

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 041130335-4335-01; I.D. 112404B]

RIN 0648-AS17

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 sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season January 1, 2005, through December 31, 2005. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

DATES: Comments must be received by December 23, 2004.

ADDRESSES: You may submit comments on this proposed rule, identified by [I.D. 112404B] by any of the following methods:

- E-mail: 0648-AS17.SWR@noaa.gov. Include the I.D. number in the subject line of the message.
- Federal e-Rulemaking portal: <http://www.regulations.gov>. Following the instructions for submitting comments.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.
- Fax: (562) 980-4047.

Copies of the report *Assessment of Pacific Sardine Stock for U.S. Management in 2005* and the Regulatory Impact Review may be obtained from the Southwest Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Tonya L. Wick, 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 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.

Public meetings of the Team and Subpanel were held at the Southwest Regional Office in Long Beach, CA, on September 28, 29, and 30, 2004 (69 FR 55144, September 13, 2004). The Council reviewed the report at its November meeting in Portland, OR, and listened to comments from its advisory bodies and the public. The Council then adopted the 2005 harvest guideline for Pacific sardine.

Based on a biomass estimate of 1,193,515 metric tons (mt), the harvest guideline for Pacific sardine for January 1, 2005, through December 31, 2005, is 136,179 mt. The biomass estimate is 102,928 mt higher (approximately 10 percent higher) than last year's estimate.

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 proposed rule, the northern allocation for 2004 would be 45,393 mt; the southern allocation would be 90,786 mt. In 2004, the northern allocation was 40,916 mt and the southern allocation was 81,831 mt.

Normally, an incidental landing allowance of sardine in landings of other CPS is set at the beginning of the fishing season. The incidental allowance 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. An incidental allowance prevents fishermen from being cited for a violation when sardine occur in schools of other CPS, and it minimizes 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 size of the sardine population was estimated using a newly modified version of the integrated stock assessment model called Age-structured Assessment Program (ASAP). Using this new ASAP model was recommended by the Coastal Pelagic Species Stock Assessment Review panel held in June 2004 in La Jolla, CA. This new ASAP model replaces the old Catch-at-Age-Analysis of Sardine-Two Area Model (CANSAR-TAM, a forward-casting, age-structured analysis) used in previous years. ASAP is a flexible forward-simulation that allows for the efficient and reliable estimation of a large number of parameters. ASAP uses fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 2004. The ASAP model allows one to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast and for the incorporation of data from the Mexican sardine fishery. Information on the fishery and the stock assessment are found in the report *Assessment of Pacific Sardine Stock for U.S. Management in 2005* (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 2005, this estimate is 1,193,515 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 2005, this estimate is 87 percent, based on the average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of aerial 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 2005, the

fraction was 15 percent based on three seasons of sea surface temperature at Scripps Pier, California.

Based on the estimated biomass of 1,193,515 mt and the formula in the FMP, a harvest guideline of 136,179 mt was determined for the fishery beginning January 1, 2005. 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. The northern allocation is 45,393 mt; the southern allocation is 90,786 mt.

Classification

These proposed specifications are issued under the authority of, and NMFS has preliminarily determined that it is 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 is 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 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 2005 harvest guideline for Pacific sardine in the EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual harvest guideline for Pacific sardine 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 then those adjustments may be made. 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 proposed harvest guideline for the 2005 fishing season is 136,179 mt, which is approximately 10 percent higher than that of the 2004 harvest guideline which could result in increased revenue to the fleet.

Whether this occurs depends on market forces and the ability of the fishing fleet to find pure schools of Pacific sardine. If the fleet were to take the full harvest guideline, and assuming no change in average exvessel price from the current level, the total revenue to the fleet would be \$15 million. However, even if there is no change in market conditions, it is not likely that the full harvest guideline will be taken in the 2005 fishing year (because of the availability of the

fleet to find pure schools of Pacific sardine), in which case total revenue would likely be lower. The Pacific sardine season begins on January 1, 2005, and ends on December 31, 2005, or when the harvest guideline is caught and the fishery is closed.

The harvest guideline would apply to the CPS purse seine fleet, which consists of 62 small vessels fishing under a limited entry program within U.S. waters. They have been actively regulated since the year 2000 without difficulty. The limited entry program was initiated because before 2000 the fleet was overcapitalized characterized by excessive harvest capacity for current biomass conditions. As a fishery becomes overcapitalized, economic efficiency is reduced and pressure to over harvest stocks increases. Setting the Pacific sardine harvest guideline under the limited entry program may affect the CPS vessels but will affect them less than if there were no limited entry program. Specifically that overcapitalization would be a greater risk (economic efficiency is reduced, pressure to over harvest stocks increases, and other serious biological [resource depletion] and practical problems [short seasons, wastage, dangerous fishing practices] are typical of open access conditions) to their income than that of setting a harvest guideline under the limited entry program. 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.

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

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

Dated: December 2, 2004.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332-4332-01; I.D. 112204A]

Fisheries of the Exclusive Economic Zone off Alaska; Bering Sea and Aleutian Islands; 2005 and 2006 Proposed Harvest Specifications for Groundfish

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

ACTION: 2005 and 2006 proposed harvest specifications for groundfish; request for comments.

SUMMARY: NMFS proposes 2005 and 2006 harvest specifications and prohibited species catch (PSC) allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2005 and 2006 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by January 7, 2005.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail to

2005AKgroundfish.tacspeccs@noaa.gov and include in the subject line of the e-mail comments the document identifier: 2005 Proposed Specifications (E-mail comments, with or without attachments, are limited to 5 megabytes);

- FAX to 907-586-7557; or
- Webform at the Federal eRulemaking Portal: www.regulations.gov. Follow the instructions at that site for submitting comments.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS at the addresses above or from the Alaska Region website at www.fakr.noaa.gov. Copies of the final 2003 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2003, are available from the North Pacific Fishery Management Council (Council), West 4th Avenue, Suite 306, Anchorage, AK 99510-2252 (907-271-2809), or from its website at www.fakr.noaa.gov/npfmc.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228, or e-mail at mary.furuness@noaa.gov.