



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 250910-0150; RTID 0648-XE809]

### Fisheries off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2025–2026 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 from July 1, 2025, through June 30, 2026. This rule prohibits most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest is allowed for use only as live bait, in 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 (CPS) Fishery Management Plan (FMP), or up to 2 metric tons (mt) per trip when caught with non-coastal pelagic species stocks. The harvest specifications for 2025–2026 include an overfishing limit (OFL) of 4,645 mt, an acceptable biological catch (ABC) of 3,957, an annual catch limit (ACL) of 2,200 mt, and an annual catch target (ACT) of 2,100 mt. This final rule is intended to conserve, manage, and rebuild the Pacific sardine stock off the coasts of Washington, Oregon, and California.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Katie Davis, West Coast Region, NMFS, (323) 372-2126, *Katie.Davis@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (*i.e.*, off the U.S. West Coast states of California, Oregon, and Washington) in accordance with the CPS FMP. The CPS FMP and its implementing regulations require NMFS to set annual reference points and management measures 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 OFL and ABC control rules in the FMP, are used to set required reference points, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*). The ACL for Pacific sardine is set according to the framework established in the Pacific sardine rebuilding plan, approved on May 29, 2025, as amendment 23 to the CPS FMP (90 FR 23461). Additionally, the CPS FMP requires additional management measures, intended to restrict harvest, for the Pacific sardine fishery, such as incidental catch restrictions.

NMFS publishes annual specifications in the **Federal Register** to establish these annual reference points (*e.g.*, the OFL, ABC, and ACL) and management measures for each Pacific sardine fishing year. NMFS published proposed specifications and management measures on June 26, 2025 (90 FR 27273). The proposed rule for this action included additional background on the specifications and details of how they were derived and the basis for which the Pacific Fishery Management Council (Council) recommended them to NMFS for potential approval. Those details are not repeated here. For additional information on this action, please refer to the proposed rule. This final rule

adopts, without changes, the annual reference points and management measures as proposed for the 2025–2026 fishing year.

*Final Reference Points and Management Measures*

Based on the 2025 stock assessment for Pacific sardine, the associated estimated age 1+ biomass of 30,158 mt, the control rule formulas in the FMP, and the Pacific sardine rebuilding plan (90 FR 23461, June 3, 2025), NMFS is implementing, as proposed, an OFL of 4,645 mt, an ABC of 3,957 mt, an ACL of 2,200 mt, and an ACT of 2,100 mt.

The CPS FMP includes a prohibition of the primary directed fishery when the biomass is at or below 150,000 mt. The Pacific sardine primary directed fishery is therefore closed, and Pacific sardine catch during the 2025–2026 fishing season is prohibited unless it is harvested as part of the live bait or minor directed fisheries, as incidental catch in other fisheries, or as part of exempted fishing permit (EFP) activities.

The 2025–2026 fishing year specifications can be found in table 1, and management measures are listed after table 1.

**Table 1 – Harvest Specifications for the 2025–2026 Sardine Fishing Year, in Metric Tons (mt)**

Biomass Estimate	OFL	ABC	HG	ACL	ACT
30,158	4,645	3,957	0	2,200	2,100

The following are the additional management measures and in-season accountability measures for the 2025–2026 Pacific sardine fishing year:

(1) An incidental per-landing limit of 20 percent (by weight) of Pacific sardine applies to other CPS primary directed fisheries (*e.g.*, Pacific mackerel);

(2) If the ACT of 2,100 mt is attained, then a per-trip limit of 1 mt of Pacific sardine applies to all CPS fisheries (*i.e.*, (1) will no longer apply); and

(3) An incidental per-landing allowance of 2 mt of Pacific sardine applies to non-CPS fisheries until the ACL is reached.

In addition to the management measures and in-season accountability measures listed in the previous paragraphs, Pacific sardine catch in the minor directed fishery remains limited to 1 mt per trip per day, and 1 trip per day by any vessel, per regulations at 50 CFR 660.511(d)(2).

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. Any Pacific sardine harvested between July 1, 2025, and the effective date of this final rule will count toward the 2025–2026 ACT and ACL.

At the April 2025 Council meeting, the Council recommended apportioning 520 mt of the ACL for an EFP proposal to support stock assessments for Pacific sardine. NMFS will publish a notice of receipt of application in the **Federal Register** and request public comment. After the comment period closes, NMFS will determine the issuance of the EFP.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** to announce when catch reaches the incidental limits, as well as any changes to allowable incidental catch percentages or trip limits. 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 June 26, 2025, NMFS published a proposed rule for this action and solicited public comments through July 11, 2025 (90 FR 27273). NMFS received two public comment letters relevant to this action, one from the non-governmental conservation

organization Oceana and one from a private citizen. After considering the public comments, NMFS made no changes from the proposed rule. Both comment letters included multiple comments, some of which are beyond the scope of this action. NMFS summarizes and responds to those comments below.

*Comment 1:* Oceana states that the  $E_{MSY}$  used to set the ABC is too high given the low sardine productivity and biomass indicated in the stock assessment, resulting in an ABC that fails to prevent overfishing, rebuild the stock, or adequately constrain U.S. fishery catches and is inconsistent with the best available science on sardine productivity. Oceana states that the Council's Scientific and Statistical Committee (SSC) has repeatedly raised concerns with the  $E_{MSY}$  parameter. Oceana also cites a court order in *Oceana, Inc. v. Raimondo*, quoting the court's conclusion about the scientific record presented to the court in that matter. Oceana states that NMFS has not made any attempt to correct or update its  $E_{MSY}$  formula since 2014, and states that NMFS' updated "correlation analysis" reduced the correlation, but NMFS did not provide the SSC with any alternatives, leaving the SSC little choice but to approve the "status quo approach to  $E_{MSY}$ ." Oceana requested that NMFS immediately develop and evaluate a range of alternatives for calculating  $E_{MSY}$  that do not rely on the CalCOFI index, specifically including alternatives that base  $E_{MSY}$  on direct measures of recent productivity reported in stock assessments.

*Response:* NMFS has determined that the OFL and ABC implemented through this action will prevent overfishing and are supported by the best scientific information available.  $E_{MSY}$  is a parameter in the OFL and ABC harvest control rules. As described in the proposed rule for these harvest specifications, the SSC has recommended in past years that the analysis and assumptions surrounding a CalCOFI-based  $E_{MSY}$  be revisited. To help inform the SSC's recommendation for this year's reference points, NMFS conducted a correlation analysis of the CalCOFI-based temperature with sardine

productivity (recruits-per-spawner) for the years 1983–2023; an update from the last analysis in 2013 that examined data from 1984–2008. The SSC’s CPS subcommittee reviewed the analysis in February 2025 and reported that “the analysis demonstrates there is still valid statistical evidence for a relationship between CalCOFI [sea surface temperature] and recruits-per-spawner.” At the April 2025 Council meeting, the full SSC reviewed the analysis and concluded that it “provides the first of many steps toward potentially updating  $E_{MSY}$  for Pacific sardine, but does not compel a change at this time.” The SSC recommended the 2025–2026 OFL and ABC be calculated using the “status quo approach to  $E_{MSY}$ ,” which uses the CalCOFI temperature index.

NMFS has determined that there is no need to calculate a new  $E_{MSY}$  at this time, and that the CalCOFI-based  $E_{MSY}$  does not present any risk of overfishing. Additionally, NMFS notes that there is no defined metric for a “high” or “low”  $E_{MSY}$ , and Oceana has not provided one. It has been previously suggested that one approach to set a precautionary proxy fishing mortality rate for small pelagic fish such as Pacific sardine is to use a value that equates to one half of the species’ natural mortality rate.<sup>1</sup> Based on the estimates of natural mortality from the 2025 Pacific sardine stock assessment, this formula would produce an  $E_{MSY}$  in the range of 0.25–0.30. By contrast, the  $E_{MSY}$  utilized to calculate the OFL implemented through this action is only 0.1771. For these reasons, NMFS has determined that the reference points recommended by the Council are based on the best scientific information available and, therefore, NMFS has determined to implement them through this action.

*Comment 2:* Oceana requests that NMFS set an ACL no greater than 5 percent of the age 1+ biomass. In addition, Oceana requests that NMFS adopt an incidental catch allowance for other CPS fisheries of no greater than 10 percent of each landing.

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<sup>1</sup> Pikitch, E. *et al.* 2012. Little Fish, Big Impact: Managing a Crucial Link in Ocean Food Webs. Lenfest Ocean Program. Washington, DC. 108 pp.

*Response:* As noted in the proposed rule, the Council recommended a 2,200-mt ACL consistent with their November 2024 recommendation for the revised rebuilding plan, which NMFS approved as amendment 23 to the CPS FMP on May 29, 2025 (90 FR 23461). Under amendment 23, when biomass is below 50,000 mt—as it is this year—the ACL is restricted to 2,200 mt or the calculated ABC, whichever is less. In approving amendment 23, NMFS determined that this approach meets the goals set out by the MSA and its National Standards to rebuild the stock, and Oceana has not provided evidence to support the need for a departure from this approach.

Oceana has also provided no evidence on which to base an incidental limit of 10 percent. The CPS FMP dictates that if the estimated biomass is below 50,000 mt, then the incidental harvest rate is restricted to 20 percent landing by weight. The 2025 estimated biomass is 30,158 mt; therefore, 20 percent is in line with the allowances of the CPS FMP. Additionally, during the 2018–2019 fishing year, the last year that the stock’s biomass was more than 50,000 mt, the incidental harvest allowance was 40 percent, and the incidental fishery harvested 272 mt. The following year, the incidental harvest allowance was restricted to 20 percent, and the incidental fishery harvested 249 mt. Increasing the incidental harvest allowance does not necessarily change the amount of Pacific sardine catch, but allows more flexibility for vessels to reduce unwanted discards when the catch ratio of sardine to other CPS is greater than 20 percent.

*Comment 3:* A private citizen states that proposed rule notes that while no tribal set-aside was requested this year, there is no process for a tribe to petition mid-season if unforeseen cultural or subsistence needs arise. The citizen urges NMFS to include language allowing federally recognized tribes to petition by a specified date—or upon demonstrated need—and to commit to evaluating and reallocating up to a defined percentage of the remaining ACT/ACL to meet tribal requirements.

*Response:* Amendment 9 to the CPS FMP established, among other things, a framework by which Indian fishing rights are implemented according to treaties between the United States and the tribes. Treaties between the United States and numerous Pacific Northwest Indian tribes reserve to these tribes the right of taking fish at usual and accustomed grounds and stations (“U&A grounds”) in common with all citizens of the United States. The resulting Pacific Coast Treaty Indian Rights were developed for the four tribes recognized as having U&A grounds in the marine areas managed by the CPS FMP, and are codified in coastal pelagic fisheries regulations at 50 CFR 660.518, and changes to those regulations—including developing a process for tribes to request a mid-season set-aside—are beyond the scope of this rulemaking.

*Comment 4:* A private citizen stated that NMFS should codify a clear allocation hierarchy for all non-directed uses of sardine (live-bait, tribal, minor-directed, CPS incidental, and non-CPS incidental) and publish real-time, sector-specific catch tallies so all users can track remaining allocations. The citizen states that the rule does not establish which sector has priority when the pool is nearly exhausted, and that this ambiguity could allow incidental catch by one sector to preempt critical live-bait or tribal needs later in the season.

*Response:* The primary directed fishery for Pacific sardine has been closed since the 2015–2016 fishing year, as the biomass remains below the 150,000 mt CUTOFF value in the CPS FMP and the remaining fisheries—incidental, live bait, and minor directed—are authorized by the CPS FMP for minimal harvest while the primary directed fishery is closed and the stock is in a rebuilding status. Developing an allocation hierarchy for these fisheries, as recommended by the commenter, is not within the scope of this rulemaking. In addition, during the development of amendment 23 to the CPS FMP (the revised Pacific sardine rebuilding plan), NMFS analyzed historical landings of sardines by the incidental, live bait, and minor directed fisheries to determine an ACL

that would allow these fisheries the flexibility to continue minimal harvest while also allowing the stock to rebuild. NMFS, in coordination with the West Coast states and communication with the Council, monitors these landings to ensure that they are not exceeded. Participants in these fisheries are represented in Council meetings where aggregated landings data in relation to the ACL are publicly available; however, these data are aggregated in such a way to protect sensitive business and other identifying information per confidentiality provisions under the MSA, and therefore may not be provided to the public on a finer scale.

*Comment 5:* A private citizen stated that the 15-day comment window is far too short for stakeholders to review and respond to a complex package. Small-boat operators, tribal co-managers, and coastal communities often lack in-house legal or scientific resources and deserve a full 30 days to provide meaningful feedback. Extending the comment period to at least 30 days will ensure all affected parties can engage fully and help NMFS finalize a more robust and defensible rule.

*Response:* As stated in the proposed rule, the establishment of the annual reference points for Pacific sardine is considered a routine action because they are calculated annually based on the framework control rules in the CPS FMP. Annual harvest specifications and management measures for Pacific sardine are based on an annual stock assessment, which is usually finalized in early spring and reviewed by the Council and its advisory bodies during the Council's regularly-scheduled meeting in April. NMFS received the recommendations from the Council that form the basis for this rule following the Council's April 2025 meeting. The Council provided an opportunity for public comment at that meeting, as it does every year before adopting the recommended harvest specifications and management measures for the proceeding fishing year. The Council's advisory bodies, which provided recommendations that were

adopted by the Council for both the Pacific sardine rebuilding plan and these harvest specifications, comprise the affected stakeholders and representatives thereof.

### **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.

This final rule is exempt from review under Executive Order 12866. This final rule is not an Executive Order 14192 regulatory action.

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the date of effectiveness of these final harvest specifications for the 2025-2026 Pacific sardine fishing season. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2025. The contents of this rule are based on the best scientific information available on the population status of Pacific sardine, which became available at that April 2025 meeting. Making these final specifications effective immediately is necessary for the conservation and management of the Pacific sardine resource because last year's restrictions on harvest ended on June 30, 2025. The FMP requires a prohibition on primary directed fishing for Pacific sardine for the 2025–2026 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. Without effective specifications, there is no prohibition on primary directed fishing, no regulations on catch, and a significant amount of sardine could theoretically be caught in a short period.

Delaying the effective date of this rule is contrary to the public interest because it would jeopardize the sustainability of the Pacific sardine stock and affected minor

fisheries. Furthermore, most affected fishermen have already been operating under a prohibition of the primary directed fishery for years, and are aware that the Council recommended that primary directed commercial fishing be prohibited again for the 2025–2026 fishing year, and are fully prepared to comply with the prohibition.

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 (90 FR 27273, June 26, 2025) and is not repeated here. As a result, a final regulatory flexibility analysis was not required and none was prepared.

A Tribal summary impact statement under section (5)(b)(2)(B) and section (5)(c)(2)(B) of E.O. 13175 was not required for this final rule because this action does not impose substantial direct compliance costs on Indian Tribal Governments and this action does not preempt Tribal law. A Tribal summary impact statement has therefore not 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: September 10, 2025.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*