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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160614521-7624-02]

RIN 0648-BF96

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment to Regulations Implementing the Coastal Pelagic Species Fishery Management Plan; Change to Pacific Mackerel Management Cycle from Annual to Biennial

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

ACTION: Final rule.

SUMMARY: The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) states that each year the Secretary will publish in the *Federal Register* the final specifications for all stocks in the actively managed stock category, which includes Pacific mackerel. NMFS is changing the management framework for Pacific mackerel so specifications will be set biennially instead of on an annual basis. The purpose of this change is to reduce the costs, while providing frequent enough reevaluation and adjustment in the specifications to manage and conserve Pacific mackerel.

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

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SUPPLEMENTARY INFORMATION: NMFS manages the Pacific mackerel fishery in the U.S. Exclusive Economic Zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the CPS FMP. The CPS FMP states that each year the Secretary will publish in the *Federal Register* the specifications for all stocks in the actively managed stock category, which includes Pacific mackerel. In 2013, the Pacific Fishery Management Council (Council) recommended that the harvest specification process for Pacific mackerel move from a 1-year management cycle to a 2-year management cycle beginning in 2015. The Council recommended this revision to the management cycle under the CPS FMP's framework mechanism, which allows such changes by rulemaking without formally amending the fishery management plan itself. NMFS published separate annual specifications for Pacific mackerel for the 2015-16 and the 2016-17 fishing seasons to keep pace with the schedule of the fishery, and is now changing the annual notice requirement under the framework mechanism of the CPS FMP. From now on, NMFS will implement 2 years of harvest specifications with one rulemaking, beginning with the 2017 fishing season.

The CPS FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific mackerel fishery based on the annual specification framework and control rules in the CPS FMP. These control rules include the harvest guideline control rule, which in conjunction with the overfishing limit (OFL), acceptable biological catch (ABC) and annual catch limit (ACL) rules in the CPS FMP are used to manage harvest levels for Pacific mackerel, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Annual estimates of biomass are an explicit part of these various harvest control rules, therefore, annual stock assessments are currently conducted for Pacific mackerel to provide annual estimates of biomass. Then, during public meetings each year, the estimated

biomass for Pacific mackerel from these assessments is presented to the Council's 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 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. Based on these recommendations, NMFS implements these catch specifications for each fishing year and publishes the specifications annually.

Over recent years, little new information has been available for informing Pacific mackerel stock assessments from one year to the next. Therefore, stock assessment scientists at the Southwest Fisheries Science Center (SWFSC), along with the SSC, concluded that conducting stock assessments annually is not necessary to manage Pacific mackerel sustainably; conducting assessments every 2 years can provide the necessary scientific information to continue to manage the stock sustainably. Annual landings of Pacific mackerel have also remained at historically low levels with landings averaging 5,000 mt over the last 10 years, well below the annual quotas over this time period. This highlights that the biomass of this stock is not being greatly impacted by fishing pressure. Low landings since 2011 are also one of the limitations of the recent stock assessments because they result in limited fishery-dependent sample information for use in the stock assessment. Based on this information, and in light of the monetary and personnel costs associated with conducting and reviewing each stock assessment as well as adopting specifications each year, the Council established a new Pacific mackerel management and assessment schedule under which full stock assessments would be conducted every 4 years, and in the second year of each cycle, the assessment will be updated using catch-only projection

estimates. Each of these assessments would provide the biomass estimate for the current year as well as a projection of what the biomass will be in the following year. Those biomass estimates would then be used in the harvest control rules for Pacific mackerel, which the Council would use to provide NMFS with recommendations for the OFL, ABC and ACL for the following 2 years.

This final rule changes the review and implementation schedule for setting Pacific mackerel harvest specifications, allowing NMFS to implement 2 years of catch specifications with a single notice and comment rulemaking. Reviewing biomass estimates and implementing catch specifications for 2 years at a time instead of 1 allows NMFS and the Council to use available time and resources in a more efficient manner, while still preserving the conservation and management goals of the CPS FMP, and using the best available science. NMFS will set biennial specifications from the 2017 fishing season forward in the Code of Federal Regulations.

The proposed rule stated that this rulemaking would change the review and implementation schedule for Pacific mackerel, *and* the stock assessment cycle. That was an error: NMFS did not intend to propose to change the stock assessment cycle by rulemaking, as the Council already acted on that change. The action by this rule is only to allow the agency to implement 2 separate years of harvest specifications through a single notice and comment rulemaking process.

On January 4, 2017, a proposed rule was published for this action and public comments solicited (82 FR 812) with a comment period that ended on February 3, 2017. NMFS received three comments regarding the amendment to change Pacific mackerel specifications to be set biennially instead of on an annual basis. No changes were made in response to the comments received. NMFS summarizes and responds to those comments below.

Comments and Responses

Comment 1: Two of the comments voiced a similar concern that, in moving from an annual stock assessment process to a biennial process, the harvest specifications would not be based on the best possible information. One commenter stated that keeping the current system of setting management specifications every year would provide better information to manage Pacific mackerel and allow the agency to be better positioned if more rapid adjustments are needed to either protect against overfishing, while the second commenter was concerned that if the stock greatly increased during one of the interim assessment years, that the industry might endure a missed opportunity.

Response: As described above, based on recommendations from its SSC and scientists from the SWFSC, the Council has determined that *as a matter of practice* doing new stock assessments every year for Pacific mackerel was not providing significantly better information with which to manage the stock and prevent overfishing compared to the proposed approach. Based on this determination, the Council established a Pacific mackerel management and assessment schedule under which full stock assessments will be conducted every 4 years, and in the second year of each cycle the assessment will be updated using catch-only projection estimates. Each of these assessments would provide the biomass estimate for the current year as well as a projection of what the biomass will be in the following year. Those biomass estimates would then be used in the harvest control rules for Pacific mackerel and the Council provides NMFS with recommendations for the OFL, ABC and ACL for the following 2 years. The action being taken by NMFS through this rule is to allow the agency to implement those 2 separate years of harvest specifications through a single notice and comment rulemaking process. Additionally, this action does not change the control rules used to set the annual catch limits,

including the ABC control rule under which scientific uncertainty in the OFL is considered in estimating ABC at a level that is intended to buffer against overfishing.

Comment 2: The California Department of Fish and Wildlife (CDFW) submitted a comment expressing general support for the proposed rule and streamlining the process for setting specifications for Pacific mackerel.

Response: CDFW is an important co-manager of CPS and NMFS appreciates its input. NMFS agrees with the CDFW that annual stock assessments are not necessary to manage Pacific mackerel sustainability. NMFS is supportive of the expanded efforts by CDFW to collect baseline biological and fishery data through their dockside sampling program to help inform ongoing and future assessment efforts of the various CPS stocks.

Classification

The Administrator, West Coast Region, NMFS, determined that the FMP Amendment to Regulations Implementing the CPS FMP; Change to Pacific Mackerel Management Cycle from Annual to Biennial is necessary for the conservation and management of the Pacific mackerel fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 26, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS is amending 50 CFR part 660 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 § 660.508, add paragraph (e) to read as follows:

§ 660.508 Annual specifications.

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(e) *Pacific mackerel*. Every 2 years the Regional Administrator will determine, and publish in the *FEDERAL REGISTER*, harvest specifications for 2 consecutive fishing seasons for Pacific mackerel.

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