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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 170322302-8104-02]

RIN 0648-BG74

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 16 to the Coastal Pelagic Species Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS is publishing this final rule to implement Amendment 16 of the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This rule will allow for very small amounts of directed, non-live bait fishing (referred to as “minor directed fishing”) on CPS finfish to occur when a fishery is otherwise closed to directed fishing. Currently, when directed fishing is closed, a small sector of the CPS fishery that is not part of the primary commercial directed fishery has been precluded from landing even minor amounts because this activity does not fall under the existing exemptions for incidental harvest or for harvesting CPS to be sold as live bait. This rule allows this sector to continue directed fishing after other directed fisheries are closed, unless otherwise specified in a closure notice published by NMFS or if an applicable annual catch limit (ACL) is anticipated to be exceeded. To prevent exploitation of this rule to make

large aggregate harvests, “minor directed fishing” would not be allowed to exceed landings of 1 metric ton (mt) per day per vessel or person or one fishing trip per day by any vessel. The purpose of this rule is to provide greater flexibility to small fishing operations, while continuing to conserve the target CPS fish stocks.

DATES: Effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of the CPS FMP as amended through Amendment 16, with notations showing how Amendment 16 will change the FMP are available via the Federal eRulemaking Portal: [http://www.regulations.gov/#!docketDetail;D= NOAA-NMFS-2017-0135](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0135), or by contacting the Pacific Fisheries Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562-980-4034; or Kerry Griffin, Pacific Fishery Management Council, at 503-820-2280.

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 Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Species managed under the CPS FMP include Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy, market squid and krill. The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations at 50 CFR part 660, subpart I.

At its April 2017 meeting, the Pacific Fishery Management Council (Council) voted to submit Amendment 16 to NMFS for review and approval. On November 6, 2017, NMFS

published a Notice of Availability for Amendment 16 in the *Federal Register* (82 FR 51381), with a comment period ending January 5, 2018. On November 22, 2017, NMFS published a proposed rule to implement Amendment 16 in the *Federal Register* (82 FR 55551), with a comment period ending December 22, 2017. NMFS approved Amendment 16 on February 1, 2018.

This final rule implements Amendment 16 by allowing “minor directed fishing” for CPS finfish after a directed fishery has been closed. Current regulations allow live bait fishing and incidental landings to continue even after a directed fishery closure; this rule allows a small sector of the CPS fishery that is not part of the primary commercial directed fishery to harvest minor amounts of CPS even during a directed fishery closure. This minor directed fishery intentionally targets CPS and typically sells the catch as specialty dead bait to recreational and commercial fisheries, or as fresh fish to restaurants and the public. Total landings from this sector typically make up less than one percent of the total landings of any particular CPS stock. Currently, directed fishing closures apply even to minor directed fisheries.

This final rule will allow minor directed fishing to continue after a directed fishery is closed. Minor directed fishing will be allowed unless otherwise specified by NMFS when closing the directed fishery, or if an applicable ACL is anticipated to be exceeded. To prevent this rule from being exploited by those who would make large aggregate harvests, “minor directed fishing” is limited to landings that do not exceed 1 mt per day per vessel or person or one fishing trip per day by any vessel. The intent of distinguishing between a “vessel” and “person” in these regulations is that some minor directed fishermen target CPS from a platform other than a vessel (e.g., beach seine); in that case, a single fishing trip (e.g., a single haul of a

beach seine) may only land a few hundred pounds. Therefore, Amendment 16 allows a person not using a vessel to make multiple fishing trips in a single day as long as the person's total landings do not exceed 1 mt in a day. Vessels are limited to a single trip per day as their typical landings are much greater per trip. For vessels, the 1-mt daily landing restriction functions like a trip limit.

This rule also updates the definition of "Regional Administrator" to reflect the absorption of the former NMFS Southwest Region into the West Coast Region, and to explicitly reference the fact that directed "live bait" fisheries may continue to operate after most other directed fishing is prohibited (which is an original provision of the FMP, not a change made by Amendment 16).

A total of 10 public comments relevant to this action were received on Amendment 16 and the proposed rule. Commenters consisted of West Coast fishing industry representatives, seafood companies, fishermen, and charter boat owners/operators. All comments expressed support for Amendment 16, primarily noting that the ability to harvest small amounts of sardine will provide new business opportunities to small-scale fishermen, including sale to specialty markets, restaurants, and as dead bait. No changes were made from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP as revised by Amendment 16, other provisions of the MSA, and other applicable law.

This final 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 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.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 8, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended 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.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.502, revise the definition of “*Regional Administrator*” to read as follows:

§ 660.502 Definitions.

* * * * *

Regional Administrator means the Regional Administrator, West Coast Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, or a designee.

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3. In § 660.505, revise paragraph (i) to read as follows:

§ 660.505 Prohibitions.

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(i) When a directed fishery has been closed, take and retain, possess, or land more than the incidental trip limit announced in the *FEDERAL REGISTER*, or a directed trip limit as described in § 660.511(d).

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4. In § 660.511, revise paragraph (d) to read as follows:

§ 660.511 Catch restrictions.

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(d) After the directed fishery for a CPS is closed under § 660.509, no person may take and retain, possess or land more of that species than the incidental trip limit set by the Regional Administrator, except the following directed fisheries may continue until the effective date of a *FEDERAL REGISTER* document published by the Regional Administrator that the annual catch limit has been reached or is projected to be reached:

(1) Fishing exclusively for live bait;

(2) Minor directed fishing for finfish that does not exceed 1 mt per day per vessel or person, and which is limited to 1 fishing trip per day by any vessel.

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