§ 412.103 Obligations of care provider facilities.

(a) *General requirements.* During any investigation by ORR, a care provider facility must:

(1) Permit ORR unrestricted access to the premises, any physical property on the premises, buildings, staff, and children in the physical custody of the care provider facility;

(2) Permit ORR to conduct interviews with children residing at the care provider facility, and without care provider facility staff, contractors, or sub-grantees of the care provider facility, or care provider facility volunteers present;

(3) Permit ORR to observe the activities of care provider facility staff, contractors, or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through contracts or grants with ORR;

(4) Promptly preserve any potential video or documentary evidence;

(5) Promptly provide access to and, upon request, copies of all files, records, reports, data, video recordings, and other information to ORR, either prior to or during the investigation;

(6) Promptly provide access to and contact information for care provider facility staff, contractors, or sub-grantees of the care provider facility, care provider facility volunteers, or other individuals who have access to children in ORR care through other contracts or grants with ORR;

(7) Submit complete and accurate responses to any written questions in a timely manner;

(8) Fully cooperate with ORR;

(9) Fully cooperate with any investigation of the same allegation by State, local, and Federal authorities and relevant law enforcement agencies.

(b) *Protection against retaliation.* Care provider facility staff, contractors, or sub-grantees of the care provider facility, and care provider facility volunteers must not retaliate against any person who in good faith reports or participates in an investigation of child abuse or neglect.

(c) *Obstruction, interference, delay of, or failure to permit an investigation.* Obstruction, interference, delay of, or failure of a care provider facility to permit or cooperate with any investigation under this part, including failure to protect unaccompanied children from retaliation pursuant to § 412.103(b), may result in ORR taking monitoring and enforcement measures including, but not limited to: remote monitoring of the care provider facility; on-site monitoring of the care provider facility; monitoring of the corporate offices to review internal policies and reporting structures, as well as supervisory response to events; limiting or stopping new placements of unaccompanied children at the care provider facility; removing all unaccompanied children from the care provider facility and placing them into other care provider facilities; issuing corrective actions; terminating the cooperative agreement or contract with the care provider facility; or imposing other such remedies for noncompliance applicable to HHS grant recipients and contractors.

(d) *Rights to legal representation, familial supports, and other supports.* During the course of an investigation, care provider facilities must provide unaccompanied children confidential access to attorneys of record and other legal service providers, in a manner consistent with requirements established at 45 CFR 411.55 (as applicable) and 45 CFR 410.1309. Care provider facilities must provide unaccompanied children access to their families, including legal guardians, in a manner consistent with requirements established at 45 CFR 411.55 (as applicable) and 45 CFR 410.1309. Care provider facilities must provide unaccompanied children with access to their child advocates, in a manner consistent with the requirements at 8 U.S.C. 1232(c)(6) and 45 CFR 410.1308. Care provider facilities must also provide unaccompanied children access to health services (including specialists and mental health practitioners), individual counseling sessions, and crisis intervention (including access to outside victim services and rape crisis centers where appropriate) to most appropriately address unaccompanied children's needs, in a manner consistent with requirements established at 45 CFR 410.1307, 45 CFR 410.1311, 45 CFR 410.1302(c)(5), and 45 CFR 411.21 (as applicable).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 241120–0297]

RTID 0648–XD848

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2024–2025 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, 2024, through June 30, 2025. This rule prohibits most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest is allowed only for use 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 30 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 2024–2025 include an overfishing limit (OFL) of 8,312 mt, an acceptable biological catch (ABC) and annual catch limit (ACL) of 6,005 mt, and an annual catch target (ACT) of 5,500 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 December 27, 2024.

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.*). Additionally, the CPS FMP requires additional management measures, intended to restrict harvest, for the Pacific sardine fishery, such as 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 21, 2024 (89 FR 52005). Additionally, in response to a court order, and to avoid a lapse in regulations, NMFS published an interim final rule (89 FR 62668; August 1, 2024) that was effective July 29, 2024, and is in place until replaced by these 2024–2025 final specifications.

Final Reference Points and Management Measures

Based on the 2024 benchmark stock assessment for Pacific sardine, the associated estimated age 1+ biomass of 58,614 mt, the control rule formulas in the FMP, and recent related Court orders, NMFS is implementing, as proposed, an OFL of 8,312 mt, an ABC of 6,005 mt, an ACL of 6,005 mt, and an ACT of 5,500 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 2024–2025 fishing season is prohibited unless it is harvested as part of the live bait, tribal, or minor directed fisheries, as incidental catch in other fisheries, or as part of exempted fishing permit (EFP) activities.

The 2024–2025 fishing year specifications can be found in table 1, and management measures are listed after table 1.

TABLE 1—HARVEST SPECIFICATIONS FOR THE 2024–2025 SARDINE FISHING YEAR, IN METRIC TONS

[mt]

Biomass estimate	OFL	ABC	HG	ACL	ACT
58,614	8,312	6,005	0	6,005	5,500

The following are the additional management measures and in-season accountability measures for the 2024–2025 Pacific sardine fishing year:

(1) If landings in the live bait fishery reach 3,000 mt of Pacific sardine, then a per-trip limit of 1 mt of Pacific sardine applies to the live bait fishery;

(2) An incidental per-landing limit of 30 percent (by weight) of Pacific sardine applies to other CPS primary directed fisheries (*e.g.,* Pacific mackerel);

(3) If the ACT of 5,500 mt is attained, then a per-trip limit of 1 mt of Pacific sardine applies to all CPS fisheries (*i.e.,* (1) and (2) will no longer apply); and

(4) 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 for finfish 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).

Background

At the April 2024 Pacific Fisheries Management Council (Council) meeting, the Council's Scientific and Statistical Committee (SSC) reviewed a Stock Assessment Review (STAR) panel report on the Southwest Fisheries Science Center's 2024 benchmark stock assessment, and also reviewed the benchmark stock assessment itself, titled ''Assessment of the Pacific sardine resource (*Sardinops sagax*) in 2024 for U.S. management in 2024–2025.'' The SSC concluded that the 2024 benchmark assessment for Pacific sardine is the best scientific information available for the management of Pacific sardine. During their review, the SSC noted major improvements in methodology from the 2020 benchmark assessment, including an updated habitat model for assigning fishery catch and survey biomass to the northern and southern subpopulations of Pacific sardine. However, the SSC applied a category 2d sigma uncertainty buffer which, compared to a category 1, equates to a larger allowance for scientific uncertainty, and therefore a lower ABC and a decreased risk of overfishing. During the discussion of the appropriate category, the SSC discussed potential uncertainty in the relationship between sardine productivity and ocean temperatures recently used to calculate the E_{MSY} parameter of the OFL and ABC control rules, as well as uncertainty in the strength of the 2023 year-class represented in the stock assessment, along with other uncertainties in the data used in the assessment.

The CPS FMP control rules, as they apply to annual reference points, use the following formulas:

OFL = Biomass * E_{MSY} * DISTRIBUTION

ABC = Biomass * BUFFER * E_{MSY} * DISTRIBUTION

Biomass. The estimated stock biomass of Pacific sardine ages 1 and older, in metric tons.

E_{MSY}. The exploitation rate for deterministic equilibrium maximum sustainable yield. Since 2014, based on annual recommendations by the Pacific Fishery Management Council's SSC, the E_{MSY} for Pacific sardine has most recently been based on a temperature-recruitment relationship based on a running 3-year average of the California Cooperative Oceanic Fisheries Investigations (CalCOFI) temperature index.

DISTRIBUTION. The average portion of the Pacific sardine biomass estimated to be in the U.S. EEZ off the Pacific coast. DISTRIBUTION is currently defined in the CPS FMP as 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.

BUFFER. The percentage reduction of the OFL as determined by the SSC's evaluation of scientific uncertainty (sigma) and the Council's risk policy (P*).

Rebuilding Plan and Oceana, Inc., v. Raimondo, et al.

During the 2019–2020 fishing year, the estimated biomass of sardine dropped below its minimum stock size threshold of 50,000 mt, which triggered an overfished determination process. NMFS accordingly declared the stock overfished on June 26, 2019 and notified the Council on July 9, 2019. NMFS worked with the Council to develop a rebuilding plan for Pacific sardine to

implement within two years and finalized it on June 24, 2021 (86 FR 33142). The rebuilding plan maintained the status quo management for Pacific sardine, which includes a complete closure of the primary sardine fishery. Oceana, an environmental non-governmental organization, challenged this rebuilding plan and later included a challenge to the 2023–2024 annual specifications (''2023 Final Rule''; 88 FR 41040), in an action filed in the United States District Court for the Northern District of California: *Oceana, Inc.,* v. *Raimondo, et al.,* No. 5:21–cv–05407–VKD (N.D. Cal., filed July 14, 2021). In its rulings on the challenges, the Court partially vacated the rebuilding plan and held that NMFS failed to demonstrate that it relied on best available science to set the overfishing limits in using the CalCOFI temperature index to determine E_{MSY} for the 2023 Final Rule.

Partially-Vacated Rebuilding Plan

The Court partially vacated the rebuilding plan on June 28, 2024. Accordingly, NMFS cannot rely on the vacated components of the rebuilding plan to guide these annual specifications. The harvest control rules in place before Amendment 18 to the CPS FMP implemented the now partially-vacated rebuilding plan are still applicable. None of the provisions of Amendment 18, whether vacated or not, changed the previously applicable harvest control rules.

E_{MSY}

NMFS considered the recent order from the Court in making a determination that the harvest specifications and management measures in this action would prevent overfishing, rebuild the stock, and are supported by the best scientific information available. As they have in previous years, the SSC recommended an OFL and ABC for the 2024–2025 fishing year that were calculated, in part, by using an E_{MSY} based on a relationship with CalCOFI temperatures as best scientific information available for preventing overfishing. The CPS FMP does not mandate that E_{MSY} be based on this relationship. Under the MSA, the SSC provides scientific advice for NMFS' consideration in fishery management decisions, including ABC and preventing overfishing. Per National Standard 2 at 50 CFR 600.315(a)(2), scientific information that is used to inform decision making should include an evaluation of its uncertainty and management decisions should recognize the risks, such as those to overfishing, associated with the sources of uncertainty. The SSC discussed the potential uncertainty surrounding the use of the CalCOFI-based E_{MSY} when considering their choice of the appropriate sigma for the ABC. NMFS has determined that the use of a Category 2 sigma, as recommended by the SSC, appropriately accounts for any scientific uncertainty and gaps in scientific information that may exist, including any surrounding E_{MSY}, in the information used to calculate the recommended reference points.

In making the determination to approve the OFL and ABC recommended by the Council, NMFS took into account the fact that the SSC recommended that the analysis and assumptions surrounding a CalCOFI based E_{MSY} be revisited. This was one of several scientific recommendations made by the SSC in April 2024. Other recommendations included a potential reconsideration of the need for the precaution provided by the DISTRIBUTION term, noting that a substantial proportion of the U.S. catch in recent years is inferred to be from the southern subpopulation of Pacific sardine and that there has been a decline in the assumed catch of northern subpopulation by Mexico, as well as endorsement of the eight high-priority research recommendations for future sardine stock assessments in the 2024 sardine STAR panel report. All of these recommendations are typical of the scientific process to inform fishery management decisions such as determining an appropriate OFL and ABC to prevent overfishing and achieve optimum yield in the fishery.

NMFS also examined recent and past years' CalCOFI temperatures in relation to this year's calculated CalCOFI-based E_{MSY}. The calculated value for this year is 0.163 and represents the lowest E_{MSY} in 10 years, and falls in the lower range of expected values. The decline in E_{MSY} this year compared to the last 3 years is the result of a high temperature record year in 2020 falling out of the running 3-year average temperature used to calculate E_{MSY}. This effect was also observed between 2014 and 2017 when a very large marine heatwave off the Pacific coast caused unprecedented disruptions in the ocean environment, resulting in high CalCOFI temperatures. The highest CalCOFI temperature in 40 years was recorded in 2015. Such events increase the running 3-year average temperature used to calculate E_{MSY}. To reduce the risk of potentially excessive E_{MSY} values, the SSC recommended in 2014 that a CalCOFI-based E_{MSY} be restricted to a maximum of 0.25 (for reference, this equated to a temperature of 16.16 °C when the median temperature was 15.90 °C). This cap on E_{MSY} was applied to calculations of the reference points for the 2016–2017 and 2018–2019 fishing years.

Although the Court found that NMFS' rationale for exclusively using CalCOFI data to determine E_{MSY} in order to set the 2023–2024 specifications was inadequate, it explicitly declined to prohibit NMFS from employing the CalCOFI-based E_{MSY} in setting catch limits, and stated that the agency must reassess the rebuilding plan and determine how to meet the requirements of the MSA in view of the Court's order. In light of the Court's finding prior to the issuance of the 2024–2025 harvest specifications, and as part of a robust decision-making process, NMFS considered whether there was alternative scientific information, per 50 CFR 600.315(a)(2), that would warrant disapproving the Council's recommendation.

Although E_{MSY} is lower this year than any E_{MSY} used in the last 10 years, NMFS acknowledges there is still scientific uncertainty surrounding the predictive efficacy of the CalCOFI temperature index. However, as explained in both the proposed rule and this final rule, this uncertainty was considered by the SSC and the Council when recommending a 2,307 mt reduction from the OFL to the ABC (*i.e.,* OFL is 8,312 mt but ABC and ACL are both 6,005 mt). Importantly, as discussed in the proposed rule and in the paragraphs that follow, in addition to accounting for any scientific uncertainty surrounding CalCOFI, NMFS also considered the only available alternative to its use, which resulted in a higher value than the CalCOFI-based E_{MSY}, and determined the lower value was appropriate to use in setting this year's specifications.

Currently, there are no other formulaic relationships between Pacific sardine recruitment and an environmental variable on which to base E_{MSY}. However, past analyses have calculated a stochastic (referenced as ''static'' in proposed rule) E_{MSY} of 0.18 when the effects of temperature on productivity are ignored.[1] This value for E_{MSY} was recommended by the SSC and utilized by NMFS as best scientific information available for management in 2012–2014 as an alternative to the default option of applying the temperature-stock relationship due to uncertainty surrounding the

[1] Hurtado-Ferro, F., and Punt, A.E. 2013. Revised analyses related to Pacific sardine harvest parameters. PFMC June 2013 Briefing Book. Agenda Item I.4.b Attachment 1.

relationship at that time.[2] During the Council's April 2023 Pacific sardine harvest specification process, the SSC specifically compared this stochastic value to the CalCOFI-based 2023–2024 E_{MSY} of 0.22 in its discussion of an appropriate OFL buffer: ''There was no support among SSC members for a category 1 designation, but there was some discussion of the merits of a category 2 versus a category 3 assessment. Although uncertainty in E_{MSY} would argue for increased uncertainty in the OFL, it was noted that the 'nondynamic' harvest rate (estimated to maximize long-term yield in stochastic simulations), of 0.18, is not very different from 0.22 based on current SSTs, and that other CPS stocks have rates that are higher still (Pacific mackerel E_{MSY} is ~0.3).'' [3]

NMFS considers this modeled stochastic E_{MSY} of 0.18 as the only available alternative that could have been considered in making OFL determinations for Pacific sardine without the use of the CalCOFI temperature index. However, the Council's SSC recommended to the Council an OFL that utilized the CalCOFI-based E_{MSY} as the best scientific information available. In making the decision to approve the OFL and ABC in this action, NMFS considered the stochastic E_{MSY} of 0.18. NMFS concluded that, at this time, it cannot make a determination that the stochastic E_{MSY} of 0.18 represents a better alternative to the CalCOFI-based E_{MSY} value the SSC recommended as the best scientific information available for determining this year's OFL. Since 2000, when the CPS FMP was adopted and harvest control rules were established for Pacific sardine, it has been determined that making efforts to include environmental information into the management of Pacific sardine is the preferred approach. And although the relatively recent running 3-year average CalCOFI temperatures have resulted in higher values than in previous years, likely as a result of anomalous, although becoming more frequent, oceanographic events, that may appear to contradict the original concept of the environmental E_{MSY}, this year's temperature and resulting E_{MSY} align with the concept as they are both in the lower range of values during a time of relatively low sardine recruitment. NMFS will continue, as it has each year, to evaluate whether the use of the CalCOFI-based E_{MSY} is the best scientific information available for future annual specifications.

As noted in the proposed rule, the Council's recommended OFL, calculated using an E_{MSY} of 0.163, is a lower OFL and therefore more precautionary than an OFL would have been based on the stochastic E_{MSY} of 0.18. Additionally, 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.[4] Based on the estimates of natural mortality from the 2024 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 0.163. 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.

Annual Catch Limit

Although this action implements an ACL equal to the ABC at 6,005 mt, as envisioned by the FMP, NMFS has determined that as a result of the closure of the directed fishery and additional management measures, landings of the northern subpopulation of Pacific sardine will remain very low and total U.S. sardine landings are highly unlikely to exceed 2,200 mt, similar to what has occurred since the 2015–2016 fishing year, when the directed fishery was closed (see table 2).

TABLE 2—LANDINGS ATTRIBUTED IN THE 2024 PACIFIC SARDINE STOCK ASSESSMENT TO NORTHERN AND SOUTHERN SUBPOPULATIONS OF PACIFIC SARDINE (2014–2023), IN METRIC TONS

Fishing year	ACL	Total landings of Pacific sardine (combined catch of northern and southern subpopulations)	Assumed landings of northern subpopulation of Pacific sardine
2014–2015	23,293	23,113	19,969
2015–2016	7,000	1,919	75
2016–2017	8,000	1,885	602
2017–2018	8,000	1,775	351
2018–2019	7,000	2,278	525
2019–2020	4,000	2,062	627
2020–2021	4,000	2,276	657
2021–2022	3,000	1,772	298
2022–2023	3,800	1,619	517

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, 2024, and the effective date of this final rule will count toward the 2024–2025 ACT and ACL.

At the April 2024 Council meeting, the Council recommended apportioning 670 mt of the ACL for two EFP proposals to support stock assessments for Pacific sardine. NMFS published a notice of receipt of EFP applications on June 26, 2024 (89 FR 53396). The comment period closed on July 26,

[2] Prior to 2012, E_{MSY} was based on a relationship with sea surface temperature measured at the Scripps Institution of Oceanography (SIO) pier, in La Jolla, CA. A scientific paper was published calling into question this relationship, so while that was reviewed, 18 percent was used for E_{MSY}. The subsequent review of the SIO pier temperature and E_{MSY} relationship determined it was actually still correlated.

[3] Scientific and Statistical Committee Minutes. April 2023. PFMC. *https://www.pcouncil.org/documents/2023/06/scientific-and-statistical-committee-draft-april-1-2-2023-minutes.pdf/.*

[4] Pikitch, E. et al. 2012. Little Fish, Big Impact: Managing a Crucial Link in Ocean Food Webs. Lenfest Ocean Program. Washington, DC. 108 pp.

2024, and NMFS received no comments. NMFS is deciding whether to issue the EFPs during the promulgation of this final rule. 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 21, 2024, NMFS published a proposed rule for this action and solicited public comments through July 8, 2024 (89 FR 52005). NMFS received two public comment letters relevant to this action, one from the California Wetfish Producer's Association (CWPA) and one from the non-governmental conservation organization Oceana. After considering the public comments, NMFS made no changes from the proposed rule. The comment from CWPA supported this action. The comment letter from Oceana included multiple comments, some of which are beyond the scope of this action. Additionally, some of the comments and requests provided by Oceana were the subject of recent litigation. The U.S. District Court (N.D. Cal.) has ruled in this case, and NMFS notes that it must complete the remand of the Pacific sardine rebuilding plan by June 1, 2025 (*Oceana, Inc.,* v. *Raimondo, et al.*). NMFS summarizes and responds to those comments from Oceana below.

Comment 1: Oceana states that the E_{MSY} used to set the OFL, ABC, and ACL fails to prevent overfishing and is inconsistent with the best available science on sardine productivity. Oceana states that in NMFS' rationale for continuing to use the CalCOFI index for E_{MSY}, NMFS incorrectly asserts that the identified flaws in the CalCOFI index are due to uncertainty.

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. NMFS notes that this issue was the subject of recent court orders: on April 22, 2024, the Court issued an order stating that NMFS failed to demonstrate that it had relied on the best available science in setting the 2023–2024 OFL for Pacific sardine using an exclusively CalCOFI-derived E_{MSY}. As stated in this rule, NMFS took into account the Court's finding on this matter and has determined that reference points established by this action, specifically the OFL and ABC, will prevent overfishing, support the rebuilding of the stock, and are supported by the best scientific information available. In an attempt to address the Court's concern for these 2024–2025 harvest specifications, NMFS expressly considered what available information exists that would necessitate that NMFS disapprove the Council's recommended OFL. As stated above, NMFS considered the only alternative E_{MSY} value previously analyzed and used by the Council's SSC and NMFS, which was 18 percent. The use of the 18 percent E_{MSY} was previously supported by analyses conducted by Hurtado-Ferro and Punt (2013) developed to evaluate the performance of alternative candidate OFL and HG control rule variants. That analysis used a Pacific sardine specific model to calculate an E_{MSY} to examine constant exploitation rate harvest control rules (*i.e.,* an E_{MSY} that does not account for an environmental effect), and is also the E_{MSY} value that was used to project the population in the rebuilding analysis for Pacific sardine.

For this year, the alternative of an 18 percent E_{MSY} would be higher than the CalCOFI-based E_{MSY} value, and would therefore result in a higher OFL than the OFL recommended by the SSC. As described in this rule, the CalCOFI-based E_{MSY} is among the lowest values produced by the CalCOFI (sea surface) temperature index in the past 10 years. The literature cited by the commenter (Zwolinski and Demer, 2019) re-evaluated the correlation between the sea surface temperature E_{MSY} values and recruitment success of the northern subpopulation of Pacific sardine over a specific period of years and suggested that the relationship was no longer statistically valid. However, the same journal article that called into question the validity of the CalCOFI temperature index in predicting the productivity of Pacific sardine stated that ''. . . even a marginally statistically significant environment-dependent recruitment model may be useful. For example, if required by the HCR, it could be used to predict recruitment in the management year and forecast the stock biomass into the following year more precisely than a model without environmental influence.'' [5] While NMFS will continue to evaluate E_{MSY}, it has determined that use of the CalCOFI temperature index is the best scientific information available in setting the 2024–2025 Pacific sardine harvest specifications.

Comment 2: Oceana argues that the stochastic E_{MSY} value of 18 percent is outdated and incorrect and that NMFS fails to analyze other available alternatives for setting the E_{MSY} value for the 2024–2025 specifications. Oceana suggests using an E_{MSY} value of 5 percent from Alternative 3 in Amendment 18 to the CPS FMP to set the OFL. Oceana states that NMFS could alternatively also readily produce an E_{MSY} from the 2024 stock assessment, as it did in the 2022 northern anchovy stock assessment, and use it to calculate the 2024–2025 annual catch specifications.

Response: As stated previously in this rule, in light of the Court's finding that NMFS' rationale for using the CalCOFI based E_{MSY} in the 2023–2024 specifications was inadequate, NMFS re-examined and reviewed the relevant information available to make a determination on approving the OFL and ABC implemented through this action. While Oceana states that the CalCOFI-based E_{MSY} and the stochastic 18 percent E_{MSY} are not consistent with the best scientific information available on sardine productivity, the comment did not offer alternative best scientific information available and NMFS has determined that none exists. Oceana suggests that NMFS consider a 5 percent E_{MSY}; however, NMFS could not, through this action, implement an OFL utilizing a 5 percent E_{MSY} and additionally has no evidence that this would represent best scientific information available. NMFS recognizes that a harvest rate of 5 percent was considered as part of alternative 3 for Amendment 18, and this could remain a potential alternative under any future rebuilding plan; however, NMFS has determined it does not represent the best scientific information available for use as an E_{MSY} to calculate this year's OFL. NMFS has no basis to consider a 5 percent E_{MSY} as alternative best scientific information available. Unlike the stochastic 18 percent described above, 5 percent is not a result of modeling work explicitly designed to calculate E_{MSY}. The 5 percent value under alternative 3 represented a harvest level between status quo management and zero U.S. harvest, which was analyzed as a policy option to explore the differences in potential rebuilding timelines as a result of reduced harvest levels. Absent any support for an E_{MSY} of 5 percent as a basis for calculating the OFL, NMFS could not determine that it was the best scientific information available.

[5] Zwolinski, JP & Demer, DA. 2019. Re-evaluation of the environmental dependence of Pacific sardine recruitment. Fisheries Research, 216, 120–125. *https://doi.org/10.1016/j.fishres.2019.03.022.*

In addition, Oceana's suggestion that NMFS could ''readily'' produce an updated E_{MSY} from the 2024 stock assessment as was done for the central subpopulation of northern anchovy (CSNA) is misleading, because the 2024 sardine stock assessment did not produce an E_{MSY} that could be considered in this rulemaking. The management of Pacific sardine has never utilized an E_{MSY} derived from a stock assessment model. No such E_{MSY} is available because it has not been produced by scientists and peer reviewed, and thus an E_{MSY} derived from a stock assessment model would not be the best scientific information available as required under the MSA. Calculating E_{MSY} for CPS stocks from a stock assessment requires scientists to run multiple data analyses, including reassessments to address potential issues, and these results would then need to be packaged and written up. This is not a straightforward process that could be accomplished and appropriately reviewed in the time available to complete this rulemaking.

The complications of this process are highlighted by the CSNA E_{MSY} development. The most appropriate way to calculate the CSNA E_{MSY} was discussed at multiple meetings, including the STAR panel meeting for the 2022 CSNA assessment as well as a full SSC meeting. These discussions included scientifically technical deliberations on the parameters of the stock assessment that influence the E_{MSY} calculation. Ultimately the SSC recommended an E_{MSY} value resulting from the stock assessment model; however, at the time the SSC noted that uncertainty in that value remained: ''The SSC endorses the E_{MSY} value (labeled F_{MSY} in the assessment) of 0.493 estimated within the assessment, where E is expressed as annual total catch divided by summary age-1+ biomass, while noting that the value of E_{MSY} remains a major uncertainty.'' During the 2024 Pacific sardine stock assessment process an E_{MSY} was not developed. Furthermore, any sort of E_{MSY} from the assessment model for Pacific sardine would likely carry similar uncertainties as those associated with the CSNA value that would require a thorough review and would not be reliable for the 2024–25 specifications.

Comment 3: Oceana states that the proposed ACL would not allow rebuilding within the legally required timeline because it represents a harvest rate and overall catch level that NMFS's rebuilding analysis showed will not rebuild the Pacific sardine population. Oceana states that in contrast, NMFS's rebuilding analysis showed that a constant catch of 2,200 metric tons or a 5 percent harvest rate would rebuild the population.

Response: NMFS acknowledges that the Court's order vacated parts of the rebuilding plan that must be addressed by June 1, 2025, including that the plan failed to rebuild the stock within the statutory timeframe under the MSA. The Court has provided NMFS until June 1, 2025 to develop a new rebuilding plan that will specify a time period for rebuilding Pacific sardine that will be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem. The rebuilding plan will also include conservation and management measures consistent with achieving rebuilding within the specified time period. It is not required by the Court's order to implement this rebuilding plan in this rule.

Comment 4: Oceana states that given the uncertainties, evidence of previous overfishing, and the need to rebuild, Oceana recommended NMFS use a lower P-star parameter than the 0.4 recommended by the Council. Noting that P-star represents the risk of overfishing.

Response: The choice of P-star is only one factor in creating a buffer between the OFL and ABC to help ensure overfishing is prevented. The other factor used for Pacific sardine is the sigma value recommended by the SSC. This sigma value is intended to capture scientific uncertainty in the OFL estimate. The Council's P-star choice is then intended to capture other factors, such as management uncertainty, in preventing overfishing. There is extremely limited management uncertainty associated with tracking catch levels against the applicable catch reference points for Pacific sardine. NMFS is readily able to track fishing mortality across the various sectors in season to ensure landings do not exceed the ACL or ABC. NMFS therefore has determined that the ABC has been appropriately reduced from the OFL to prevent overfishing.

Comment 5: Oceana states that given the stock remains near the 50,000 mt minimum stock size threshold, the proposed incidental harvest rate of 30 percent is excessive.

Response: 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 2024 estimated biomass is 58,614 mt. Under the CPS FMP, at this value, the incidental rate could be up to 45 percent; therefore, 30 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 doesn't 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.

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 because it is a routine rule that would implement regulations for less than 1 year.

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 (89 FR 52005, June 21, 2024) and is not repeated here. As a result, a final regulatory flexibility analysis was not required and none was prepared.

Pursuant to Executive Order 13175, this proposed 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 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: November 20, 2024.

Samuel D. Rauch III,

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

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