

reimbursed for the expense of fishing for subsistence halibut under the following conditions:

(1) Persons who qualify as rural residents under § 300.65(g)(1) and hold a subsistence halibut registration certificate in the persons's name under § 300.65(i) may be reimbursed for actual expenses directly related to subsistence fishing for halibut, including only ice, bait, food, or fuel, by residents of the same rural community listed on the person's subsistence halibut registration certificate; or

(2) Persons who qualify as Alaska Native tribal members under § 300.65(g)(2) and hold a subsistence halibut registration certificate in the person's name under § 300.65(i) may be reimbursed for actual expenses directly related to subsistence fishing for halibut, including only ice, bait, food, or fuel, by any Alaska Native tribe or its members.

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[FR Doc. E8-7902 Filed 4-11-08; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No.080326475-8477-01]

RIN 0648-XG22

#### 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 sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2008, through December 31, 2008. This HG has been determined according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

**DATES:** Comments must be received by May 14, 2008.

**ADDRESSES:** You may submit comments on this proposed rule identified by 0648-XG22 by any 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

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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report "Assessment of Pacific Sardine Stock for U.S. Management in 2008" may be obtained from the Southwest Regional Office (see the Mailing address above).

#### 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) and the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel). 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 comment, the Council makes its HG recommendation to NMFS. The annual HG is published in the **Federal Register** as close as practicable to the start of the fishing season.

For actively managed CPS stocks, full assessments and the accompanying Stock Assessment Review (STAR) process typically occur every third year and were last completed in 2004. Therefore, for this 2007 cycle, a full assessment for Pacific sardine was conducted and reviewed by a STAR Panel in La Jolla, California, September 18-21, 2007. This assessment produced an estimated biomass of 832,706 mt. Applying this biomass number to the harvest control rule in the FMP produces an acceptable biological catch (ABC) for the 2008 fishery of 89,093 metric tons (mt).

In November, the Council held a public meeting in San Diego, California (72 FR 59256) during which time the Team, Subpanel, CPS Subcommittee of the Scientific and Statistical Committee (SSC) and the Council reviewed the current stock assessment, biomass numbers and ABC. Following their review of the assessment, associated biomass and ABC and after hearing reports by the SSC, Team and Subpanel the Council adopted an ABC or HG of 89,093 mt for the 2008 fishing year. This ABC is 42 percent less than the ABC/HG adopted by the Council for the 2007 fishing season.

The Pacific sardine HG is apportioned based on the following allocation scheme established by Amendment 11 (71 FR 36999, June 29, 2006) to the CPS FMP: 35 percent is allocated coastwide on January 1; 40 percent, plus any portion not harvested from the initial allocation is reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations is released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery will be closed via appropriate rulemaking until it re-opens either per the allocation scheme or the beginning of the next fishing season. The Regional Administrator shall publish a notice in the **Federal Register** the date of the closure of the directed fishery for Pacific sardine.

Based on recommendations by the Team, and the potential that seasonal allocation totals may be attained during the 2008 fishing year due to the decrease in the HG, the Council also adopted a set aside of 8,909 mt (10 percent of the ABC). Implementation of the set aside would establish a directed harvest fishery of 80,184 mt and an incidental fishery of 8,909 mt. This incidental fishery would allow for incidental landings of Pacific sardine in other fisheries and prevent the closure of such fisheries, particularly other CPS fisheries, if a seasonal directed fishery

total is reached and directed fishing is closed. In turn the set aside would also help to ensure the fishery does not exceed the ABC.

The proposed set aside is based on recent annual incidental sardine landing rates in other fisheries during each of the seasonal allocation periods. The set-aside would initially be allocated across these periods in the following way: January 1–June 30, 26,550 mt is to be allocated for directed harvest with an incidental set aside of 4,633 mt; July 1–September 14, 34,568 mt is allocated for directed harvest with an incidental set aside of 1,069 mt; September 15–December 31, 19,066 mt is allocated for directed harvest with an incidental set aside of 3,207 mt.

If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest will be allowed and, for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. The proposed incidental fishery will also be constrained to a 20 percent by weight incidental catch rate when Pacific sardine are landed with other CPS to minimize targeting of Pacific sardine and to maximize landings of harvestable stocks. In the event that an incidental set aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking. If the set aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period will be automatically adjusted to account for the discrepancy.

The size of the sardine population was estimated using the Stock Synthesis 2 (SS2) model platform. Use of the SS2 model was recommended by the CPS STAR Panel held in September 2007, in La Jolla, California. The SS2 model platform replaces the Age-structured Assessment Program (ASAP) that has been used the previous three years. The STAR Panel concluded that the ASAP model had a number of difficulties that SS2 was able overcome, including: 1) allowance for some sardine to spawn at age-0, 2) differences in timing of the fisheries throughout the range, 3) estimation of initial conditions, 4) variability in weight-at-age among fisheries and between the fishery and population, and 5) log-normal bias correction for the stock-recruitment relationship. Detailed information on the fishery and the stock assessment are found in the report "Assessment of Pacific Sardine Stock for U.S.

Management in 2008" (see ADDRESSES).

The formula in the CPS FMP uses the following factors to determine the HG:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above for the 2008 management season is 832,706 mt.
2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.
3. *Distribution.* The portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 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 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures; a higher fraction for warmer ocean temperatures and a lower fraction for cooler temperatures. Warmer ocean temperatures favor the production of Pacific sardine. For 2008, the fraction used was 15 percent, based on three seasons of sea surface temperature at Scripps Pier, California.

#### 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 2008 HG for Pacific sardine 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 sardine 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. The HG is determined using an environmentally-based formula accounting for the effect of ocean conditions on stock productivity.

The HG is apportioned based on the following allocation scheme: 35 percent of the HG is allocated coastwide on January 1;

40 percent of the HG, plus any portion not harvested from the initial allocation is then reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations will be released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery is closed until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during an allocation period or the year; the HG and seasonal allocations are available until fully utilized by the entire CPS fleet.

The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finish fleet. Approximately 107 vessels are permitted to operate in the sardine fishery component of the CPS fishery off the U.S. West Coast; 63 permits in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 44 permits in Oregon and Washington's state Pacific sardine fisheries. 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. 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. Therefore, 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 sardine ex-vessel price per mt. NMFS used average Pacific sardine 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 2007 fishing year, the HG was set at 152,564 mt with an estimated ex-vessel value of \$18 million. Around 136,000 mt (89,000 in California and 47,000 in Oregon and Washington) of this HG was actually harvested during the 2007 fishing season valued at an estimated \$14 million. The proposed HG for the 2008 Pacific sardine fishing season (January 1, 2008 through December 31, 2008) is 89,093 metric tons (mt). If the fleet were to take the entire 2008 HG, and assuming a coastwide average ex-vessel price per mt of \$110, the potential revenue to the fleet would be approximately \$10 million.

Although the HG for 2008 is 42 percent lower than the HG for 2007, a drop in profitability is not expected because the 2008 HG approximates the average catch from 2001–2006 of 85,000 mt. The sardine harvest depends greatly on market forces within the fishery, as well as the other CPS fisheries, and on the regional availability of the resource to the fleets and the fleets' ability to find pure schools of Pacific sardine. A change in the market and/or the potential lack of availability of the resource to the fleets could cause a reduction in the amount of Pacific sardine that is harvested, in turn, reducing the total revenue to the fleet from Pacific sardine. The 2007 harvest was

anomalously large, approximately 50,000 mt more than the 2001–2006 average. From 2001 through 2006, the average landings coastwide were approximately 85,000 mt with annual revenues during that time at approximately \$10 million. Therefore at current ex-vessel price per mt, the harvest guideline for 2008 should provide revenue similar to revenues earned from 2001 through 2006.

In addition, the revenue derived from harvesting Pacific sardine 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 finfish vessels typically harvest a number of other species, including anchovy, mackerel, squid, and tuna, making Pacific sardine only one component of a multi-species CPS fishery. Any lower revenue from the harvest of Pacific sardine may be offset, in part, by harvest of these other species.

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: April 9, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For  
Regulatory Programs, National Marine  
Fisheries Service.*

[FR Doc. E8–7899 Filed 4–11–08; 8:45 am]

**BILLING CODE 3510–22–S**