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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130808697-6907-02]

RIN 0648-XC808

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Multi-Year Specifications for Monitored and Prohibited Harvest Species Stock Categories

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

ACTION: Final rule.

SUMMARY: NMFS is implementing annual catch limits (ACL) and, where necessary, other annual reference points (overfishing limits (OFL) and acceptable biological catches (ABC)) for certain stocks in the monitored and prohibited harvest species categories under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The ACLs are: jack mackerel, 31,000 metric tons (mt); northern subpopulation of northern anchovy, 9,750 mt; central subpopulation of northern anchovy, 25,000 mt; and krill, zero. Additionally, an OFL of 39,000 mt, an ABC of 9,750 mt and an annual catch target (ACT) of 1,500 mt are being implemented for the northern subpopulation of northern anchovy. This rule is intended to conserve and manage these stocks off the U.S. West Coast. If the ACL for any one of these stocks is reached, then fishing for that stock will be closed until it reopens at the start of the next fishing season.

DATES: The Annual Catch Limits established in this final rule are effective from January 1, 2017, through December 31, 2017..

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

SUPPLEMENTARY INFORMATION: The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* The six species managed under the CPS FMP are Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy (northern and central subpopulations), market squid and krill. The CPS FMP is implemented by regulations at 50 CFR part 660, subpart I.

Management unit stocks in the CPS FMP are classified under three management categories: actively managed, monitored and prohibited harvest species. Active stocks are characterized by periodic stock assessments, and/or periodic or annual adjustments of target harvest levels. Management of monitored stocks, by contrast, generally involves tracking landings against the relevant ACL (previously the ABCs) and qualitative comparison to available abundance data, without regular stock assessments or annual adjustments to target harvest levels. Species in both categories may be subject to management measures such as catch allocation, gear regulations, closed areas, closed seasons, or other forms of “active” management. For example, trip limits and a limited entry permit program are already in place for all CPS finfish. The monitored category includes jack mackerel, two sub-populations of the northern anchovy stock, and market

squid. Krill is the only stock in the prohibited harvest category. The CPS monitored stocks have not been managed to a hard quota like the active category stocks by NMFS (although the state of California manages market squid with an annual limit). Instead, landings have been monitored against harvest reference levels to determine if overfishing is occurring and to gauge the need for more active management such as requiring periodic stock assessments and regular adjustments to quotas. Catches of the three finfish stocks in the monitored category—northern anchovy (northern and central subpopulations) and jack mackerel—have remained well below their respective ABC (now ACL levels for jack mackerel and the central anchovy subpopulation) since implementation of the CPS FMP in 2000, with average catches over the last 10 years of approximately 7,300 mt (270 mt and 660 mt for the central and northern subpopulations of northern anchovy and jack mackerel, respectively).

In September 2011, NMFS approved Amendment 13 to the CPS FMP, which modified the framework process used to set and adjust fishery specifications and for setting ACLs and accountability measures (AMs). Amendment 13 was intended to ensure the FMP conforms with the 2007 amendments to the MSA and NMFS' revised MSA National Standard 1 guidelines at 50 CFR part 600. Specifically, Amendment 13 maintained the existing reference points and the primary harvest control rules for the monitored stocks (jack mackerel, northern anchovy and market squid), including the large buffer built into the ABC control rule for the finfish stocks, as well as the overfishing criteria for market squid, but modified these reference points and control rules to align with the revised advisory guidelines and to comply with the new statutory requirement to establish a process for setting ACLs and AMs. This included a default

management framework under which the OFL for each monitored stock was set equal to the maximum sustainable yield (MSY) value and ABC was reduced from the OFL by 75 percent as an uncertainty buffer (based on the existing ABC control rule where ABC equals 25 percent of OFL/MSY). This default framework is used unless there is determined to be a more appropriate OFL; as is the case for the northern subpopulation of northern anchovy, or stock-specific ABC control rule, like the proxy for the fishing rate that is expected to result in MSY (F_{MSY} proxy) for market squid of Egg Escapement ≥ 30 percent. ACLs are then set equal to the ABC or could be set lower than the ABC, along with ACTs, if deemed necessary. These control rules and harvest policies for monitored CPS stocks are simpler and more precautionary than those used for actively managed stocks in recognition of the low fishing effort and low landings for these stocks, as well as the lack of current estimates of stock biomass.

Through this action, NMFS is implementing the ACLs shown in Table 1 for jack mackerel, the two subpopulations of northern anchovy, and krill, as well as an OFL, ABC and ACT for the northern subpopulation of northern anchovy.

Table 1. ACLs for Monitored CPS Finfish, Including OFL, ABC, and ACT for the Northern Subpopulation of Northern Anchovy.

| Stock | OFL | ABC | ACL | ACT |
|--|---|---|--|----------|
| Jack mackerel | 126,000 mt | 31,000 mt | 31,000 mt | |
| Northern anchovy, (northern subpopulation) | 39,000 mt | 9,750 mt | 9,750 mt | 1,500 mt |
| Northern anchovy, (central subpopulation) | 100,000 mt | 25,000 mt | 25,000 mt | |
| Market squid | F _{MSY} proxy resulting in Egg Escapement \geq 30% | F _{MSY} proxy resulting in Egg Escapement \geq 30% | ACL not required (Less than 1-year lifecycle and no overfishing) | |
| Krill | Undefined | Undefined | 0 | |

The OFLs and ABCs listed in Table 1 for jack mackerel, the central subpopulation of northern anchovy, market squid and krill are included for information purposes only. The OFL and ABC specifications for those stocks are set in the FMP; NMFS is not establishing or revising them by this action.

These catch levels and reference points were recommended to NMFS by the Council and were based on recommendations from its advisory bodies according to the framework in the FMP established through Amendment 13, including OFL and ABC recommendations from its Science and Statistical Committee (SSC). The ACLs for these monitored stocks will be in place for the calendar year fishing season (January 1-December 31), and would remain in place for each subsequent calendar year until new scientific information becomes available to warrant changing them, or if landings

increase and consistently reach the ABC/ACL level, necessitating a change to active management under the FMP. These ACLs provide a means to monitor these stocks on an annual basis and prevent overfishing, as each year the total harvest of each stock will be assessed against their respective ACLs. Furthermore, if the harvest level of a fishery reaches an ACL, the directed fishery would be closed through the end of the year. These ACLs and other reference points remain in place until changed according to the FMP framework. While this rule announces the ACLs for calendar year 2017 only, in a future rulemaking NMFS intends to propose regulatory text codifying the ACLs in 50 CFR part 660 subpart I.

Market squid, because of their short life-cycle, fall under the statutory exception from the requirement to set ACLs and AMs. Section 303(a)(15) of the MSA states that the requirement for ACLs “shall not apply to a fishery for species that has a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species”. Market squid have a lifecycle of less than 1 year and have not been determined to be subject to overfishing; therefore, an ACL is not required and is not being implemented for market squid.

NMFS is not establishing or changing the specifications for krill by this rulemaking. Krill are a prohibited harvest species. The targeting, harvesting and transshipment of krill are all explicitly prohibited; therefore, the ACL for krill is zero. Because the harvest level is zero, setting an OFL or ABC for krill would serve no function and is not done in this action.

If an ACL is reached, or is expected to be reached for one of these fisheries, the directed fishery would be closed until the beginning of the next fishing season. The

NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure. Additionally, nearing or exceeding one of these ACLs would trigger a review of whether the fishery should be moved into the actively managed category of the FMP.

The proposed rule also referenced ACTs in the paragraph above that describes closing fisheries upon attainment of ACLs and reviewing whether the fishery should be moved to the actively managed category. That was an error and NMFS did not intend to propose closing the fishery upon attainment of the ACT, or describe the ACT as trigger point for any post-season AMs, as ACTs are not designed to trigger automatic closures or management category review; therefore, reference to ACTs has been removed from that paragraph. The purpose of the ACT for the northern subpopulation of northern anchovy is only to assist with in-season tracking of fishery landings to help ensure the ACL is not exceeded.

Further background on this action can be found in the proposed rule that solicited public comments for this action (80 FR 72676, November 20, 2015) and is not repeated here.

NMFS received 50 comment letters on the proposed rule. Twenty-six of these comment letters were of very similar form and substance, and were focused only on northern anchovy fishing in Monterey Bay, CA, and the proposed ACL for the central subpopulation of northern anchovy. Additionally, many of the other comment letters provided multiple comments. One comment letter from a non-governmental organization was also represented to NMFS as having been electronically signed by 27,151 individuals. Many of the comments provided, such as reconsideration of the existing

OFL and ABC values and control rules, as well as other aspects of CPS management such as spatial management or stock re-categorization, are beyond the scope of this rulemaking and will not be addressed here. However, NMFS found the comments valuable and will consider them for future management planning, and will ensure the Council is aware of the comments. Although changes to the OFL or ABC levels or revisiting these values or the default ABC control rule for monitored stocks was not being proposed in this rulemaking, for information purposes only, NMFS will respond to comments on some aspects of the existing OFL and ABC values, which were previously endorsed by the Council's SSC and NMFS as the best available science. No changes were made in response to the comments received. NMFS summarizes and responds to the comments below.

Comments and Responses

Comment 1: The proposed ACL for the central subpopulation of northern anchovy is too high and a more precautionary/lower quota should be set and additional precautionary measures be adopted, such as area closures. Various rationale were stated for this comment including concern that: the northern anchovy stock may be at a low abundance level, based partially on a recent scientific journal article (MacCall et al. 2016) describing a collapse of anchovy off California; that fishing may be resulting in potential impacts to northern anchovy predators in certain locations; and that the ACL is based on an outdated biomass estimate and should be revised based on more current information.

Response: Northern anchovy, like other small pelagic species, can undergo wide natural fluctuations in total abundance, even in the absence of fishing. This is caused by

the fact that northern anchovy recruitment (the number of young fish that enter a population in a given year) is highly variable and likely correlated with prevailing oceanographic conditions. The ACL for the central subpopulation of northern anchovy (CSNA) is currently set equal to its ABC value of 25,000 mt, which is 75,000 mt lower than its OFL. This substantial reduction in allowable catch from the OFL (the estimate of the level of catch above which overfishing is occurring), is primarily in recognition of the high uncertainty in the OFL value and the knowledge that the yearly abundance of this stock can fluctuate as described above. These catch levels are derived from the default OFL specification and ABC control rule framework for monitored stocks, which were used for CSNA, under which its OFL was set equal to its MSY value and its ABC level was reduced from this OFL by 75 percent to account for scientific uncertainty in the OFL and to prevent overfishing, among other considerations. This ABC value is also the upper bound for which the ACL can be set. As previously stated, the existing OFL and ABC values are not subject to this rulemaking. This management framework, including the non-discretionary reduction in allowable catch built into the harvest policy for CPS stocks in the monitored category, was previously recommended by the Council's SSC, adopted by the Council and approved by NMFS as best available science and determined to appropriately account for uncertainty and protect the stock from overfishing. Therefore, until new scientific information becomes available and approved for revising the ABC, it is not necessary to further reduce the ACL from the ABC for precautionary reasons regarding scientific uncertainty in the level of catch intended to prevent overfishing.

Although it is true that the last formal stock assessment for CSNA was completed in 1995, contrary to the perceptions expressed in some of the comments received, the ACL for CSNA is not based on this assessment or any single estimate of biomass. As described above, the ACL has been reduced down from the OFL, which has been set equal to its estimate of MSY—an estimate that is intended to reflect the largest average fishing mortality rate or yield that can be taken from a stock over the long term.

NMFS is aware of the scientific journal article referenced in the comments (MacCall et al. 2016) and the methods used by authors of this article were partially reviewed at the workshop described below. NMFS agrees there is evidence that CSNA did likely go through a decline in the recent past and abundance may still be at some relatively low state. Additionally, NMFS agrees with the finding in the paper that any decline is a result of “natural phenomena” and not fishing. NMFS notes, however, that the time period for which the article discusses a potential decline is from 2008 and 2011, and does not provide analysis for years past 2011. The estimates of biomass in the article also increased by an order of magnitude between 2003 and 2005, highlighting the variability mentioned above that this stock can exhibit. Preliminary data examined by NMFS from 2015 shows that anchovy recruitment along portions of the U.S. West Coast appears to be stronger than previous recruitment levels over the past 10 years. The extent of this potential decline and whether or not the stock is still at low levels is currently unclear. Much of the available compiled data on the central subpopulation of northern anchovy is either outdated or from surveys that are best at providing regional indices of relative availability and variability of the stock, but are not estimates of overall biomass, which are typically best derived from stock assessments. Thus, while the increased

recruitment signals seen in 2015 are positive, it would be premature to assess their overall contribution to the stock without conducting a formal assessment of the data. It is important to note that NMFS' decision to approve the ACL for the CSNA is not based on this recent survey data. Similarly, it would not be appropriate to reduce the ACL further below the ABC based on potentially outdated information or information that has not been formally reviewed.

Relating to the comment that the stock has not been assessed recently, and that NMFS should set the ACL based on updated information, NMFS points out that the Council, in coordination with NMFS Southwest Fisheries Science Center, recently held a workshop to examine available approaches to assessing short-lived, data poor species as well the current available data and how it may be used. A report from this workshop is now available and was reviewed by the Council at its September 2016 meeting. Additionally, NMFS is currently analyzing some of the data described above about CSNA and, based on the recommendations from this workshop, is scheduled to provide an assessment of the available information on the stock in the fall of 2016. Although the current management framework for anchovy is not set up to explicitly utilize the abundance information that may be produced, it will hopefully allow NMFS to have a better understanding of the current state of this stock.

With regards to the ACL being implemented for CSNA and the potential indirect impact to CSNA predators through the removal of a prey source, because the ACL is set equal to the ABC, and the ABC has already been substantially reduced to protect CSNA from overfishing, harvesting up to the ACL level should equate to very little risk to the CSNA as a result of fishing. Therefore, it is unlikely that removing up to the ACL will

reduce the total abundance of CSNA in a manner that would indirectly impact predator populations. Additionally, given that harvest rates of CSNA have generally been well below this ACL, with little expectation they will increase significantly in the short term, and the fact that CSNA is only one component of much larger forage base that most predators in the California Current Ecosystem (CCE) along the U.S. west coast depend on, harvest at the level of the ACL would likely not have a discernable impact as a removal of a prey source. Furthermore, there is no direct evidence that the current fishing levels are having direct competition effects on species that feed on CSNA. The likely reason for this is that most studies have shown that predators of CPS in the CCE have more opportunistic diets rather than depending on one specific prey item. For example, many documented predators of sardines showed no signs of population stress or decline during periods of very low sardine abundance in the CCE from the 1950s through the 1980s when their diets reflected an absence of this prey resource.

With regards to the comment that spatial fishing area closures may be necessary due to the potential for localized effects of prey limitations through localized depletion of CSNA by fishing, spatial closures such as those requested by some commenters are outside the scope of this action. The only part of this action that relates to CSNA is the ACL for the stock. However, NMFS appreciates some of the commenter's concerns regarding spatial effects. Although additional analysis is needed, recent research suggests that CSNA distribution, as well as other species, including other forage species, may have shifted both spatially and temporally in recent years due to severe environmental changes in the ocean, such as the "Warm Blob" and early El Niño effects. Although most predators of small pelagic species off the west coast are not dependent on

the availability of a single species (as described above) but rather on a suite of species whose total and regional abundances may also shift each year, these recent shifts in distribution over time and space may be limiting prey availability to some predators during certain times of the year. NMFS has been working to better understand diet linkages between forage fish species and higher order predators to enhance the ecosystem science used in our fisheries management.

Comment 2: Anchovy fishing within the waters of Monterey Bay, CA, is negatively impacting humpback whales and fishing should be restricted or prohibited in that area.

Response: NMFS appreciates the many comments received by both the general public and business owners concerned about Humpback whales, as they are an important trust resource of NMFS. NMFS found many of the comments and the firsthand information provided in them valuable and will consider it in future management actions; however, changes to CPS management such as area closures are outside the scope of this action. However, NMFS will respond in part to these comments. Humpback whales are globally distributed and are highly migratory; spending spring, summer, and fall feeding in temperate or high-latitude areas of the North Atlantic, North Pacific and Southern Ocean and migrating to the tropics in winter to breed and calve. Humpback whales are believed to be largely opportunistic foragers (Fleming et al., 2015), who target a wide variety of prey species (Whitteveen, 2006). They are known to feed on several types of small schooling fish and krill, and their prey consumption is likely an indicator of dominant prey types in the ecosystem. Recent NMFS status reports show humpbacks are increasing in abundance throughout much of their range with some populations no longer

warranting listing under the Endangered Species Act. Humpbacks off the central California coast are highly migratory, breeding in Costa Rica and Mexico and traveling to central California to forage. Coupling their diverse diet and migratory patterns, it is unlikely that the removal of a portion of one prey source in one localized geographic area would have a substantial negative impact on their population.

Comment 3: One commenter stated that the default framework for setting an OFL for the northern subpopulation of northern anchovy was not used, and although not clear from the comment, that presumably had the default framework been used, a different value would have been calculated. Additionally, the comment stated that NMFS did not explain how scientific uncertainty was accounted for in the established OFL.

Response: As it relates to the specific information used to determine the OFL for the northern subpopulation of northern anchovy, NMFS has determined the best available scientific information was used. This value was determined by the Council's SSC and was determined to represent the best available science and therefore recommended to NMFS by the Council. With regards to not using the default framework, as described in the preamble of the proposed rule, the default framework established through Amendment 13 set the OFLs for the central subpopulation of northern anchovy and jack mackerel equal to the existing MSY values in the FMP that were established through Amendment 8 to the FMP. An MSY value was undetermined for the northern subpopulation of northern anchovy at that time; therefore, the default framework could not be used for the northern subpopulation of northern anchovy. In 2015, Amendment 14 to the CPS FMP established an F_{MSY} of 0.3 as the MSY reference point for the northern subpopulation of northern anchovy. However, because the default framework in the FMP

for setting OFLs and ABCs is based on applying a percentage to numerical MSY/OFLs, it was necessary to determine a numerical OFL value through the specifications process.

In formulating its recommendation on an appropriate OFL estimate, the SSC reviewed all of the available information on the stock, which although limited, included information such as egg and larvae survey data, density and distribution data, stock productivity and vulnerability information and landings data, which was prepared and presented to them by the Council's CPSMT (Agenda Item I.2.c, CPSMT Report 1, November 2010 and references contained within). Furthermore, the SSC also noted that because the northern subpopulation of anchovy has been lightly fished, with inconsistent effort, that the time series of catch was an unreliable indicator of annual stock status for setting the OFL. In the preamble to the proposed rule, NMFS also explained how uncertainty is accounted for in estimating the OFL. The OFL of 39,000 mt was reduced by 75 percent to 9,750 mt (i.e., the ABC) explicitly to account for uncertainty in the OFL.

Comment 4: The comment stated that the control rules and management reference points for jack mackerel are "fraught with doubt" because the most recent stock assessment is outdated and that NMFS has not explained how scientific uncertainty is accounted for in the jack mackerel ACL. The commenter also recommends NMFS set the ACL for jack mackerel at 1,000 tons based on recent catch as it would better reflect the scientific guidance and best available science.

Response: Although the existing control rules are not subject to this rulemaking, NMFS points out that as is the case for the central subpopulation of northern anchovy (and explained in response to comment one), the existing OFL and ABC control rules for jack mackerel and the resulting values are not based on a single stock assessment. NMFS

recognizes that formal stock assessments have not been conducted in many years for either northern anchovy or jack mackerel. However, management of these stocks is not based on single point estimates of biomass; therefore, the fact that the most recent assessments are outdated is not relevant to the current quotas which are based on MSY principles. The OFL is based on the principle of MSY, which is a long-term average and intended to reflect a fishing mortality rate that does not jeopardize the capacity of a stock or stock complex to produce MSY. This OFL is then reduced by 75 percent by the ABC control rule to account for scientific uncertainty in the OFL, which was explained in the preamble to the proposed rule, as well as in this final rule and was also explained in the environmental assessment and other documents that accompanied Amendment 13 to the CPS FMP, which established the ABC control rule. Similar to the other monitored finfish stocks, because jack mackerel is lightly fished, with inconsistent effort over time, the existing time series of catch is likely an unreliable indicator of stock status, making it an unreliable source of information for estimating abundance or setting catch levels.

Comment 5: The California Department of Fish and Wildlife (CDFW) expressed support for the proposed action, but voiced concern over the potential increase in staff workload and monitoring costs that the proposed action may cause. Additionally, CDFW asked for clarification on whether establishing ACLs for the two subpopulations of northern anchovy might require improved monitoring of the two stocks in the ocean area where the populations can overlap.

Response: CDFW is an important co-manager in the management of CPS and NMFS appreciates its input. Based on current fishery operations and landings, NMFS does not expect that changes in monitoring practices will be necessary as a result of this

action because the ACLs being implemented are the same as the ABC levels that have been in place in the FMP since 1999. However, NMFS recognizes that these fisheries are dynamic and aspects of the fishery, such as ports of landing, could change, requiring additional work from CDFW. If this were to occur, NMFS would work closely with CDFW to help ensure the burden was minimized and work to find efficiencies in current monitoring procedures to lessen any additional costs. With regards to how catch is currently tracked and reported for the two subpopulations of northern anchovy, similarly this action does not require a change in current practices for differentiating landings between these two subpopulations at this time. However, as the comment points out, we are seeing oceanographic changes that could re-distribute the current core harvesting and landings areas (Los Angeles, CA, Monterey CA, and off near the mouth of the Columbia River in Oregon and Washington). If this were to occur, along with an increase in landings of both these subpopulations, status quo procedures would likely need to change in a manner described in the comment. If this need arises, NMFS will work closely with the CDFW to ensure this is done in an efficient manner.

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.

These final 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 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 and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, a certification was developed for this regulatory action using SBA's size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are marine commercial fishing businesses and were considered small under the SBA's size standards, and thus they all would continue to be considered small under the new standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action.

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

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

Dated: October 11, 2016.

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National Marine Fisheries Service.

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