



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210521-0114; RTID 0648-XW035]

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2021-2022 Annual Specifications and Management Measures for Pacific Sardine

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2021, through June 30, 2022. 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 per trip when caught with non-Coastal Pelagic Species stocks. The proposed annual catch limit for the 2021-2022 Pacific sardine fishing year is 3,329 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-2021-0045, by the following method:

- *Electronic Submissions:* Submit all public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2021-0045 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method 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).

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, West Coast Region, NMFS, (562) 619-2052, Taylor.Debevec@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 (MSA), 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 (Council), including the Council's CPS Management Team (Team), CPS Advisory Subpanel (Subpanel) and 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 measures. 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 2021-2022 fishing year, as well as management measures to ensure that harvest does not exceed those limits and the 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 primary directed fishery is determined using the FMP-specified HG formula. This Pacific sardine HG control rule, the primary mechanism for setting the primary directed 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, 28,276 metric tons (mt), is below that value, the formula results in an HG of zero, and no Pacific sardine are available for the primary directed fishery during the 2021-2022 fishing season. This is the seventh consecutive year that the primary directed fishery is closed.

During the 2019-2020 fishing year, the estimated biomass of Pacific sardine dropped below its 50,000-mt minimum stock size threshold (MSST), which triggered an

overfished determination process. Accordingly, NMFS declared the stock overfished on June 26, 2019, and notified the Council on July 9, 2019. Since then, NMFS has worked with the Council to develop a rebuilding plan for Pacific sardine. At its September 2020 meeting, the Council recommended Amendment 18 to the CPS FMP, which would implement a rebuilding plan for Pacific sardine. NMFS published a Notification of Availability (86 FR 14401) for Amendment 18 to the CPS FMP on March 16, 2021, with a comment period ending on May 17, 2021.

At the Council's April 2021 meeting, the Council's SSC reviewed the SWFSC 2021-2022 Pacific sardine stock assessment "Catch-only projection of the Pacific sardine resource in 2021 for U.S. management in 2021-2022." The SWFSC completes annual assessments for Pacific sardine. The type of assessment alternates between benchmark assessments in one year and updated assessments the following two years. Both types of assessments are based largely on data collected from annual research cruises. However, due to the COVID-19 pandemic, a CPS research cruise was not conducted in 2020. As a result, the SWFSC produced a catch-only projection, based on the 2020 benchmark assessment, to provide a biomass estimate for harvest specifications during the 2021-2022 fishing year.

Although the SSC acknowledged that the SWFSC appropriately conducted the stock assessment in accord with the Council's Terms of Reference for catch-only projections, the SSC concluded that the assessment was not appropriate for use in management this year. The SSC's primary concern was the discrepancy between the 2020 estimated fleet catch used in the 2020 benchmark assessment and the actual observed 2020 fleet catch used in the 2021 catch-only assessment. Specifically, the actual observed MexCal fleet catch (*i.e.*, catch from Mexico, Southern California, and Central California) used for the 2021 catch-only projection was significantly higher than the preliminary estimate of the MexCal fleet catch for the same time period used in the

2020 benchmark assessment (33,070 mt vs 11,819 mt), resulting in a catch level for 2020 that was higher than the estimated biomass for 2020. This high level of catch caused the stock assessment model to make unrealistic assumptions about the stock (*e.g.*, levels of recruitment and fishing mortality rate) that are not expected for a catch-only assessment, as they varied too much from the 2020 benchmark assessment. For example, to reflect such a high catch amount, the model assumed a recruitment level that was nearly triple the previous assessment model estimate of recruitment.

Because of this discrepancy, the SSC recommended using the 2020 benchmark assessment to provide a biomass estimate for harvest specifications during the 2021-2022 fishing year, including the 2020-2021 biomass estimate of 28,276 mt, and the OFL of 5,525 mt. The SSC acknowledged that defaulting to the 2020-2021 stock assessment does not resolve the inconsistencies between the 2020 benchmark assessment and the 2021 catch-only assessment; therefore, the SSC recommended designating the 2020 benchmark assessment as a Category 3 stock assessment, which infers a high amount of uncertainty (*i.e.*, a data-poor assessment) and functionally increases the buffer between the OFL and the ABC to account for the greater uncertainty and ensure overfishing is prevented.

Based on the SSC's recommendation, the Council recommended, and NMFS is proposing for the 2021-2022 fishing year, an OFL of 5,525 mt, an ABC of 3,329 mt, an annual catch limit (ACL) of 3,329 mt, and a prohibition on commercial Pacific sardine catch, unless it is harvested as part of the live bait, tribal, or minor directed fisheries, as incidental catch in other fisheries, or as part of exempted fishing permit (EFP) activities. The Council also recommended an annual catch target (ACT) of 3,000 mt for the 2021-2022 fishing year. For comparison, the ABC/ACL and ACT adopted last year were 4,288 mt and 4,000 mt, respectively. Therefore, although the recommended OFL for this

year is the same as last year, the ABC/ACL level has been reduced to account for greater uncertainty in the OFL and an increased level of precaution.

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 Recommended Management Measures below).

Recommended Management Measures

The proposed annual harvest limits and management measures were developed in the context of the fact that NMFS declared the Pacific sardine stock overfished in July 2019. Since the biomass remains below the 50,000 mt MSST, the FMP requires that incidental catch of Pacific 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).

The following are the proposed management measures and inseason accountability measures for the Pacific sardine 2021-2022 fishing year:

- 1) If landings in the live bait fishery reach 1,800 mt, of Pacific sardine, then a 1-mt per-trip limit of sardine would apply to the live bait fishery.
- 2) An incidental per-landing limit of 20-percent (by weight) Pacific sardine applies to other CPS primary directed fisheries (*e.g.*, Pacific mackerel).
- 3) If the ACT of 3,000 mt is attained, then a 1-mt per-trip limit of Pacific sardine would apply to all CPS fisheries (*i.e.*, 1) and 2) would no longer apply).
- 4) An incidental per-landing allowance of 2 mt of Pacific sardine would apply to non-CPS fisheries until the ACL is reached.

All sources of catch including any 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 and ACL.

The NMFS West Coast Regional Administrator would publish a notification 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 previous fishing years, the Quinault Indian Nation has requested, and NMFS has 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 2021-2022 fishing year, the Quinault Indian Nation has not requested a tribal set-aside, and therefore none is proposed.

At the April 2021 meeting, the Council approved three EFP proposals requesting an exemption from the prohibition to directly harvest sardine during their discussion of sardine management measures. Those EFPs include a total amount of up to 830 mt of the ACL.

This action must be effective by July 1, 2021; 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 provided an opportunity for public comment at its

April 2021 meeting, as it does every year before adopting the recommended harvest specifications and management measures for the proceeding fishing year.

Classification

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

This proposed rule is exempt from review under Executive Order 12866.

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 2021-2022 annual specifications for Pacific sardine in the U.S. EEZ off the West 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. We do not collect or have access to information about affiliation between vessels or affiliation between vessels and processing entities in this fishery, or receipts in Alaska, Hawaii, or international fisheries, so it is possible that some impacted entities may exceed \$11 million in ex-vessel revenue or another size-standard threshold. Based on available data, the average annual west coast revenue per vessel for all west coast vessels, including those described above potentially affected by this rule, was well below the threshold level of \$11 million as of 2020; 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 primary directed 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), the HG is zero. Since there is again no directed fishing for the 2021-2022 fishing year, this proposed rule will not change the potential

profitability for directly regulated entities compared to the previous six fishing years. Additionally, while the proposed 2021-2022 ACL is slightly 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 sardine can still access these other profitable fisheries while 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 Paper Reduction Act. There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed action.

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

Dated: May 21, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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