

The Act generally defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. Individuals and states are not included in the definition of a small entity. Few of the entities that meet the definition of a small entity as that term is used in the RFA would be impacted directly by this document.

Because this document is focused on the proposed funding methodology that will be used to determine federal BHP payment rates, it does not contain provisions that would have a significant direct impact on hospitals, and other health care providers that are designated as small entities under the RFA. However, the provisions in this document may have a substantial, positive indirect effect on hospitals and other health care providers due to the substantial increase in the prevalence of health coverage among populations who are currently unable to pay for needed health care, leading to lower rates of uncompensated care at hospitals. The Department cannot determine whether this document would have a significant economic impact on a substantial number of small entities, and we request public comment on this issue.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a document may have a significant economic impact on the operations of a substantial number of small rural hospitals. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As indicated in the preceding discussion, there may be indirect positive effects from reductions in uncompensated care. Again, the Department cannot determine whether this document would have a significant economic impact on a substantial number of small rural hospitals, and we request public comment on this issue.

#### D. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct effects on states, preempts state law, or otherwise has federalism implications. The BHP is entirely optional for states, and if implemented in a state, provides access to a pool of funding that would not otherwise be available to the state.

We have consulted with states to receive input on how the Affordable

Care Act provisions codified in this document would affect states. We have participated in a number of conference calls and in person meetings with state officials.

We continue to engage in ongoing consultations with states that have expressed interest in implementing a BHP through the BHP Learning Collaborative, which serves as a staff level policy and technical exchange of information between CMS and the states. Through consultations with this Learning Collaborative, we have been able to get input from states on many of the specific issues addressed in this document.

**Authority:** Section 1331(d)(3) of the Affordable Care Act.

Dated: November 20, 2013.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: November 22, 2013.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 130822744-3744-01]

RIN 0648-BD63

#### Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Change to Start of Pacific Sardine Fishing Year

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

**ACTION:** Proposed rule.

**SUMMARY:** Each year, NMFS implements regulations that set the annual quota and management measures for the Pacific sardine fishing year. NMFS proposes to change the starting date of the annual Pacific sardine fishery from January 1 to July 1. This would change the fishing season from one based on the calendar year to one based on a July 1 through the following June 30th schedule. No other changes to the annual allocation structure are being made and the existing seasonal allocation percentages will remain as specified in the FMP; as would the current quota roll-over provisions. The

purpose of this change is to better align the timing of the research and science that is used in the annual stock assessments with the annual management schedule. To enable this transition in fishing years, this action also would establish a one-time interim harvest period for the 6 months from January 1, 2014, through June 30, 2014.

**DATES:** Comments must be received by January 22, 2014.

**ADDRESSES:** You may submit comments on this document identified by “NOAA-NMFS-2013-0167” by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0167](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0167), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; Attn: Joshua Lindsay.

- **Fax:** (562) 980-4047; Attn: Joshua Lindsay

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

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

**SUPPLEMENTARY INFORMATION:** This proposed rule would change the start date of the 12-month Pacific sardine fishery from January 1 to July 1, thus changing the fishing season for Pacific sardine from one based on the calendar year to one beginning on July 1 and continuing through June 30th of the following year. The purpose of this change is to better align the timing of the research and science used in the annual stock assessments with the annual management schedule, as the present schedule imposes substantial

challenges in terms of survey data availability relative to the timing of stock assessments.

The process for setting the annual Pacific sardine quotas begins with the Pacific Fishery Management Council's (Council) annual November public meeting, where scientists present the estimated biomass of Pacific sardine to the Council and its various advisory bodies. At this meeting the biomass estimate and the status of the fishery is reviewed and discussed. Following this review by the Council and after hearing public comment, the Council adopts a biomass estimate which, based on the management framework in the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP), is used in the calculation and development of the annual Pacific sardine catch levels that are recommended to the National Marine Fisheries Service (NMFS) by the Council. NMFS then implements regulations that set the annual quota for the Pacific sardine fishing year that currently begins January 1 and ends December 31.

These annual Pacific sardine quotas are based in large part on the results of annually conducted stock assessments that provide the biomass estimates used in the calculation of quotas. The stock assessments go through a scientific review process in late September or early October in preparation for action at the November Council meeting.

At present, the current research and management schedule imposes substantial challenges in terms of survey data availability relative to the timing of the completion of the stock assessments. In recent years, the data used in the stock assessments has come from new and expanded surveys that occur throughout the summer and into September. This has caused conflicts in the stock assessment process as both the survey teams and the stock assessment scientists have become rushed both to finish the research and analyze the data in time for the stock assessment to be completed and reviewed prior to the November Council meeting. This timing is necessary to accommodate the current management cycle that is tied to the January 1 fishery season start date. For example, some of the data currently used in the stock assessment comes from a survey conducted off of Oregon and Washington that occurs until September 15. With the formal review of the stock assessment normally held the first week of October, data from this survey must also be provided to the stock assessment team by mid to late September. This provides little time for a thorough review of survey data and

results prior to delivery to the stock assessment team.

To address the assessment scheduling constraints described above, with the management process for implementing annual quotas, the Council recommended, and NMFS is proposing, to change the start of the fishing season from January 1 to July 1. By moving the timing of the start of the fishery to July 1 and therefore the timing of when the stock assessment must be completed (late winter/early spring) this will allow the management process, for which the timing will also change, to then better align with the research and data being collected for the assessment.

The harvest guideline (HG) for the Pacific sardine fishery is apportioned based on the allocation scheme established through Amendment 11 to the CPS FMP. Under the allocation scheme, the Pacific sardine fishing year is divided into three seasonal periods with fixed allocation percentages of quota attached to each time period: January 1–June 30 (35 percent), July 1–September 14 (40 percent) and September 15–December 31 (25 percent). Any quota not harvested in a period is rolled over into the subsequent period; any amount not harvested by the end of the fishing year is not rolled over into the next fishing year. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery will close until either it re-opens per the allocation scheme or the beginning of the next fishing season.

Through this proposed action, what is currently known as the second allocation period (July 1–September 14) would become the first period, the third allocation period (September 15–December 31) would become the second period, and the first allocation period (January 1–June 30) would become the third period. No changes to the seasonal allocation structure are being made through this action and the existing seasonal allocation percentages will remain as specified in the FMP; as would the current quota roll-over provisions. The Council will be addressing complete year sardine management (July 1 to June 30) at their April 2014 public meeting.

If this proposed rule is implemented, the start of the next complete fishing season would begin on July 1, 2014. Because the current 2013 fishing season ends on December 31, 2013, NMFS is also proposing in this rule the establishment of a one-time interim harvest allocation period from January 1, 2014 through June 30, 2014 to allow for continued fishing during the transition from a January to July start of

the fishing season. The harvest specifications for this interim allocation period will be implemented through a separate rulemaking action. At the November 2013 Council meeting, the Council took action on setting the quota for the January 2014 through June 2014 period. Although the interim harvest specifications will include an Overfishing Limit (OFL), Acceptable Biological Catch (ABC) and Annual Catch Limit (ACL) for calendar year 2014, those specifications are expected to be replaced based on the new stock assessment and Council action in April 2014.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of 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 a result, a regulatory flexibility analysis is not required, and none has been prepared. The analysis of the Chief Counsel was as follows:

The purpose of the proposed action is to change the date of the start of the yearly Pacific sardine fishery from January 1 to July 1, thus changing the fishing season for Pacific sardine from one based on the calendar year to a fishing year that will begin on July 1 and continuing through June 30th of the following year. As described in the preamble of this rule, the purpose of this change is to better align the timing of the research and science that is used in the annual stock assessments with the annual management schedule.

The proposed action is not expected to have significant direct or indirect socioeconomic impacts because harvest limits and management measures influencing ex-vessel revenue and personal income, such as how harvest limits are determined, are not established under the range of alternatives considered. Instead, the proposed action only changes the annual fishing season from one based on the calendar year to one beginning on

July 1 and proceeding to the following June 30th. The CPS FMP and its implementing regulations require NMFS to set an OFL, ABC, ACL and harvest guideline (HG) or annual catch target (ACT) for the Pacific sardine fishery based on the specified harvest control rules in the FMP. A specific harvest control rule is applied to the current stock biomass estimate to derive the annual HG that is used to manage the directed commercial take of Pacific sardine. This annual HG is the primary determinate in the overall revenue derived from fishing for Pacific sardine, and this action does not change the framework.

On June 20, 2013, the U.S. Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 million to \$19.0 million, Shellfish Fishing from \$4.0 million to \$5.0 million, and Other Marine Fishing from \$4.0 million to \$7.0 million. NMFS conducted its analysis for this action using the new size standards.

As stated above, the U.S. Small Business Administration now defines small businesses engaged in finfish fishing as those vessels with annual revenues of or below \$19 million. Under the former, lower size standards, all entities subject to this action in previous years were considered small entities, and under the new standards they continue to be considered small. The small entities that would be affected by the proposed action are the vessels that fish for Pacific sardine as part of the West Coast CPS finfish fleet. In 2012 there were approximately 96 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast, 55 vessels in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. The average annual per vessel revenue in 2012 for the West Coast CPS finfish fleet was well below \$19 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, 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. Therefore this rule will not create disproportionate

costs between small and large vessels/businesses.

Currently the fishery begins on January 1 and ends on December 31 of each year and the HG is apportioned based on the following allocation scheme established through Amendment 11 to the CPS FMP. Under this 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 will close until either it re-opens per the allocation scheme or the beginning of the next fishing season; any amount not harvested by the end of the fishing year is not rolled over into the next fishing year. 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 purpose of Amendment 11 and the framework described above was to achieve optimal utilization of the available harvest of Pacific sardine by all entities through an equitable coastwide allocation, providing vessels in all regions an equal opportunity to the resource.

Under this proposed rule, the allocation period currently known as the second allocation period (July 1–September 14) would become the first period, the third allocation period (September 15–December 31) would become the second period, and the first allocation period (January 1–June 30) would become the third period. No changes to the seasonal allocation structure are being made and the existing allocation percentages will remain as specified in the FMP, as would the current quota roll-over provisions. Because no changes to the allocation structure or seasonal percentages would be made, the proposed action does not appear to be inconsistent with objectives and analyses conducted in Amendment 11 creating the current allocation framework. Therefore, the proposed action is likely to result in negligible or at this point unknown economic impacts.

Additionally, the establishment of a one-time interim harvest allocation

period from January 1, 2014 through June 30, 2014 will allow for a transition from the current start of the fishing season to the proposed new start on July 1. The intent of this action is to allow fishing opportunities to continue during the transition period. The alternative to this proposed provision is to prohibit fishing during the transition period. Compared to the alternative, the proposed interim harvest allocation period is expected to have positive economic impacts on the affected small entities as it will allow them to continue fishing. However, this action only establishes the framework by which harvest allocations will be set for this 6-month period; the specific economic impacts of any quota allocated for this interim harvest period will be analyzed separately when those quota are established.

For the reasons above, the Chief Counsel for Regulation certified that this rule will not have a significant economic impact on a substantial number of small entities.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

#### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indians.

Dated: December 17, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 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 § 660.510, paragraph (a) is revised to read as follows:

##### § 660.510 Fishing seasons.

\* \* \* \* \*

(a) *Pacific sardine.* July 1 to June 30, or until closed under § 660.509.

\* \* \* \* \*

■ 3. In § 660.511, paragraphs (f) through (h) are revised to read as follows:

**§ 660.511 Catch restrictions.**

\* \* \* \* \*

(f) On July 1, 40 percent of the initial harvest guideline for Pacific sardine is allocated coastwide within the fishery management area.

(g) On September 15, 25 percent of the initial harvest guideline for Pacific sardine plus the remaining unharvested portion of the July 1 allocation in (f) is allocated coastwide within the fishery management area.

(h) On January 1, 35 percent of the initial harvest guideline for Pacific

sardine plus the remaining unharvested portion of the September 15 allocation is allocated coastwide within the fishery management area.

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