

Dated: September 20, 2004.  
**Thomas C. Voltaggio,**  
*Acting Deputy Regional Administrator,*  
*Region III.*

■ 40 CFR parts 52 and 81 are amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart V—Maryland**

■ 2. Section 52.1070 is amended by adding paragraph (c)(187) to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(187) The Ozone Redesignation and Maintenance Plan for Kent and Queen Anne's Counties nonattainment area submitted on February 4, 2004 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) A letter dated February 9, 2004 from the Maryland Department of the Environment transmitting Maryland's State Implementation Plan pertaining to the redesignation request for the Kent and Queen Anne's Counties Ozone Nonattainment Area.

(B) SIP Revision 03–15, Redesignation Request for Kent and Queen Anne's

Counties Ozone Nonattainment Area, February 4, 2004.

(ii) Additional Material—Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(187)(i) of this section.

**PART 81—[AMENDED]**

■ 1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.321 is amended by revising the ozone table entry for Kent and Queen Anne's Counties to read as follows:

**§ 81.321 Maryland.**

\* \* \* \* \*

**MARYLAND—OZONE (1-HOUR STANDARD)**

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Kent County and Queen Anne's County Area				
Kent County .....	October 21, 2004	Attainment.		
Queen Anne's County .....	October 21, 2004	Attainment.		
* * * * *				

<sup>1</sup> This date is October 18, 2000, unless otherwise noted.

\* \* \* \* \*  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 04076201–4279–02; I.D. 060204F]

RIN 0648–AR97

**Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement the annual harvest guideline for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast. The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and its implementing regulations

require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. This action adopts allowable harvest levels for Pacific mackerel off the U.S. Pacific coast.

**DATES:** This action becomes effective November 22, 2004.

**ADDRESSES:** The report *Stock Assessment of Pacific Mackerel with Recommendations for the 2004–2005 Management Season* may be obtained from Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. An regulatory impact review/regulatory analysis may be obtained at this same address.

**FOR FURTHER INFORMATION CONTACT:** Tonya L. Wick, Southwest Region, NMFS, (562) 980–4036.

**SUPPLEMENTARY INFORMATION:** The CPS FMP, which was implemented by a final rule published in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into the categories of actively managed and monitored. Harvest guidelines of 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).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure is published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season begins on July 1 of each year and ends on June 30 the following year.

The Team and Subpanel meetings took place at the Long Beach, CA, office of the NMFS, Southwest Region, on May 18 and 19, 2004 (69 FR 23730, April 20, 2004, and 69 FR 24585, May 4, 2004). The SSC meeting took place in

conjunction with the June 13–18, 2004, Council meeting in Foster City, CA.

A modified virtual population analysis stock assessment model is used by stock assessment scientists to estimate the biomass of Pacific mackerel. The model employs both fishery dependent and fishery independent indices to estimate abundance. The biomass was calculated through the end of 2003, then estimated for the fishing season that began July 1, 2004, based on: (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2004, (2) modeled estimates of fishing mortality during 2003, (3) assumptions for natural and fishing mortality through the first half of 2004, and (4) estimates of age-specific growth. Based on this approach the biomass for July 1, 2004, would be 81,383 metric tons (mt). Applying the formula in the FMP to this biomass estimate results in a harvest guideline of 13,268 mt, which is higher than last year but similar to low harvest guidelines of recent years.

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of Pacific mackerel.* For 2004, this estimate is 81,383 mt.
2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt. The cutoff is subtracted from the biomass, leaving 63,183 mt.
3. *The portion the Pacific mackerel biomass in the U. S. exclusive economic zone (EEZ) off the Pacific coast.* This estimate is 70 percent, based on the historical average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of aerial fish-spotters. Therefore, the harvestable biomass in U.S. EEZ waters is 70 percent of 63,183 mt, that is, 44,228 mt.
4. *The harvest fraction.* This is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent. The harvest fraction is multiplied by the harvestable biomass in U.S. waters (44,228 mt), which results in 13,268 mt.

Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Mackerel with Recommendations for the 2004–2005 Management Season*, which may be obtained by mail from Rodney R. McInnis, Regional Administrator (see ADDRESSES).

Following recommendations of the fishing industry and Subpanel for the 2003–2004 fishing season, a directed fishery for Pacific mackerel of 7,500 mt was set beginning July 1, 2003, followed by an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS, if the 7,500 mt was harvested. A 1 mt landing of Pacific mackerel per trip would have been allowed if no other species were landed during a trip. NMFS implemented a directed and incidental fishery last season in response to concerns about how a low harvest guideline for mackerel might interfere with the sardine fishery. Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch. As of June 30, 2004, the end of the season, approximately 5,961 mt of Pacific mackerel had been landed; therefore, an incidental fishery was not necessary.

At its meeting on May 19, 2004, the Subpanel recommended for the 2004–2005 fishing season that a directed fishery of 9,100 mt and an incidental fishery of 4,168 mt be implemented. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective when 9,100 mt of Pacific mackerel is estimated to be harvested. The Subpanel also recommended to allow 1 mt of mackerel to be landed per trip during the incidental fishery without landing any other CPS. The Subpanel recommended that an inseason review of the mackerel season be completed for the March 2005 Council meeting, with the possibility of reopening the directed fishery as an automatic action if sufficient amount of the harvest guideline reserved for the incidental fishery remains unharvested. At its June 2004 meeting, the Council made these recommendations to NMFS. A proposed rule containing the Council's recommendations was published July 20, 2004 (69 FR 43383). The public comment period ended on August 4, 2004.

One public comment was received.

**Comment:** One commenter generally criticized commercial fishing rules and recommended that the quota should be cut by 10 percent per year until the fishery is closed.

**Response:** The commenter provided no information to support such a change. Further, the comment seemed to be a generic one and not directed to the mackerel fishery, but to all commercial fisheries in general. Information provided by the stock assessment and

recommended by the Council indicates that the harvest guidelines proposed are appropriate, therefore, NMFS has not changed the harvest guidelines from those proposed.

After a review of the information available and the one public comment, NMFS approved the Council's recommendation and hereby implements the following measures for the July 1, 2004, through June 30, 2005, fishing season:

Based on the estimated biomass of 81,383 mt and the formula in the FMP, a harvest guideline of 13,268 mt will be in effect for the fishery beginning on July 1, 2004. This harvest guideline applies to Pacific mackerel harvested in the U.S. EEZ off the Pacific coast beginning at 12:01 a.m. on July 1, 2004, and remains in effect through June 30, 2005, unless the harvest guideline is attained and the fishery is closed before June 30, 2005. All landings made after July 1, 2004, will be counted toward the 2004–2005 harvest guideline of 13,268 mt. There shall be a directed fishery, followed by an incidental fishery of 4,168 mt. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS will become effective after the date when 9,100 mt of Pacific mackerel is estimated to have been harvested. A landing of 1 mt of Pacific mackerel per trip will be permitted during the incidental fishery for trips in which no other CPS is landed.

#### Classification

This final rule has been determined to be not significant for purposes of 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 the proposed rule for 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. No comments were received regarding the economic impacts of this action. As a result, a regulatory flexibility analysis was not prepared.

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

Dated: October 15, 2004.

**Rebecca Lent,**

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

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