

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

[Docket No. 070907502-7503-01]

RIN 0648-XB01

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 for the fishing season of July 1, 2007, through June 30, 2008. This HG has been calculated 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.

DATES: Comments must be received by October 29, 2007.

ADDRESSES: You may submit comments on this proposed rule, identified by 0648-XB01 by any of the following methods:

- E-mail: 0648-XB01.SWR@noaa.gov. Include the identifier "0648-XB01" in the subject line of the message.
- Federal e-Rulemaking portal: <http://www.regulations.gov>. Following the instructions for submitting comments.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.
- Fax: (562) 980-4047.

Copies of the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2007-2008 Fishing Year* 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 the 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. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team), the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) and the CPS Subcommittee of the Scientific and Statistical Committee (SSC). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NOAA's National Marine Fisheries Service (NMFS). The annual HG is published in the **Federal Register** as close as practicable to the start of the fishing season. The Pacific mackerel season begins on July 1 and ends on June 30 of each year.

A full assessment for Pacific mackerel was conducted this year and reviewed by a Stock Assessment Review (STAR) Panel in La Jolla, CA, May 1-4. Public meetings of the Team and Subpanel were then held May 8-10 in Long Beach, CA. During these meetings the STAR Panel report and current stock assessment for Pacific mackerel, which included a preliminary biomass estimate and ABC, were presented and reviewed in accordance with the procedures of the FMP. Based on a total stock biomass estimate of 359,290 metric tons (mt), the ABC for U.S. fisheries for the 2007/2008 management season is 71,629 mt. The estimated stock biomass for the 2006/2007 season was 112,700 mt, resulting in an ABC of 19,845 mt. The increase in ABC this management season is the result of changes to the modeling parameters recommended by the STAR Panel during their review of the current stock assessment for Pacific mackerel; adjusting stock recruitment variability to be more consistent with the biology of the species and an improvement in the catch-per-unit-effort in the commercial passenger fishing vessel time series.

In June, the Council held a public meeting in Foster City, CA, during which time they reviewed the current stock assessment, biomass numbers and ABC and heard statements from the SSC, Team and Subpanel (72 FR 29130).

The SSC endorsed the assessment as the best available science for use in management. Both the Team and Subpanel recommended setting the 2007/2008 HG below ABC and no higher than 40,000 mt. This HG recommendation is still roughly double the HG adopted by the Council for the 2006/2007 fishing year (19,845 mt) and much greater than the average U.S. harvest since the year 2000 (5,700 mt). Setting the harvest guideline substantially below the ABC was recommended as a precautionary measure in response to uncertainty associated with changes to assessment modeling parameters and the reference in the FMP that the domestic fishery appears to be market limited to roughly 40,000 mt.

Following the SSC, Team and Subpanel reports the Council adopted an HG of 40,000 mt for the 2007-2008 fishing year. The Council also adopted the Subpanel recommendation that in the event that the 40,000 mt is attained by the fishery, that Pacific mackerel fishing be closed to directed harvest and only incidental harvest be allowed. The proposed incidental fishery would be constrained to a 45 percent by weight incidental catch rate when Pacific mackerel are landed with other CPS, except that up to one metric ton of Pacific mackerel could be landed without landing any other CPS.

The Council may schedule an inseason review of the Pacific mackerel fishery for the March or April 2008 Council meeting, in order to consider either releasing a portion of the incidental allotment to the directed fishery or further constraining incidental landings to ensure total harvest remains below the ABC.

The size of the Pacific mackerel population was estimated using the Age-Structured-Assessment-Program (ASAP) stock assessment model. ASAP was recommended as the most appropriate framework for conducting the Pacific mackerel assessment for the 2007/2008 management year by the STAR panel which met in May of 2007 at the Southwest Fisheries Science Center in La Jolla, California. Information on the fishery and the stock assessment are found in the report *Pacific mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2007-08 Fishing Season* (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 for the 2007/2008 management season is 359,290 metric tons (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. *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 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 follows:

The purpose of this proposed rule is to implement the 2007/2008 harvest guideline for Pacific mackerel in the EEZ off the U.S. West Coast. The CPS FMP and its

implementing regulations require NMFS to set an annual harvest guideline 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 harvest guideline is then derived.

Pacific mackerel harvest is a component of the CPS fisheries off the U.S. West Coast which 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-one vessels are currently permitted in the Federal CPS limited entry fishery off California. 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 and therefore will impact a substantial number of these small entities in the same manner. 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 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.

For the 2006/2007 fishing year, the harvest guideline was set at 19,845 mt with an estimated ex-vessel value of approximately \$2.7 million. Around 8,000 mt of this harvest guideline was actually harvested during the 2006/2007 fishing season valued at an estimated \$1 million.

The proposed harvest guideline for the 2007/2008 Pacific mackerel fishing season

(July 1, 2007 through June 30, 2008) is 40,000 metric tons (mt). This HG recommendation is roughly double the HG adopted by the Council for the 2006/2007 fishing year (19,845 mt) and much greater than the average U.S. harvest since the year 2000 (5,700 mt). If the fleet were to take the entire 2007/2008 harvest guideline, and assuming no change in the coastwide average ex-vessel price per mt of \$132, the potential revenue to the fleet would be approximately \$5.3 million. However, the potential lack of availability of the resource to the fishing fleet could cause a reduction in the amount of Pacific mackerel harvested, in which case the total revenue to the fleet would be reduced. Additionally, if there is no change in market conditions (i.e., a lack in demand for Pacific mackerel product), it is not likely that the full harvest guideline will be taken during the 2007–2008 fishing year, in which case profits will be lower.

NMFS does not anticipate a drop in profitability based on this rule due to the fact that it allows fishermen to harvest more than last year. 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 24, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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