

indicates the shipment meets or exceeds the recommendations of the World Organization for Animal Health in its Aquatic Animal Health Code on *Batrachochytrium dendrobatidis*.

We are seeking information on the importation and transportation of live amphibians or their eggs and chytrid fungus (also known as chytridiomycosis) for possible addition to the injurious wildlife list under the Lacey Act.

The regulations contained in 50 CFR part 16 implement the Lacey Act. Under the terms of the injurious wildlife provisions of the Lacey Act, the Secretary of the Interior is authorized to prohibit the importation and interstate transportation of species designated by the Secretary as injurious. Injurious wildlife are those species, offspring, and eggs that are injurious or potentially injurious to wildlife or wildlife resources, to human beings, or to the interests of forestry, horticulture, or agriculture of the United States. Wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, and reptiles are the only organisms that can be added to the injurious wildlife list. The lists of injurious wildlife are provided at 50 CFR 16.11–16.15. If the process initiated by this notice results in the addition of a species to the list of injurious wildlife contained in 50 CFR part 16, their importation into or transportation between States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States would be prohibited, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations at 50 CFR 16.22), or by Federal agencies without a permit solely for their own use.

Public Comments

This notice of inquiry requests biological, economic, or other data regarding the addition of live amphibians as injurious unless free of *Batrachochytrium dendrobatidis* (chytrid fungus) to the list of injurious wildlife. This information, along with other sources of data, will be used to determine if live amphibians or their eggs that are infected with *Batrachochytrium dendrobatidis* are a threat, or potential threat, to those interests of the United States delineated above, and thus warrant addition to the list of injurious wildlife in 50 CFR 16.14.

You may submit your information and materials concerning this notice of inquiry by one of the methods listed in the **ADDRESSES** section. If you submit a

comment via <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this notice of inquiry, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Room 770, 4401 North Fairfax Drive, Arlington, VA 22203.

We are soliciting information and supporting data from the public to gain substantive information, and we specifically seek information on the following questions regarding the importation of live amphibians and their eggs infected with *Batrachochytrium dendrobatidis* (chytrid fungus):

- (1) What Federal, State, or tribal regulations exist to prevent the spread of chytrid fungus?
- (2) Are there any known mechanisms in the United States to test for, control, or regulate movement or interstate transport of chytrid fungus?
- (3) How many businesses import live amphibians or their eggs into the United States?
- (4) How many businesses sell live amphibians or their eggs for interstate commerce?
- (5) What are the annual sales of these imported live amphibians and their eggs?
- (6) What species of amphibians, fish, or other class of animal have been affected by chytrid fungus in the United States and how were they infected?
- (7) What are the current and potential effects to species listed as threatened or endangered under the ESA that are contaminated with chytrid fungus?
- (8) What are the potential costs of recovering threatened or endangered species affected by chytrid fungus?
- (9) What is the likelihood that wild amphibians would be affected by the importation of live amphibians or their eggs that harbor chytrid fungus?
- (10) What would it cost to eradicate chytrid fungus?
- (11) Are there any potential benefits to allowing the chytrid fungus pathogen to be imported?
- (12) What is the potential for the industries that conduct trade in

amphibians to self-police through voluntary best practices; for example, how successful is the “Bd-Free ‘Phibs Campaign” sponsored by the Pet Industry Joint Advisory Council?

(13) What peer-reviewed methods for detecting chytrid fungus have been published?

(14) Are there any other comments or information regarding the listing of live amphibians as injurious unless free of chytrid fungus?

Dated: September 10, 2010.

Thomas L. Strickland,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–23039 Filed 9–16–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100830407–0410–02]

RIN 0648–XY51

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 2010–2011 fishing year is 11,000 metric tons (mt) and is proposed to be divided into a directed fishery HG of 8,000 mt and an incidental fishery of 3,000 mt.

DATES: Comments must be received by October 18, 2010.

ADDRESSES: You may submit comments on this proposed rule identified by 0648–XY51 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: Amber Morris

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:

Amber Morris, Southwest Region, NMFS, (562) 980-3231.

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.

The biomass and harvest specifications for each actively managed species within the CPS FMP are reviewed every year by the Pacific Fishery Management Council (Council) at their public meetings. The Scientific and Statistical Committee's (SSC) CPS Subcommittee, the Coastal Pelagic Species Management Team (Team) and the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) review and discuss the biomass, the acceptable biological catch (ABC) and the status of the fisheries and present their comments to the Council. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NOAA's National Marine Fisheries Service (NMFS). A rule implementing the annual HG is published in the **Federal Register** as close as practicable to the start of the fishing season.

A full assessment for Pacific mackerel was conducted and then reviewed by a Stock Assessment Review (STAR) Panel in May 2009. This assessment estimated the biomass of Pacific Mackerel to be 282,049 metric tons (mt). Based on this estimated biomass, the harvest control

rule in the CPS FMP produced an ABC of 55,408 mt. The Council depended on the 2009 full assessment and 2009 landings to make management decisions for the 2010 fishing season. Based on this information, the Council recommended an ABC of 55,408 mt (calculated from the 2009 biomass estimate of 282,049 mt) and an overall HG for the July 1, 2010, through June 30, 2011, fishing season of 11,000 mt with 8,000 mt allocated to a directed fishery and 3,000 mt set aside for incidental landings in other CPS fisheries should the 8,000 mt directed fishery HG be attained. These proposed harvest levels are nearly identical to those implemented in 2009, for which the HG was 10,000 mt with 8,000 mt for the directed fishery and 2,000 mt for the incidental landings. The proposed 1,000 mt increase in the set aside for incidental landings this season was in response to comments by industry that Pacific mackerel availability to the fleet may be increasing and that fishing opportunities for other CPS could be forgone if the mackerel season closed early.

The Council also recommended the following specifications for the 2010-2011 management of Pacific mackerel: First, NMFS will close the directed fishery if the 8,000 mt directed fishery HG is attained, and second, a 45-percent incidental catch allowance will be established for landing Pacific mackerel with other CPS (in other words, no more than 45% by weight of the CPS landed per trip may be Pacific mackerel) with the exception that up to 1 mt of Pacific mackerel could be landed per trip without landing any other CPS.

NMFS proposes to set the overall HG for the Pacific mackerel 2010-2011 fishing season at 11,000 mt with 8,000 mt allocated to a directed fishery and 3,000 mt set aside for incidental landings in other CPS fisheries should the 8,000 mt directed fishery HG be attained. If 8,000 mt are landed the directed fishery for Pacific mackerel will close and a 45-percent by weight incidental trip allowance for landing Pacific mackerel with other CPS will be implemented, with the exception that 1 mt may be landed per trip without 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 Year* (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

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 for Fisheries 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 explained below:

The purpose of this proposed rule is to implement the 2010-2011 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-two vessels are currently permitted in the Federal CPS limited entry fishery off California. All of 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 disproportionate 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 2008/2009 fishing year approximately 4,000 mt of Pacific mackerel were landed with an estimated ex-vessel value of \$780,000 and during the 2009/2010 fishing year approximately 3,190 mt of Pacific mackerel were landed with an estimated ex-vessel value of \$622,230. The proposed HG for the 2010/2011 Pacific mackerel fishing season (July 1, 2009 through June 30, 2010) is 11,000 mt. If the fleet were to take the entire 2010/2011 HG, and assuming no change in the coastwide average ex-vessel price per mt of approximately \$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., an increase demand for Pacific mackerel product), it is not likely that the full HG will be taken during the 2010–2011 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 to 2009 is 4,886 mt with average annual ex-vessel revenue of \$861,775. Based on this catch and revenue history for Pacific mackerel over the nine years, NMFS does not anticipate a drop in profitability based on this rule as the 2010/2011 available harvest (11,000 mt) is 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 \$12.5 million in 2009 and market squid which had an estimated ex-vessel of \$56 million in 2009. 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 13, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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