



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No: 210702-0144; 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: Final rule.

SUMMARY: NMFS is implementing annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year, which runs from July 1, 2021, through June 30, 2022. This final rule will prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest will 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 will 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 annual catch limit for the 2021-2022 Pacific sardine fishing year is 3,329 metric tons. This final rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective [*INSERT DATE OF PUBLIC INSPECTION WITH THE FEDERAL REGISTER*].

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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.*

This final rule implements the annual catch levels, reference points, and management measures for the 2021-2022 fishing year. The final rule adopts, without changes, the catch levels and restrictions that NMFS proposed in the rule published on May 26, 2021. The proposed rule for this action included additional background on the specifications and details of how the Pacific Fishery Management Council (Council) derived its recommended specifications for Pacific sardine. Those details are not repeated here. For additional information on this action, please refer to the proposed rule (86 FR 28325).

This rule implements an OFL of 5,525 metric tons (mt) and an ABC/annual catch limit (ACL) of 3,329 mt, based on CPS FMP control rules and a biomass estimate of Pacific sardine of 28,276 mt. This biomass estimate is from the 2020 benchmark stock assessment and was recommended for use this year by the Council's Scientific and Statistical Committee after identifying significant uncertainties in the 2021 catch-only projection. Because the estimated biomass is less than the value of the CUTOFF

parameter in the CPS FMP (150,000 mt), the harvest guideline is set to 0 mt, meaning there is no primary directed fishery for Pacific sardine. This is the seventh consecutive year the primary directed fishery has been closed. Because the estimated biomass is below the minimum stock size threshold (50,000 mt) 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. Although these management measures, triggered by the FMP, are expected to keep catch far below the ACL as they have done in recent history, this rule also implements an annual catch target (ACT) of 3,000 mt and implements management measures to ensure harvest opportunity throughout the year.

A summary of the 2021-2022 fishing year specifications can be found in Table 1, and management measures in the list below.

Table 1 – Harvest Specifications for the 2021-2022 Sardine Fishing Year in Metric Tons (mt)

Biomass Estimate	OFL	ABC	HG	ACL	ACT
28,276	5,525	3,329	0	3,329	3,000

Measures for commercial sardine harvest during the 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 exempted fishing permit (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. At the April 2021 Council meeting, the Council approved 830 mt of the ACL for three EFP proposals to support stock assessments for Pacific sardine. Any Pacific sardine harvested between July 1, 2021, and the effective date of the final rule will count toward the 2021-2022 ACT.

The NMFS West Coast Regional Administrator will 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 will make announcements through other means available, including emails to fishermen, processors, and state fishery management agencies.

Comments and Responses

On May 26, 2021, NMFS published a proposed rule for this action and solicited public comments through June 10, 2021 (86 FR 28325). NMFS received one public comment letter containing multiple comments from the environmental group Oceana. After considering the public comment, NMFS made no changes from the proposed rule. NMFS summarizes and responds to the comment letter from Oceana below.

Comment: Oceana states that the proposed harvest specifications are not based on the best available science, fail to prevent overfishing, and will impede rebuilding. Oceana requests that NMFS revise the proposed specifications to reduce catch limits.

Specifically, Oceana suggests that NMFS use a different E_{MSY} value to calculate the OFL, ABC, and ACL, which would result in an OFL of 1,230 mt, an ABC of 741 mt, and an ACL lower than 741 mt. Oceana also suggests that NMFS reduce catch by limiting live bait harvest of sardine, denying EFP applications that propose to land or sell sardine or limiting their catch to 10 mt, and limiting incidental catch of sardine in other directed CPS fisheries to no more than 10 percent of landings.

Response: NMFS has determined this action is based on the best available science, prevents overfishing, and will not impede rebuilding. NMFS disagrees with Oceana's suggestion that setting a lower ACL, specifically an ACL lower than 741 mt, is necessary to prevent overfishing. The reference points being implemented through this action were recommended by the Council based on the control rules in the FMP and were endorsed by the Council's Scientific and Statistical Committee (SSC) as the best scientific information available for setting the 2021-2022 harvest specifications for Pacific sardine. In addition, the management measures adopted by the Council, including an ACT that was set even lower than the ACL (3,000 mt), are more than adequate to ensure catch does not exceed the ACL/ABC and OFL, and therefore add an additional measure for preventing overfishing. Furthermore, although the SSC did not endorse the 2021 catch-only projection due to uncertainty in the model (including the level of catch by Mexico), more precaution was built into the Council's ABC recommendation to account for this uncertainty and to ensure overfishing is prevented. The reference points implemented through this action should also be viewed in the context of the non-discretionary harvest restrictions already in place, pursuant to the CPS FMP, which generally restrict the fishery from catching the full ACL. These non-discretionary restrictions include the continued closure of the primary directed fishery (*i.e.*, the largest fishery that takes the majority of Pacific sardine catch) and restrictions on incidental harvest of Pacific sardine in other CPS fisheries (which are currently less than half of typical incidental limits).

NMFS also finds it unnecessary to further limit the landings of sardine by implementing any of the additional measures recommended by Oceana – *i.e.*, limiting live bait harvest, denying EFP applications or limiting their allowable catch, and reducing the percentage of landings allowed in other directed CPS fisheries. The Council considered the overfished status of Pacific sardine, as well as the uncertainty around the

2021 catch update due to the inability to collect survey data during the COVID-19 pandemic, and incorporated precautionary measures in their recommendations to NMFS to account for those factors. Those precautionary measures included: (1) deeming the assessment Tier 3 (high uncertainty); (2) using a P^* value of 0.4 (high uncertainty); (3) reducing the ACT from the ACL; (4) reducing the EFP allowance from the requested amount; (5) limiting incidental sardine landings in CPS fisheries to 20 percent; and (6) incorporating accountability measures. These accountability measures include: (1) limiting live bait landings to 1 mt per landing once 1,800 mt of sardine is attained; (2) imposing a per-trip limit of 1 mt of sardine in all CPS fisheries once the ACT is attained; and (3) implementing an incidental per-landing allowance of 2 mt in non-CPS fisheries until the ACL is reached.

Finally, although changes to how E_{MSY} is calculated is beyond the scope of this rulemaking, NMFS would nevertheless like to respond to Oceana's suggestion in this regard. NMFS is aware of the 2019 scientific publication referenced by Oceana in their comment letter and of ongoing Council discussions related to E_{MSY} . NMFS is committed to participating in discussions about new science and whether that science justifies a change to how E_{MSY} is calculated for management purposes. Regarding the 2019 paper mentioned by Oceana that was authored by researchers at the SWFSC, NMFS notes that research related to the appropriate temperature index to inform E_{MSY} is ongoing. NMFS has not yet determined whether, based on that paper, a change in how E_{MSY} is calculated is necessary for management purposes. NMFS will continue to examine whether this new publication warrants a change in management; however, at this time NMFS has determined that the reference points set through this action are based on the best scientific information available. Regarding recent Council discussions related to E_{MSY} , NMFS notes that the Council's SSC – the scientific advisory body that is responsible for recommending changes to E_{MSY} – has the ability to recommend changes to E_{MSY} at any

time, and it has not determined that a change is necessary at this time. The Council's SSC previously made such a recommendation in 2014 when it recommended that NMFS switch from using the 3-year average of Scripps Institution of Oceanography (SIO) sea surface temperature measurements to using the 3-year average of CalCOFI sea surface temperature measurements to inform E_{MSY} . In 2014 the SSC also recommended an interim measure of a static E_{MSY} of 18 percent until that change, from SIO to CalCOFI, could be adopted after being properly analyzed.

Classification

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

The need to implement these measures in a timely manner to ensure they are in place as soon as possible after the start of the fishing season, July 1, 2021, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after date of publication. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2021, the contents of which were based on the best available new information on the population status of Pacific sardine that became available at that time. Making these final specifications effective as soon as possible after July 1, the first day of the fishing year, is necessary for the conservation and management of the Pacific sardine resource because last year's restrictions on harvest are not effective after June 30. The FMP requires a prohibition on primary directed fishing for Pacific sardine for the 2021-2022 fishing year because the sardine biomass has dropped below the CUTOFF. The purpose of the CUTOFF in the FMP, and for prohibiting a primary directed fishery when the biomass drops below this level, is to protect the stock when biomass is low and provide a buffer of spawning stock that is protected from fishing and can contribute to rebuilding the stock. A delay of a full 30

days in the date of effectiveness for this rule would result in the re-opening of the primary directed commercial fishery on July 1.

Delaying the effective date of this rule much beyond July 1 would be contrary to the public interest because it would jeopardize the sustainability of the Pacific sardine stock. Furthermore, most affected fishermen are aware that the Council recommended that primary directed commercial fishing be prohibited for the 2021-2022 fishing year, and are fully prepared to comply with the prohibition.

This final rule is exempt from review under 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 for the purposes of the Regulatory Flexibility Act. The factual basis for the certification was published in the proposed rule and is not repeated here. As a result, a regulatory flexibility analysis was not required, and none was prepared.

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with the Council's tribal representative, who has agreed with the provisions that apply to tribal vessels.

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 action.

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

Dated: July 6, 2021.

Samuel D. Rauch, III

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National Marine Fisheries Service.

