



**BILLING CODE: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 190409351-9452-01]**

**RIN 0648-XG972**

**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:** Proposed rule.

**SUMMARY:** NMFS proposes to implement annual catch limits and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2019, through June 30, 2020. The proposed action would prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest would be allowed only in the live bait fishery, minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The incidental harvest of Pacific sardine would be limited to 20 percent by weight of all fish per trip when caught with other stocks managed under the Coastal Pelagic Species Fishery Management Plan or up to 2 metric tons when caught with non-Coastal Pelagic Species stocks. The proposed annual catch limit for the 2019-2020 Pacific sardine fishing year is 4,514 metric tons. This

proposed rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

**DATES:** Comments must be received by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2019-0034, by any 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-2018-0034](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0034), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Lynn Massey, Sustainable Fisheries Division, NMFS West Coast Region, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802-4250; Attn: Lynn Massey.

*Instructions:* 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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

A copy of the report “Assessment of Pacific Sardine Resource in 2019 for U.S.A. Management in 2019-2020” is available at <https://www.pcouncil.org/wp->

*content/uploads/2019/04/E3\_Supp\_Att1\_REVISED\_Sardine\_Assessment\_Update\_Review\_Draft-full-version-electronic-only-DO-NOT-PRINT.pdf*, and may be obtained from the West Coast Region (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Lynn Massey, West Coast Region, NMFS, (562) 436-2462, *lynn.massey@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set 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 harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (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 (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*

During public meetings each year, the NMFS Southwest Fisheries Science Center (SWFSC) presents the estimated biomass for Pacific sardine to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC). The Team, Subpanel and SSC review the biomass and the status of the fishery, and recommend applicable catch limits and additional management measure. Following Council review and public comment, the Council adopts a biomass estimate and recommends catch limits and any in-season accountability measures to NMFS. NMFS

publishes annual specifications in the **Federal Register** to establish these catch limits and management measures for each Pacific sardine fishing year. This rule proposes the Council's recommended catch limits for the 2019-2020 fishing year, as well as management measures to ensure that harvest does not exceed those limits, and adoption of an OFL and ABC that take into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine.

### *Recommended Catch Limits*

According to the FMP, the catch limit 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 2019-2020 management season, this is 27,547 metric tons (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 catch limit, 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 directed commercial fishery during the 2019-2020 fishing season. This would be the fifth consecutive year that the primary directed commercial fishery is closed.

At the April 2019 Council meeting, the Council's SSC approved, and the Council adopted, the SWFSC's "Assessment of the Pacific Sardine Resource in 2019 for U.S. Management in 2019-2020", available here: [https://www.pcouncil.org/wp-content/uploads/2019/04/E3\\_Supp\\_Att1\\_REVISED\\_Sardine\\_Assessment\\_Update\\_Review\\_Draft-full-version-electronic-only-DO-NOT-PRINT.pdf](https://www.pcouncil.org/wp-content/uploads/2019/04/E3_Supp_Att1_REVISED_Sardine_Assessment_Update_Review_Draft-full-version-electronic-only-DO-NOT-PRINT.pdf). The resulting Pacific sardine biomass estimate of 27,547 mt was adopted as the best scientific information available for setting harvest specifications. Based on recommendations from its SSC and other advisory bodies, as well as the OFL and ABC control rules in the CPS FMP, the Council recommended, and NMFS is proposing, an OFL of 5,816 mt, an ABC of 4,514 mt, an annual catch limit (ACL) of 4,514 mt, and a prohibition on commercial Pacific sardine catch, unless it is harvested as part of the live bait, tribal, or minor directed fisheries, or as incidental catch in other fisheries. The Council also recommended an annual catch target (ACT) of 4,000 mt for the 2019-2020 fishing year. In conjunction with setting an ACT, the Council also recommended inseason and other management measures to ensure harvest opportunity under the ACT throughout the year (see below).

#### *Recommended management measures*

The proposed annual harvest limits and management measures were developed in the context of information, which has been communicated to the Council, that the sardine biomass has also declined below its minimum stock size threshold (MSST) of 50,000 mt

defined in the CPS FMP. NMFS is in the process of reviewing the 2019 stock assessment (see **ADDRESSES**), and depending on the outcome of that review, might officially change the status of the Pacific sardine stock to overfished. Because the Council accepted that the biomass is below the 50,000 mt MSST, the FMP requires that incidental catch of sardine in other CPS fisheries be limited to an incidental allowance of no more than 20 percent by weight (instead of a maximum of 40 percent allowed when below the CUTOFF but above the MSST) and that incidental catch of live bait be limited to no more than 15 percent by weight.

The Secretary is currently reviewing Amendment 17 to the CPS FMP, as recommended by the Council. Amendment 17, if approved, would remove the FMP's pre-specified 15 percent incidental landing limit that becomes effective for live bait if a stock managed under the CPS FMP becomes overfished. Therefore, Amendment 17 would provide flexibility to allow directed live bait fishing for Pacific sardine when Pacific sardine is overfished, provided that any such fishing is consistent with regulations and any rebuilding plan for the stock. NMFS published a Notice of Availability on Amendment 17 in the **Federal Register** on March 22, 2019 (84 FR 10768), and is soliciting public comments through May 21, 2019. Because Amendment 17 is still under Secretarial review, NMFS advised the Council to recommend management measures for the 2019-2020 fishing year that match the status quo FMP provisions (*i.e.*, no directed live bait for overfished stocks and 15 percent maximum incidental limit on live bait for overfished stocks) and if desired, state its intent to use the provision of Amendment 17 (*i.e.*, allow directed live bait for overfished stocks with no predetermined limits) if it is approved. Therefore, the Council's recommended management measure on live bait (see

#1 below) differs depending on NMFS' forthcoming determination on Amendment 17. The statutory deadline for NMFS to make a decision to approve, disapprove, or partially approve Amendment 17 is June 20, 2019, however NMFS expects to make the decision prior to issuing the final rule for the 2019-2020 Pacific sardine harvest specifications.

The following are the proposed management measures and inseason accountability measures for the Pacific sardine 2019-2020 fishing year:

1) If the Secretary of Commerce approves Amendment 17, then directed live bait fishing for sardine will be permitted and will be subject to accountability measures specified under number 2 below. If Amendment 17 is not approved, then live bait landings will be limited to the 15-percent maximum allowed by the current CPS FMP and will still be subject to accountability measures specified under number 2 below;

2) If landings in the live bait fishery reach 2,500 mt, NMFS will institute a 1-mt per trip limit of sardine to the live bait fishery;

3) A 20-percent incidental per landing by weight catch allowance will be applied to other CPS primary directed commercial fisheries (*e.g.*, Pacific mackerel);

4) A 2-mt per trip incidental catch allowance will be applied to non-CPS fisheries; and

5) If the ACT of 4,000 mt is attained, NMFS will institute a 1-mt per trip limit of sardine to live bait, and a 1-mt per trip limit of incidentally-caught sardine when caught with other CPS.

All sources of catch including any exempted fishing permit (EFP) set-asides, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS

and non-CPS fisheries, and minor directed fishing, will be accounted for against the ACT.

The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** to announce when catch reaches the incidental limits as well as any changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS would make announcements through other means available, including emails to fishermen, processors, and state fishery management agencies.

In each of the previous 7 fishing years, the Quinault Indian Nation requested, and NMFS approved, a set-aside for the exclusive right to harvest Pacific sardine in the Quinault Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to the 1856 Treaty of Olympia (Treaty with the Quinault). For the 2019-2020 fishing year, the Quinault Indian Nation has not requested a tribal set-aside and therefore none is proposed.

At the April 2019 meeting, the Council also voted in support of two EFP proposals requesting an exemption from the prohibition to directly harvest Pacific sardine. This action accounts for NMFS approval of up to 405 mt of the ACL to be harvested under EFPs.

This action must be effective by July 1, 2019. Otherwise the fishery will open without any catch limits or restrictions in place. In order to ensure that these harvest specifications are effective in time for the start of the July 1 fishing year, NMFS will solicit public comments on this proposed rule for 15 days rather than the standard 30 days. A 15-day comment period has been the practice since the 2015-2016 fishing year

when the primary directed fishery for sardine was first closed. NMFS received the recommendations from the Council that form the basis for this rule only last month. The subject of this proposed rule—the establishment of the reference points—is considered a routine action, because they are calculated annually based on the framework control rules in the FMP. Additionally, the Council provides an opportunity for public comment each year at its April meeting before adopting the recommended harvest specifications and management measures for the proceeding fishing year.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary

industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The purpose of this proposed rule is to conserve the Pacific sardine stock by preventing overfishing, while still allowing harvest opportunity among differing fishery sectors. This will be accomplished by implementing the 2019-2020 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast. The small entities that would be affected by the proposed action are the vessels that would be expected to harvest Pacific sardine as part of the West Coast CPS small purse seine fleet if the fishery were open, as well as fishermen targeting other CPS, sardine for live bait, or sardine in the minor directed fishery. In 2014, the last year that a directed fishery for Pacific sardine was allowed, 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 those vessels was well below the threshold level of \$11 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule is considered to equally affect all of these small entities in the same manner. Therefore, this rule would not create disproportionate costs between small and large vessels/businesses.

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 is the level typically used to manage the principal commercial sardine fishery and is the harvest level NMFS typically uses for profitability analysis each year. As stated above, the CPS FMP dictates that when the estimated biomass drops below a certain level (150,000 mt) there is no HG. Therefore, for the purposes of profitability analysis, this action is essentially proposing an HG of zero for the 2019-2020 Pacific sardine fishing season (July 1, 2019, through June 30, 2020). The estimated biomass used for management during the preceding fishing year (2018-2019) was also below 150,000 mt. Therefore, NMFS did not implement an HG for the 2018-2019 fishing year, thereby prohibiting the primary commercial directed Pacific sardine fishery. Since there is again no directed fishing for the 2019-2020 fishing year, this proposed rule will not change the potential profitability compared to the previous fishing year. Additionally, while the proposed 2019-2020 ACL is lower compared to previous years, it is still expected to account for the various fishery sector needs (*i.e.*, live bait, incidental catch in other CPS fisheries, and minor directed fisheries).

The revenue derived from harvesting Pacific sardine is typically only one of the sources of fishing revenue for the commercial vessels that participate in this fishery. As a result, the economic impact to the fleet from the proposed 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. 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 catch limits proposed in this action are to ensure the vessels impacted by a prohibition on directly harvesting Pacific sardine can still access these other profitable fisheries while still minimizing Pacific sardine harvest.

CPS vessels typically rely on multiple species for profitability because abundance of Pacific sardine, like the other CPS stocks, is highly associated with ocean conditions and seasonality. Variability in ocean conditions and season results in variability in the timing and location of CPS harvest 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, the CPS fishery as a whole has relied on a group of species for its annual revenues.

Therefore the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

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: May 22, 2019.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2019-11040 Filed: 5/24/2019 8:45 am; Publication Date: 5/28/2019]