amortize the capital cost. Twenty-five years allows a greater volume and variety of energy conservation measures, and is consistent with non-DoD agency practice for similar contracts.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only seeks to clarify the contract term for contracts awarded under the statutory authority of 10 U.S.C. 2913. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the contract term for contracts awarded under the statutory authority of 10 U.S.C. 2913. Section 2913 requires DoD to develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of such contracts. DoD is authorized by section 2913 to contract with utility service providers to implement energy conservation measures on military bases. Section 2913 does not indicate a term limit for contracts executed under this authority, and this has created ambiguity and inconsistency throughout DoD on the term limit that is imposed on contracts awarded under the authority. Additionally, the ambiguity has resulted in a hesitation to enter shared energy savings contracts, contrary to the intent of section 2913.

The proposed rule is not anticipated to have a significant economic impact on small business entities. The number of contract awards made under the authority of 10 U.S.C. 2913 is not currently tracked by DoD's business systems. However, it is estimated that approximately 25 shared energy savings projects are initiated across DoD each year, with approximately 17 being awarded annually. It is believed that most awards are made to large utility providers, with generally 25% or more of the renovation and operations & maintenance work executed under the awards being subcontracted to local small business by the utility provider.

This rule does not impose new recordkeeping or reporting requirements. This rule only serves to clarify the maximum contract term that may be authorized for these awards. Any burden caused by this rule is expected to be minimal and will not be any greater on small entities than it is on large businesses.

The rule does not impose any additional reporting, recordkeeping, and other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to this rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D018), in correspondence.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 241**

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 241 is proposed to be amended to read as follows:

**PART 241—ACQUISITION OF UTILITY SERVICES**

■ 1. The authority citation for part 241 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 241.103 by redesignating paragraphs (2) and (3) as paragraphs (3) and (4) and adding a new paragraph (2) to read as follows:

**241.103 Statutory and delegated authority.**

\* \* \* \* \*

(2) The contracting officer may enter into a shared energy savings contract under 10 U.S.C. 2913 for a period not to exceed 25 years.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 130808697–5999–01]

**RIN 0648–XC808**

**Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Multi-Year Specifications for Monitored and Prohibited Harvest Species Stock Categories**

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to implement annual catch limits (ACL) and, where necessary, other annual reference points (overfishing limits (OFL) and acceptable biological catches (ABC)) for certain stocks in the monitored and prohibited

harvest species categories under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed ACLs are: Jack mackerel, 31,000 metric tons (mt); northern subpopulation of northern anchovy, 9,750 mt; central subpopulation of northern anchovy, 25,000 mt; and krill, zero. Additionally, an OFL of 39,000 mt, an ABC of 9,750 mt and an annual catch target (ACT) of 1,500 mt is being proposed for the northern subpopulation of northern anchovy. This rule is intended to conserve and manage these stocks off the U.S. West Coast. If the ACL for any one of these stocks is reached, then fishing for that stock will be closed until it reopens at the start of the next fishing season.

**DATES:** Comments must be received by December 21, 2015.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2013–0145, by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)

#!docketDetail;D=NOAA-NMFS-2013-0145, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Joshua Lindsay.

- **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).

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034.

**SUPPLEMENTARY INFORMATION:** The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Pacific Fishery Management Council (Pacific Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* The six species managed under the CPS FMP are Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy (northern and central subpopulations), market squid and krill. The CPS FMP is implemented by regulations at 50 CFR part 660, subpart I.

Management unit stocks in the CPS FMP are classified under three management categories: Actively managed; monitored; and prohibited harvest species. Active stocks are characterized by periodic stock assessments, and/or periodic or annual adjustments of target harvest levels. Management of monitored stocks, in contrast, generally involves tracking landings against the relevant ACL (previously the ABCs) and qualitative comparison to available abundance data, but without regular stock assessments or annual adjustments to target harvest levels. Species in both categories may be subject to management measures such as catch allocation, gear regulations, closed areas, closed seasons, or other forms of “active” management. For example, trip limits and a limited entry permit program are already in place for all CPS finfish. The monitored category includes jack mackerel, two subpopulations of northern anchovy stock and market squid. Krill is the only stock in the prohibited harvest category. The monitored stocks have not been managed to a hard quota like the active category stocks by NMFS (although the state of California manages market squid with an annual limit). Instead, landings have been monitored against harvest reference levels to determine if overfishing is occurring and to gauge the need for more active management such as requiring periodic stock assessments and regular adjustments to a quota. Catches of the three finfish stocks in the monitored category—northern anchovy (northern and central subpopulations) and jack mackerel—have remained well below their respective ABC (now proposed ACL levels for jack mackerel and the central anchovy population) since implementation of the CPS FMP in 2000, with average catches over the last 10 years of approximately 7,300 mt,

270 mt and 660 mt for the central and northern subpopulations of northern anchovy and jack mackerel, respectively.

In September 2011, NMFS approved Amendment 13 to the CPS FMP, which modified the framework process used to set and adjust fishery specifications and for setting ACLs and accountability measures (AMs); Amendment 13 was intended to ensure the FMP conforms with the 2007 amendments to the MSA and NMFS’ revised MSA National Standard 1 guidelines at 50 CFR part 600. Specifically, Amendment 13 maintained the existing reference points and the primary harvest control rules for the monitored stocks (jack mackerel, northern anchovy and market squid), including the large buffer built into the ABC control rule for the finfish stocks, as well as the overfishing criteria for market squid, but modified these reference points and control rules to align with the revised advisory guidelines and to comply with the new statutory requirement to establish a process for setting ACLs and AMs. This included a default management framework under which the OFL for each monitored stock was set equal to the maximum sustainable yield (MSY) value and ABC was reduced from the OFL by 75 percent as an uncertainty buffer (based on the existing ABC control rule where ABC equals 25 percent of OFL/MSY). This default framework is used unless there is determined to be a more appropriate OFL, as is the case for the northern subpopulation of northern anchovy, or stock specific ABC control rule like the proxy for the Fishing rate that is expected to result in maximum sustainable yield ( $F_{MSY}$  proxy) for market squid of Egg Escapement  $\geq 30$  percent. ACLs are then set equal to the ABC or could be set lower than the ABC, along with annual catch targets (ACTs), if deemed necessary. These control rules and harvest policies for monitored CPS stocks are simpler and more precautionary than those used for actively managed stocks in recognition of the low fishing effort and low landings for these stocks, as well as the lack of current estimates of stock biomass.

Through this action, NMFS proposes to implement the ACLs shown in Table 1 below for jack mackerel, the two subpopulations of northern anchovy, and krill, as well as an OFL, ABC and ACT for the northern subpopulation of northern anchovy.

TABLE 1—PROPOSED ACLS FOR MONITORED CPS FINFISH, INCLUDING PROPOSED OFL, ABC, AND ACT FOR THE NORTHERN SUBPOPULATION OF NORTHERN ANCHOVY

Stock	OFL	ABC	ACL	ACT
Jack mackerel .....	126,000 mt .....	31,000 mt .....	31,000 mt	
Northern anchovy, (northern subpopulation).	39,000 mt .....	9,750 mt .....	9,750 mt .....	1,500 mt.
Northern anchovy, (central subpopulation).	100,000 mt .....	25,000 mt .....	25,000 mt	
Market squid .....	$F_{MSY}$ proxy resulting in Egg Escapement $\geq 30\%$ .	$F_{MSY}$ proxy resulting in Egg Escapement $\geq 30\%$ .	ACL not required (Less than 1-year lifecycle and no overfishing).	
Krill .....	Undefined .....	Undefined .....	0	

The OFLs and ABCs listed in Table 1 for jack mackerel, the central subpopulation of northern anchovy, market squid and krill are included for information purposes only. The OFL and ABC specifications for those stocks are set in the FMP; NMFS does not propose to establish or revise them by this proposed rule.

These proposed catch levels and reference points were recommended to NMFS by the Pacific Council and were based on recommendations from its advisory bodies according to the framework in the FMP established through Amendment 13, including OFL and ABC recommendations from its Science and Statistical Committee (SSC). The proposed ACLs for these monitored stocks would be in place for the calendar year fishing season (January 1–December 31), and would remain in place for each subsequent calendar year until new scientific information becomes available to warrant changing them, or if landings increase and consistently reach the ABC/ACL level and it necessitates a change to active management under the FMP. These management benchmarks provide a means to monitor these stocks on an annual basis. Each year, the total harvest of each stock will be assessed against the ACL until such time as the Pacific Council chooses to reassess the management of these stocks, new scientific information regarding these stocks becomes available, or harvest approaches or exceeds the ACL. These benchmarks implicitly include a postseason AM; harvest levels are monitored annually to assess whether a stock should become actively managed.

Per the framework that was established through Amendment 13, the OFLs for the central subpopulation of northern anchovy and jack mackerel are set based on MSY values that were established through Amendment 8 to the FMP. In 2015, Amendment 14 to the CPS FMP established an  $F_{MSY}$  of 0.3 as the MSY reference point for the northern subpopulation of northern

anchovy in the CPS FMP. However, because the framework in the FMP for setting ABCs is based on applying a percentage to numerical MSY/OFLs, it was necessary to determine a numerical OFL value through the specifications process. Because the northern subpopulation of the northern anchovy is currently lightly fished and effort has been inconsistent over time, it was determined that using a catch time series as a way of setting the OFL was not appropriate as it likely was an unreliable indicator of stock status. Therefore, the best available scientific information on the population and biology of northern subpopulation northern anchovy was compiled to develop an OFL. The available information included two separate estimates of biomass; the average of these two estimates was approximately 130,000 mt. After reviewing this information, the SSC recommended that the OFL be set by multiplying the average of these two biomass estimates (130,000 mt), by an  $F_{MSY}$  0.3, which is also the  $F_{MSY}$  value for Pacific mackerel. This is appropriate because, biologically, anchovy populations are likely to be as or more productive than Pacific mackerel. This calculation results in an OFL of 39,000 mt and with the established uncertainty buffer of 75 percent, an ABC of 9,750 mt. Although the proposed ACL for this stock is equal to the ABC, to further account for uncertainty surrounding the reference points for this stock, anchovy's role as forage, and because annual catch levels have been sustainably below the ACL, the Pacific Council recommended, and NMFS is proposing, an ACT of 1,500 mt.

Market squid, because of its short life-cycle, falls under the statutory exception from the requirement to set ACLs and AMs. Section 303(a)(15) of the MSA states that the requirement for ACLs “shall not apply to a fishery for species that has a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species.”

Market squid have a lifecycle of less than 1 year and have not been determined to be subject to overfishing; therefore, an ACL is not required and is not being proposed for market squid.

NMFS is not proposing to establish or change specifications for krill by this rulemaking. Krill are a prohibited harvest species. The targeting, harvesting and transshipment of krill are all explicitly prohibited; therefore, the ACL for krill is zero. Because the harvest level is zero, setting an OFL or ABC for krill would serve no function and is not being proposed in this rule.

If the proposed ACL and/or ACT levels are reached, or are expected to be reached, for one of these fisheries, the directed fishery would be closed until the beginning of the next fishing season. The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure. Additionally, nearing or exceeding one of these ACLs or the ACT would trigger a review of whether the fishery should be moved into the actively managed category of the FMP.

#### 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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

The primary action being implemented through this rule as it relates to potential economic impacts on small entities is the establishment of multi-year ACLs for the two sub-stocks of northern anchovy and for jack mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set ACLs for these fisheries based on the harvest control rules in the FMP.

On June 12, 2014, the SBA issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647). The rule increased the size standard for Finfish Fishing from \$19.0 to 20.5 million, Shellfish Fishing from \$5.0 to 5.5 million, and Other Marine Fishing from \$7.0 to 7.5 million. 79 FR 33650, 33656 (June 12, 2014). NMFS conducted its analysis for this action in light of the new size standards.

The entities that would be affected by the proposed action are the vessels that harvest jack mackerel and northern anchovy as part of the West Coast CPS purse seine fleet. Jack mackerel and northern anchovy are components of the CPS purse seine fishery off the U.S. West Coast, which generally fishes a complex of species, including Pacific sardine, Pacific mackerel and market squid. Currently there are 58 vessels permitted in the Federal CPS limited entry fishery off California. Annually 28 to 45 (average 39) of these CPS vessels landed anchovy and jack mackerel over the last five years. Approximately 26 baitfish licenses are issued annually in the state of Washington to harvest northern anchovy. Since 2009, the state of Oregon has not required a permit to harvest anchovy in Oregon waters. Jack mackerel is currently not fished in Oregon and Washington.

The average annual per vessel revenue in 2013 for the West Coast CPS finfish small purse seine fleet, as well as the few vessels that target anchovy off of Oregon and Washington, was below \$20.5 million; therefore, all of these vessels are considered small businesses under the SBA size standards. 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 a substantial number of these small entities in the same manner. The corresponding annual revenues from these species averaged to about \$60,000 and \$653,000, for jack mackerel and anchovy respectively.

To evaluate whether this proposed rule could potentially reduce the profitability of the affected vessels, NMFS compared current and average recent historical landings to the proposed ACLs. The proposed multi-year ACL (maximum fishing level for each year) for the northern anchovy central subpopulation is 25,000 mt and the proposed northern subpopulation ACL is 9,750 mt. In 2014, 10,511 mt of the northern anchovy central subpopulation and 112 mt of northern anchovy northern subpopulation were landed. The annual average harvest from 2004 to 2014 for the central and northern subpopulations of northern anchovy is 7,300 mt and 270 mt, respectively. The proposed jack mackerel ACL is 31,000 mt. In 2014, approximately 1,800 mt of jack mackerel were landed and average annual landings of jack mackerel over the last ten years is 549 mt. Prior landings of these stocks have been well below the proposed ACLs. Therefore, although the establishment of ACLs for these stocks is considered a new management measure for these fisheries, based on current and historical landings of these stocks, this proposed action will not result in changes in current fishery operations. As a result, it is unlikely that the ACLs proposed in this rule will limit the profitability of the fleets catching these stocks and thus would not impose a significant economic impact.

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 Pacific sardine, Pacific mackerel, squid, and tuna, making these fisheries only components 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 the revenue derived from the specific fisheries addressed in this proposed rule decline, such a decline will have only a small impact, if at all, on the profits of CPS fishery vessels.

Pursuant to the Regulatory Flexibility Act and the SBA's June 20, 2013 and June 12, 2014 final rules (78 FR 37398 and 79 FR 33647, respectively), this certification was developed for this action using the SBA's revised size standards. All entities subject to this action are small entities as defined by both the former, lower size standards and the revised size standards. Because each affected vessel is a small business, this proposed action is considered to equally affect all of these small entities in the same manner. Based on the disproportionality and profitability analysis above, the proposed action, if adopted, will not have adverse or disproportional economic impact on these small business entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

There are no reporting, recordkeeping, 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: November 17, 2015.

**Samuel D. Rauch III,**

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

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