

Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. *Unfunded Mandates Reform Act*

This NPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

I. *Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this NPRM. An initial environmental assessment is available in the docket.

J. *Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://www.dot.gov/privacy.html>.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, and Uranium.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follow:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

2. In § 173.33, paragraph (e) is revised to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

* * * * *

(e) *Retention of hazardous materials in product piping during transportation.*

(1) *Liquid hazard material other than Class 3 (flammable liquid) material.* No person may offer for transportation or transport a liquid hazardous material in Division 5.1 (oxidizer), Division 5.2 (organic peroxide), Division 6.1 (toxic), or Class 8 (corrosive to skin only) in the external product piping of a DOT specification cargo tank motor vehicle unless the vehicle is equipped with bottom damage protection devices conforming to the requirements of § 178.337–10 or § 178.345–8(b) of this subchapter, as appropriate, or the accident damage protection requirements of the specification under which the cargo tank motor vehicle was manufactured. This requirement does not apply to a cargo tank motor vehicle with external product piping designed, drained or purged so that the amount of material remaining in each pipe does not exceed one liter (0.26 gallon).

(2) *Class 3 (flammable liquid) material.* No person may offer or transport Class 3 material in the external product piping of a cargo tank motor vehicle marked and certified to a DOT specification on or after [DATE TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE] unless the cargo tank motor vehicle is protected with the bottom damage protection devices conforming to the requirements of § 178.337–10 or § 178.345–8(b) of this subchapter, as appropriate. A cargo tank motor vehicle marked or certified to a DOT specification before [DATE TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE] must be in compliance with requirements of this section by [DATE TWELVE YEARS AFTER EFFECTIVE DATE OF FINAL RULE]. The requirements in this paragraph (e)(2) do not apply to—

(i) A cargo tank motor vehicle designed and constructed with engine, body, and cargo tank permanently mounted on the same chassis with external product piping protected from impact by another motor vehicle by the structural components of the cargo tank motor vehicle, such as damage protection guards, framing members, or wheel assemblies;

(ii) A cargo tank motor vehicle containing combustible liquid as defined in accordance with § 173.120 of this part or a Class 3 flammable liquid material reclassified as a combustible liquid in accordance with § 173.120; or

(iii) A cargo tank motor vehicle with external product piping designed, drained or purged so that the amount of material remaining in each pipe does not exceed one liter (0.26 gallon).

(3) A sacrificial device equipped in accordance with § 178.345–8(b)(2) of this subchapter, may not be used to satisfy the accident damage protection requirements of this paragraph (e) if hazardous material is retained in product piping in excess of excepted amounts during transportation.

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Issued in Washington, DC, on January 14, 2011, under authority delegated in 49 CFR part 1.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2011–1695 Filed 1–26–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110111018–1019–01]

RIN 0648–XA109

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) and seasonal allocations for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2011, through December 31, 2011. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2011 maximum HG for Pacific sardine is 50,526 metric tons (mt), of which 4,200 mt would initially be set aside for potential use under an Exempted Fishing Permit (EFP). The remaining 46,326 mt, constituting the initial commercial fishing HG, would be divided across the seasonal allocation periods in the following way: January 1–June 30—16,214 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14—18,530 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31—11,582 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt, plus an additional 2,000 mt set aside to buffer against reaching the total HG. This rule

is intended to conserve and manage Pacific sardine off the West Coast.

DATES: Comments must be received by February 11, 2011.

ADDRESSES: You may submit comments on this proposed rule identified by 0648-XA109 by any 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.

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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 prefer to remain anonymous). You may submit attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report "Assessment of Pacific Sardine Stock for U.S. Management in 2011" 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 was implemented by publication of a 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. Conversely, annual biomass estimates are not currently calculated for species that are classified as monitored stocks (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the estimated biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel

(Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with HG recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its HG recommendation to NMFS.

The purpose of this proposed rule is to implement the 2011 HG for Pacific sardine 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 sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines what the maximum HG for the current fishing season will be, based, in large part, on the estimate of stock biomass. The harvest control rule in the CPS FMP is $HG = [(Biomass-Cutoff) * Fraction * Distribution]$ with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above for the 2011 management season is 537,173 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *Distribution.* The portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 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 150,000 mt that may be harvested.

At the November 2010 Council meeting, the Council adopted the 2010 Assessment of the Pacific Sardine Resource in 2010 for U.S. management in 2011 and a Pacific sardine biomass estimate of 537,173 mt. When this biomass estimate is applied to the harvest control rule for Pacific sardine in the CPS FMP, the resulting maximum HG is 50,526 mt. For the 2011 Pacific sardine fishing year, the Council recommended to NMFS a maximum HG of 50,526 mt. Similar to the action taken in 2009 and 2010, the Council also recommended that 4,200 mt of the available 2011 HG be initially reserved for fishing/research activities that would be undertaken under a potential exempted fishing permit (EFP). In 2010, 5,000 mt was subtracted from the total HG for an EFP.

The Council will hear proposals and comments on any potential EFPs at the March 2011 Council meeting, and at the April 2011 Council meeting it will make a final recommendation to NMFS on whether or not all or a portion of the 4,200 mt set-aside should be allocated for use under an EFP(s). NMFS will likely make a decision on whether to issue an EFP for Pacific sardine some time prior to the start of the second seasonal period (July 1, 2011). Any of the 4,200 mt that is not issued to an EFP will be rolled into the third allocation period's directed fishery. Any set-aside attributed to an EFP designed to be conducted during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period's directed fishery. Any set-aside attributed to an EFP designed to be conducted during closed fishing times in the third allocation, but not utilized, will not be re-allocated.

The Council also recommended that the remaining 46,326 mt (HG of 50,526 mt minus proposed 4,200 mt EFP set-aside) be used as the initial overall commercial fishing HG for Pacific sardine, and that this amount be allocated across the seasonal periods established by Amendment 11 (71 FR 36999). The Council recommended incidental catch set-asides of 1,000 mt per allocation period, and an additional management uncertainty buffer of 2,000 mt in the third period. The purpose of the incidental set-aside allotments and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed. The additional management buffer in the third period is due to difficulties associated with closing the fishery, and to help ensure that the fishery does not exceed the maximum HG.

The directed harvest levels and incidental set-aside would be initially allocated across the three seasonal allocation periods in the following way: from January 1–June 30, 15,214 mt would be allocated for directed harvest with an incidental set aside of 1,000 mt; from July 1–September 14, 17,530 mt would be allocated for directed harvest with an incidental set aside of 1,000 mt; and from September 15–December 31, 8,582 mt would be allocated for directed harvest with an incidental set aside of 1,000 mt. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed.

For the remainder of the period, any incidental Pacific sardine landings would be counted against that period's incidental set-aside. The proposed incidental fishery would also be constrained to a 30 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine. In the event that an incidental set-aside is projected to be attained, the incidental fishery will be closed for the remainder of the period. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period would automatically be adjusted downward to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period's directed harvest total would be adjusted upward to account for this discrepancy as well.

If the total HG or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery would be closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. The NMFS Southwest Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure.

For the 2011 Pacific sardine fishing season the Council also recommended an overfishing limit (OFL) of 92,767 mt and an Acceptable Biological Catch (ABC) and Annual Catch Limit (ACL) of 84,681 mt. The HG proposed for the 2011 fishing season is operationally similar to an Annual Catch Target (ACT) (as defined at § 600.310(f)(2)). These reference points are in accordance with the proposed Amendment 13 to the CPS FMP on which the Council took final action on in June 2010, and that will undergo review by NMFS. The intent of Amendment 13 is to revise relevant sections of the CPS FMP to ensure they are consistent with the objectives of the revised National Standard 1 (NS1) guidelines.

Detailed information on the fishery and the stock assessment are found in the report "Assessment of Pacific Sardine Stock for U.S. Management in 2011" (see **ADDRESSES**).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens

Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The results of the analysis are stated below. For copies of the IRFA, and instructions on how to send comments on the IRFA, please see the **ADDRESSES** section above.

The purpose of this proposed rule is to implement the 2011 HG for Pacific sardine 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 sardine fishery based on the harvest control rule in the FMP. The harvest control rule is applied to the current stock biomass estimate to derive the annual HG. The HG is determined using an environmentally-based formula accounting for the effect of ocean conditions on stock productivity.

The HG is apportioned based on the following allocation scheme: 35 percent of the HG is allocated coastwide on January 1; 40 percent of the HG, plus any portion not harvested from the initial allocation is then reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations will be released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery is closed until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during an allocation period or the year; the HG and seasonal allocations are available until fully utilized by the entire CPS fleet.

The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finfish fleet. Approximately 108 vessels are permitted to operate in the sardine fishery component of the CPS fishery off the U.S. West Coast; 64 permits in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 44 permits in Oregon and Washington's state Pacific sardine fisheries. The U.S. Small

Business Administration defines small businesses engaged in fishing as those vessels with annual revenues of or below \$4 million. The average annual per vessel revenue in 2010 for the West Coast CPS finfish fleet was well below \$4 million, and all of these vessels therefore are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner. Accordingly, there would be no economic impacts resulting from disproportionality between small and large business entities under the proposed action.

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

For the 2010 fishing year, the maximum HG was set at 72,039 mt. Approximately 66,000 mt of the HG was harvested during the 2010 fishing season, with an estimated total coastwide ex-vessel value of \$12.2 million. Using these figures, the 2010 ex-vessel price per mt of Pacific sardines was \$185.

The proposed HG for the 2011 Pacific sardine fishing season (January 1, 2011 through December 31, 2011) is 50,526 mt. This HG is approximately 25% less than the directed fishing HG for 2010 of 68,039 mt. This decrease in HG is due to a decrease in the coastwide Pacific sardine biomass from which the HG is directly derived.

If the fleet were to take the entire 2011 HG, and using the 2010 ex-vessel average price of \$185 per mt of Pacific sardine, the total potential revenue for the entire fleet would be approximately \$9.3 million. This would be slightly less than the average coastwide total ex-vessel value achieved from 2001–2010 of approximately \$11.5 million. There will also likely be a drop in profitability based on this rule compared to last season due the lower HG this fishing season. Whether this will occur depends greatly on market forces within the fishery, and on the regional availability of the resource to the fleets and the fleets' ability to find pure schools of Pacific sardine. A change in the market rate and/or the potential lack of availability of the resource to the fleets could cause a reduction in the amount of Pacific sardine that is harvested which, in turn, would reduce the total revenue to the fleet from Pacific sardine.

However, the revenue derived from harvesting Pacific sardine is only one factor determining the overall revenue of a majority of the CPS fleet, and therefore the economic impact to the fleet from the proposed action, can not be viewed in isolation. CPS finfish vessels typically harvest a number of other species, including anchovy, mackerel, squid, and tuna, making Pacific sardine only one component of a multi-species CPS fishery. A reliance on multiple species is a necessity because each CPS stock is highly associated to present ocean and environmental conditions. Because each species responds to such conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore as abundance levels and markets fluctuate, the CPS fishery as a

whole has endured by depending on a group of species.

No significant alternatives to this proposed rule were considered or exist that would accomplish the stated objectives of the applicable statutes, and which would minimize any significant economic impact of this proposed rule on the affected small entities. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the harvest control rule in the FMP. The harvest control rule is applied to the current stock biomass estimate to determine what the HG for that fishing season will be; as biomass increases so will the HG, conversely as biomass decreases so does the HG. The determination of the annual HG merely implements the established procedures of the FMP with the goal of continuing

to provide expected net benefits to the nation, regardless of what the specific annual allowable harvest of Pacific sardine equates to.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

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

Dated: January 21, 2011.

Samuel D. Rauch III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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