

§ 76.56 [Amended]

■ 2. In § 76.56, remove paragraphs (d)(3) through (d)(5).

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 120403254-2135-02]

RIN 0648-XB045

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 catch limit (ACL), harvest guideline (HG), annual catch target (ACT) and associated annual reference points for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing year season of July 1, 2011, through June 30, 2012. NMFS establishes the ACL, HG, and ACT under the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) for Pacific mackerel off the Pacific coast. The ACL (or maximum HG) for the 2011-2012 Pacific mackerel fishing year is 40,514 metric tons (mt). The ACT, which will be the directed fishery harvest target, is 30,386 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the ACL and ACT (which is 10,128 mt) as a set-aside for incidental landings in other CPS fisheries. This final rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Effective June 18, 2012, through June 30, 2012.

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

SUPPLEMENTARY INFORMATION: During annual public meetings, the NMFS Southwest Fisheries Science Center presents the estimated biomass for Pacific mackerel 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 SSC (and the other teams) then present the estimated biomass to the Council along with the calculated overfishing limit (OFL), available biological catch (ABC), ACL and ACT (and/or HG) recommendations, and the Council listens to comments from the Team, Subpanel and SSC. Following review by the Council and after considering public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

This final rule will implement the 2011-2012 Pacific mackerel fishery ACL, HG, ACT and other annual catch reference points, including OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass, for Pacific mackerel in the U.S. EEZ off the Pacific coast. (The EEZ off the Pacific Coast encompasses ocean waters seaward of the outer boundary of state waters, which is 3 nautical miles off the coast, out to a line 200 nautical miles from the coast.) The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. The HG is based, in large part, on the current 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 mackerel for the 2011-2012 management season is 211,126 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. *Fraction.* The harvest fraction (30%) is the percentage of the biomass above 18,200 mt that may be harvested.
4. *Distribution.* The average portion (currently 70%) of the total Pacific mackerel biomass that is estimated to be in the U.S. EEZ off the Pacific coast, 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.

At the June 2011 Council meeting, the Council adopted the 2011-12 Pacific mackerel assessment and a Pacific mackerel biomass estimate of 211,126 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended, and NMFS is

implementing, an OFL of 44,336 mt, an ABC of 42,375 mt, an ACL and maximum harvest guideline (HG) of 40,514 mt, and an ACT of 30,386 mt for the 2011/2012 Pacific mackerel fishing year. These catch specifications are based on the most recent stock assessment and the control rules established in the CPS FMP.

As of April 2012 the fishery had landed 1,120 mt of Pacific mackerel which is less than 2% of the current ACL. Although it is highly unlikely that the ACL will be reached, if the ACT is attained, the directed fishery will close, and the difference between the ACL and ACT (10,128 mt) will be reserved as a set-aside for incidental landings in other CPS fisheries and for other sources of mortality. In that event, for the remainder of the fishing year incidental harvest measures will be in place, including a 45% incidental catch allowance when Pacific mackerel are landed with other CPS (in other words, 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 could be landed without landing any other CPS. Upon the fishery attaining the ACL/HG (40,514 mt), no vessels in CPS fisheries may retain Pacific mackerel. The purpose of the incidental set-aside and allowance of an incidental fishery is to allow for the restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce bycatch and allow for continued prosecution of other important CPS fisheries. The NMFS Southwest Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing.

On April 12, 2012, NMFS published a proposed rule for this action and solicited public comments (77 FR 21958). No comments were received. For further background information on this action please refer to the preamble of the proposed rule (77 FR 21958, April 12, 2012).

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 final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

NMFS finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the establishment of the harvest

specifications for the 2011–2012 Pacific mackerel fishing season. Making this rule effective immediately upon publication is necessary to ensure the provisions of the CPS FMP for the conservation and management of Pacific mackerel are implemented this fishing year. Making this rule effective 30 days after publication would cause confusion among regulated parties and to the public because the specifications would not be in place during the relevant fishing year in which they apply. As

such, the delay would undermine the very intention of this rulemaking.

This final 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 during the proposed rule stage that this action would not have significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule 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: June 11, 2012.

Alan D. Risenhoover,

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

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