

Suite 222, Arlington, VA 22203. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section in our original notice—74 FR 66865—for more information).

**FOR FURTHER INFORMATION CONTACT:**

Sarah Quamme, Listing Coordinator, Southwest Regional Ecological Services Office, 500 Gold Avenue, SW., Albuquerque, NM 87102; telephone 505-248-6920. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** On

Wednesday, December 16, 2009, we announced a 90-day finding on 192 species from a petition we received to list 475 species in the Southwest region of the United States as threatened or endangered under the Act (16 U.S.C. 1531 *et seq.*) (74 FR 66865). We found that the petition presented substantial information indicating that 67 of the 192 species may warrant listing as threatened or endangered. When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we requested information on each of the 67 species from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties.

In that notice, we asked commenters to refer to an incorrect docket number when submitting comments via U.S. mail or hand delivery. The correct docket number is [FWS-R2-ES-2008-0130], and our instructions to persons submitting comments electronically included the correct docket number. All hardcopy comments received under the incorrect docket number will be routed to the correct docket. If you already submitted a comment, even with the incorrect docket number, you need not resubmit it. For more information about the species, background, and our finding, see our original notice at 74 FR 66865.

**Sara Prigan,**

*Federal Register Liaison.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 0912281446-91447-01]

RIN 0648-XT32

**Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications**

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes a regulation to implement the annual harvest guideline (HG) and seasonal allocations for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2010, through December 31, 2010. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2010 acceptable biological catch (ABC) or maximum HG is 72,039 mt. 5,000 mt of this 72,039 mt would initially be set aside for use under an Exempted Fishing Permit (EFP), if issued, leaving the remaining 65,732 mt as the initial commercial fishing HG. That HG would be divided across the seasonal allocation periods in the following way: January 1–June 30, 22,463 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14, 25,861 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31, 11,760 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt with an additional 4,000 mt set aside to buffer against reaching the ABC. This rule is intended to conserve and manage Pacific sardine off the West Coast.

**DATES:** Comments must be received by February 2, 2010.

**ADDRESSES:** You may submit comments on this proposed rule identified by 0648-XT32 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- Fax: (562)980-4047

Instructions: No comments will be posted for public viewing until after the

comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you prefer to remain anonymous). You may submit attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report “Assessment of Pacific Sardine Stock for U.S. Management in 2010” may be obtained from the Southwest Regional Office (see the Mailing address above).

**FOR FURTHER INFORMATION CONTACT:**

Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

**SUPPLEMENTARY INFORMATION:** The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council’s (Council) CPS Management Team (Team), the Council’s CPS Advisory Subpanel (Subpanel) and the Council’s Scientific and Statistical Committee (SSC). At that time, the biomass, the ABC and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council makes its HG recommendation to NMFS.

In November 2009, the Council adopted and recommended to NMFS an ABC or maximum HG of 72,039 mt for the 2010 Pacific sardine fishing year. This ABC is based on a biomass estimate of 702,204 mt and the harvest control rule established in the CPS FMP. This ABC/HG is slightly higher than the ABC/HG for the 2009 fishing season,

which was 66,932 mt. The Council also recommended that 5,000 mt of the available 2010 ABC/HG be initially reserved for research activities that would be undertaken under a potential exempted fishing permit (EFP). In 2009, 2,400 mt was subtracted from the total HG for an EFP. The Council will hear proposals and comments on any potential EFPs at the March Council meeting and make a final recommendation to NMFS on whether or not to issue an EFP(s) for the 5,000 mt research set aside at their April 2010 Council meeting. NMFS will likely make a decision on whether or not to issue an EFP some time prior to the start of the second seasonal period (July 1, 2010). Any of the 5,000 mt that is not issued to an EFP will be rolled into the third allocation period's directed fishery. Any research set aside attributed to an EFP designed to be conducted during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period's directed fishery. Any research set aside attributed to an EFP designed to be conducted during closed fishing times in the third allocation, but not utilized, will not be re-allocated.

The Council recommended that the remaining 67,039 mt (HG of 72,039 mt minus proposed 5,000 mt EFP set aside) be used as the initial overall fishing HG and be allocated across the seasonal periods established by Amendment 11 (71 FR 36999). The Council also recommended an incidental catch set aside of 3,000 mt and a management uncertainty buffer of 4,000 mt. Subtracting this set aside from the initial overall HG establishes an initial directed harvest fishery of 60,039 mt and an incidental fishery of 3,000 mt. The purpose of the incidental fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, if and when a seasonal directed fishery is closed.

The directed harvest levels and incidental set-aside would be initially allocated across the three seasonal allocation periods in the following way: January 1–June 30, 22,463 mt would be allocated for directed harvest with an incidental set aside of 1,000 mt; July 1–September 14, 25,861 mt would be allocated for directed harvest with an incidental set aside of 1,000 mt; September 15–December 31, 11,760 mt would be allocated for directed harvest with an incidental set aside of 1,000 mt. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to

directed harvest and only incidental harvest would be allowed. For the remainder of the period, any incidental Pacific sardine landings would be counted against that period's incidental set-aside. The proposed incidental fishery would also be constrained to a 30 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine. In the event that an incidental set aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period would automatically be adjusted to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period's directed harvest total would be adjusted to account for this discrepancy as well.

If the total HG or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery would be closed via appropriate rulemaking until it re-opens either per the allocation scheme or the beginning of the next fishing season. The Regional Administrator would publish a notice in the **Federal Register** announcing the date of such closures.

Detailed information on the fishery and the stock assessment are found in the report "Assessment of Pacific Sardine Stock for U.S. Management in 2010" (see **ADDRESSES**).

The formula in the CPS FMP uses the following factors to determine the HG:

1. *Biomass*. The estimated stock biomass of Pacific sardine age one and above for the 2010 management season is 702,204 mt.
2. *Cutoff*. This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.
3. *Distribution*. The portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent and 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.

4. *Fraction*. The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures; a higher fraction for warmer ocean temperatures and a lower fraction for cooler temperatures. Warmer ocean temperatures favor the production of Pacific sardine. For 2010, the fraction used was 15 percent, based

on three seasons of sea surface temperature at Scripps Pier, California.

### Classification

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

These proposed specifications are 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of this proposed rule is to implement the 2010 HG for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the ABC, from which the HG is then derived. The HG is determined using an environmentally-based formula accounting for the effect of ocean conditions on stock productivity.

The HG is apportioned based on the following allocation scheme: 35 percent of the HG is allocated coastwide on January 1; 40 percent of the HG, plus any portion not harvested from the initial allocation is then reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations will be released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery is closed until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during an allocation period or the year; the HG and seasonal allocations are available until fully utilized by the entire CPS fleet.

The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finfish fleet. Approximately 109 vessels are permitted to operate in the sardine fishery component of the CPS fishery off the U.S. West Coast; 65 permits in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 44 permits in Oregon and Washington's state Pacific sardine fisheries. This proposed rule has an equal effect on all of these small entities and therefore will impact a substantial number of these small entities in the same manner. These vessels are considered small business entities by the

U.S. Small Business Administration since the vessels do not have annual receipts in excess of \$4.0 million. Therefore, there would be no economic impacts resulting from disproportionality between small and large business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2009 fishing year the maximum HG was set at 66,932 mt. The majority of the HG was harvested during the 2009 fishing season with an estimated coastwide ex-vessel value of \$12.5 million. Although the 2009 HG was 25 percent lower than the HG for 2008, due to an increase in ex-vessel price per pound of sardine, coastwide ex-vessel revenue for 2009 was less than \$2 million different than revenue for 2008 and above the average ex-vessel revenue achieved from 2002–2007.

The proposed HG for the 2010 Pacific sardine fishing season (January 1, 2010 through December 31, 2010) is 72,039 mt. This HG is slightly higher than the HG for 2009 of 66,932 mt. If the fleet were to take

the entire 2010 HG, and assuming a coastwide average ex-vessel price per mt of \$187, the potential revenue to the fleet would be approximately \$13.5 million. This would be higher than average coastwide ex-vessel value achieved from 2002–2009. Whether this will occur depends greatly on market forces within the fishery and on the regional availability of the resource to the fleets and the fleets' ability to find pure schools of Pacific sardine. A change in the market and/or the potential lack of availability of the resource to the fleets could cause a reduction in the amount of Pacific sardine that is harvested, in turn, reducing the total revenue to the fleet from Pacific sardine.

However, the revenue derived from harvesting Pacific sardine is only one factor determining the overall revenue of a majority of the CPS fleet and therefore the economic impact to the fleet from the proposed action can not be viewed in isolation. CPS finfish vessels typically harvest a number of other species, including anchovy, mackerel, squid, and tuna, making Pacific sardine only one component of a multi-species CPS fishery. A reliance on multiple species is a necessity because each CPS stock is highly associated to present ocean and environmental conditions. Because each species responds to

such 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 endured by depending on a group of species.

Based on the disproportionality and profitability analysis above, this rule if adopted, will not have a significant economic impact on a substantial number of these 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.

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

Dated: January 7, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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