

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 110606318–1655–02]

RIN 0648–BA68

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 13 to the Coastal Pelagic Species Fishery Management Plan; Annual Catch Limits

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 13 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This final rule implements parts of Amendment 13 to the CPS FMP, which is intended to ensure the FMP is consistent with advisory guidelines published in Federal regulations. Amendment 13 revised the framework process in place to set and adjust fishery specifications and management measures and modified this framework to include new specification reference points such as annual catch limit (ACL).

DATES: Effective December 14, 2011.

ADDRESSES: Copies of the CPS FMP as Amended through Amendment 13 and the Environmental Assessment/Regulatory Impact Review for Amendment 13, are available from Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802, or Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at (562) 980–4034 or Mike Burner, Pacific Fishery Management Council, at (503) 820–2280.

SUPPLEMENTARY INFORMATION: The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Species managed under the CPS FMP include Pacific sardine, Pacific mackerel, jack mackerel,

northern anchovy, market squid and krill. The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations that can be found at 50 CFR part 660, subpart I.

The MSA was amended in 2007 to include new requirements for ACLs and accountability measures (AMs) and other provisions regarding preventing and ending overfishing and rebuilding fisheries. On February 17, 2009, NMFS revised its guidelines implementing MSA National Standard 1 (January 16, 2009; 74 FR 3178) in response to these changes in the MSA. The revised guidelines explain NOAA's interpretation of the new statutory requirements for specifying ACLs at such levels that overfishing does not occur and that measures be taken to ensure accountability with these limits. The purpose of Amendment 13 is to amend the CPS FMP to comply with certain provisions in those revised advisory guidelines and to comply with the new requirement to establish a process for setting ACLs and AMs. Specifically, Amendment 13 revised the framework process to set and adjust fishery specification and management measures, and established a framework for specifying new reference points such as ACLs and AMs, as well as other provisions for preventing overfishing such as the potential setting of annual catch targets (ACTs).

Additionally, Amendment 13 amended the FMP to better account for scientific and management uncertainty and to prevent overfishing through the following measures:

- Modify the existing harvest control rules for actively managed species (Pacific sardine and Pacific mackerel) to include a buffer or reduction in acceptable biological catch (ABC) relative to overfishing limit (OFL) to account for scientific uncertainty. This buffer will be recommended during the annual management cycle through a combination of scientific advice from the Scientific and Statistical Committee (SSC) and a policy determination of the Council.

- Maintain the default harvest control rules for monitored stocks (jack mackerel, northern anchovy and market squid) but modified as necessary to specify the new management reference points. ACLs would likely be specified for multiple years until such time as the species becomes actively managed or new scientific information becomes available. The current buffer of a 75-percent reduction in the ABC control rule (ABC equals 25 percent of OFL/MSY) will remain in use until recommended for modification by the SSC and by the Council through the

annual harvest and management specification process and approved by NMFS.

- Add a mechanism for the use of sector-specific ACLs, ACTs and AMs. Although not a change to the FMP, the Council reaffirmed that all management unit species (MUS) currently in the FMP, including those species categorized as monitored species and prohibited harvest species (krill) are “in the fishery” and will remain as MUS. Amendment 13 also adds Pacific herring (*Clupea pallasii pallasii*) and jacksmelt (*Atherinopsis californiensis*) to the FMP as ecosystem component (EC) species. Although the incidental catch of these species within CPS fisheries is extremely small, the intent of this action is to continue to specifically monitor the catches of these species and report catch estimates in the annual Stock Assessment and Fishery Evaluation report along with other incidental catch. In addition to the current ecological considerations in the FMP, the amendment also specifies that the Council will include ecological considerations when reviewing and/or adopting status determination criteria (SDCs), ACLs, and ACTs.

No substantive changes have been made to this rule from the proposed rule stage and no changes have been made to the regulatory text from the proposed rule.

On June 28, 2011 NMFS published a proposed rule for Amendment 13 soliciting public comments (76 FR 124). NMFS received two letters regarding the proposed rule to implement Amendment 13, including a letter of “no comment” submitted by U.S. Department of the Interior and one from two non-governmental organizations (NGO) that is addressed below.

Comment 1: The majority of the points raised in the NGO comment related more to the CPS FMP as whole as opposed to specific changes being made by Amendment 13, and will not be addressed here. However, NMFS found the comments valuable and will consider them for future management planning, and will respond directly to the commenters about their concerns regarding matters outside the scope of this rulemaking. With regard to Amendment 13 and/or its implementing regulations the comment stated that revised ABC control rules for the actively managed stocks (Pacific sardine and Pacific mackerel) failed to properly articulate or provide an adequate buffer for scientific uncertainty with respect to OFL levels. Also with regard to the framework measures in Amendment 13 the comment stated that new framework for determining overfishing and the

formula for calculating OFL for actively managed species allows CPS to be harvest at levels higher than previously allowed and provides for less precautionary management than under the old framework. Specific to the regulations implementing Amendment 13, the comment also stated that the revised definition of a “harvest guideline” is not clear with respect to how it compares to an ACT. The comment also stated that an Environment Impact Statement (EIS) should have been prepared instead of an Environmental Assessment, that a wider range of alternatives should have been analyzed, and that proper scoping or a process for providing public comment did not occur.

Response: NMFS believes the revised framework for ABC that uses a P^* , or probability of overfishing determination, provides for an appropriate way to incorporate scientific uncertainty in the OFL to buffer against overfishing (i.e., exceeding the OFL). The ABC will be recommended to NMFS by the Council based on its preferred level of risk aversion. The ABC is based on a percentage reduction of the OFL as determined by an SSC determination on scientific uncertainty and a risk policy determined by the Council. In cases where scientific uncertainty (σ) associated with estimating an OFL is quantified by the SSC, the percentage reduction that defines the scientific uncertainty buffer and the ABC can be determined by translating the estimated σ to a range of probability of overfishing (P^*) values. The Council then selects a level of risk aversion by choosing an appropriate P^* value. Each P^* value is then matched to its corresponding BUFFER fraction that is applied to the OFL according to the ABC control rule.

Under Amendment 13 overfishing will be determined for the finfish stocks based on new OFL formulas and not based on the existing ABC or harvest guideline (HG) formulas. Based on the guidance in the revised NS 1 guidelines the harvest levels that resulted from the existing ABC/HG formulas were more analogous to ACL or ACT type levels as opposed to OFL levels. Within the new Amendment 13 framework, OFLs correspond with MSY levels which are in concert with the relationship between OFL, ABC and ACL described in the guidelines. Additionally, the maximum allowable catch levels (ACLs and associated ACTs), will still be set based on the same conservative formulas and principles that exist in the CPS FMP. These levels will be considered in conjunction with ABC control rules to prevent overfishing.

With regard to the definitions of “harvest guideline” and ACT, the CPS FMP previously used the setting of harvest guidelines (HGs) in a similar way as to how ACTs are defined, as a management target. Because ACTs are an optional reference point and HGs were already in the FMP, NMFS decided to maintain the term HG for consistency purposes while recognizing that HGs will be used with the same objective as ACTs, to prevent the ACL from being exceeded.

Regarding the comments about the National Environmental Policy Act (NEPA) analysis for Amendment 13, the EA showed that the implementation and adoption of Amendment 13 will not significantly adversely impact the quality of the human environment. Therefore an EIS is not necessary to comply with NEPA for this action. With regard to the range of alternatives, NMFS believes a reasonable number of alternatives were analyzed based on the nature of this action. Additionally, the alternatives analyzed were all reasonable, would all meet the purpose and need of the action, and were all objectively evaluated. The public had several opportunities to provide input on the development of the proposed action and EA. The Council process, which is based on stakeholder involvement, provides opportunities for public input on scoping and public comment on fishery management proposals during Council, subcommittee, and advisory body meetings. Meetings of the Council and its advisory bodies constitute the scoping process, involving the development of alternatives and consideration of the impacts of the alternatives: all meetings are announced in advance, and welcome public attendance and comments. Specifically the public had opportunity to provide input into this action and EA during the March and November 2009, and March and June 2010, Pacific Council meetings. Additionally, NMFS published a **Federal Register** notice on June 8, 2011, that announced the availability of the Amendment and draft EA and comments on the draft EA were accepted until August 8, 2011, providing the public 60 days to submit comments on the EA.

Classification

The Administrator, Southwest Region, NMFS, determined that the Amendment 13 is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council 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. The factual basis for the certification was published in the proposed rule and is not repeated here.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: November 8, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. Amend § 660.502 by removing the definition of “Monitored species (MS)” and revising the definition of “Harvest guideline” to read as follows:

§ 660.502 Definitions.

* * * * *

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require complete closure of a fishery. It is operationally similar to an Annual Catch Target (ACT) (as defined at § 600.310(f)(2) of this chapter).

* * * * *

■ 3. Revise § 660.508 to read as follows:

§ 660.508 Annual specifications.

(a) The Regional Administrator will determine any harvest guideline, quota, Annual Catch Limit (ACL) (defined at § 600.310(f)(2)) or Annual Catch Target (ACT) (defined at § 600.310(f)(2) of this chapter) in accordance with the framework process in the FMP.

(b) Any harvest guideline, quota, ACL, or ACT, including any apportionment between the directed fishery and set-

aside for incidental harvest, will be published in the **Federal Register**.

(c) The announcement of each harvest guideline, quota, ACL or ACT will contain the following information if available or applicable:

(1) The estimated biomass or MSY proxy on which the harvest guideline, quota, ACL or ACT was determined;

(2) The portion, if appropriate, of the harvest guideline, quota, ACL or ACT set aside to allow for incidental harvests after closure of the directed fishery;

(3) The estimated level of the incidental trip limit that will be allowed after the directed fishery is closed; and

(4) The allocation, if appropriate, between Subarea A and Subarea B.

(d) As necessary, harvest guidelines, quotas, OFLs (defined at § 600.310(f)(2)), ABCs (defined at § 600.310(f)(2) of this chapter), ACLs or ACTs, will receive public review according to the following procedure:

(1) Meetings will be held by the Council's CPSMT and AP, where the estimated biomass and/or other biological or management benchmarks will be reviewed and public comments

received. Each of these meetings will be announced in the **Federal Register** before the date of the meeting, if possible.

(2) All materials relating to the estimated biomass and/or other biological or management benchmarks will be forwarded to the Council and its Scientific and Statistical Committee and will be available to the public from the Regional Administrator when available.

(3) At a regular meeting of the Council, the Council will review the estimated biomass and/or other biological or management benchmarks and offer time for public comment. If the Council requests a revision, justification must be provided.

(4) The Regional Administrator will review the Council's recommendations, justification, and public comments and base his or her final decision on the requirements of the FMP and other applicable law.

■ 4. Revise § 660.509 to read as follows:

§ 660.509 Accountability measures (season closures).

(a) *General rule.* When the directed fishery allocation or incidental allocation is reached for any CPS species it shall be closed until the beginning of the next fishing period or season. Regional Administrator shall announce in the **Federal Register** the date of such closure, as well as any incidental harvest level(s) recommended by the Council and approved by NMFS.

(b) *Pacific Sardine.* When the allocation and reallocation levels for Pacific sardine in § 660.511(f) through (h) are reached, the Pacific sardine fishery shall be closed until either it re-opens per the allocation scheme in § 660.511(g) and (h) or the beginning of the next fishing season as stated in § 660.510(a). The Regional Administrator shall announce in the **Federal Register** the date of the closure of the directed fishery for Pacific sardine.

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