



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

#### Docket No. 210826-0168

#### RIN 0648-BK56

### Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Biennial Specifications; 2021-2022 and 2022-2023 Specifications for Pacific Mackerel

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to implement allowable catch levels, an overfishing limit, an allowable biological catch, and an annual catch limit for Pacific mackerel in the U.S. exclusive economic zone off the West Coast (California, Oregon and Washington) for the fishing seasons 2021-2022 and 2022-2023. This proposed rule is pursuant to the Coastal Pelagic Species Fishery Management Plan. The proposed harvest guideline and annual catch target for the 2021-2022 fishing season are 8,323 metric tons (mt) and 7,323 mt, respectively. The proposed harvest guideline and annual catch target for the 2022-2023 fishing season are 5,822 mt and 4,822 mt, respectively. If the fishery attains the annual catch target in either fishing season, the directed fishery will close, reserving the 1,000-mt difference between the harvest guideline and annual catch target as a set-aside for incidental landings in other Coastal Pelagic Species fisheries and other sources of mortality. This document 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-2021-0066, by any of the following method:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA-NMFS-2021-0066 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:** 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. exclusive economic zone (EEZ) off the West Coast in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (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 Pacific mackerel fishing season runs from July 1 to June 30. The purpose of this proposed rule is to implement these harvest specifications, which include allowable harvest levels (*i.e.*, annual catch target (ACT) and harvest guideline (HG)), an annual catch limit (ACL), and

annual catch reference points (*i.e.*, overfishing limit (OFL) and acceptable biological catch (ABC)). The uncertainty surrounding the current biomass estimates for Pacific mackerel for the 2021-2022 and 2022-2023 fishing seasons was taken into consideration in the development of these harvest specifications. Any Pacific mackerel harvested between July 1, 2021, and the effective date of the final rule would count toward the 2021-2022 ACT and HG.

During public meetings each year, the NMFS Southwest Fisheries Science Center (SWFSC) presents biomass estimates for Pacific mackerel 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), and the biomass estimates and the status of the fisheries are reviewed and discussed. The CPSMT, CPSAS, and SSC then provide recommendations and comments to the Council regarding the calculated OFL, ABC, ACL, HG and ACT. Following Council review 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/HG) as well as OFL, ABC, and ACL for the upcoming two Pacific mackerel fishing seasons.

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 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 estimate of stock biomass for the fishing year. 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 2021-2022 management season is 57,832 metric tons (mt). The estimated stock biomass of Pacific mackerel for the 2022-2023 management season is 45,925 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*. Pacific mackerel range from Mexico to Alaska and regularly migrate between Mexico and the U.S West Coast. Because some of the Pacific mackerel stock exists outside of U.S. waters, the Distribution parameter is used to estimate the proportion of the total biomass in U.S. waters and to calculate U.S. catch limits. The average portion of the total Pacific mackerel biomass estimated in the West Coast U.S. EEZ is set in the FMP at 70 percent. The 70 percent distribution estimate 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 for both the 2021-2022 and 2022-2023 fishing seasons. For the 2021-2022 Pacific mackerel fishing season these include an OFL of 12,145 mt, an ABC and ACL of 9,446 mt, a HG of 8,323 mt, and an annual ACT of 7,323 mt. For the 2022-2023 Pacific mackerel fishing season these include an OFL of 9,644 mt, and ABC and ACL of 7,501 mt, a HG of 5,822 mt, and an ACT of 4,822 mt. These catch specifications are based on the control rules established in the CPS FMP and biomass estimates of 57,832 mt (2021-2022) and 45,925 mt (2022-2023). The biomass estimates are the result of a catch-only stock assessment the NMFS SWFSC completed in June 2021. The Council's SSC and

the Council approved this stock assessment and resulting biomass estimates as the best scientific information available for management at the June 2021 Council meeting.

Under this proposed action, in the unlikely event that catch reaches the ACT in either fishing season, 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.<sup>1</sup> For the remainder of the fishing season, incidental landings in CPS fisheries would be constrained to a 45-percent incidental catch allowance (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel); and in non-CPS fisheries, up to 3 mt of Pacific mackerel may be landed incidentally per fishing trip. The incidental set-aside is intended to allow continued operation of fisheries for other stocks, particularly other CPS 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 directed fishing (when harvest levels reach or exceed the ACT). Additionally, to ensure the regulated community is informed of any closure, NMFS will also make announcements through other means available, including email to fishermen, processors, and state fishery management agencies.

### **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.

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<sup>1</sup> Directed fishing for live bait and minor directed fishing is allowed to continue during a closure of the directed fishery.

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 small entities that would be affected by the proposed action are those vessels that harvest Pacific mackerel as part of the West Coast Coastal Pelagic Species (CPS) purse seine fleet and are all considered small businesses under the above size standards.

The CPS Fishery Management Plan (FMP) and its implementing regulations requires the National Marine Fisheries Service (NMFS) to set an overfishing limit (OFL), acceptable biological catch (ABC), annual catch limit (ACL), harvest guidelines (HG) and annual catch target (ACT) for the Pacific mackerel fishery based on the harvest control rules in the FMP. These specific harvest control rules are applied to the current stock biomass estimate to derive these catch specifications, which are used to manage the commercial take of Pacific mackerel. A component of these control rules is that as the estimated biomass decreases or increases from one year to the next, so do the applicable quotas.

Pacific mackerel harvest 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. Pacific mackerel are principally caught off southern California within the limited

entry portion (south of 39 degrees N. latitude; Point Arena, California) of the fishery. Currently there are 53 vessels permitted in the Federal CPS limited entry fishery off California. The average annual per vessel revenue in 2020 for vessels that landed Pacific mackerel was well below the threshold level of \$11 million; 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.

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 2019-2020 fishing year, the HG was 11,109 mt with an ACT of 10,109 mt and an incidental set-aside of 1,000 mt. Approximately 3,840 mt of Pacific mackerel were harvested in the 2019-2020 fishing year with an estimated ex-vessel value of approximately \$1,299,153.

The HG for the 2021-2022 Pacific mackerel fishing season is 8,323 mt, with an ACT of 7,323 mt and an incidental set-aside of 1,000 mt. The HG for the 2022-2023 Pacific mackerel fishing season is 5,822 mt with an ACT of 4,822 mt and an incidental set-aside of 1,000 mt. The proposed ACTs for these fishing years are lower than the prior two fishing years (i.e., 10,109 mt for 2019-2020 and 6,950 mt for 2020-2021). However, Pacific mackerel landings in the U.S. over the last ten management seasons (2009-2010 through 2019-2020) have averaged only about 3,790 mt. Therefore 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. 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. There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed action.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 26, 2021.

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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 § 660.511, revise 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, 2021, through June 30, 2022, the harvest guideline is 8,323 mt and the ACT is 7,323 mt; and

(2) For the Pacific mackerel fishing season July 1, 2022, through June 30, 2023, the harvest guideline is 5,822 mt and the ACT of 4,822 mt.

(j) When an ACT in paragraph (i) of this section has been reached or exceeded, 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 in CPS fisheries (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 when landed in non-CPS fisheries. The Regional Administer shall announce in the **Federal Register** the date that an ACT is reached or exceeded, and the date and time that the restrictions described in this paragraph go into effect.

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