

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC (mt)	Adjusted 2009 observer set-aside TAC (mt)
10,000–19,000	1, 0, 0	982	72.57	36.29.
Less than 10,000	0, 0, 0	491	36.29	18.15.

* Part-time vessels may take one trip in the Elephant Trunk Access Area at a reduced possession limit of 3,600 lb (1,633 kg) and one trip in the NLCA with a possession limit of 18,000 lb (8,165 kg).

** Occasional vessels may take 1 trip in the Nantucket Lightship Access Area or 1 trip in the Elephant Trunk Access Area.

(3) *Table of Delmarva Access Area TAC and trip allocation adjustments based on exploitable biomass estimates and revised target TAC levels.* The

following table specifies the required adjustments that shall be made through the procedure specified in paragraph (a)(3)(i)(F)(1) of this section under

various biomass estimates and adjusted 2009 target TAC estimates:

Exploitable biomass estimate (mt)	Adjusted trips (full-time, part-time, occasional)	Adjusted trips (general category)	Adjusted 2009 research set-aside TAC	Adjusted 2009 observer set-aside TAC
10,000 or greater	No adjustment	No adjustment	No adjustment	No adjustment.
Less than 10,000	0, 0, 0	0	0	0.

* * * * *
 (5) Possession and landing limits—(i) Scallop possession limits. Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section,

after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph

(a)(5). No vessel declared into an Access Area as described in § 648.59 may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Area described in § 648.59.

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2008	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	7,500 lb. (3,402 kg).
2009	18,000 lb (8,165 kg)	18,000 lb ¹ (8,165 kg)	7,500 lb. (3,402 kg).

¹ Unless reduced per § 648.60(a)(3)(i)(E)(2).

* * * * *
 (d) Possession limit to defray costs of observers—(1) Observer set-aside limits by area—(i) Nantucket Lightship Access Area. For the 2008 fishing year, the observer set-asides for the Nantucket Lightship Access Area is 55,000 lb (25 mt).

Lightship Access Area. For the 2008 fishing year, the research set-aside for the Nantucket Lightship Access Area is 110,000 lb (50 mt).

(ii) *Closed Area II Access Area.* For the 2009 fishing year, the research set-aside for the Closed Area II Access Area is 116,000 lb (53 mt).

(ii) *Closed Area II Access Area.* For the 2009 fishing year, the observer set-aside for the Closed Area II Access Area is 58,000 lb (26 mt).

(iii) *Elephant Trunk Access Area.* For the 2008 and 2009 fishing years, the observer set-aside for the Elephant Trunk Access Area is 222,000 lb (101 mt), and 162,000 lb (73 mt), respectively, unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(iii) *Elephant Trunk Access Area.* For the 2008 and 2009 fishing years, the research set-aside for the Elephant Trunk Access Area is 440,000 lb (200 mt), and 324,000 lb (147 mt), respectively, unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(iv) *Delmarva Access Area.* For the 2009 fishing year, the observer set-aside for the Delmarva Access Area is 60,000 lb (27 mt), unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(iv) *Delmarva Access Area.* For the 2009 fishing year, the research set-aside for the Delmarva Access Area is 120,000 lb (54 mt), unless the 2009 set-aside is adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(e) * * *
 (1) Research set-aside limits and number of trips by area—(i) *Nantucket*

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 ■ 11. In § 648.62, paragraph (b)(1) is revised to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.

* * * * *
 (b) * * *

(1) *NGOM TAC.* The TAC for the NGOM shall be 70,000 lb (31.8 mt) for both the 2008 and 2009 fishing years.

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 [FR Doc. 08–1300 Filed 5–23–08; 12:48 pm]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 080326475–8686–02]

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: Final rule; closure of directed fishing for Pacific sardine

SUMMARY: NMFS issues this final rule 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. NMFS also announces that based on the best available information recently obtained from the fishery, the directed fishing harvest total for the first allocation period (January 1 – June 30) has been reached and therefore directed fishing for Pacific sardine is now closed until July 1, 2008.

DATES: Effective May 29, 2008 through December 31, 2008, except for directed harvest closure effective through June 30, 2008

ADDRESSES: 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 is implemented by regulations at 50 CFR part 660 subpart I, 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.

A full assessment for Pacific sardine was conducted this management cycle and reviewed by a Stock Assessment Review (STAR) Panel in La Jolla, California, September 18–21, 2007. This assessment produced an estimated

biomass of 832,706 metric tons (mt). Applying this biomass number to the harvest control rule in the FMP produces an ABC for the 2008 fishery of 89,093 (mt).

In November, the Council adopted, and NMFS then approved, 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 Council also adopted, and NMFS approved, a set-aside of 8,909 mt (10 percent of the ABC), establishing a directed harvest fishery of 80,184 mt and an incidental fishery of 8,909 mt. The purpose of the incidental fishery is to 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 also helps to ensure the fishery does not exceed the ABC.

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.

The set-aside is based on recent annual incidental sardine landing rates in other fisheries during each of the seasonal allocation periods. The set-aside is initially allocated across these periods in the following way: January 1–June 30, 26,550 mt is 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 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 above in-season harvest restrictions are not intended to affect the prosecution the live bait portion of the Pacific sardine fishery.

For further background information on this action please refer to the preamble of the proposed rule (73 FR 20015).

Comments and Responses

NMFS received one comment regarding the Pacific sardine annual specifications.

Comment 1: The commenter stated that they believed that the catch specifications for CPS do not adequately take into account broader ecosystem needs and information such as foraging requirements of other species that may feed on Pacific sardine.

Response: NMFS agrees that Pacific sardine is an important prey component of the California Current ecosystem and as such the current harvest control rule formula used to determine the harvest guideline for Pacific sardine takes into account ecosystem as well as physical environmental factors. This is achieved by means of a formula that, after overall biomass is determined, takes into account the viability of the sardine stock and its value as forage when determining the guideline number. This is accomplished by a harvest rate or harvest “fraction” that is adjusted between 5 percent and 15 percent based on current ocean temperatures. Because past shifts in sardine productivity are linked with warm or cold ocean regimes a higher fraction is allotted for harvest when ocean temperatures are warmer and sardine production is greater, while the lower fraction is used when ocean temperatures are cooler and sardine production is decreased. In addition, a 150,000 mt stock biomass threshold, or “cutoff”, is established below which no harvest is allowed in order to ensure a minimum spawning biomass is protected. Each year this “cutoff” number of 150,000 mt is subtracted from the overall biomass number before the

harvestable biomass is calculated to take into account the importance of Pacific sardine as forage.

Classification

The Administrator, Southwest Region, NMFS, determined that this final rule is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. § 553(b)(B) for the closure of the January 1- June 30 directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. § 553(d)(3) to waive the 30-day delay in effectiveness for both the establishment of the harvest guideline and closure of the January 1 June 30 directed harvest. These measures respond to the best available information and are necessary for the conservation and management of the Pacific sardine resource. The most recent data from the fishery, received by NMFS on May 11, 2008, shows that projected landings, along with some previously reported landings, are

significantly greater than anticipated. Based on this data, NMFS believes that the directed harvest allocation for the period January 1 through June 30 will be attained much sooner than predicted and prior to publication of this rulemaking. A delay in effectiveness would cause the fishery to further exceed the in-season directed harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel. Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income. To help keep the regulated community advised of the progression of sardine landings, the California Department of Fish and Game provided a detailed accounting of landings-to-date to the CPS Advisory Subpanel in late April. The Subpanel is comprised of representatives from all sectors and regions of the sardine industry, including processors, fishermen, user groups and fishermen association representatives. As landing totals have become available, they are also posted on NMFS' Southwest Regional Office website, [\[swr.nmfs.noaa.gov/\]\(http://swr.nmfs.noaa.gov/\). NMFS will also announce this closure through other means available, including fax, email, and mail to fishermen, processors, and state agencies. Therefore, NMFS finds that there is good cause to waive the 30-day delay in effectiveness in this circumstance.](http://</p></div><div data-bbox=)

This final rule is exempt from Office of Management and Budget 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 a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule (73 FR 20015) and is not repeated here. No comments were received regarding this certification or the economic impact of the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: May 23, 2008.

Samuel D. Rauch III,

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

[FR Doc. 08-1304 Filed 5-23-08; 3:15 pm]

BILLING CODE 3510-22-S