

§ 1610.4-5 Formulation of alternatives.

At the direction of the Field Manager, in collaboration with any participating cooperating agencies, BLM will consider all reasonable resource management alternatives and develop several complete alternatives for detailed study. Nonetheless, the decision to designate alternatives for the further development and analysis remains the exclusive responsibility of the BLM. * * *

12. Amend § 1610.4-6 by revising the first sentence to read as follows:

§ 1610.4-6 Estimating effects of alternatives.

The Field Manager, in collaboration with any participating cooperating

agencies, will estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail. * * *

13. Amend § 1610.4-7 by revising the section heading and the first sentence to read as follows:

§ 1610.4-7 Identification of preferred alternatives.

The Field Manager, in collaboration with any participating cooperating agencies, will evaluate the alternatives, estimate their effects according to the planning criteria, and identify a preferred alternative that best meets Director and State Director guidance. Nonetheless, the decision to identify a

preferred alternative remains the exclusive responsibility of the BLM. * * *

14. In addition to the amendments set forth above, in 43 CFR part 1600, in the table below, for each section indicated in the left column, remove the title indicated in the middle column from wherever it appears in the section, and add the title indicated in the right column.

§§ 1610.0-5, 1610.1, 1610.2, 1610.3-1, 1610.3-2, 1610.4-8, 1610.4-9, 1610.5-1, 1610.5-3, 1610.5-5, 1610.5-7, 1610.7-1, 1610.8 [Amended]

Section	Remove	Add
1601.0-5	District and Area Manager	Field Manager.
1610.1	District and Area Manager	Field Manager.
1610.2	District Manager	Field Manager.
1610.3-1	District or Area Manager	Field Manager.
1610.3-2	District and Area Managers	Field Managers.
1610.4-8	District Manager	Field Manager.
1610.4-9	District Manager	Field Manager.
1610.5-1	District Manager	Field Manager.
1610.5-3	District and Area Manager	Field Manager.
1610.5-5	District Manager	Field Manager.
1610.5-7	District and Area Manager	Field Manager.
1610.7-1	District Manager	Field Manager.
1610.8	District or Area Manager	Field Manager.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040706201-4201-01; I.D. 060204F]

RIN 0648-AR97

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; request for comments.

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. This action proposes allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Comments must be received by August 4, 2004.

ADDRESSES: Copies of the report *Stock Assessment of Pacific Mackerel with Recommendations for the 2004-2005 Management Season*, and the Regulatory Impact Review may be obtained from the Southwest Regional Office (see **ADDRESSES**).

You may submit comments on this proposed rule, identified by [I.D. 060204F] by any of the following methods:

- E-mail: 0648-AR97.SWR@noaa.gov. Include the I.D. number in the subject line of the message.
- Federal e-Rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.
- Fax: (562) 980-4047.

FOR FURTHER INFORMATION CONTACT: Tonya L. Ramsey, 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, 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 Team and Subpanel meetings took place at the Long Beach, CA, office of the NMFS, Southwest Region, on May 18th and 19th, 2004. The SSC meeting took place in conjunction with the June 13–18, 2004, Council meeting in Foster City, CA.

A modified virtual population analysis stock assessment model is used to estimate the biomass of Pacific mackerel. The model employs both fishery dependent and fishery independent indices to estimate abundance. The biomass was calculated through the end of 2003, then estimated for the fishing season that began July 1, 2004, based on: (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2004, (2) modeled estimates of fishing mortality during 2003, (3) assumptions for natural and fishing mortality through the first half of 2004, and (4) estimates of age-specific growth. Based on this approach the biomass for July 1, 2004, would be 81,383 metric tons (mt). Applying the formula in the FMP would result in a harvest guideline of 13,268 mt, which is higher 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 2004, this estimate is 81,383 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 63,183 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 63,183 mt, that is, 44,228 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 (44,228 mt), which results in 13,268 mt.

Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Mackerel with Recommendations for the 2004–2005 Management Season*, which may

be obtained from the Southwest Regional Office.

Following recommendations of the fishing industry and Subpanel for the 2003–2004 fishing season, a directed fishery for Pacific mackerel of 7,500 mt was set beginning July 1, 2003, followed by an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS, if the 7,500 mt was harvested. A 1 mt landing of Pacific mackerel per trip would have been allowed if no other species were landed during a trip. NMFS implemented a directed and incidental fishery last season in response to concerns about how a low harvest guideline for mackerel might interfere with the sardine fishery. Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch. As of May 10, 2004, approximately 5,616 mt of Pacific mackerel had been landed; therefore, an incidental fishery was not necessary.

At its meeting on May 19, 2004, the Subpanel recommended for the 2004–2005 fishing season that a directed fishery of 9,100 mt and an incidental fishery of 4,168 mt be implemented. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective when 9,100 mt of Pacific mackerel is estimated to be harvested. The Subpanel also recommended to allow 1 mt of mackerel to be landed per trip during the incidental fishery without landing any other CPS. The Subpanel recommended that an inseason review of the mackerel season be completed for the March 2005 Council meeting, with the possibility of reopening the directed fishery June 1, 2005, if sufficient fish remain. At that time the NMFS Southwest Regional Administrator will review the fishery to assess whether there is a sufficient amount of the unharvested portion of the harvest guideline (i.e., anything in excess of the amount needed to support incidental harvest) to warrant a reopening of the directed fishery.

Classification

This proposed rule has been determined to be not significant for purposes 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 purpose of the proposed rule is to inform the public of the 2004–2005 harvest guideline for Pacific mackerel in the exclusive EEZ off the Pacific coast. The CPS

FMP and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. The harvest guideline is derived by a formula applied to the current biomass estimate. The formula leaves little latitude for discretion except when errors are found in the calculations or in the data. There is no alternative to the harvest guideline as specified; there is no discretion to use an adjusted formula. Further, there is only one stock assessment method available to establish the adult biomass used to derive the harvest guideline. No changes are proposed in the regulations governing the fishery.

The harvest guideline would apply to the CPS purse seine fleet, which consists of 62 small vessels fishing within U.S. waters. These vessels fish for small pelagic fish (Pacific sardine, Pacific mackerel) all year and for market squid in the winter, and may harvest tuna in the U.S. exclusive economic zone seasonally when they are available, usually late in the summer and early fall. These vessels are considered small business entities. There should not be any significant economic impact to a substantial number of these small entities.

The Pacific mackerel season began on July 1, 2004, and ends on June 30, 2005, or when the harvest guideline is achieved and the fishery is closed. The proposed harvest guideline for 2004–2005 is 13,268 mt. Of that, the directed fishery is initially allocated 9,100 mt, allowing up to 4,168 mt for incidental catches in mixed species fisheries for the rest of the year. This is intended to prevent premature closure of the fishery targeting other CPS species such as Pacific sardine. The 2004–2005 harvest guideline is higher than the 2003–2004 (10,652 mt) fishing year which could result in increased revenue to the fleet. If the fleet were to take the full harvest guideline, the total revenue to the fleet would be \$1.54 million for the 2003–2004 fishing season and \$1.92 million for the 2004–2005 fishing season. Thus the proposed harvest guideline could potentially increase the revenue for the 2004–2005 fishing season assuming there is no change in average ex-vessel price from the current level under existing market conditions. However, even though the harvest guideline is increasing, the actual landings for the 2004–2005 fishing season are expected to be approximately the same as in the 2003–2004 fishing season, around 6,000 mt. The harvest of Pacific mackerel is dependent on fishing conditions related to weather and the schooling of fish related to ocean conditions (which affects the ability of the fishermen to find them). Assuming a harvest approximately the same as in the 2003–2004 fishing season, the only way in which small businesses could be adversely affected is if relevant market conditions, such as the need for feed for aquaculture, were to change. No such changes are expected. Since both fishing conditions and market conditions are expected to remain stable, there will not be any change in effect on small businesses.

As a result, a regulatory flexibility analysis is not required and none has been prepared.

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

Dated: July 14, 2004.

Rebecca Lent,

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

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