



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 170322302-7999-01]**

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

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 16 of the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The purpose of this proposed rule is to amend the CPS regulations to allow for very small amounts of directed, non-live bait fishing on CPS finfish to occur when a fishery is otherwise closed to directed fishing. Currently, when directed fishing closures are enacted, a small sector of the CPS fishery that is not part of the primary commercial directed fishery has been precluded from fishing and/or harvesting even minor amounts because this activity does not fall under the existing exemptions during closures for incidental harvest or for harvesting CPS to be sold as live bait. NMFS is proposing changes to the CPS regulations to allow this sector to continue directed fishing after other directed fisheries are closed, unless otherwise specified or if an applicable annual catch limit (ACL) is

anticipated to be exceeded. As a further restriction, to ensure this minor directed fishing provision is not exploited 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.

**DATES:** Comments must be received by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2017-0135, 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-2017-0135](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0135), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802-4250; Attn: Joshua Lindsay.

**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 [www.regulations.gov](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).

Copies of the draft CPS FMP as amended through Amendment 16, with notations showing how Amendment 16 would change the FMP, if approved, are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket 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.

The MSA requires each regional fishery management council to submit any amendment to a FMP to NMFS for review and approval, disapproval, or partial approval. The MSA also requires that NMFS, upon receiving an amendment to a FMP, publish notification in the *Federal Register* that the amendment is available for public review and comment. NMFS will consider

the public comments received during the comment period described above in determining whether to approve, disapprove, or partially approve Amendment 16.

At its April 2017 meeting, the Pacific Fishery Management Council (Council) voted to submit Amendment 16 to NMFS for review and approval; this proposed rule would revise the implementing regulations for the CPS FMP to implement Amendment 16 by allowing “minor directed” fishing for CPS finfish after a directed fishery has been closed. Current regulations provide for potential allowances of live bait fishing and incidental landings in the event of a directed fishery closure; this action would allow a small sector of the CPS fishery that is not part of the primary commercial directed fishery to harvest minor amounts of CPS. This sector of the 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, when directed fishing closures are enacted, these very small-scale fisheries have been precluded from fishing and/or harvesting these minor amounts because they do not fall under the existing exemptions during closures.

If this proposed rule is approved, minor directed fishing will be allowed to continue after a directed fishery is closed. Minor directed fishing will be allowed unless otherwise specified, or if an applicable ACL is anticipated to be exceeded. As a further restriction, to ensure the minor directed landing provision is not exploited to make large aggregate harvests, this action proposes regulations to limit this directed fishing exemption so that landings cannot exceed 1 mt per day per vessel or person, and which is limited to one fishing trip per day by any vessel. The intent of distinguishing between a “vessel” and “person” in these regulations is that some participants in

this small sector of the CPS fishery fish from a platform other than a vessel (e.g., beach seine) and in a single fishing trip (e.g., a single haul of a beach seine) may only land a few hundred pounds. Therefore, the Council recommended, and NMFS is proposing, to allow a person to make multiple fishing trips in a single day as long as their total landings do not exceed 1 mt in a day. The Council recommended that vessels be limited to a single trip as their typical landings are much greater per trip. For vessels, it was the Council's intent that the 1 mt daily landing restriction function like a trip limit.

This rule also proposes to update 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 proposed in Amendment 16).

### **Classification**

Pursuant to section 304 (b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 16, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

This proposed 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

The purpose of this rule is to add an exemption to the CPS regulations that would allow very small levels of directed fishing to occur during times when directed fishing would normally be disallowed.

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 primary entities that would be affected by the proposed action are the vessels and individuals that target very small levels of CPS finfish as part of a small sector of the CPS fishery that is not part of the primary commercial directed fishery and are all considered small businesses under the above size standards. This small sector of the 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. For example, the highest landing year for Pacific sardine from this sector between 2005 and 2015 included 134 landings by 12 vessels, totaling only 50 mt of sardines, with an average of 20 mt per year over this same time period. In comparison, the average total landings of Pacific sardine over this time period was around 69,000 mt. Although the landings from this sector are small in comparison to the primary directed fisheries for CPS, the revenue derived from these small landings make up an important revenue stream for the participants.

The proposed action is not expected to have direct or indirect adverse socioeconomic impacts as the primary function of this action is to provide relief for the small entities who harvest small amounts of CPS but are precluded from doing so under the existing directed fishery closure regulations. Although the CPS FMP requires prohibitions on directed fishing in certain situations, such as to protect the stock when biomass is low, any fishing done under the proposed minor harvest regulations would be accounted for and tracked under any applicable catch limit for that year thereby continuing to protect the stock and prevent overfishing. Additionally, because the landings from this sector are so small this action is not expected to indirectly negatively impact, through lost harvesting potential, those that are currently provided exemptions during closures, such as the live bait sector or the traditional purse seine vessels that utilize the incidental harvest provisions during closures.

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

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 16, 2017.

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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 proposed to be 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.

\* \* \* \* \*

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

**§ 660.505 Prohibitions.**

\* \* \* \* \*

(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).

\* \* \* \* \*

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

**§ 660.511 Catch restrictions.**

\* \* \* \* \*

(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* notice 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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