

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.997, paragraph (g)(3) is revised to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(g) * * *

(1) * * *

(2) * * *

(3) From 6 a.m. to 7 a.m. and from 9 a.m. to 4 p.m., Monday to Friday, and from 6 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need only be opened every hour on the hour, except the draw shall open on signal for commercial vessels that qualify under paragraphs (g)(1) or (g)(2) of this section.

* * * * *

Dated: June 16, 2006.

L.L. Hereth,

*Rear Admiral, United States Coast Guard,
Commander, Fifth Coast Guard District.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051028280–6160–02; I.D. 102105A]

RIN 0648–AT11

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 11

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

ACTION: Final rule

SUMMARY: NMFS issues this final rule to implement Amendment 11 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP), which

changes the framework for the annual apportionment of the Pacific sardine harvest guideline along the U.S. Pacific coast. The purpose of this final rule is to achieve optimal utilization of the Pacific sardine resource and equitable allocation of the harvest opportunity for Pacific sardine.

DATES: Effective July 31, 2006.

ADDRESSES: Copies of Amendment 11 entitled *Allocation of the Pacific Sardine Harvest Guideline Amendment 11 to the Coastal Pelagic Species Fishery Management Plan*, and the accompanying environmental assessment/final regulatory flexibility analysis/regulatory impact review may be obtained at the address below.

• Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

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

SUPPLEMENTARY INFORMATION:

Amendment 11 changes the regional allocation structure of Pacific sardine that has been in place for the last three years and establishes a coastwide, seasonal allocation apportionment. Amendment 11 provides the following allocation formula for the non-tribal share of the harvest guideline: (1) thirty-five percent of the harvest guideline to be allocated coastwide on January 1; (2) reallocate 40 percent of the harvest guideline coastwide, plus any portion not harvested from the initial allocation, on July 1; and (3) reallocate the remaining 25 percent of the harvest guideline coastwide, plus any portion not harvested from earlier allocations, on September 15. A proposed rule to implement Amendment 11 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) was published in the **Federal Register** on November 16, 2005 (70 FR 69502). On January 26, 2006, NMFS Southwest Region (SWR) sent a letter to the Pacific Fishery Management Council (Council) approving Amendment 11 to the CPS FMP.

The Council adopted the CPS FMP in 1998. The CPS FMP was implemented on January 1, 2000 (64 FR 69888, December 15, 1999). The original Pacific sardine allocation formula in the FMP partitioned 33 percent of the annual harvest guideline to the northern subarea and 66 percent to the southern subarea. Nine months after the January start of the fishery (i.e., October 1), the remaining harvest guideline was pooled and reallocated 50 percent - 50 percent to each subarea. The original boundary between the two subareas was 35° 40' N.

lat. (approximately Point Piedras Blancas, California). This formula was incorporated into the CPS FMP from existing California state law. The state law was designed to balance the fishing opportunity for Pacific sardine between the southern California-based fleet and the Monterey-based fleet. At the time of the FMP's implementation, this was considered a status quo action (as the Pacific sardine fishery occurred principally in California) with no environmental impacts. No alternative allocation formulae were considered.

After the original CPS FMP was adopted, the Pacific sardine biomass expanded north along the U.S. West Coast allowing fisheries to develop in the Pacific Northwest (Oregon and Washington). With this expansion, under the original formula, the northern area allocation was shared by the Monterey-based fleet and the Oregon and Washington-based fleets. Oregon and Washington-based fleets expressed concern to the Council that the original allocation framework did not provide optimal harvest opportunity to the respective fishery sectors. Generally, the southern California-based fleet starts harvesting Pacific sardine January 1, and the harvest increases steadily throughout the year; the Monterey-based fleet starts in August (tied to market squid availability) and harvest increases through January or February of the following year; Oregon and Washington-based fleets have a more abbreviated season, which starts in June and ends in October. Because these sectors operate on very different schedules, annual allocations help to ensure that each sector receives a reasonable fishing opportunity. Ex-vessel landings in all sectors are driven by domestic and international market forces for Pacific sardines, as well as the availability and markets for other species of economic benefit to the Pacific sardine vessels and processors (e.g., market squid). The northern California-based fleets and the Oregon and Washington-based fleets are also affected by adverse weather which occurs and affects the ability of these fleets to harvest Pacific sardine during such periods.

In April 2003, the Council recommended to NMFS an interim framework for the allocation of Pacific sardine. The revised allocation system: (1) changed the definition of the subareas by moving the geographic boundary between the two areas from 35° 40' N. lat. to 39° N. lat. (Point Arena, California); (2) moved the date when remaining unharvested Pacific sardine is reallocated to the subareas from October 1 to September 1; (3) changed the percentage of the unharvested

Pacific sardine that is reallocated to the northern subarea and southern subarea from 50 percent to both subareas to 20 percent to the northern subarea and 80 percent to the southern subarea; and (4) reallocated all the unharvested Pacific sardine that remains on December 1 coastwide. The Council requested this allocation framework be in place for the 2003 and 2004 fishing seasons, and also in 2005 if the 2005 harvest guideline was at least 90 percent of the 2003 harvest guideline. NMFS implemented the revised allocation framework by a regulation that was published on September 4, 2003 (68 FR 52523). Using the best available information, the interim allocation framework was developed to address concerns for the short-term until NMFS and the Council had sufficient time to develop a more comprehensive, longer-term allocation framework.

At the June 2005 Council meeting, the Council examined seven alternative long-term allocation schemes, and at that time adopted the regulations set forth in Amendment 11. The Council also recommended a review of the allocation formula in 2008, due to the fact that the Pacific sardine resource, as well as the fisheries and markets that rely on it, are often dynamic and difficult to predict.

For further background information on this action please refer to the preamble of the proposed rule (70 FR 69502).

Comments and Responses

NMFS received three comments electronically regarding Amendment 11 or its implementing rules: two letters were received from an industry organization and one comment was received from a member of the public. Comments were not opposed to the adoption or implementation of the amendment. These comments are addressed here:

Comment 1: One commenter stated a belief that the northern part of the sardine population on the coast may be more variable than the southern part and felt that close monitoring and careful allocation may be needed.

Response: The Pacific sardine population can be hard to predict and variable. However, in April, 2006, the Southwest Fisheries Science Center, with the cooperation of the Northwest Fisheries Science Center, and the Canadian Department of Fisheries and Oceans, conducted a coast-wide sardine research survey off California, Oregon, Washington, and Vancouver Island. The primary goal of this research was a fishery independent estimate of Pacific sardine over most of its known range

during the same time period (synoptic) to provide stock structure information without migration introducing possible biases. This was the first cruise of this nature conducted to examine sardine populations; it is expected to provide valuable information towards the understanding of the northern portion of the population as well as sardine stock structure as a whole.

Comment 2: The second commenter asked that NOAA use a precautionary, stepwise approach to "long-term" allocation. The comment also provided notes on specific Amendment language from an industry perspective.

Response: NMFS believes that by the Council recommending a review of the allocation formula in 2008, with the objective of examining any new data on the sardine population that could improve the assessment model or allocation scheme, that the Council is moving in a stepwise manner regarding the allotment of the Pacific sardine resource. Most of the notes on the language were in reference to predictions made about the fishery such as future market conditions, possible landings within the two subareas, and the available harvest level. NMFS agrees that it is difficult to truly predict any of these conditions, however it is believed that the Council took a cautious approach when examining these elements during the assessment process of Amendment 11.

Comment 3: The third commenter also expressed the need for expanded research as well as interest in a re-examination of the capacity of the fishery, particularly the open access portion in the Northwest.

Response: As stated previously, a coast-wide sardine research survey has recently been completed with the intent of providing valuable insight into the stock structure and population dynamics of Pacific sardines off the West Coast. Although the Pacific sardine fishery is a federally managed limited entry fishery south of 39° N. lat. and an open access fishery north of 39° N. lat., the States of Oregon and Washington limit the number of vessels allowed in their respective state managed fisheries. Amendment 11 was designed to provide equitable harvest of the sardine resource to all parties involved. Basing the allotments on a coastwide, as opposed to a subarea scale, and using a seasonal approach should enable this to occur.

No changes were made to the regulatory text from the proposed rule.

Classification

The Regional Administrator, Southwest Region, NMFS, determined

that the final rule implementing Amendment 11 to the CPS FMP is necessary for the conservation and management of the Pacific sardine fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and management Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Following the proposed rule stage of this action a Final Regulatory Flexibility Analysis (FRFA) was prepared that examines the economic impact this action would have on small entities. The FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** sections of this final rule. This final rule does not duplicate, overlap, or conflict with other Federal rules. There are no reporting, record-keeping, or other compliance requirements of the proposed rule.

Approximately 104 vessels were permitted to operate in the Pacific sardine fisheries off the U.S. West Coast in 2004; 63 vessels were permitted in the Federal CPS limited entry fishery off California (south of 39° N. lat.), while 41 vessels were permitted in Oregon and Washington's state Pacific sardine fisheries. All of these vessels would be considered small businesses under the Small Business Administration standards since the vessels do not have annual receipts in excess of \$3.5 million. Therefore, NMFS does not anticipate any disproportionate economic impacts resulting between small and large vessels under the proposed action. Additionally, this proposed action is not likely to significantly affect (both positive and negative effects) these small entities. The purpose of the action is to achieve optimal utilization of the available harvest by all entities through an equitable coastwide allocation. Therefore, vessels in all regions should have an equal opportunity to the resource.

The fleet as it exists in present day is not likely to change over the 2005–2009 period because vessels from California could fish in the U.S. Exclusive Economic Zone off Oregon and Washington without a respective state issued limited entry permit, but would have to land their catches in California. Given the current technology and operational aspects of the Pacific sardine fishery this would not be practicable. Therefore, NMFS believes

that these 63 and 41 vessels will comprise the respective southern and northern subarea fleets in the future. Under the preferred long-term allocation alternative, Pacific sardine landings for CPS for the entire West Coast were projected to increase: (1) 19,674 mt from the status quo over the 2005–2009 period, with a corresponding increase in ex-vessel revenues of \$3,076,891, under a 136,000–mt harvest guideline, and a 10 percent annual growth rate in landings for all fishery sectors over the 2005–2009 period (defined as base case); (2) no change in total landings, but an increase of \$1,514,553 in ex-vessel revenues under a 72,000 mt harvest guideline, and a 10-percent annual growth rate in landings for all Pacific sardine fishery sectors over the 2005–2009 period (defined as low harvest guideline case or); and, (3) no change in total landings or in total ex-vessel revenues under a 200,000 mt harvest guideline, and a 10-percent annual growth rate in landings for all fishery sectors over the 2005–2009 period (defined as high harvest guideline case). NMFS anticipates a 10-percent annual growth rate per year based on input from the Pacific sardine industry members as to what the Pacific sardine market could accommodate. For the preferred alternative, Pacific sardine landings in the northern subarea sardine fishery were estimated to be 28,141 mt greater than the status quo with ex-vessel revenues increasing by \$3.8 million under the base case; a 34,592–mt increase in landings and an increase of \$4.7 million in ex-vessel revenue under the low harvest guideline case; and a no increase in landings or in ex-vessel revenue under the high harvest guideline case. Landings in the southern subarea Pacific sardine fishery would decrease by 8,467–mt and ex-vessel revenues would decrease by \$743,181 relative to the status quo under the base case; a decrease of 26,011 mt in landings and \$3.2 million in ex-vessel revenues under the low harvest guideline case; and, no changes under the high harvest guideline case.

For the 63 CPS limited entry vessels that would be eligible to participate in the southern subarea Pacific sardine fishery, the 8,467 mt loss in landings over the period under the base case, preferred alternative, represents a potential decrease in ex-vessel revenues of \$11,797 per vessel from the status quo alternative, which would be 2.6 percent loss in each vessel's projected revenues. For the preferred alternative under the low harvest guideline case, vessels in the southern subarea fishery stand to lose \$50,497 each, a 15.3–

percent decrease from the status quo, and under the high harvest guideline case there would be no change in vessel earnings from the status quo. These estimates may understate the actual earnings impacts per vessel since only 61 vessels participated in the southern subarea fishery during 2004.

For the 41 vessels that could participate in the northern subarea fishery each would stand to gain \$93,173 in ex-vessel revenues over the period under the base case, preferred alternative, a 10.6-percent increase from the status quo alternative. For the preferred alternative under the low harvest guideline case, vessels in the northern subarea fishery gain \$114,533 each, a 26.4-percent increase from the status quo, and under the high harvest guideline case there would be no change from the status quo. These estimates may understate the actual earnings impacts per vessel since only 34 vessels recorded landings in the northern subarea fishery during 2004.

The Council considered six alternatives to the preferred alternative in addition to the status quo alternative. All alternatives resulted in ex-vessel revenue gains of various magnitudes for the fishery as a whole except the “No Action” alternative in all cases, and alternative 4.b under the low harvest guideline case. Although the proposed alternative did not yield the greatest overall gain, with the least negative impacts to individual vessels from any one region, it was deemed most equitable by industry members when considered relative to the full range of conservation and management objectives constituting optimum yield under the Magnuson-Stevens Act.

The Council prepared an environmental assessment (EA) for Amendment 11 to the CPS FMP and the Assistant Administrator for NMFS concluded that there will be no significant impact on the human environment as a result of this final rule. Section 7 consultations under the Endangered Species Act were initiated with both the U.S. Fish and Wildlife Service and the Protected Resource Division of the NMFS. In both instances it was determined that fishing activities conducted under Amendment 11 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of any such species.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing, Indians,

Reporting and recordkeeping requirements.

Dated: June 22, 2006.

James W. Balsiger,

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

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.502, the definition for “Initial annual harvest guideline” is added, in alphabetical order, to read as follows:

§ 660.502 Definitions.

* * * * *

Initial harvest guideline means a specified numerical harvest objective set at the beginning of the fishing season.

* * * * *

■ 3. Section 660.509 is revised to read as follows:

§ 660.509 Closure of directed fishery.

(a) When the annual harvest guideline for either Pacific sardine or Pacific mackerel is reached, the directed fishery for Pacific sardine or Pacific mackerel shall be closed until the beginning of the next fishing season as stated in § 660.510 (a) and (b). The Regional Administrator shall announce in the **Federal Register** the date of closure of the directed fishery for Pacific sardine or Pacific mackerel. Upon such closure, Pacific mackerel may be harvested incidental to the directed fishery for Pacific sardine to the extent permitted by the annual harvest guideline. The Regional Administrator shall announce in the **Federal Register** the amount of the incidental trip limit, if any, that was recommended by the Council and approved by NMFS.

(b) When the allocation and reallocation levels for Pacific sardine in § 660.511 (f)-(h) are reached, the Pacific sardine fishery shall be closed until either it re-opens per the allocation scheme in § 660.511 (g) and (h) or the beginning of the next fishing season as stated in § 660.510 (a). The Regional Administrator shall announce in the **Federal Register** the date of the closure of the directed fishery for Pacific sardine.

■ 4. In § 660.511 paragraph (f) is revised, and paragraphs (g), and (h) are added to read as follows:

§ 660.511 Catch restrictions.

* * * * *

(f) On January 1, 35 percent of the initial harvest guideline for Pacific sardine is allocated coastwide within the fishery management area.

(g) On July 1, 40 percent of the initial harvest guideline for Pacific sardine

plus the remaining unharvested portion of the January 1 allocation in (f) is allocated coastwide within the fishery management area.

(h) On September 15, 25 percent of the initial harvest guideline for Pacific sardine plus the remaining unharvested portion of the July 1 allocation is

allocated coastwide within the fishery management area.

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