

time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 21, 2005.

Kerry Drake,

Acting Director, Air Division Region IX.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No 060109004-6004-01; I.D. 010406E]

RIN: 0648-AT76

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 off the Pacific coast for the fishing season of January 1, 2006, through December 31, 2006. 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 February 1, 2006.

ADDRESSES: You may submit comments on this proposed rule, identified by I.D. 010406E by any of the following methods:

- E-mail: 0648-AT76.SWR@noaa.gov. Include the I.D. number 010406E 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 2006* and the Environmental Assessment/Regulatory Impact Review may be obtained from

the Southwest Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: The CPS 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) 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 the reports from the Team, Subpanel, and SSC, provides time for public comment, and then 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 NMFS Southwest Fisheries Science Center in La Jolla, CA on October 5 and 6, 2005 (70 FR 55335, September 21, 2005). The Council reviewed the report at its November meeting in San Diego, CA, and listened to comments from its advisory bodies and the public. The Council then adopted the 2006 harvest guideline for Pacific sardine. Based on a biomass estimate of 1,061,391 metric tons (mt), the harvest guideline for Pacific sardine for January 1, 2006, through December 31, 2006, is 118,937 mt.

The size of the sardine population was estimated using an integrated stock assessment model called Age-structured Assessment Program (ASAP). 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. 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 2006* (see **ADDRESSES**).

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

1. *The biomass of sardines age one and above.* For 2006, this estimate is 1,061,391 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 2006, this estimate is 87 percent. It is based on the average 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 varies from 5 to 15 percent, depending on current ocean temperatures. The higher fraction is used for warmer ocean temperatures, which favor production of Pacific sardine, and the lower fraction is used for cooler temperatures. Based on the last three seasons of sea surface temperatures at Scripps Pier, California, a fraction of 15 percent was used for 2006.

Based on the estimated biomass of 1,061,391 mt and the formula in the FMP, a harvest guideline of 118,937 mt was determined for the fishery beginning January 1, 2006.

Amendment 11 to the CPS FMP, which is now undergoing Secretarial review, would change the framework for the annual apportionment of the Pacific sardine harvest guideline along the U.S. Pacific coast and set up a new long-term allocation scheme. A proposed rule to implement Amendment 11 was published in the **Federal Register** on November 16, 2005 (70 FR 69502). Based on this new long-term allocation scheme, 35 percent of the harvest guideline would be released coastwide on January 1; 40 percent of the harvest guideline, plus any portion not harvested from the initial 35 percent would be released coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from the earlier releases would then be available for harvest.

If the total harvest guideline or these apportionment levels for Pacific sardine

are reached at any time, the Pacific sardine fishery shall be closed until either it re-opens per the allocation scheme or the beginning of the next fishing season. The Regional Administrator shall announce in the **Federal Register** the date of the closure of the directed fishery for Pacific sardine.

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.

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.

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 establish the 2006 harvest guideline for Pacific sardine 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, at which time 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.

The proposed harvest guideline for the 2006 fishing season is 118,937 mt. Although this is 13 percent lower than the 2005 harvest guideline, it is still 22,049 mt higher than the largest recent harvest by the United States. 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 just over \$15 million. Whether this occurs depends on market forces and the ability of

the fishing fleet to find pure schools of Pacific sardine. However, even if there is no change in market conditions, it is not likely that the full harvest guideline will be taken in the 2006 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, 2006, and ends on December 31, 2006, or when the harvest guideline is caught and the fishery is closed.

Approximately 104 vessels were permitted to operate in the Pacific sardine fisheries off the U.S. West Coast in 2004; 63 vessels were permitted in the Federal CPS limited entry fishery off California (south of 39° N. lat.), while 41 vessels were permitted in Oregon and Washington's state Pacific sardine fisheries. All of these vessels would be considered small businesses under the Small Business Administration standards since the vessels do not have annual receipts in excess of \$3.5 million. Therefore, NMFS does not anticipate any disproportionate economic impacts resulting between small and large vessels under the proposed action. Additionally, this proposed action is not likely to significantly affect (both positive and negative effects) 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: January 11, 2006.

James W. Balsiger,

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

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