species based on those updates in scientific information. Therefore, based on information submitted by the petitioners and information in Service files, we find the information concerning advancements in science and new information concerning the needs of the species to be substantial information. We now know more specifically where habitat exists for manatees that is critical to their survival and recovery. As a consequence, we have determined that a revision to critical habitat for the manatee may be warranted to address new information concerning habitat usage and needs.

(4) Petitioners Claim that The U.S. Fish and Wildlife Service Recognizes the Need for Revision.

The petitioners cite passages from Service consultation documents and the current Florida Manatee Recovery Plan (Recovery Plan) as evidence that we have stated the need to assess and revise critical habitat for the Florida manatee (p. 17). Specifically, the petitioners cite a biological opinion regarding U.S. Army Corps of Engineers Application (No. 4-1-97-F-602): ''The action area is within designated critical habitat for the manatee; however, no specific primary or secondary constituent elements were included in the critical habitat designation, making it difficult to determine when an action adversely modifies critical habitat.'' The petitioners state that the Service's Recovery Plan acknowledges the need to revise critical habitat and cite Recovery Action 3.5 from the Recovery Plan: ''Much has been learned about manatee distribution in the decades since manatee critical habitat was originally defined. The FWS should assess the need to revise critical habitat for the Florida manatee.''

The Service disagrees with the petitioner's statement that the Recovery Plan acknowledges the need to revise critical habitat; however, we do acknowledge that the 2001 Florida Manatee Recovery Plan contains a recovery action, including the recommendation as stated above, to assess the need to revise critical habitat. Although the Service believes ''assessing the need'' is not the same as ''recognizing the need'' for revision, we find that the information submitted by the petitioner in this category to be substantial information indicating that a revision to critical habitat for the manatee may be warranted.

Petitioners' Proposed Revisions to Critical Habitat

In addition to identifying the deficiencies noted above with the current Florida manatee critical habitat designation, the petitioners dedicate an entire section of the petition to specific proposed revisions to manatee critical habitat in Florida. These proposed revisions include a description of geographic boundaries within each regional management unit that would alter the currently designated critical habitat, as well as recommended physical and biological features essential to the conservation of the manatee that would require protection and special attention either throughout all or portions of the petition's proposed geographical boundary revisions.

Within each geographic management unit (Northwest Region, Southwest Region, Atlantic Region, and Upper St. Johns River Region), the petitioners provide a list of the currently designated critical habitat areas followed by their proposed revisions to those areas. In most cases, the petitioners list additional areas that they believe should be included in a revision to the currently designated critical habitat boundaries. They cite available scientific data to support their proposal.

The list of essential features recommended by the petitioners for each of these geographic areas includes warm water (natural springs, passive thermal basins, and power plant thermal discharges); various food sources (seagrasses and freshwater vegetation); travel corridors; shelter (for calving and from disturbances); fresh water; and other habitat features (water depth, water quality and salinity).

The Service recognizes the importance of warm water habitat to manatees; however, we have not evaluated potential physical and biological features essential to the conservation of the manatee. The Service makes no statement at this time on the specific proposals by the petitioners for the constituent elements or for the areas presented as revised critical habitat geographic boundaries. We do believe that any revision to critical habitat should reflect the current understanding of the conservation needs of the species.

Finding

Our process for making this 90–day finding under section 4(b)(3)(D) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)).

Based on this review and evaluation, in addition to the information readily available in our files, we find that the petition has presented substantial scientific information indicating that revision of the critical habitat designation for the Florida manatee may be warranted. Therefore, we are initiating a review to determine how we intend to proceed with the request to revise the critical habitat designation under the Act for the Florida manatee.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.govor* upon request from the Field Supervisor, Jacksonville, Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this notice are the staff members of the Jacksonville, Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 16, 2009.

Thomas L. Strickland

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. E9–23245 Filed 9–28– 09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0909111273–91274–01]

RIN 0648–XR09

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: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline (HG) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast. This HG is proposed 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 proposed total HG for the 2009–2010 fishing year is 10,000 metric tons (mt) and is proposed to be divided into a directed fishery HG of 8,000 mt and an incidental fishery of 2,000 mt.

DATES: Comments must be received by October 29, 2009.

ADDRESSES: You may submit comments on this proposed rule identified by 0648–XR09 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- Fax: (562)980–4047, Att: Joshua Lindsay

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2009–2010 Fishing Year* may be obtained from the Southwest Regional Office (see **ADDRESSES**).

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

SUPPLEMENTARY INFORMATION: The CPS FMP, which is implemented by regulation at 50 CFR part 660, subpart I, divides management unit species into two categories: actively managed and monitored. The HGs for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates.

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 (Pacific Council) Coastal Pelagic Species Management Team (Team), the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) and the CPS Subcommitee 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 NOAA's National Marine Fisheries Service (NMFS). The annual HG is published in the **Federal Register** as close as practicable to the start of the fishing season.

For the 2009–2010 Pacific mackerel management season a full assessment for Pacific mackerel was conducted and then reviewed by a Stock Assessment Review (STAR) Panel in May 2009. This most recent full assessment for Pacific mackerel estimates the current biomass to be 282,049 mt. Based on this estimated biomass, the harvest control rule in the CPS FMP produces an ABC of 55,408 mt.

At the June 2009 Pacific Council Meeting, the Council reviewed the current Pacific mackerel stock assessment, biomass numbers, ABC and STAR Panel Report, as well as heard statements/reports from the SSC, Team and Subpanel. Although the assessment for Pacific mackerel was reviewed by a STAR Panel and was approved by the SSC as the best available science for use in management, concerns were expressed by all the advisory groups regarding the data sources that informed the assessment and the uncertainty in the assessment results. Taking into consideration these reports and statements, the Council adopted the most recent assessment for Pacific mackerel along with the calculated ABC, but recommended setting an overall HG for the July 1, 2009 through June 30, 2010 fishing season at 10,000 mt. The Council also recommended that 8,000 mt of this total HG be allocated for a directed fishery and 2,000 mt be set-aside for incidental Pacific mackerel landings in other fisheries should the 8,000 mt directed fishery HG be attained. Should the directed Pacific mackerel fishery attain landings of 8,000 mt, the Council recommends that NMFS close the directed fishery and establish a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS (no more than 45% by weight of the CPS landed per trip may be Pacific mackerel), except that up to 1 mt of Pacific mackerel can be landed without landing any other CPS.

Information on the fishery and the stock assessment can be found in the report *Pacific mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2009–10 Fishing Season* (see **ADDRESSES**).

The harvest control rule formula in the FMP uses the following factors to determine the ABC:

1. *Biomass.* The estimated stock biomass of Pacific mackerel age one and above for the 2009–2010 management season is 282,049 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.

3. *Distribution.* The portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established this at 30 percent.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are 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 this proposed rule is to implement the 2009–2010 HG for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific mackerel fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the ABC, from which the HG is then derived.

Pacific mackerel harvest is one component of CPS fisheries off the U.S. West Coast which primarily includes the fisheries for Pacific sardine, northern anchovy, jack mackerel and market squid. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 N. latitude; Point Arena, California) of the fishery. Sixty vessels are currently permitted in the Federal CPS limited entry fishery off California. These vessels are considered small business entities by the U.S. Small Business Administration since the vessels do not have annual receipts in excess of $4.0

million. This proposed rule has an equal effect on all of these small entities. Therefore, there would be no disporportionate impacts on large and small business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific mackerel ex-vessel price per mt. NMFS used average Pacific mackerel ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

During the 2007/2008 fishing year 6,200 mt of Pacific mackerel were landed with an estimated ex-vessel value of $900,000 and during the 2008/2009 fishing year approximately 4,000 mt were landed with an estimated exvessel value of $780,000. The proposed HG for the 2009/2010 Pacific mackerel fishing season (July 1, 2008 through June 30, 2009) is 10,000 mt. If the fleet were to take the entire 2009/2010 HG, and assuming no change in the coastwide average ex-vessel price per mt of $200, the potential revenue to the fleet would be approximately $2 million.

The amount of Pacific mackerel caught each year depends greatly on market forces within the fishery, as well as the other CPS fisheries, and on the regional availability of the species to the fleet and the fleets' ability to easily find schools relatively close to port. If there is no change in market conditions (i.e., a lack in demand for Pacific mackerel product), it is not likely that the full HG will be taken during the 2009–2010 fishing year, in which case profits will be lower than if the entire HG were taken. Additionally, the potential lack of regional availability of the resource to the fleet can cause a reduction in the amount of Pacific mackerel that is harvested, in turn, potentially reducing the total revenue to the fleet.

The annual average U.S. Pacific mackerel harvest from 2001/2002 to 2008/2009 is 5,584 mt with an average annual exvessel revenue of $929,419. Based on this catch and revenue history for Pacific mackerel over the last nine years NMFS does not anticipate a drop in profitability based on this rule, as the 2009/2010 available harvest (10,000 mt) is nearly twice the average catch during that time.

In addition, the revenue derived from harvesting Pacific mackerel is only one factor determining the overall revenue of the CPS fleet and therefore the economic impact to the fleet from the proposed action cannot be viewed in isolation. CPS vessels typically harvest a number of other species, including Pacific sardine, market squid, northern anchovy, and tuna, with the focus on Pacific sardine, which had an estimated ex-vessel of $14.5 million in 2008 and market squid which had an estimated ex-vessel of $26 million in 2008. Therefore Pacific mackerel is only a small component of this multi-species CPS fishery.

Based on the disproportionality and profitability analysis above, this rule if adopted, will not have a significant economic impact on a substantial number of these small entities.

As a result, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

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

Dated: September 23, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E9–23463 Filed 9–28–09; 8:45 am]

BILLING CODE 3510–22–S