

regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's action incorporates requirements that are already in effect pursuant to the Ford Act. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and must explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action, i.e., hazards to aircraft from birds attracted to municipal solid waste landfills, present a disproportionate risk to children.

*H. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTA"), Public Law 104-113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or would be otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards.

Today's proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus.

*I. Executive Order 12898: Environmental Justice*

EPA has undertaken to incorporate environmental justice into its policies and programs through: (1) Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"; (2) EPA's April 1995, "Environmental Justice Strategy, Office of Solid Waste and Emergency Response Environmental Justice Task Force Action Agenda Report"; and (3) the National Environmental Justice Advisory Council. EPA is committed to addressing environmental justice concerns, and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure: (1) That no segment of the population—regardless of race, color, national origin, or income—bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities; and (2) that all people live in clean and sustainable communities. The EPA believes that today's proposed rule, which conforms the language in 40 CFR 258.10 to the Ford Act, has no adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community. These standards would not affect the location of any MSWLF other than to prohibit the location of MSWLFs within six miles of a public airport as defined in the proposed rule.

*J. Executive Order 13211: Energy Effects*

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" because it is not a significant regulatory action under Executive Order 12866.

**List of Subjects in 40 CFR Part 258**

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 31, 2002.

**Christine Todd Whitman,**  
Administrator.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 020628163-2163-01; I.D. 061302B]

RIN 0648-AP43

**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:** Proposed rule.

**SUMMARY:** NMFS proposes a regulation to implement the annual harvest guideline for Pacific mackerel in the exclusive economic zone (EEZ) 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. The intended effect of this action is to propose allowable harvest levels for Pacific mackerel off the Pacific coast.

**DATES:** Comments must be received by July 26, 2002.

**ADDRESSES:** Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. The report Stock Assessment of Pacific Mackerel with Recommendations for the 2002-2003 Management Season may be obtained at this same address.

**FOR FURTHER INFORMATION CONTACT:**

James J. Morgan, Southwest Region, NMFS, (562) 980-4036.

**SUPPLEMENTARY INFORMATION:** The 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, and then, after providing time for public comment, makes its recommendation 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 FMP relies on a framework procedure that includes public comment to announce the harvest guideline each year without publication of a proposed rule. However, to ensure compliance with the Administrative Procedure Act, a proposed rule is being published. Team, Subpanel, and SSC meetings as described above were held as in the past. The Team meeting took place at the Southwest Fisheries Science Center in La Jolla, California, on May 29, 2002 (67 FR 34434, May 14, 2002). The SSC and Subpanel meetings took place in conjunction with the June 17-21, 2002, Council meeting in Foster City, California.

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 2001, and then estimated for the fishing season that begins July 1, 2002, based on (1) the

number of Pacific mackerel estimated to comprise each year class at the beginning of 2002, (2) modeled estimates of fishing mortality during 2001, (3) assumptions for natural and fishing mortality through the first half of 2002, and (4) estimates of age-specific growth. Based on this approach, the biomass for July 1, 2002, would be 77,516 metric tons (mt). Applying the formula in the FMP would result in a harvest guideline of 12,456 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 2002, this estimate is 77,516 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 59,316 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 59,316 mt, that is, 41,521 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 (41,521 mt), which is 12,456 mt.

Information on the fishery and the stock assessment are found in the report Stock Assessment of Pacific Mackerel with Recommendations for the 2002-2003 Management Season, which may be obtained at the address above (see **ADDRESSES**).

Following recommendations of the fishing industry and Subpanel for the 2001/2002 fishing season, a directed fishery for Pacific mackerel of 6,000 mt was set beginning July 1, 2001, followed by an incidental allowance of 45 percent of Pacific mackerel in landings of any CPS. A 1-mt landing of mackerel per trip was also allowed if no other species were landed during a trip. A significant amount of the harvest guideline remained unused toward the end of the fishing season; therefore, the directed fishery was reopened on April 1, 2002 (67 FR 16322, April 5, 2002). NMFS implemented this approach 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. Public comments are requested on how the fishery might be conducted for the 2002/2003 fishing season to achieve but not exceed the harvest guideline while minimizing impacts on the harvest of other CPS.

In view of the above, the following determinations have been made for the July 1, 2002, through June 30, 2003, fishing season. Public comment is sought on these determinations.

Based on the estimated biomass of 77,516 mt and the formula in the FMP, a harvest guideline of 12,456 would be calculated and would be in effect for the fishery beginning on July 1, 2002. This harvest guideline would be available for harvest for the fishing season beginning at 12:01 a.m. on July 1, 2002, and continue through June 30, 2003, unless the harvest guideline is attained and the fishery closed before June 30.

### Classification

These proposed specifications are issued under the authority of, and NMFS has preliminarily determined that they are in accordance with, the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and the regulations implementing the FMP at 50 CFR part 660, subpart I.

This proposed rule has been determined to be not significant for purpose of 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 low harvest guideline for Pacific mackerel is not expected to have significant effect on the fleet because mackerel has not been a significant source of revenue for the fleet. The CPS fleet targets a variety of species depending on environmental and market conditions and can easily compensate for a low mackerel harvest.

Northern anchovy, Pacific sardine, Pacific mackerel, jack mackerel (finfish), and market squid are the target species of the fleet. Jack mackerel, northern anchovy, and market squid are monitored species under the FMP. However, the market squid fishery is actively managed by the State of California. Squid contributes a substantial portion of the total revenue to the CPS fleet in most years.

An average of 273 vessels landed CPS off the Pacific coast from 1996 through 2000. Only 65 of these vessels are authorized to fish in the limited entry fishery for finfish south of 39° N. lat. In the limited entry area, vessels without limited entry permits may land up to 5 metric tons per trip of finfish until the directed fishery is closed. An open access fishery exists north of 39° N. lat., which includes Oregon, Washington, and a

portion of California north of San Francisco. All vessels are considered small businesses. The species harvested can exhibit wide variability in abundance from year to year; therefore, when one species is unavailable, revenue is typically derived from other CPS.

From 1996 through 2000, 25.2 percent of total ex-vessel revenue was derived from finfish, and 6.8 percent of that revenue resulted from landings of Pacific mackerel. On average, approximately 15 percent of the 273 vessels (41 vessels) depend on CPS finfish, that is, finfish accounts for the greatest share of a vessel's total ex-vessel revenue. There also are an average of 19 processors and buyers in California, Oregon, and Washington whose annual purchases of CPS finfish represent the largest share of their total annual expenditures.

Average revenue of the fleet for 1996 through 2000 was \$31.4 million. Squid comprised almost 75 percent of that revenue, but during an El Nino event squid availability drops precipitously. In 1998,

total revenue totaled only \$8.3 million because of a low squid harvest. In that year, mackerel made up 30.8 percent of revenue.

There are indications of an approaching El Nino. If an El Nino occurs, there will be a significant drop in ex-vessel revenue in 2003 due to the unavailability of squid.

Nevertheless, the FMP requires setting the Pacific mackerel harvest guideline based on the current biomass estimate to ensure protection of the resource and to ensure a fishery in subsequent years. There are ameliorating factors that currently exist that would reduce the impact that occurred in the 1998 fishery. Sardine landings increased from 32,553 mt in 1996 to 67,888 mt in 2000, the result of an increasing biomass and the development of new markets. Domestic harvest of sardine in 2001 was 78,583 mt with an ex-vessel revenue of more than \$9 million. Similar levels are expected in 2002. Revenue from northern anchovy was only \$245,000 in 1998, while revenue in 2001 was \$1.4 million. In 2001, due to increased

sardine and anchovy harvest, Pacific mackerel comprised less than 4 percent of ex-vessel revenue. If a low squid harvest occurs in 2003 resulting from an El Nino event, the most likely result is that Pacific mackerel will make up approximately 9 percent of ex-vessel revenue.

Hence, implementation of these specifications would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for this rule has been prepared.

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

Dated: July 5, 2002.

**Rebecca Lent,**

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

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