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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 170901861-7861-01]

RIN 0648-BH08

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Biennial Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement annual harvest specifications and management measures to establish the allowable catch levels for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the West Coast (California, Oregon and Washington) for the fishing years 2017-2018 and 2018-2019. This rule is proposed pursuant to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed harvest guideline (HG) and annual catch target (ACT) for the 2017-2018 fishing year are 26,293 metric tons (mt) and 25,293 mt respectively. The proposed HG and ACT for the 2018-2019 fishing year are 23,840 mt and 22,840 mt respectively. If the fishery attains the ACT in either fishing year, the directed fishery will close, reserving the difference between the HG and ACT as a 1,000 mt set-aside for incidental landings in other CPS fisheries and other sources of mortality. If the HG is reached, all retention would be prohibited through the end of the fishing year. This rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

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-2017-0134, 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-2017-0134*, 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* 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 report, “Pacific Mackerel Biomass Projection Estimate for USA Management in 2017-2018 and 2018-2019” may be obtained from the West Coast Regional Office.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, NMFS manages the Pacific mackerel fishery in the U.S. EEZ off the West Coast in accordance with the CPS FMP. The CPS FMP and its implementing regulations require NMFS to set annual harvest specifications for the Pacific mackerel fishery based on the annual specification framework and control rules in the FMP. The purpose of this proposed rule is to implement these harvest specifications, which include allowable harvest levels (ACT/HG/annual catch level [ACL]), as well as annual catch reference points (overfishing limit [OFL] and acceptable biological catch [ABC]) that take into consideration uncertainty surrounding the current biomass estimates for Pacific mackerel for the 2017-2018 and 2018-2019 fishing years.

During public meetings each year, biomass estimates for Pacific mackerel are presented to the Pacific Fishery Management Council's (Council) CPS Management Team (CPSMT), the Council's CPS Advisory Subpanel (CPSAS) and the Council's Scientific and Statistical Committee (SSC), where the biomass estimates and the status of the fisheries are reviewed and discussed. These biomass estimates are then presented to the Council along with the calculated OFL, ABC, ACL, HG and ACT recommendations and comments from the CPSMT, CPSAS and SSC. Following review by the Council and after hearing public comment, the Council adopts biomass estimates and makes its harvest specification recommendations to NMFS. Biennial specifications published in the *Federal Register* establish these allowable harvest levels (i.e., ACT/ACL/HG) for the upcoming two Pacific mackerel fishing years. This is the first proposed rule where harvest specifications are being adopted for the upcoming two fishing years (2017-

2018 and 2018-2019) per the recently published final rule (82 FR 35687; August 1, 2017) that changed the CPS FMP management framework so that Pacific mackerel harvest specifications could be adopted biennially instead of annually.

The control rules in the CPS FMP include the HG control rule, which in conjunction with the OFL and ABC rules, are used to manage harvest levels for Pacific mackerel. According to the FMP, the quota for the principal commercial fishery, the HG, is determined using the FMP-specified HG formula. The HG is based, in large part, on the current estimate of stock biomass. The biomass estimate is an explicit part of the various harvest control rules for Pacific mackerel, and as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend. The harvest control rule in the CPS FMP is $HG = [(Biomass-Cutoff) * Fraction * Distribution]$ with the parameters described as follows:

1. *Biomass*. The estimated stock biomass of Pacific mackerel for the 2017-2018 management season is 143,403 mt. The estimated stock biomass of Pacific mackerel for the 2018-2019 management season 131,724 mt.
2. *Cutoff*. This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.
3. *Fraction*. The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested. This is set in the FMP at 30 percent.
4. *Distribution*. The average portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

The Council has recommended and NMFS is proposing, Pacific mackerel harvest specifications and management measures for both the 2017-2018 and 2018-2019 fishing years. For the 2017-2018 Pacific mackerel fishing year these include an OFL of 30,115 metric tons (mt), an ABC and ACL of 27,510 mt, a HG of 26,293 mt, and an annual ACT of 25,293 mt. For the 2018-2019 Pacific mackerel fishing year these include an OFL of 27,662 mt, and ABC and ACL of 25,269 mt, a HG of 23,840 mt, and an ACT of 22,840 mt. The Pacific mackerel fishing season runs from July 1 to June 30. These catch specifications are based on the control rules established in the CPS FMP and biomass estimates of 143,403 mt (2017-2018) and 131,724 mt (2018-2019); these biomass estimates are the result of a full stock assessment completed in June 2015 and a subsequent catch-only projection estimate completed in June 2017 by NMFS Southwest Fisheries Science Center and approved by the Council's SSC and the Council at their June 2017 meeting as best available science (see **ADDRESSES**).

Under this proposed action, upon the unlikely attainment of the ACT in either fishing year, directed fishing would close, reserving the difference between the HG and ACT (1,000 mt) as a set aside for incidental landings in other fisheries and other sources of mortality. For the remainder of the fishing year, incidental landings would be constrained to a 45-percent incidental catch allowance when Pacific mackerel are landed with other CPS (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel) or up to 3 mt of Pacific mackerel could be landed incidentally in non-CPS fisheries.¹ Upon attainment or projected attainment of the HG, no retention of Pacific mackerel would be allowed even as incidental catch. The purpose of the incidental set-aside and allowance of an incidental fishery is to allow for the restricted incidental landings of Pacific mackerel in other fisheries, particularly

¹ Live bait fishing is excluded from closures of the directed fishery, and Amendment 16 to the CPS FMP, if approved, would allow very small directed fisheries to continue even when most directed were closed.

other CPS fisheries, when the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important stocks that may school with Pacific mackerel.

The NMFS West Coast Regional Administrator will publish a notice in the *Federal Register* announcing the date of any closure of either 1) directed fishing (when harvest levels near or take the ACT) or 2) retention—including by incidental fishing (when harvest levels near or attain the HG). Additionally, to ensure 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. This rule would also add paragraph (p) to the prohibitions section at 50 CFR 660.505 referencing the prohibition on retention, possession, or landing of Pacific mackerel for the remainder of the year after the closure date specified in the *Federal Register* notice published by the Regional Administrator.

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 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:

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.

Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 degrees N. latitude; Point Arena, California) of the CPS fishery and is one component of CPS fisheries off the U.S. West Coast, which also includes the fisheries for Pacific sardine, northern anchovy and market squid. The small entities that would be affected by the proposed action are those vessels that harvest Pacific mackerel as part of the West Coast CPS purse seine fleet and are all considered small business under the above size standards. Currently there are 58 vessels permitted in the Federal CPS limited entry fishery off California. The average annual per vessel revenue in 2016 for those vessels was well below the threshold level of \$11 million; therefore, all of these vessels are considered small businesses under the RFA. Therefore, this rule would not create disproportionate costs between small and large vessels/businesses.

NMFS used the ex-vessel revenue information for a profitability analysis, as the cost data for the harvesting operations of CPS finfish vessels was limited or unavailable. For the 2016-2017 fishing year, the HG was 21,161 mt and was divided into an ACT of 20,161 mt and an incidental set-aside of 1,000 mt. Approximately 1,492.16 mt of Pacific mackerel was harvested in the 2016-2017 fishing year with an estimated ex-vessel value of approximately \$417,616.

The HG for the 2017-2018 Pacific mackerel fishing year is 26,293 mt, with an ACT of 25,293 mt and an incidental set-aside of 1,000 mt. The HG for the 2018-2019 Pacific mackerel fishing year is 23,840 mt with an ACT of 22,840 mt and an incidental set-aside of 1,000 mt. These proposed ACTs are similar to the ACT established for the 2016-2017 fishing year (20,161 mt), thus it is highly unlikely that the ACTs proposed in this rule will limit the potential profitability to the fleet from catching Pacific mackerel compared to last season or recent catch levels, as shown below. The annual average U.S. Pacific mackerel harvest in recent years (2010-2015) has been about 5,000 mt. In this period, the landings have not exceeded 11,800 mt. Additionally, annual average landings during the last decade (2005-2015) have not been restricted by the applicable quota. Accordingly, vessel income from fishing is not expected to be altered as a result of this rule as it compares to recent catches in the fishery, including under the previous season's regulations.

Based on the disproportionality and profitability analysis above, the proposed action, if adopted, will not have adverse or disproportional economic impact on these small business 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.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 21, 2017.

Alan D. Risenhoover,
Acting 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 § 660.505, add paragraph (p) to read as follows:

§ 660.505 Prohibitions.

* * * * *

(p) Retain, possess or land Pacific mackerel after an announcement under § 660.511(j) that the harvest guideline has been taken or is projected to be reached soon.

3. In § 660.511, add paragraphs (i) and (j) to read as follows:

§ 660.511 Catch restrictions.

* * * * *

(i) The following harvest specifications apply for Pacific mackerel:

(1) For the Pacific mackerel fishing season July 1, 2017, through June 30, 2018, the harvest guideline is 26,293 mt and the ACT is 25,293 mt;

(2) For the Pacific mackerel fishing season July 1, 2018, through June 30, 2019, the harvest guideline is 23,840 mt and the ACT of 22,840 mt.

(j) When an ACT in paragraph (i) of this section has been reached or is projected to be reached soon, then for the remainder of the Pacific mackerel fishing season, Pacific mackerel may not be targeted and landings of Pacific mackerel may not exceed 45 percent of landings when Pacific mackerel are landed with other CPS (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel), except that up to 3 mt of Pacific mackerel may be landed without landing any other CPS. When a harvest guideline in paragraph (i) of this section has been reached or is projected to be reached soon, no further retention of Pacific mackerel is allowed through the end of the Pacific mackerel fishing season. The Regional Administrator shall announce in the *Federal Register* the date that an ACT or the harvest guideline is reached or is expected to be reached, and the date and time that the restrictions described in this paragraph go into effect.

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