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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150428405-5539-02]

RIN 0648-XD927

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.

SUMMARY: NMFS issues this final rule to implement annual management measures and harvest specifications to establish the allowable catch levels (i.e. annual catch limit (ACL)/harvest guideline (HG)) for the northern subpopulation of Pacific sardine (hereafter, simply Pacific sardine), in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2015, through June 30, 2016. These specifications were determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This action includes a prohibition on directed non-tribal Pacific sardine commercial fishing for Pacific sardine off the coasts of Washington, Oregon and California, which is required because the estimated 2015 biomass of Pacific

sardine has dropped below the cutoff threshold in the HG control rule. Under this action Pacific sardine may still be harvested as part of either the live bait or tribal fishery or incidental to other fisheries; the incidental harvest of Pacific sardine will initially be limited to 40-percent by weight of all fish per trip when caught with other CPS or up to 2 metric tons (mt) when caught with non-CPS. The ACL for 2015-2016 Pacific sardine fishing year is 7,000 mt. This rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective July 1, 2015 through June 30, 2016.

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

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. EEZ off the Pacific coast (California, Oregon, and Washington) in accordance with the CPS FMP. Annual specifications published in the **Federal Register** establish the allowable harvest levels (i.e. over fishing limit (OFL)/ ACL/HG) for each Pacific sardine fishing year. The purpose of this final rule is to implement these annual catch reference points for the 2015-2016 fishing year. This final rule adopts, without changes, the reference points that NMFS proposed in the rule published on May 21, 2015 (80 FR 29296), including an OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast.

The FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the HG control rule, which in

conjunction with the OFL and ABC rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* According to the FMP, the quota for the principle commercial fishery is determined using the FMP-specified HG formula. The HG formula in the CPS FMP is $HG = [(Biomass - CUTOFF) * FRACTION * DISTRIBUTION]$ with the parameters described as follows:

1. *Biomass*. The estimated stock biomass of Pacific sardine age one and above. For the 2015-2016 management season this is 96,688 mt.
2. *CUTOFF*. This is the biomass level below which no HG is set. The FMP established this level at 150,000 mt.
3. *DISTRIBUTION*. The average portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast. The FMP established this at 87 percent.
4. *FRACTION*. The temperature-varying harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

As described above, the Pacific sardine HG control rule, the primary mechanism for setting the annual directed commercial fishery quota, includes the CUTOFF parameter which has been set as a biomass amount of 150,000 mt. This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Therefore, because this year's biomass estimate is below that value, the formula results in an HG of zero and therefore no Pacific sardine are available for the commercial directed fishery during the 2015-2016 fishing year.

At the April 2015 Pacific Fishery Management Council (Council) meeting, the Council adopted the "Assessment of the Pacific Sardine Resource in 2015 for U.S.A.

Management in 2015-2016” completed by NMFS Southwest Fisheries Science Center and the resulting Pacific sardine biomass estimate of 96,688 mt. Based on recommendations from its Science and Statistical Committee (SSC) and other advisory bodies, the Council recommended and NMFS is implementing, an OFL of 13,227 mt, an available biological catch (ABC) of 12,074 mt, and a prohibition on sardine catch unless it is harvested as part of either the live bait or tribal fishery or incidental to other fisheries for the 2015-2016 Pacific sardine fishing year. As additional conservation measures, the Council also recommended and NMFS is implementing an ACL of 7,000 mt and an annual catch target (ACT) of 4,000 mt. Incidental catch of Pacific sardine in other CPS fisheries will be managed under the ACT and be subject to the following management controls to reduce targeting and potential discard of Pacific sardine: 1) a 40 percent by weight incidental catch rate when Pacific sardine are landed with other CPS until a total of 1,500 mt of Pacific sardine are landed; 2) after 1,500 mt have been caught, the allowance will be reduced to 30 percent; and 3) when 4000 mt is reached, the incidental per landing allowance will be reduced to 5 percent for the remainder of the 2015-2016 fishing year. Additionally, the Council adopted a 2 mt incidental per landing allowance in non-CPS fisheries. Because Pacific sardine is known to comingle with other CPS stocks, these incidental allowances were adopted to allow for the continued prosecution of these other important CPS fisheries and reduce the potential discard of sardine

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** announcing the date of attainment of any of the incidental catch levels described above and subsequent changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS

will make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

As explained in the proposed rule, 1,000 mt of the ACL are being set aside for tribal harvest use as a result of a request by the Quinault Indian Nation.

On May 21, 2015, NMFS published a proposed rule for this action and solicited public comments (80 FR 29296), with a public comment period that ended on June 5, 2015. NMFS received two comments—explained below—regarding the proposed Pacific sardine specifications. After consideration of the public comments, no changes were made from the proposed rule. For further background information on this action please refer to the preamble of the proposed rule.

Comments and Responses

Comment 1: The commenter stated that the language in the proposed rule seems to minimize the economic impact of the sardine closure on the fleet and that sardine income has been a critical component of profitability. The commenter requested that NMFS address the economic impacts of the closure by re-opening the sardine fishery as soon as possible. The commenter further states that the immediate focus should be on confirming whether the surveys used to estimate biomass are accurate.

Response: NMFS understands and agrees that this action is likely to have a negative economic impact on vessels that harvest Pacific sardine. NMFS did not intend to minimize the potential lost revenue to sardine fisherman caused by this rule compared to previous seasons. Although most vessels within the CPS fleet may be able to shift fishing effort to other species and supplement economic losses incurred by the sardine closure, we also understand that for certain individuals, including the commenter, the

prohibition on directed commercial harvest may carry a heavier financial burden. The fact that many sardine fishermen also participate in other fisheries, which is expected to help offset lost revenue from sardine harvest, was not the deciding factor for NMFS in taking this action.

The CPS FMP and its implementing regulations require NMFS to set the harvest specifications for the Pacific sardine fishery using the control rules set in the FMP. As stated above, the Pacific sardine HG control rule includes a CUTOFF of 150,000 mt. When the sardine biomass drops below this level, the FMP dictates that there will be no quota allocated to the primary commercial directed fishery. Allowing a directed commercial fishery as requested by the commenter would therefore violate the FMP. While allowing directed commercial fishing for the 2015-2016 fishing year could provide short-term economic benefits, the HG control rule is intended to help ensure long-term opportunities for harvesting sardine and relatively stable levels of harvest as opposed to a “boom-and-bust” type fishery. Although even in the absence of a commercial fishery, unfavorable environmental conditions could keep the sardine population at a low level, the purpose of a cutoff that is three times greater than the overfished level (50,000 mt) is akin to having a pre-determined, systemic rebuilding program that limits fishing as the stock declines. A cutoff both helps prevent overfishing and also stops fishing at an early stage in the stock’s decline to help maintain a stable core population of sardines that can jump-start a new cycle of population growth if the environmental conditions become favorable.

With regard to the commenter’s question about whether the surveys used to estimate sardine biomass are sound, as explained above under **SUPPLEMENTARY**

INFORMATION, this year's biomass estimate used for the 2015-2016 specifications went through extensive review, and along with the resulting OFL and ABC, was endorsed by the Council's SSC and NMFS as the best available science. The stock assessment for the 2015-2016 fishing year, as with each annual stock assessment, went through a multi-stage review process including being reviewed and discussed by the Council, and the Council's SSC, CPS management team, and CPS advisory subpanel to ensure that the best available science is utilized when calculating the biomass estimate. Every year, NOAA conducts a stock assessment for the northern subpopulation of Pacific Sardine that combines fisheries data with data collected off the West Coast by NOAA research ships surveying for sardine eggs, larvae and schools of mature fish, with models that incorporate sardine biology. As noted by the commenter, in past years the assessment has also incorporated scientific information from industry sponsored aerial surveys. However, this survey was not conducted in 2014 so data was not available for use in the 2015 survey. If in future years this work becomes available then this data source can be incorporated.

Comment 2: One commenter expressed support for the prohibition on directed commercial sardine fishing, but opposed the proposed ACL and ACT levels, and requested that NMFS instead set an ACL of no more than 1,000 mt. The commenter expressed an opinion that the FMP does not allow any fishing when the biomass drops below the CUTOFF. The commenter further stated that the proposed ACL would allow too much harvest at a time when the sardine biomass is low and would further reduce the population to an overfished condition and does not provide an incentive for fisherman to avoid incidentally catching sardine.

Response: NMFS disagrees that the ACL and ACT implemented in this rule are not in line with the FMP or that they fail to prevent overfishing and thereby will not protect the stock from becoming overfished. The ACL and ACT should be viewed in the context of the OFL for the northern subpopulation of Pacific Sardine of 13,227 mt and an ABC of 12,074 mt that takes into account scientific uncertainty surrounding the OFL. These reference limits were recommended by the Council based on the control rules in the FMP and were endorsed the Council's SSC. The commenter does not note disagreement with these levels. By definition, fishing could conceivably occur up to these levels and overfishing would not be occurring and therefore fishing would not be the cause of the stock moving towards an overfished state. An ACL of 7,000 mt is well below both the OFL and ABC and with the ACT of 4,000 mt under which incidental catch of sardine will be managed, along with the multiple safeguards in place to keep the catch under that level, the management measures implemented by this rule are more than adequate to prevent exceeding the OFL.

In response to the commenter's opinion that no harvest should be allowed when the biomass drops below the 150,000-mt CUTOFF, NMFS notes that the FMP does not forbid incidental, live bait or tribal harvest in this situation. It also appears that although the commenter states that the harvest rate in this situation should be zero, the commenter nevertheless agrees that the FMP can allow these types of harvest. The commenter specifically cites the CPS FMP language that allows for live bait harvest when the estimated biomass drops below the CUTOFF. The commenter also recommends setting the ACL at 1,000 mt to accommodate live bait, tribal and incidental harvest of sardine. Additionally, although the commenter disagrees with setting the ACL at 7,000 mt

because it would allow a harvest rate above zero percent (which the commenter argues would violate the FMP), the commenter also requests that an ACL of 1,000 mt be implemented (implying that the commenter recognizes that the FMP allows a harvest rate above zero percent). Detailed information on the fishery and the stock assessment are found in the report “Assessment of the Pacific Sardine Resource in 2015 for U.S.A. Management in 2015-2016.”

Classification

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

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the establishment of these final harvest specifications for the 2015-2016 Pacific sardine fishing season. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2015, the contents of which were based on the best available new information on the population status of Pacific sardine that became available at that time. Making these final specifications effective on July 1 is necessary for the conservation and management of the Pacific sardine resource. The FMP requires a prohibition on directed fishing for Pacific sardine for the 2015-2016 fishing year because the sardine biomass has dropped below the CUTOFF. The purpose of the CUTOFF in the FMP—and disallowing directed fishing when the biomass drops below this level—is to protect the stock when biomass is low and provide a buffer of spawning stock that is protected from fishing and available for use in rebuilding the stock. A delay

in the effectiveness of this rule for a full 30 days would not allow the implementation of this prohibition prior to the expiration of the closure of the directed fishery on July 1, 2015, which was imposed under the 2014-2015 annual specifications.

Delaying the effective date of this rule beyond July 1 would be contrary to the public interest because reducing Pacific sardine biomass beyond the limits set out in this action could decrease the sustainability of the Pacific sardine, as well as causing future harvest limits to be even lower under the harvest control rule, thereby reducing future profits of the fishery.

These final specifications are exempt from review under Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this action. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA). No issues were raised by public comments in response to the IRFA prepared pursuant to the Regulatory Flexibility Act (RFA) for this action or on the economic impacts of the rule generally. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The results of the FRFA are stated below. Additionally for copies of the FRFA, please see the **FOR FURTHER INFORMATION CONTACT** section above.

The purpose of this action is to implement the 2015-2016 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast. Annual specifications published in the **Federal Register** establish the allowable harvest levels (i.e. OFL/ ACL/HG) for each Pacific sardine fishing year. This final rule adopts without changes the reference points that NMFS proposed in the rule published on May 21, 2015 (80 FR 29296), including an OFL and an ABC that takes into consideration uncertainty surrounding the

current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP.

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467). The rule increased the size standard for Finfish Fishing from \$19.0 to 20.5 million, Shellfish Fishing from \$5.0 to 5.5 million, and Other Marine Fishing from \$7.0 to 7.5 million. 78 FR 33656, 33660, 33666 (See Table 1). NMFS conducted its analysis for this action in light of the new size standards.

The small entities that would be affected by the action are the vessels that fish for Pacific sardine as part of the West Coast CPS small purse seine fleet. As stated above, the U.S. Small Business Administration now defines small businesses engaged in finfish fishing as those vessels with annual revenues of \$20.5 million or less. Under the former, lower 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. In 2014, there were approximately 81 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast; 58 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 2014 for the West Coast CPS finfish fleet was well below \$20.5 million; therefore, all of these vessels therefore are considered small businesses under the RFA. Because each affected vessel is a small business, this 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 would not create disproportionate costs between small and large vessels/businesses.

For the 2014-2015 fishing year, approximately 22,076 mt were available for harvest by the directed non-tribal commercial fishery (this includes 2,500 released from the tribal set aside). Approximately 19,440 mt (approximately 3,378 mt in California and 16,023 mt in Oregon and Washington) of this allocation was harvested during the 2014-2015 fishing year, for an estimated ex-vessel value of \$8.8 million.

The CPS FMP and its implementing regulations require NMFS to annually set an OFL, ABC, ACL and HG or ACT for the Pacific sardine fishery based on the specified harvest control rules in the FMP applied to the current stock biomass estimate for that year. The derived annual HG or ACT is the level typically used to manage the principle commercial sardine fishery and is the harvest level typically used by NMFS for profitability analysis each year. As stated above, the FMP dictates that when the estimated biomass drops below a certain level (150,000 mt) that there is no HG. Therefore, for purposes of profitability analysis, this action is implementing an HG of zero for the 2015-2016 Pacific sardine fishing year (July 1, 2014 through June 30, 2015). As there is no directed fishing for the 2015-2016 fishing year, the rule will decrease small entities' potential profitability compared to last season.

However, revenue derived from harvesting Pacific sardine is typically only one source of fishing revenue for a majority of the vessels that harvest Pacific sardine; as a result, the economic impact to the fleet from the action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most

CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular squid, making Pacific sardine only one component of a multi-species CPS fishery. For example, market squid have been readily available to the fishery in California over the last three years with total annual ex-vessel revenue averaging approximately \$66 million over that time, compared to an annual average ex-vessel from sardine of \$15 million over that same time period. Additionally, some sardine vessels that operate off of Oregon and Washington also fish for salmon in Alaska or squid in California during times of the year when sardine are not available. The purpose of the incidental allowances under this action are to ensure the vessels impacted by this sardine action can still access these other profitable fisheries while still limiting the harvest of sardine.

These vessels typically rely on multiple species for profitability because the total and regional abundance of sardine, like the other CPS stocks, is highly associated with ocean conditions and seasons of the year, and therefore are harvested at various times and areas throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore, as abundance levels and markets fluctuate, it has necessitated that the CPS fishery as a whole rely on a group of species for its annual revenues. Therefore, although there will a reduction in sardine revenue for the small entities affected by this action as compared to the previous season, it is difficult to predict exactly how this reduction will impact overall annual revenue for the fleet.

No significant alternatives to this action exist that would accomplish the stated objectives of the applicable statutes. The zero directed harvest level is required by the

FMP. NMFS implemented incidental catch allowances, which minimizes the economic impact of this rule on the affected small entities and ensures that the CPS fleet can continue fishing other CPS species where sardine incidental catch is possible.

There are no reporting, record-keeping, or other compliance requirements required by this final rule. Additionally, no other Federal rules duplicate, overlap or conflict with this final rule.

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

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

Dated: June 23, 2015

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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