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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 170320292-7580-02]

RIN 0648-XF311

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 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, Pacific sardine), in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2017, through June 30, 2018. 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 off the coasts of Washington, Oregon, and California, which is required because the estimated 2017 biomass of Pacific sardine has dropped below the biomass threshold specified 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 as incidental catch

in other fisheries; the incidental harvest of Pacific sardine would 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 the 2017-2018 Pacific sardine fishing year is 8,000 mt. This action is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective July 1, 2017, through June 30, 2018.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034, joshua.lindsay@noaa.gov.

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., overfishing 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 2017-2018 fishing year. This final rule adopts, without changes, the catch levels and restrictions that NMFS proposed in the rule published on May 30, 2017 (82 FR 24656), including the OFL and an acceptable biological catch (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 principal 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 2017-2018 management season, this is 86,586 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 is 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 a CUTOFF parameter, which has been set as a biomass level of 150,000 mt. This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Since this year's biomass estimate is below that value, the formula results in an HG of zero, and no Pacific sardine are available for the primary commercial directed fishery during the 2017-2018 fishing season.

At the April 2017 Pacific Fishery Management Council (Council) meeting, the Council's Science and Statistical Committee (SSC) approved, and the Council adopted, the "Assessment of the Pacific Sardine Resource in 2017 for U.S. Management in 2017-2018," which was prepared by NMFS Southwest Fisheries Science Center. The resulting

Pacific sardine biomass estimate of 86,586 mt is the best available science for setting harvest specifications. Based on recommendations from its SSC and other advisory bodies, the Council recommended, and NMFS is implementing, an OFL of 16,957 mt, an ABC of 15,497 mt, and a prohibition on Pacific sardine catch, unless it is harvested as part of either the live bait or tribal fishery or incidental to other fisheries for the 2017-2018 Pacific sardine fishing year. As additional management measures, the Council also recommended, and NMFS is implementing through this action, an ACL of 8,000 mt and that the incidental catch of Pacific sardine in other CPS fisheries be managed with the following automatic inseason actions to reduce the potential for both targeting and discard of Pacific sardine:

- An incidental per landing by weight allowance of 40 percent Pacific sardine in non-treaty CPS fisheries until a total of 2,000 mt of Pacific sardine are landed.
- When 2,000 mt are landed, the incidental per landing allowance will be reduced to 20 percent until a total of 5,000 mt of Pacific sardine have been landed.
- When 5,000 mt have been landed, the incidental per landing allowance will be reduced to 10 percent for the remainder of the 2017-2018 fishing year.

Pacific sardine is known to comingle with other CPS stocks; thus, these incidental allowances are established to allow for the continued prosecution of these other important CPS fisheries and reduce the potential discard of sardine. Additionally, an incidental per landing allowance is allowed in non-CPS fisheries: up to 2 mt may be landed per trip.

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 also 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, the Quinault Indian Nation requested a set-aside for tribal harvest of 800 mt (the same amount that was requested and approved for the 2016-2017). NMFS considered this request and, per this action, 800 mt of the 2017-2018 ACL are being set aside for tribal harvest.

Detailed information on the fishery and the stock assessment are found in the report “Assessment of the Pacific Sardine Resource in 2017 for U.S. Management in 2017-2018” (see **FOR FURTHER INFORMATION CONTACT**).

Comment and Response

On May 30, 2017, NMFS published a proposed rule for this action and solicited public comments (82 FR 24656), with a public comment period that ended on June 14, 2017. NMFS received one comment letter—explained below—during the comment period. After consideration of the public comment, no changes were made from the proposed rule. For further background information on this action please refer to the preamble of the proposed rule. NMFS summarizes and responds below to the comment letter below.

Comment: The commenter expressed support for the prohibition on directed commercial sardine fishing, but opposition to the proposed ACL level, and requested that NMFS instead set an ACL of no more than 2,000 mt to be divided among the live bait and tribal sectors, and to accommodate limited bycatch. The commenter expressed an opinion that the proposed ACL of 8,000 mt is contrary to the purpose of the CUTOFF

and that only minimal incidental catch (i.e., 2,000 mt) should be allowed to prevent further depletion and support sardine recovery.

In addition to commenting on the proposed rule, the bulk of the comment described various scientific papers and requested reconsideration of various aspects of sardine management including the Minimum Stock Size Threshold value as well as aspects of the harvest guideline control rule, including but not limited to the existing CUTOFF parameter and the DISTRIBUTION parameter. (These parameters, as well as other changes to the sardine harvest control rule and management are set in the CPS Plan and are beyond the scope of this rulemaking; therefore, they will not be addressed below.)

Response: NMFS disagrees that the ACL implemented in this rule is not in line with the FMP or that it fails to prevent overfishing or “is excessive and risks further depletion and delayed recovery”. The ACL should be viewed in the context of the OFL for the northern subpopulation of Pacific Sardine of 16,957 mt and an ABC of 15,497 mt that takes into account scientific uncertainty surrounding the OFL. These harvest reference limits were recommended by the Council based on the control rules in the FMP and were endorsed by the Council’s SSC. The commenter does not question that the OFL and ABC levels reflect the best available science. By definition, harvest up to the level of OFL or ABC would not constitute overfishing, and would not drive the stock towards an overfished state. This rule takes a conservative approach by limiting harvest levels by all sources to an ACL of 8,000 mt, which is well below both the OFL and ABC. All incidental catch, live bait harvest and tribal harvest of sardine will be managed to stay at or below the ACL, employing multiple safeguards to ensure the ACL will not be

exceeded. In short, the management measures implemented by this rule are more than adequate to prevent exceeding the OFL. Additionally, even in the absence of any fishing mortality, unfavorable environmental conditions could keep the sardine population at a low level. Small pelagic species, such as sardine, undergo wide natural fluctuations in abundance, even in the absence of fishing, from environmental conditions external to fishing; therefore, it is highly unlikely that reducing the ACL from 8,000 mt to 2000 mt would measurably affect long-term fluctuations in Pacific sardine abundance. Based on the recent stock assessments and NMFS research, low recent recruitments (i.e., the number of young fish maturing into the spawning population) is the primary cause of the current downward trend in overall population size. Recruitment is believed to be strongly related to environmental conditions, particularly, large-scale oceanographic phenomena.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS West Coast Regional Administrator, with the concurrence of the 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 laws.

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 2017-2018 Pacific sardine fishing season. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2017, the contents of which were based on the best available new scientific information on the population status of Pacific sardine that became available at that time. Making these final specifications effective on July 1,

2017, 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 2017-2018 fishing year because the sardine biomass is below the CUTOFF. The purpose of the CUTOFF in the FMP—and prohibiting 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, 2017, which was imposed under the 2016-2017 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 cause 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.

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.

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 26, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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