

50 CFR 635.28(b)(2), when NMFS projects that fishing season landings for a specific shark quota have reached or are about to reach 80 percent of the available quota, NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for that specific quota is closed, even across fishing years.

On June 24, 2008 (73 FR 35778; corrected July 15, 2008, 73 FR 46058), NMFS announced that the porbeagle quota for the 2008 fishing year would be 1.7 metric tons (mt) dressed weight (dw) (3,748 lbs dw). In the September 23, 2008, landings update, sharks reported as unknowns were apportioned to species or species groups using observer data by number rather than weight. This method was originally used because it follows the procedures used in the stock assessment. However, while the stock assessment is done in number of sharks, quota monitoring is done by weight. As such, for this and all future updates, sharks reported as unknowns will be apportioned to species or species groups by weight. Thus, landings for some groups may differ from previous landings updates. Additionally, NMFS worked with the State of North Carolina to try to determine the amount of double reporting between state and federal landings. While doing this, NMFS discovered that many of North Carolina's landings of spiny dogfish were incorrectly reported as unknown or sandbar sharks. The latest update corrects this reporting error. Dealer reports through the October 15, 2008, reporting period indicated that 2.0 mt dw or 116.0 percent of the available quota for porbeagle sharks has been taken. Accordingly, NMFS is closing the commercial porbeagle shark fishery as of 11:30 p.m. local time November 18, 2008.

During the closure, retention of porbeagle sharks is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under 50 CFR 635.4, unless the vessel is permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and no sale provisions may apply (50 CFR 635.22(a) and (c)). The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of porbeagle sharks harvested by a person aboard a vessel

that has been issued a commercial shark limited access permit under 50 CFR 635.4, is prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure, and were held in storage by a dealer or processor.

#### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway, and any delay in this action would cause further overharvest of the quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. Thus, for these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under 50 CFR 635.28(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: November 12, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 0808051050-81421-02]

RIN 0648-XJ42

#### Fisheries Off West Coast States; 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 this final rule to implement the annual harvest guideline (HG) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2008, through June 30, 2009.

This HG has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast. The HG for the 2008-2009 fishing season is 40,000 metric tons (mt). If this total is reached, Pacific mackerel fishing will be closed to directed harvest and only incidental harvest will be allowed at a 45 percent by weight incidental catch rate when landed with other CPS, except that up to one mt of Pacific mackerel can be landed without landing any other CPS.

**DATES:** Effective December 18, 2008 through June 30, 2009.

**ADDRESSES:** Copies of the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2008-2009 Fishing Year* may be obtained from the Southwest Regional Office by contacting Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

#### FOR FURTHER INFORMATION CONTACT:

Joshua 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).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team), the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) and the CPS Subcommittee of the Scientific and Statistical Committee (SSC). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NMFS.

For the 2008-2009 Pacific mackerel management season an updated assessment for Pacific mackerel was

conducted and then reviewed by the SSC CPS Subcommittee, the Team and the Subpanel during a series of meetings May 13–15, 2008, in Long Beach, California. During these meetings the current stock assessment for Pacific mackerel, which included a preliminary biomass estimate and ABC, were presented and reviewed in accordance with the procedures of the FMP. Based on a total stock biomass estimate of 264,732 mt the harvest control rule in the CPS FMP produces an ABC of 51,772 mt for the 2008–2009 management season.

In June, the Council held a public meeting in Foster City, California, during which time the Council reviewed the current stock assessment, biomass numbers and ABC as well as heard statements from the SSC, Team and Subpanel. The SSC endorsed the assessment as the best available science for use in management. Both the Team and Subpanel recommended setting the 2008–2009 HG below ABC and no higher than 40,000 mt.

Following the SSC, Team and Subpanel reports the Council adopted a HG of 40,000 mt for the 2008–2009 fishing year. This HG recommendation is the same as the one recommended and implemented by NMFS for the 2007–2008 fishing season. Establishing a HG for the directed fishery substantially below the ABC was recommended in response to

uncertainty associated with changes to assessment modeling parameters and the estimate made in the FMP that the domestic fishery appears to be market limited to roughly 40,000 mt. The Council also adopted the Subpanel recommendation that in the event that the 40,000 mt is attained by the fishery, that Pacific mackerel fishing be closed to directed harvest and only incidental harvest be allowed. The proposed incidental fishery would be constrained to a 45 percent by weight incidental catch rate when Pacific mackerel are landed with other CPS, except that up to one mt of Pacific mackerel could be landed per trip without landing any other CPS.

The Council may schedule an in-season review of the Pacific mackerel fishery at the nearest appropriate Council meeting, towards a possible consideration of either releasing a portion of the incidental allotment to the directed fishery or further constraining incidental landings to ensure total harvest remains below the ABC.

A proposed rule was published for this action that solicited public comments (73 FR 49156). No comments were received.

Information on the fishery and the stock assessment are found in the report *Pacific mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2008–09 Fishing Season* (see ADDRESSES).

## Classification

The Administrator, Southwest Region, NMFS, determined that this final rule is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is exempt from Office of Management and Budget 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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule (73 FR 49156) and is not repeated here.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: November 10, 2008.

**Samuel D. Rauch III,**

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

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