

warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (ADDRESSES).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: February 20, 2004.

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 660

[Docket No. 031125290-4058-02; I.D. 111003D]

RIN 0648-AQ97

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 regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast for the fishing season January 1, 2004, through December 31, 2004. This action adopts a harvest guideline and initial subarea allocations for Pacific sardine off the Pacific coast that have been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP).

DATES: Effective March 26, 2004.

ADDRESSES: The report Stock Assessment of Pacific Sardine with

Management Recommendations for 2004 may be obtained from Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 W. 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: Svein Fougnier, Southwest Region, NMFS, 562-980-4040.

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 two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species 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 after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 and ends on December 31 of each year.

The Team meeting took place at the Southwest Fisheries Science Center in La Jolla, CA, on October 14, 2003. A public meeting between the Team and the Subpanel was held at the same location that afternoon. The Council reviewed the report at its November meeting in Del Mar, CA, when it also heard comments from its advisory bodies and the public.

Based on a biomass estimate of 1,090,587 metric tons (mt) (in U.S. and Mexican waters), using the FMP formula, the harvest guideline for Pacific sardine in U.S. waters for January 1, 2004, through December 31, 2004, is 122,747 mt. The biomass

estimate is slightly higher than last year's estimate; however, the difference between this year's biomass is not statistically significant from the biomass estimates of recent years.

Under the FMP, the harvest guideline is allocated one-third for Subarea A, which is north of 39° 00' N. lat. (Pt. Arena, CA) to the Canadian border, and two-thirds for Subarea B, which is south of 39° 00' N. lat. to the Mexican border. Under this final rule, the northern allocation for 2004 would be 40,916 mt, and the southern allocation would be 81,831 mt. In 2003, the northern allocation was 36,969 mt, and the southern allocation was 73,939 mt.

An incidental landing allowance of sardine in landings of other CPS would become effective if the harvest guideline is reached and the fishery closed. A landing allowance of sardine up to 45 percent by weight of any landing of CPS is authorized by the FMP, and this is the level set for 2004. An incidental allowance prevents fishermen from being cited for a violation when sardine occur in schools of other CPS, and it minimizes wasteful bycatch of sardine if sardine are inadvertently caught while fishing for other CPS. Sardine landed with other species also requires sorting at the processing plant, which adds to processing costs. Mixed species in the same load may damage smaller fish.

The sardine population was estimated using a modified version of the integrated stock assessment model called Catch at Age Analysis of Sardine Two Area Model (CANSAR TAM). CANSAR-TAM is a forward-casting, age-structured analysis using fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 2003. The modification of CANSAR-TAM was developed to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast. Information on the fishery and the stock assessment is found in the report Stock Assessment of Pacific Sardine with Management Recommendations for 2004 (see ADDRESSES).

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

1. *The biomass of age one sardine and above.* For 2004, this estimate is 1,090,587 mt.
2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.
3. *The portion of the sardine biomass that is in U.S. waters.* For 2004, this estimate is 87 percent, based on the

average of larval distribution obtained from scientific cruises and on the distribution of the resource obtained from logbooks of fish-spotters.

4. The harvest fraction. This is the percentage of the

biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures. A higher fraction is used for warmer ocean temperatures, which favor the production of Pacific sardine, and a lower fraction is used for cooler temperatures. For 2004, the fraction was 15 percent based on three seasons of sea surface temperature at Scripps Pier, California.

As indicated above, the harvest guideline for U.S. waters is allocated one-third (40,916 mt) to Subarea A and two-thirds (81,831 mt) to Subarea B.

A proposed rule for the specification of the harvest guideline and initial allocations was published on December 3, 2003 (68 FR 67638). One comment was received on the proposed rule and urged that the harvest guideline be reduced 10 percent per year for an unspecified period, but it did not provide information to warrant such an action, and thus no changes have been made in the final rule.

Classification

These specifications are issued under the authority of, and NMFS has 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 final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that described the economic impact this rule, if implemented, would have on small entities. No comments were received on any aspect of the IRFA or the analysis of the economic impacts of the proposed rule. NMFS then 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 rule. A harvest guideline is established by the FMP to limit harvests to levels that protect the resource while providing a source of revenue for the fishing industry and other benefits to society over the long term.

The harvest formula in the FMP is conservative and a significantly higher harvest than that allowed by the FMP could be realized without a detrimental

effect on the resource, at least in the short term; this could provide substantial economic benefits to the fishing industry. However, there are both biological and economic reasons to restrain harvests. First, there is uncertainty about the effect of expanded harvests in the northern subarea. This fishery takes larger fish that may play an important role in maintenance of resource productivity. Research into the relationship of the northern and southern components is necessary before allowing higher harvests. Specifically, the research will address the question of whether harvest of the larger fish in the north has a disproportionate impact on the stock compared to equivalent harvest in the south. Second, the harvest guideline derived by the current formula has been sufficient in recent years in satisfying existing markets; therefore, there would not likely be a significant economic benefit from a higher harvest guideline. The best information available on the economics of the CPS fishery indicates that landings and revenue have increased steadily since recovery of the resource began and could increase in 2004 if additional markets were developed. However, landings in 2003 are projected to be similar to the landings in 2001 and 2002, suggesting that markets are saturated. Therefore, there would not likely be a significant increase in harvests even if more fish were made available. That is, there is little opportunity to increase revenue in 2004.

Implementing the 2003 harvest guideline and allocations (i.e., the no action alternative) would keep the fishery at 2003 levels. There would not be much difference between this alternative and the proposed action as the harvest guideline would be quite similar.

Implementing the new harvest guideline for 2004 without allocating to the different subareas would set up a derby fishery without regard to the allocation procedures in the FMP. The fisheries in Subarea A and in Subarea B could harvest without restriction. There would be a possibility that the fishery in the northern subarea would harvest sardine at a level that would result in either a shift of fishery benefits from south to north or an early closure of the coastwide fishery. There would be increased revenue in the north at the expense of the southern fishery. However, premature closure would also result in substantial idle purse seine capacity in the southern subarea, where the fishery has traditionally been more active in the fall and winter.

Setting a harvest guideline above that authorized by the FMP is conceivable if the biomass and the harvest guideline were low and recruitment high. The harvest guideline is based on greater than age 1 plus sardine. If the biomass of sardine less than age 1 were known to be high, then some economic benefits would accrue to the fishing industry by allowing a harvest greater than that permitted by the formula in the FMP based on the premise that these fish are short-lived and should be harvested when available. If this situation occurred, economic benefits could be conferred on the fishing industry with the possibility of no negative biological impact. However, this approach faces two difficulties: (1) The higher the harvest is above that authorized by the FMP, the greater the potential for exacerbating a decline of the resource. The risk would be small at high biomass levels such as those of recent years, but as noted there is uncertainty, especially concerning the relationship between the northern and southern components of the stock. Further, there is no need for a higher harvest guideline at this time because, under the current approach, enough sardine has been available for harvest to satisfy existing market. (2) Such an approach (allowing higher harvests) would most likely be viewed favorably by industry if the biomass (and ensuing harvest guideline) were low and the fishery faced economic hardship from a lack of other fishing opportunities. In this situation, the potential for negative biological impacts is substantial. The uncertainty of the estimate of sardine less than age 1 is high. The estimates of biomass and/or recruitment could be high, but natural mortality is high, and how much biomass a zero age class will contribute to the biomass of the resource is uncertain. This increases the likelihood of negative biological impacts. In the final analysis, however, this alternative would have similar results as the proposed action. The proposed harvest guideline is at a level that allows maximum use by existing markets; therefore, there would not likely be significant benefits from a higher harvest guideline. If information on Pacific sardine became available that had not been previously considered indicating a risk of following the harvest formula in the FMP, a more conservative harvest guideline might be implemented to protect the resource. There is no such information at this time. The harvest formula in the FMP, however, sets a conservative harvest policy. Setting a harvest guideline lower than required by the FMP would not

likely bestow significant biological benefits at current biomass levels.

In summary, there are no factors that would justify deviation from the harvest guideline formula and allocation approach of the FMP. The requirements of the FMP that specify a harvest guideline action based on scientific data and a formula in the FMP continue to be valid. Setting a harvest guideline less than the proposed harvest guideline could have significant economic impacts. A reasonable assumption is that the harvest guideline will be attained. At an ex-vessel price of \$114/mt (2001–2002 average), this would yield revenue of \$13.9 million. Every 10,000 mt reduction in landings would reduce revenue by \$1.14 million. Setting a harvest guideline above the level derived could generate increased landings (though that is unlikely with current market conditions) but at an unacceptable level of risk of economic dislocation (if northern fisheries expanded too quickly) and ecological difficulties in the future (if the stock is less resilient than thought or the northern component of the stock is more important than is now known).

Approximately 100 vessels participate in the CPS fishery off the U.S. West Coast. All of these vessels would be considered small businesses under the Small Business Administration standards. Therefore, there would be no economic impacts resulting from disproportionality between small and

large vessels under the proposed action. A limited entry fishery occurs south of 39° N. Lat. A total of 65 vessels are permitted to participate in the limited entry fishery. An open access fishery exists north of 39° N. Lat. in which about 15 vessels participate. These are also small businesses. Vessels harvesting CPS for bait are also small businesses but are unregulated under the FMP.

Fisheries for Pacific sardine occur from Monterey, CA, south throughout the year and off Oregon and Washington in summer. Since 2000, most of the CPS fleet has obtained an average of 30 percent of its total revenue from Pacific sardine. This has occurred during a period in which there has been an increase in demand for market squid, as well as new markets for sardine that developed since 2000. The average annual revenue from Pacific sardine has been \$9.1 million (2002 dollars) during the last 3 years (2000 through 2002). This is the revenue the industry might expect on average given the amount of sardine available for harvest and market demand. As of October 14, 2003, 65,000 mt had been landed. Based on historical landings, landings may reach 90,000 mt, which is below the harvest guideline. Known factors that have influenced the landings in 2003 is an outbreak of domoic acid in California, which makes Pacific sardine unmarketable, and the availability of market squid in the

summer, which provides higher revenue to the fishing industry than sardine. If the harvest guideline is reached during the 2004 fishing season, there will be an increase of \$3.7 million in ex-vessel revenue above that of the 2003 fishing season. With a harvest guideline of 122,747 mt and an average ex-vessel price of \$114.00 per ton, potential revenue could be \$14.0 million. The harvest guideline for the 2003 fishing season was 110,908 mt; however, landings are expected to reach only 90,000 or 95,000 mt by December 31, 2003. Market demand has not supported increased harvests, for the reasons noted above. The proposed action will yield potentially higher revenue (about \$3 million) from Pacific sardine than the current year if the full harvest guideline is taken and prices remain constant.

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 sardine but all species harvested during the year by the CPS fleet.

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

Dated: February 20, 2004.

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