



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 171031999-8160-01]**

**RIN 0648-BH40**

**Fisheries Off West Coast States; West Coast Salmon Fisheries; Management**

**Measures to Limit Fishery Impacts on Sacramento River Winter Chinook Salmon**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to approve new fishery management measures to limit incidental catch of endangered Sacramento River winter Chinook salmon (SRWC) in fisheries managed under the Pacific Fishery Management Council's (Council) Pacific Salmon Fishery Management Plan (FMP). These new management measures replace existing measures, which have been in place since 2012, with updated salmon abundance modeling methods that utilize the best available science and address concerns that the existing measures were overly conservative.

**DATES:** Comments on this proposed rule must be received on or before [*insert 15 days after publication in FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2017-0139, by any one 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-2017-0139*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115-0070.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS.

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. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Peggy Mundy at 206-526-4323.

**SUPPLEMENTARY INFORMATION:**

**Background**

Ocean salmon fisheries off the coasts of Washington, Oregon, and California are managed by the Council according to the FMP. The FMP includes harvest controls that are used to manage salmon stocks sustainably. The FMP also requires that the Council manage fisheries consistent with “consultation standards” for stocks listed as endangered

or threatened under the Endangered Species Act (ESA) for which NMFS has issued biological opinions. NMFS has issued biological opinions for every ESA listed salmon species impacted by the fisheries governed by the FMP, and reminds the Council of requirements to maintain consistency with those opinions (“consultation standards”) in its annual guidance letter to the Council regarding development of the annual ocean salmon management measures.

SRWC has been listed as endangered under the ESA since 1990 (55 FR 46515, November 5, 1990). These fish are impacted by ocean salmon fisheries south of Point Arena, California; thus NMFS has consulted on these impacts under section 7 of the ESA. Since the original consultation, NMFS has periodically reinitiated consultation on the impacts of ocean salmon fisheries on SRWC, most recently in 2010. In its 2010 biological opinion, NMFS determined that ocean salmon fisheries were likely to jeopardize the continued existence of SRWC, but not modify or destroy critical habitat. To address this jeopardy conclusion, NMFS issued and implemented an interim reasonable and prudent alternative (RPA) for fisheries in 2010 and 2011, and required development of an abundance-based framework for limiting impacts on SRWC during this interim period. In 2012, NMFS issued and implemented the current RPA to limit impacts of fisheries on SRWC. The RPA consists of two parts: part one includes fishing season and size limit restrictions (see Table 1, below); part two specifies an abundance-based harvest control rule. The harvest control rule uses a forecast abundance that is based on the 3-year geometric mean of prior spawning escapement. At 3-year geometric mean abundance greater than 5,000, no impact rate cap is imposed. At 3-year geometric mean abundance between 5,000 and 4,000, the impact rate cap is 20 percent. At 3-year

geometric mean abundance between 4,000 and 500, the impact rate cap declines linearly from 20 percent at 4,000 abundance to 10 percent at 500 abundance. At 3-year geometric mean abundance below 500, the impact rate cap is zero percent.

**Table 1. Fishing Season and Size Restrictions for Ocean Chinook Salmon Fisheries, South of Point Arena, California.**

Fishery	Location	Shall open no earlier than	Shall close no later than	Minimum size limit (total length <sup>1</sup> ) shall be
Recreational	Between Point Arena and Pigeon Point	1 <sup>st</sup> Saturday in April	2 <sup>nd</sup> Sunday in November	20 inches
	Between Pigeon Point and the U.S./Mexico border	1 <sup>st</sup> Saturday in April	1 <sup>st</sup> Sunday in October	
Commercial	Between Point Arena and the U.S./Mexico border†	May 1	September 30†	26 inches
	†Exception: Between Point Reyes and Point San Pedro, there may be an October commercial fishery conducted Monday through Friday, but shall end no later than October 15.			

<sup>1</sup>Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail (50 CFR 660.402).

Since implementation of the RPA, two issues with the control rule have arisen from Council discussion. First, the control rule does not allow for any fishery impacts when the most recent 3-year geometric mean of spawning escapement for SRWC falls below 500. This would result in closure of all salmon fisheries south of Point Arena, CA, which the Council felt was unnecessarily restrictive. Second, because the control rule is based on spawning escapement, it is not responsive to more forward looking indicators of

stock productivity, *e.g.* poor juvenile salmon survival during the prolonged California drought. The Council did not raise any issues with respect to the fishing season and size limit restrictions that formed the first part of the 2012 RPA; and continues to consider this part of the applicable ESA “consultation standard.” Thus NMFS includes maintaining those restrictions as part of this action.

In 2015, the Council created an ad hoc SRWC Workgroup to develop a new harvest control rule that would address the two issues mentioned above; the SRWC workgroup comprised staff from NMFS, California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service. The SRWC Workgroup’s meetings to develop and analyze alternative harvest control rules were open to the public. Additionally, the SRWC Workgroup presented their reports to the Council at regularly scheduled Council meetings in 2016 and 2017. These workgroup and Council meetings were noticed in the *Federal Register*, public input was invited, and the meetings were open to the public through either in-person attendance, webinar, conference call, or live streaming on the internet. At the Council’s September 2017 meeting, the Council selected four of the alternatives developed by the Workgroup for final analysis. The Council then selected a final preferred alternative at their November 2017 meeting. Documents considered by the Council are available on the Council website:

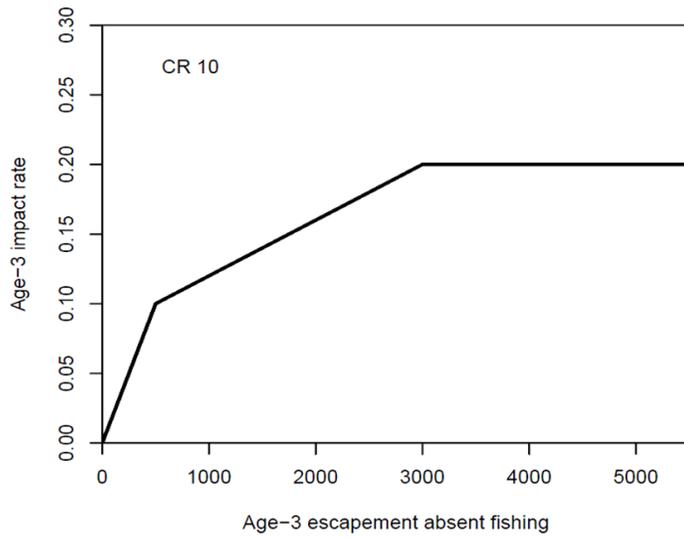
(<https://www.pcouncil.org/resources/archives/briefing-books/november-2017-briefing-book/#salNov2017>). The Council transmitted their recommendation to NMFS on December 6, 2017.

### **Council’s Recommended Harvest Control Rule**

The new harvest control rule recommended by the Council uses juvenile survival (*i.e.*, fry to the end of age-2 in the ocean) to model a forecast of age-3 escapement absent fishing ( $E_3^0$ ). The model used is a modification of Winship *et al.* (2014) and is detailed in O'Farrell *et al.* (2016). The recommended control rule will provide a forward-looking forecast rather than the current hind-cast methodology.

The new harvest control rule sets the maximum allowable age-three impact rate based on the forecast age-three escapement in the absence of fisheries ( $E_3^0$ ). At  $E_3^0$  above 3,000, the allowable impact rate is fixed at 20 percent. At  $E_3^0$  between 3,000 and 500, the allowable impact rate declines linearly from 20 percent to 10 percent. At  $E_3^0$  between 500 and 0, the allowable impact rate declines linearly from 10 percent to 0 percent, thus providing fishing opportunity at all levels of SRWC abundance. See Figure 1.

**Figure 1. The Proposed Harvest Control Rule (CR10), Recommended by the Pacific Fishery Management Council, for Management of Ocean Salmon Fisheries that Affect Sacramento River Winter Chinook Salmon (SRWC Workgroup 2017).**



The SRWC Workgroup compared the alternative harvest control rules with respect to extinction risk to SRWC and how the alternatives would affect fishing opportunity. With respect to extinction risk, the workgroup found little contrast among the alternatives in their simulation analyses. With respect to fishing opportunity, the workgroup did find differences among the alternatives, and concluded that the Council's recommended alternative was intermediate in constraining the fishery compared to the other alternatives under consideration. Fisheries south of Point Arena, where SRWC are contacted, impact several salmon stocks. In the six years that the current harvest control rule has been in place, these fisheries have been constrained by impacts to SRWC as well as California Coastal Chinook (ESA-listed as threatened), Sacramento River fall Chinook (not ESA-listed), and Klamath River fall Chinook (not ESA-listed). However, in recent years, the only closures of the fishery south of Point Arena were due to Sacramento River fall Chinook (2008, 2009). Under the new control rule for SRWC, fishing impacts would be allowed at all non-zero forecast abundance of SRWC; therefore, the new control rule would not, in itself, result in a fishery closure.

The harvest control rule recommended by the Council would address the issues raised by the current harvest control rule. The new harvest control rule would allow for fishing opportunity in the affected area at all levels of abundance of SRWC, and uses juvenile productivity and survival to develop a responsive, forward-looking abundance forecast. The new harvest control rule is expected to accomplish these goals without appreciably increasing the extinction risk to SRWC over the current harvest control rule. The new harvest control rule was developed in a public process with opportunity for the States, Tribes, and the public to provide input. The Council recommended and NMFS

proposes to implement this new harvest control rule, together with the size and fishing season limits described above, beginning with the 2018 ocean salmon fishing season that will begin May 1, 2018.

### **References Cited**

O'Farrell, M., N. Hendrix, and M. Mohr. 2016. An evaluation of preseason abundance forecasts for Sacramento River winter Chinook salmon. Pacific Fishery Management Council Briefing Book for November 2016, 35p.

SRWC Workgroup. 2017. Further evaluation of Sacramento River winter Chinook control rules, dated October 18, 2017. Pacific Fishery Management Council Briefing Book for November 2017, 9 p.

Winship, A. J., M. R. O'Farrell, and M. S. Mohr. 2014. Fishery and hatchery effects on an endangered salmon population with low productivity. Transactions of the American Fisheries Society 143, 957–971

### **Classification**

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Salmon Fishery Management Plan, the MSA, and other applicable law, subject to further consideration after public comment.

The West Coast Regional Administrator has determined that the actions of this proposed rule will be analyzed in an environmental assessment under the National Environmental Policy Act.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

As required by section 603 of the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was prepared. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS.

Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (80 FR 81194, December 29, 2015). This standard is only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA.

NMFS' small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing is \$11 million in annual gross receipts. This standard applies to all businesses classified under North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses. (50 CFR 200.2; 13 CFR 121.201).

The proposed rule would specify the annual amount of fishery impact that will be allowed on ESA-listed SRWC and, thereby, affect the fishing opportunity available in the area south of Point Arena, CA. This would affect commercial and recreational fisheries. Using the high from the last 3 years, 153 commercial trollers are likely to be impacted by this rule, all of whom would be considered small businesses. The 16-25 commercial

vessels who have greater than 75 percent of their annual revenue from Chinook salmon south of Point Arena would be most impacted by this rule. Charter license holders operating south of Point Arena will be directly regulated under the updated harvest control rule. The number of license holders has fluctuated with harvest levels, varying from 70 in 2010 to 93 in 2014. Of these, 20-50 vessels could be considered “active”, landing more than 100 salmon in the year. The proposed rule would impact about 90 charter boat entities, about 50 of whom were “active” in peak years (2013-2014). In summary, this rule will directly impact about 250 entities made up of commercial and charter vessels, with about 75 of these highly active in the fishery and likely to experience the largest impacts, in proportion to their total participation.

The proposed action includes a de minimis provision and would allow impacts at all non-zero forecast abundance. Because of this feature, this proposed action is unlikely to result in fishery closure in the analysis area. The alternative would also provide increased certainty to operators over the status quo, in which the Council has elected lower impact rates than specified by the current control rule. Therefore, this action would be expected to have a positive impact of low magnitude on economic benefits to fishery-dependent communities that would vary year-to-year, but not likely to be significant.

Commercial trollers and charter operators face a variety of constraining stocks. In no year has SWRC been the only constraining stock. Entities are constrained by both ESA-listed and non-listed species; the years that had the most constrained fisheries in the last decade were 2008 and 2009, when fisheries in the analysis area were closed to limit impacts to Sacramento River fall Chinook, not an ESA-listed species, rather than the ESA-listed species SRWC. Thus, while entities will likely continue to face constraints

relative to fishing opportunities, because the proposed action is expected to provide low-positive benefits to both commercial and charter operators, NMFS does not expect the rule to impose significant negative economic effects.

This proposed rule would not establish any new reporting or recordkeeping requirements. This proposed rule does not include a collection of information. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

This action is the subject of a consultation under section 7 of the ESA. NMFS is currently preparing a biological opinion on the effects of this action on SRWC, which will be completed prior to publishing a final rule. This action is not expected to have adverse effects on any other species listed under the Endangered Species Act (ESA) or designated critical habitat. This action implements a new harvest control rule to limit impacts on SRWC from the ocean salmon fishery and would be used in the setting of annual management measures for West Coast salmon fisheries. NMFS has current ESA biological opinions that cover fishing under annual regulations adopted under the FMP on all listed salmon species. NMFS reiterates what is required for consistency with these opinions for all ESA-listed salmon and steelhead species in their annual guidance letter to the Council. Some of NMFS past biological opinions have found no jeopardy, and others have found jeopardy, but provided reasonable and prudent alternatives to avoid jeopardy. The annual management measures are designed to be consistent with the biological opinions that found no jeopardy, and with the reasonable and prudent alternatives in the jeopardy biological opinions.

This proposed rule was developed after meaningful collaboration with West Coast tribes, through the Council process. Under the MSA at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the Council's jurisdiction. No tribes with Federally recognized fishing rights are expected to be affected by this rule.

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

Dated: February 15, 2018.

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National Marine Fisheries Service.

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