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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160411325-6325-01]

RIN 0648-XE568

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 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, simply Pacific sardine), in the U.S. Exclusive Economic Zone (EEZ) off the Pacific coast for the fishing season of July 1, 2016, through June 30, 2017. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed action would prohibit directed non-tribal Pacific sardine commercial fishing for Pacific sardine off the coasts of Washington, Oregon and California, which is required because the estimated 2016 biomass of Pacific sardine has dropped below the biomass threshold specified in the HG control rule. Under the proposed 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 proposed annual catch limit (ACL) for the 2016-2017 Pacific sardine fishing year is 8,000 mt. 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-2016-0052, 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-2016-0052 , click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; Attn: Joshua Lindsay.
- *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 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).

Copies of the report “Assessment of Pacific Sardine Resource in 2016 for U.S.A. Management in 2016-2017” may be obtained from the West Coast Region (see **ADDRESSES**).

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

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific sardine is presented 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), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), available biological catch (ABC), and HG, along with recommendations and comments from the Team, Subpanel, and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS. NMFS manages the Pacific sardine fishery in the U.S. EEZ off the Pacific coast (California, Oregon, and Washington) in accordance with the FMP. Annual specifications published in the **Federal Register** establish the allowable harvest levels (i.e. OFL/ACL/HG) for each Pacific sardine fishing year. The purpose of this proposed rule is to implement these annual catch reference points for 2016-2017, including the OFL and an ABC that takes into consideration uncertainty surrounding the

current estimate of biomass for Pacific sardine. 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 2016-2017 management season this is 106,137 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.

Therefore, because this year's biomass estimate is below that value, the formula results in

an HG of zero and therefore no Pacific sardine are available for the commercial directed fishery during the 2016-2017 fishing season.

At the April 2016 Council meeting, the Council's SSC approved, and the Council adopted, the "Assessment of the Pacific Sardine Resource in 2016 for U.S.A. Management in 2016-2017", completed by NMFS Southwest Fisheries Science Center and the resulting Pacific sardine biomass estimate of 106,137 mt as the best available science for setting harvest specifications. Based on recommendations from its SSC and other advisory bodies, the Council recommended, and NMFS is proposing, an OFL of 23,085 mt, an ABC of 19,236 mt, and a prohibition on sardine catch unless it is harvested as part of either the live bait or tribal fishery or incidental to other fisheries for the 2016-2017 Pacific sardine fishing year. As additional management measures, the Council also recommended, and NMFS is proposing, 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 would be reduced to 30 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 would be reduced to 10 percent for the remainder of the 2016-2017 fishing year.

Because Pacific sardine is known to comingle with other CPS stocks, these incidental allowances are proposed to allow for the continued prosecution of these other important

CPS fisheries and reduce the potential discard of sardine. Additionally, a 2 mt incidental per landing allowance in non-CPS fisheries is proposed.

The NMFS West Coast Regional Administrator would 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.

In the previous 4 fishing years the Quinault Indian Nation requested, and NMFS approved, set-asides 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 2016-2017 fishing season the Quinault Indian Nation has requested that NMFS provide a set-aside of 800 mt (1,000 mt less than was requested and approved in 2015-2016) and NMFS is considering the request.

Detailed information on the fishery and the stock assessment are found in the report “Assessment of the Pacific Sardine Resource in 2016 for U.S.A. Management in 2016-2017” (see **ADDRESSES**).

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 proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens

Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866 because they contain no implementing regulations.

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:

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467). The rule increased the size standard for Finfish Fishing from \$19.0 to 20.5 million, Shellfish Fishing from \$5.0 to 5.5 million, and Other Marine Fishing from \$7.0 to 7.5 million. 78 FR 33656, 33660, 33666 (See Table 1). NMFS conducted an economic analysis for this action in light of the new size standards.

The purpose of this proposed rule is to conserve the Pacific sardine stock by preventing overfishing, so that directed fishing may occur in future years. This will be accomplished by implementing the 2016-2017 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 fish for Pacific sardine as part of the West Coast CPS small purse seine fleet. As stated above, the U.S. Small Business Administration now defines small businesses engaged in finfish fishing as those vessels with annual revenues of \$20.5 million or less. Under the former, lower standards, all entities subject to this action in previous years were considered small entities, and under the new standards they

continue to be considered small. In 2015, 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 total ex-vessel revenue from the harvest of CPS finfish in 2015 was approximately \$4.7 million, making the average annual per vessel revenue in 2015 for the West Coast CPS finfish fleet well below \$20.5 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities and will impact a substantial number 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 typically used by NMFS for profitability analysis each year. As stated above, the 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 2016-2017 Pacific sardine fishing season (July 1, 2016 through June 30, 2017). The estimated biomass used for management during the preceding fishing year (2015-2016) was also below 150,000 mt, therefore NMFS did not implement a HG, thereby disallowing a commercial directed sardine fishery. Since there is again no

directed fishing for the 2016-2017 fishing year, this proposed rule will not change the potential profitability as compared to the previous fishing year.

The revenue derived from harvesting Pacific sardine is typically only one source of fishing revenue for many of the vessels that harvest Pacific sardine; 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 proposed incidental allowances under this action are to ensure the vessels impacted by this sardine action can still access these other profitable fisheries while still limiting the harvest of sardine. These proposed incidental allowances are similar to those implemented last year and should not restrict access to those other fisheries.

CPS vessels typically rely on multiple species for profitability because abundance of sardine, like the other CPS stocks, is highly associated with ocean conditions and seasonality, and therefore are harvested at various times and areas 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, it has necessitated that the CPS fishery as a whole rely on a group of species for its annual revenues.

Pursuant to the Regulatory Flexibility Act and the SBA's June 20, 2013, and June 14, 2014, final rules (78 FR 37398 and 79 FR 33647, respectively), this certification was developed for this action using the SBA's revised size standards. NMFS considers all entities subject to this action to be small entities as defined by both the former, lower size standards and the revised size standards. Based on the disproportionality and profitability analysis above, 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 Paper Reduction Act.

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

Dated: May 19, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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