



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 231220-0313]

RTID 0648-XD112

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Harvest Specifications for the Central Subpopulation of Northern Anchovy

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to revise the overfishing limit (OFL) and acceptable biological catch (ABC), but maintain the annual catch limit (ACL), for the central subpopulation of northern anchovy (CSNA) in the U.S. exclusive economic zone (EEZ) off the West Coast under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). NMFS is proposing an OFL of 243,779 metric tons (mt) and ABC of 60,945 mt, and an ACL of 25,000 mt. Under current regulations, if the ACL for this stock is reached or projected to be reached in a fishing year (January 1 – December 31), then fishing will be closed until it reopens at the start of the next fishing year. This rulemaking is intended to conserve and manage CSNA 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-2023-0136, 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-

2023-0136 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 <https://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: Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034, Joshua.Lindsay@noaa.gov.

SUPPLEMENTARY INFORMATION: The CPS fishery in the U.S. EEZ off the West Coast is managed under the CPS FMP in coordination with the Pacific Fishery Management Council (Council). The CPS FMP was developed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA; 16 U.S.C. 1801 *et seq.*). The CPS FMP is implemented by regulations at 50 CFR part 660, subpart I.

Background on CSNA Management

CSNA is managed under multi-year catch limits and quantitative or qualitative reviews of available abundance data without required regular stock assessments or required annual adjustments to target harvest levels. This is in part due to the fact that it does not have biologically significant catch levels and, therefore, does not require intensive harvest management to ensure overfishing is prevented. Allowable catches are set well below maximum sustainable yield (MSY) levels to ensure overfishing does not occur. As a result, anchovy has been adequately managed by tracking landings and

examining available abundance indices. CSNA may also be subject to management measures such as catch allocation, gear regulations, closed areas, or closed seasons.

In September 2011, NMFS approved Amendment 13 to the CPS FMP, which modified the framework process used to set and adjust fishery specifications and for setting ACLs and accountability measures. Amendment 13 conformed the CPS FMP with the 2007 reauthorization of the Magnuson-Stevens Act and revision to the Magnuson-Stevens Act National Standard 1 guidelines at 50 CFR 600.310, which, for the first time, required the establishment of ACLs for management unit species (with exceptions). Maintaining the existing reference points and the primary harvest control rules for CSNA, including the large uncertainty buffer built into the ABC control rule for the finfish stocks, Amendment 13 established a management framework under which the OFL for CSNA is set equal to its existing MSY value, if available, and ABC is set at 25 percent of the OFL. This 75 percent reduction from the OFL to the ABC is to provide a buffer for scientific uncertainty surrounding the OFL. It was recognized at the time that due to the multi-year nature of the management approach, in combination with the biology of CSNA, there would be uncertainty associated with the OFLs; therefore, the Council's Scientific and Statistical Committee (SSC) recommended that a large uncertainty buffer be used (*i.e.*, 75 percent reduction) to prevent overfishing. The ACL is then set either equal to or lower than the ABC.

The OFL is set equal to an estimate of MSY—an estimate that is intended to reflect the largest average fishing mortality rate or yield that can be taken from a stock over the long term (if available) or set based on a stock-specific method if deemed more appropriate. The inclusion of a large non-discretionary buffer between the OFL and ABC both protects the stock from overfishing and allows for a relatively small sustainable harvest. In recognition of the low fishing effort and landings, the Council chose this type of multi-year management framework for some finfish stocks in the FMP because it has

proven sufficient to prevent overfishing while allowing for sustainable annual harvests, even when the year-to-year biomasses of these stocks may fluctuate.

Although the allowable catch levels are not required to be adjusted each year for CSNA, the Council is required by regulation to produce an annual Stock Assessment and Fishery Evaluation report, which documents, among other scientific information, significant trends or changes in the resource, marine ecosystems, and fishery over time, and information on which to base catch specifications and status determinations.¹ The report documents trends in landings, changes in fishery dynamics and available population, and biological information for all CPS stocks and is available for Council review each year. The purpose of this report is to provide the Council with the ability to react to the best scientific information available and propose new catch limits if and when changes to management are needed to prevent overfishing or achieve the optimum yield (OY).

Additionally, in November 2021, the Council adopted into its Council Operating Procedures a flowchart and timeline to facilitate regular check-ins on CSNA management. This timeline includes conducting a new stock assessment every 8 years, the first being the one that occurred in 2022, and check-ins every 2 years between those assessments when the Council could revisit the ABC. This flowchart was developed by the Council's Coastal Pelagic Species Management Team (CPSMT) in coordination with the Council's CPS Advisory Subpanel and SSC.

Purpose of the Proposed Rule

On December 31, 2020, NMFS published a final rule in response to a September 2020 court order² directing NMFS to implement new reference points for CSNA (85 FR 86855). That rule established the current reference points for CNSA – *i.e.*, an OFL of

¹ See 50 CFR 600.315(d).

² This order was issued in *Oceana v. Ross, et al.*, Case No. 19-cv-03809-LHK (N.D. Cal.).

119,153 mt, an ABC of 28,788 mt, and an ACL of 25,000 mt. Because NMFS had to publish the rule within 120 days of the court's ruling, and therefore outside the Council process, NMFS expressed intent to work with the Council to implement a new rule based on Council recommendations in the coming years. NMFS was again sued on this 2020 rule³. Although the Court ultimately upheld the referent points implemented in the December 2020 rule in a June 2022 order, NMFS and the Council have been working to review and implement new reference points for CSNA through the Council and FMP process.

At the Council's June 2022 meeting, the Council's SSC reviewed the Southwest Fisheries Science Center's recently completed benchmark assessment for CSNA and endorsed it as the best scientific information available for management of CSNA. Although trends in anchovy abundance have been tracked over time, including the development of abundance estimates of northern anchovy since 2015, this was the first stock assessment for CSNA since 1995.

The SSC determined that utilizing the biomass time series from this new assessment to calculate a new OFL represented a better OFL than the MSY-based default harvest control rule. The SSC utilized an average of the last 7 years of biomass estimates from the stock assessment, as well as an E_{MSY} (exploitation rate for deterministic equilibrium MSY) from the assessment to recommend an OFL. The FMP calls for applying a "DISTRIBUTION" term to biomass estimates that is an estimate of the portion of the population in foreign waters. A DISTRIBUTION of 0.82 was used to obtain an OFL value for U.S. waters specifically, which resulted in a U.S. OFL of 243,779 mt. As mentioned above, per the FMP the OFL is then reduced by 75 percent which equated to an ABC of 60,945 mt, which was endorsed by the SSC. Although the

³ *Oceana v. Raimondo, et al.*, Case No. 21-cv-00736-VC (N.D. Cal.).

Council could have set the ACL equal to the ABC, based on socioeconomic and ecological considerations, they chose to recommend a lower ACL of 25,000 mt.

Proposed Reference Points

Based on the best available scientific information and recommendations from the SSC and CPSMT, the Council recommended, and NMFS proposes to implement, annual reference points for CSNA including an OFL of 243,779 mt, an ABC of 60,945, and an ACL of 25,000 mt. Because this ACL value is already in place (see 50 CFR 660.511(k)), no regulatory changes are necessary. NMFS has made the preliminary determination that these annual reference points are supported by the best scientific information available and will prevent overfishing. These proposed specifications are intended to conserve and manage CSNA off the U.S. West Coast. All sources of catch would be accounted for against the ACL, including any fishing occurring as part of an exempted fishing permit, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries and minor directed fishing. Under current regulations at 50 CFR 660.509(a), if catch reaches the ACL, the NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** to announce the closure of the fishery until the next fishing season (January 1). 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. These reference points would remain in place until new information or concerns arise. NMFS is confident that the proposed OFL in combination with the proposed ABC and ACL will prevent overfishing into the future, is representative of both the historical and recent abundance estimates, and takes into account potential fluctuations in anchovy biomass.

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 not subject to the requirements of 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.

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 reasons discussed below.

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 (North American Industry Classification System (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 and manage CSNA by preventing overfishing, while still allowing harvest opportunity among differing fishery sectors. This will be accomplished by implementing these annual specifications in the U.S. EEZ off the West Coast. The small entities that would be affected by the proposed action, if adopted, are the vessels that would be expected to harvest CSNA as part of the West Coast CPS small purse seine fleet. In the last 10 years, an average of 25 such vessels have made CSNA landings each year. In the most recent year (2022), 34 such vessels made CSNA landings. From 2012 to 2022, the average annual revenue per vessel for all CPS

vessels, including the 34 vessels potentially affected by this rulemaking, was well below the threshold level of \$11 million. These 34 vessels that made CSNA landings averaged around \$1 million in annual revenue, and therefore are considered small businesses under the RFA. 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 could be possible that some impacted entities may exceed \$11 million in ex-vessel revenue. However, based on available data, NMFS has determined this to be unlikely. Because each affected vessel is a small business, this proposed rule, if adopted, is considered to equally affect all of these small entities in the same manner. Therefore, this rulemaking 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. Because the ACL is not changing, this proposed rule, if adopted, is not expected to change the potential profitability for these small entities compared to the previous fishing year. Therefore, this proposed rule is not expected to have a significant economic impact on the 34 small entities described above.

In addition, CSNA is only one component of the multi-species CPS fishery, Therefore, the revenue derived from harvesting CSNA is typically only one of the sources of fishing revenue for the commercial vessels that participate in the CPS fishery. For example, many vessels in California also harvest mackerel and squid, as well as incidental or live-bait catch of sardine, as the directed fishery is currently closed. CPS vessels typically rely on multiple species for profitability because abundance of CSNA, 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. In the event that this proposed action might result in any unexpected decrease in the annual revenue derived from CSNA by the affected small entities, those small entities could be expected to compensate for the decrease by harvesting other CPS stocks.

For the reasons stated above, this proposed rule, if adopted, would 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 Paperwork 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: December 20, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2023-28482 Filed: 12/26/2023 8:45 am; Publication Date: 12/27/2023]