

not a toll-free number), e-mail [byf6@cdc.gov](mailto:byf6@cdc.gov).

**SUPPLEMENTARY INFORMATION:** On December 10, 2008, HHS proposed a rule intended to update the quality assurance and control requirements for the manufacture of respirators approved under 42 CFR part 84 by NIOSH and MSHA (73 FR 75045). The comment period for the proposed rule originally closed on February 9, 2009 but was reopened and extended until April 10, 2009 (74 FR 9381), and subsequently extended to October 9, 2009 (74 FR 23815). NIOSH also held public meetings on its proposed rule on March 23, 2009 in Adelphi, Maryland and on March 30, 2009 in Los Angeles, California.

NIOSH has reviewed the transcripts of the public meetings and the written comments received. While the commenters were generally supportive of the need to update the quality assurance and control requirements, they raised questions about several areas of the proposed rule pertaining to its economic impact. NIOSH has decided that this issue requires additional consideration and further economic analysis before considering or proceeding with alternatives to the proposed rule. This action is consistent with Executive Order 13563 which requires Federal agencies to conduct a retrospective review of regulations to determine which rules may “be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”

Although not required to do so by the Administrative Procedure Act or by the regulations of the Office of Federal Register, HHS believes the public interest is best served by withdrawing the proposed rule identified in this document. The withdrawal of the proposed rule identified in this document does not preclude HHS from reinitiating rulemaking in the future regarding quality assurance and control requirements for the manufacture of respirators approved under 42 CFR part 84. Should HHS decide to undertake such rulemaking sometime in the future, it will re-propose the action and provide new opportunities for comment.

For the reasons stated herein, the notice of proposed rulemaking published on December 10, 2008 is hereby withdrawn.

Dated: May 31, 2011.

**Kathleen Sebelius**

*Secretary, Department of Health and Human Services.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

**RIN 0648–BA68**

#### **Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 13 to the Coastal Pelagic Species Fishery Management Plan; Annual Catch Limits**

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

**ACTION:** Notice of availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 13 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) for review by the Secretary of Commerce. The intent of Amendment 13 is to ensure the FMP is consistent with NMFS advisory guidelines. The guidelines describe fishery management approaches to meet the objectives of National Standard 1 (NS1) of section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). National Standard 1 states “Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the U.S. fishing industry.”

**DATES:** Comments on Amendment 13 must be received by August 8, 2011.

**ADDRESSES:** You may submit comments identified by 0648–BA68 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, Attn: 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 prefer to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the CPS FMP as Amended through Amendment 13 and its associated Environmental Assessment/Regulatory Impact Review, are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384 or the NMFS Southwest Region (Rodney McInnis or Joshua Lindsay) (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562–980–4034 or Mike Burner, Pacific Fishery Management Council, at 503–820–2280. **SUPPLEMENTARY INFORMATION:** The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Council pursuant to the MSA, 16 U.S.C. 1801 *et seq.* Species managed under the CPS FMP include Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy, market squid and krill. The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations at 50 CFR part 660, subpart I.

The MSA requires each regional fishery management council to submit any amendment to an FMP to NMFS for review and approval, disapproval, or partial approval. The MSA also requires that NMFS, upon receiving an amendment to an FMP, publish notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, disapprove, or partially approve Amendment 13.

The MSA was amended in 2007 to include new requirements for ACLs and accountability measures (AMs) and other provisions regarding preventing and ending overfishing and rebuilding fisheries. On January 16, 2009, NMFS revised its guidelines implementing MSA National Standard 1 (74 FR 3178)

in response to these changes in the MSA. The revised guidelines explain NOAA's interpretation of the new statutory requirements for specifying ACLs at such levels that overfishing does not occur and that measures be taken to ensure accountability with these limits. The purpose of Amendment 13 is to amend the CPS FMP to ensure it is consistent with these revised advisory guidelines and to comply with the statute. Specifically, Amendment 13 would revise the framework process to set and adjust fishery specification and management measures, and would establish a framework for specifying new reference points such as ACLs and AMs, as well as other provisions for preventing overfishing such as the potential setting of annual catch targets (ACTs).

Amendment 13 revises the framework process currently in place to set and adjust fishery specifications and management measures and establishes a framework for specifying new reference points such as overfishing level (OFL), acceptable biological catch (ABC) and ACL, where necessary. This includes the mechanisms to set ACLs and the associated AMs to ensure they are not exceeded, control rules for determining ABC and other provisions for preventing overfishing such as the potential setting of annual catch targets (ACTs) and the development of Maximum Sustainable Yield proxies and/or OFLs for those stocks for which current biomass estimates are not available. Specifically, Amendment 13 would implement this new fishery specification framework, designed to better account for scientific and management uncertainty and to

prevent overfishing, in the FMP through the following:

- Modify the existing harvest control rules for actively managed species to include a buffer or reduction in ABC relative to OFL to account for scientific uncertainty. This buffer will be determined during the annual management cycle through a combination of scientific advice from the Scientific and Statistical Committee (SSC) and a policy determination of the Council;

- Maintain the default harvest control rules for monitored stocks as modified to specify the new management reference points. ACLs would be specified for multiple years until such time as the species becomes actively managed or new scientific information becomes available. The value of 0.25 in the ABC control rule (a 75 percent buffer) will remain in use until recommended for modification by the SSC and approved by the Council;

- Add a mechanism for the use of sector-specific ACLs, ACTs and AMs, in the annual harvest and management specification process.

Amendment 13 also adds Pacific herring (*Clupea pallasii pallasii*) and jacksmelt (*Atherinopsis californiensis*) to the FMP as ecosystem component (EC) species. Although the incidental catch of these species within CPS fisheries is extremely small, the intent of this action is to monitor the catches of these species and report catch estimates in the annual Stock Assessment and Fishery Evaluation report along with other incidental catch. In addition to the current ecological considerations in the FMP, the

amendment adds language to specify that the Council will include ecological considerations when reviewing and/or adopting status determination criteria, ACLs, and ACTs. Although not a change to the FMP, the Council reaffirmed that all management unit species (MUS) in the FMP, including those species currently categorized as monitored species and prohibited harvest species (krill), are "in the fishery" and therefore remain as MUS.

Public comments on Amendment 13 must be received by August 8, 2011, to be considered by NMFS in the decision whether to approve, disapprove, or partially approve Amendment 13. A proposed rule to implement Amendment 13 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on the proposed regulation to implement Amendment 13 in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received during the comment period for the amendment, whether specifically directed to the amendment, or the proposed rule, will be considered in the approval/disapproval decision.

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

Dated: June 3, 2011.

**Margo Schulze-Haugen,**

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

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