DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 240614–0162; 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: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement 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 proposed rule would prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest would be 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 proposed harvest specifications for 2024–2025 include an overfishing limit of 8,312 metric tons (mt), an annual catch limit of 6,005 mt, and an annual catch target of 5,500 mt. This proposed rule is intended to conserve, manage, and rebuild the Pacific sardine stock off the coasts of Washington, Oregon, and California.

DATES: Comments must be received by July 8, 2024.

ADDRESSES: A plain language summary of this rule is available at *https://www.regulations.gov/docket/NOAA-NMFS-2024-0040.* You may submit comments on this document, identified by NOAA–NMFS–2024–0040, by the following method:

- *Electronic Submissions:* Submit all public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2024–0040 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

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 Coastal Pelagic Species (CPS) Fishery Management Plan (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 overfishing limit (OFL) and acceptable biological catch (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 management measures for the Pacific sardine fishery, such as catch restrictions, in the Pacific sardine rebuilding plan implemented by Amendment 18 to the CPS FMP (86 FR 33142, June 24, 2021).

The NMFS Southwest Fisheries Science Center (SWFSC) conducts annual stock assessments for Pacific sardine, alternating between benchmark assessments in 1 year and update assessments the following 2 years. Benchmark assessments are evaluated by a stock assessment review (STAR) panel, which provides a report to the Pacific Fishery Management Council (Council) documenting its findings on the technical merits. During public meetings each year, the Council, including the Council's CPS Management Team (Team), CPS Advisory Subpanel (Subpanel), and Scientific and Statistical Committee (SSC), review the estimated biomass and the status of the fishery in these stock assessments, and recommend applicable reference points, catch limits, and management measures. Following Council review and public comment, the Council recommends these harvest specifications and management measures and any in-season accountability measures to NMFS, who then reviews the Council's recommendations to ensure they are consistent with the CPS FMP and all applicable laws. Following that review, NMFS publishes annual specifications in the **Federal Register** to establish annual reference points (*e.g.,* the OFL, ABC, and annual catch limit (ACL)) and management measures for each Pacific sardine fishing year. The OFL is an annual catch amount that corresponds to the estimate of (annual) fishing mortality corresponding to maximum sustainable yield (MSY). The ABC is set below the OFL and is a reference point that incorporates a scientific uncertainty buffer against overfishing. For Pacific sardine, the ABC is based on a percentage reduction (BUFFER) of the OFL as determined by an SSC evaluation of scientific uncertainty (sigma σ) and the Council's risk policy (P*). In cases where the SSC quantifies scientific uncertainty (sigma, σ) associated with estimating an OFL, the percentage reduction that defines the ABC buffer can be determined by translating the estimated σ to a range of probability of overfishing (P*) values.

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, the SSC has used a temperature-recruitment relationship based on a running 3-year average of the California Cooperative Oceanic Fisheries Investigations (CalCOFI) temperature index to calculate an E_{MSY} for Pacific sardine.

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*).

During the 2019–2020 fishing year, the estimated biomass of Pacific sardine

dropped below its 50,000-mt minimum stock size threshold (MSST), which triggered an overfished determination process. NMFS declared the stock overfished on June 26, 2019, and notified the Council of this determination on July 9, 2019. A rebuilding plan for Pacific sardine was finalized on June 24, 2021 (86 FR 33142). The rebuilding plan (Amendment 18 to the CPS FMP) stipulates that reference points (*i.e.,* the OFL, ABC, and ACL) are to continue to be set annually based on annual stock assessments, the control rules in the FMP, and best scientific information available recommendations from the Council's SSC. The rebuilding plan also includes the following management measures that restrict harvest: (1) prohibition of the primary directed fishery when the biomass is at or below 150,000 mt; (2) automatic reduction in incidental allowances in other CPS fisheries to no more than 20 percent by weight when the biomass is at or below 50,000 mt; and (3) other accountability measures the Council may recommend.

Proposed Reference Points and Management Measures

At the Council's April 2024 meeting, the Council's SSC reviewed a STAR panel report on the SWFSC's 2024 benchmark stock assessment, as well as the assessment itself, titled ''Assessment of the Pacific sardine resource (*Sardinops sagax*) in 2024 for U.S. management in 2024–2025,'' and 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 from the 2020 benchmark assessment, including an updated habitat model for assigning fishery catch and survey biomass to the northern and southern subpopulations of sardine. However, the SSC applied a category 2d sigma, instead of a category 1, as some past full assessments have been categorized. The result of a category 2d sigma determination compared to a category 1 is that it equates to a larger scientific uncertainty buffer, and therefore a lower ABC. During the discussion of the appropriate category, the SSC discussed potential uncertainty in the relationship between sardine productivity and ocean temperatures used to calculate E_{MSY} as well as uncertainty in the strength of the 2023 year-class represented in the stock assessment.

Based on the 2024 benchmark stock assessment, the associated estimated age 1+ biomass of 58,614 mt, and the control rule formulas in the FMP, NMFS is proposing, as the Council recommended, an OFL of 8,312 mt, an ABC of 6,005 mt, and an ACL of 6,005 mt. The proposed OFL and ABC were based on the control rules in the FMP and on recommendations from the Council's SSC and their determination of best scientific information available for calculating the OFL and recommended precautionary buffer for the ABC.

According to the CPS FMP, the catch limit for the primary directed fishery is determined using the FMP-specified HG formula. This Pacific sardine HG control rule, the primary mechanism for setting the primary directed fishery catch limit, includes a CUTOFF parameter, the lowest level of estimated biomass at which directed harvest is allowed (*i.e.,* a biomass level of 150,000 mt). This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Because the biomass estimate used this year (*i.e.,* 58,614 mt) is below that value, the formula results in an HG of zero, and no Pacific sardine are available for the primary directed fishery during the 2024–2025 fishing season. As noted previously, the rebuilding plan also includes a prohibition of the primary directed fishery when the biomass is at or below 150,000 mt. This is the 10th consecutive year that the primary directed fishery is closed.

Pacific sardine catch during the 2024–2025 fishing season is therefore prohibited unless it is harvested as part of the live bait, Tribal ,[1] or minor directed fisheries, as incidental catch in other fisheries, or as part of exempted fishing permit (EFP) activities. For these types of harvests, NMFS is proposing, as the Council recommended, an annual catch target (ACT) of 5,500 mt for the 2024–2025 fishing year.

TABLE 1—OVERFISHING LIMIT (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), HARVEST GUIDELINE (HG), AND ANNUAL CATCH LIMIT (ACL) CALCULATIONS AS ESTABLISHED UNDER AMENDMENT 13 TO THE CPS FMP

Harvest specification and formula parameters	Value
BIOMASS (ages 1+, mt)	58,614
BUFFER $_{Pstar}$ (Category 2)	0.7224
Calculated E_{MSY}	0.163
DISTRIBUTION (U.S.)	0.87
2024–2025 Pacific sardine annual specifications	**Metric tons**
OFL = BIOMASS * E_{MSY} * DISTRIBUTION	8,312
ABC = BIOMASS * $BUFFER_{0.40}$ * E_{MSY} * DISTRIBUTION	6,005
HG	0
ACL = ABC	6,005
ACT	5,500

The proposed annual harvest limits and management measures were developed in the context of NMFS' July 2019 declaration that the Pacific sardine stock was overfished and June 2021 approval of a rebuilding plan for the stock.

The following are the additional proposed 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 would apply 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);

[1] For the 2024–2025 fishing year, the Quinault Indian Nation has not requested a Tribal set-aside, and therefore none is proposed.

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

(4) An incidental per-landing allowance of 2 mt of Pacific sardine would apply 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).

At the April 2024 meeting, the Council also recommended that NMFS approve two EFP proposals requesting an exemption from the prohibition to directly harvest sardine during their discussion of sardine management measures. Those EFP proposals include a total amount of up to 670 mt, and will be reviewed and potentially approved by NMFS through a separate process.

All sources of catch including any fishing occurring as part of an EFP, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries and minor directed fishing, would be accounted for against the ACT and ACL.

The NMFS West Coast Regional Administrator would 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 would make announcements through other means available, including emails to fishermen, processors, and State fishery management agencies.

Court Order in Oceana, Inc., v. Raimondo, et al.

On April 22, 2024, shortly before NMFS finalized this proposed rule, the U.S. District Court for the Northern District of California (the Court) issued an order in *Oceana, Inc.,* v. *Raimondo, et al.,* No. 5:21–cv–05407–VKD (N.D. Cal., filed July 14, 2021), a case that challenged NMFS' approval of Amendment 18 to the CPS FMP (*i.e.,* the sardine rebuilding plan) and the June 23, 2023 final rule that set harvest specifications and management measures for the 2023–2024 sardine fishing year (88 FR 41040) (2023 Final Rule). In that order, the Court found that some aspects of Amendment 18 and the 2023 Final Rule violate the MSA and remanded them to NMFS. Specifically, the Court found that NMFS' reliance on the temperature-recruitment relationship based on the 3-year running average CalCOFI temperature index was not supported by the administrative record. The Court did not, however, vacate Amendment 18 or the 2023 Final Rule. The Court also did not issue an order on remedy, and instead ordered the parties to submit proposals regarding what further proceedings are necessary to identify an appropriate remedy. As of this writing, remedy proceedings are ongoing.

Because the 2023 Final Rule set harvest specifications and management measures that end on June 30, 2024, NMFS must publish new specifications and management measures by July 1, 2024 to avoid a lapse in regulations governing the fishery. Without specifications and management measures in place, the Pacific sardine fishery would be unregulated. NMFS is therefore proposing harvest specifications and management measures for the upcoming fishing season as recommended by the Council. This proposed rule is consistent with the rebuilding plan, which is still effective, and it would maintain the status quo and ensure that management measures are in place to constrain catch during the 2024–2025 fishing season in furtherance of NMFS' goal to conserve, manage, and rebuild the Pacific sardine population.

In making a preliminary determination that the harvest specifications and management measures proposed in this action would prevent overfishing, rebuild the stock, and are supported by the best scientific information available, NMFS considered the recent order from the Court as well as ongoing discussions at the Council regarding E_{MSY}. As they did the previous year, the SSC recommended revisiting the analysis and assumptions underlying an E_{MSY} based on CalCOFI temperatures; however, they also recommended its use as best available science for setting the 2024–2025 OFL and ABC. The SSC discussed the uncertainty surrounding E_{MSY} when considering their choice of the appropriate uncertainty buffer (sigma) for the ABC. NMFS has determined that the SSC appropriately accounted for any scientific uncertainty and gaps in scientific information used to calculate the recommended reference points through their recommendation of Category 2 sigma; which is a larger buffer than would have been associated with a Category 1 sigma.

The calculated CalCOFI-based E_{MSY} value for this year is 0.163 and represents the lowest E_{MSY} in 10 years. 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 changes in the ocean environment, and the 2015 annual CalCOFI temperature was the highest in 40 years. This situation triggered the application of the maximum allowed E_{MSY} value of 0.25, instead of the calculated E_{MSY}, to prevent potentially excessive E_{MSY} values.

Although NMFS believes there is additional support for using a CalCOFI-based E_{MSY} in setting this year's specifications (as described in the previous paragraphs), to the extent the use of CalCOFI is precluded this year because of the Court's order, NMFS considered alternatives to using the CalCOFI-based E_{MSY}. Currently, no other analysis is known of relationships between Pacific sardine recruitment and an environmental variable on which to base E_{MSY}; however, past analyses have calculated a static E_{MSY} of 0.18 when the effects of temperature on productivity are ignored. NMFS considers this static E_{MSY} of 0.18 as the only available alternative for setting Pacific sardine specifications without the use of the CalCOFI temperature index. However, the Council's recommended E_{MSY} of 0.163 is a lower and therefore more conservative value than the static E_{MSY}. Therefore, even if the use of a CalCOFI-based E_{MSY} is precluded this year, NMFS believes it is still appropriate to use the lower, more conservative E_{MSY} of 0.163 for this year's specifications on a stock that is rebuilding while the methodology for determining E_{MSY} is under review.

Additionally, although this action proposes an ACL equal to the ABC at 6,005 mt, as envisioned by the FMP, NMFS has preliminarily 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 are unlikely to exceed 2,200 mt, similar to what has occurred over the last 3 full fishing years (see table 2).

TABLE 2—LANDINGS OF NORTHERN AND SOUTHERN SUBPOPULATIONS OF PACIFIC SARDINE (2020–2023), IN METRIC TONS (mt)

Fishing year	2020–2021	2021–2022	2022–2023
ACL	4,288	3,329	4,274
Total Landings of northern and southern subpopulation	2,276	1,772	1,619
Landings of northern subpopulation	657	298	517

Classification

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

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public participation in this action pursuant to Administrative Procedure Act section 553(c) (5 U.S.C. 553(c)), while also ensuring that the final specifications are in place for the start of the Pacific sardine fishing year on July 1, 2024. 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 2024 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 subject of this proposed rule—the establishment of the reference points—is considered a routine action, because they are calculated annually based on the framework control rules in the FMP, and in accordance with management measures required by the Pacific sardine rebuilding plan, which has been in place since 2021. A prolonged comment period and subsequent potential delay in implementation past the start of the 2024 fishing year would be contrary to the public interest, as it could create confusion in the Pacific sardine industry around current specifications and management measures. Such a delay would effectively open the fishery without the restrictions necessary to manage harvest rates in compliance with the Pacific sardine rebuilding plan.

This proposed rule is exempt from review under Executive Order 12866 because it is a routine rule that would implement regulations for less than 1 year.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with the Tribal representative on the Council who has agreed with the provisions that apply to Tribal vessels.

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, for the reasons provided below.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

The purpose of this proposed rule is to conserve and rebuild the Pacific sardine stock by preventing overfishing, while still allowing limited harvest opportunity among differing fishery sectors. This will be accomplished by implementing the 2024–2025 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast. The small entities that would be affected by the proposed action are the vessels that would be expected to participate in the primary directed Pacific sardine fishery as part of the Pacific coast CPS small purse seine fleet. In 2014 (*i.e.,* the last year that a directed fishery for Pacific sardine was allowed) there were approximately 81 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast, with that total comprising 58 vessels in the Federal CPS limited entry fishery off California (south of lat. 39° N) and a combined 23 vessels in Oregon and Washington's State Pacific sardine fisheries. NMFS does not collect or have access to information about affiliation between vessels or affiliation between vessels and processing entities in this fishery, or receipts in Alaska, Hawai'i, or international fisheries, so it is possible that some impacted entities may exceed $11 million in ex-vessel revenue or another size-standard threshold. Based on available data, the average annual Pacific coast revenue per vessel for all west coast vessels, including those described above potentially affected by this rule, was well below the threshold level of $11 million as of 2024. Therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule is considered to equally affect all of these small entities in the same manner. Therefore, this rule would not create disproportionate costs between small and large vessels/businesses.

The CPS FMP and its implementing regulations require NMFS to annually set an OFL, ABC, ACL, and HG or annual catch target for the Pacific sardine fishery based on the specified harvest control rules in the FMP applied to the current stock biomass estimate for that year. The derived annual HG is the level typically used to manage the principal commercial sardine fishery and is the harvest level NMFS typically uses for profitability analysis each year. As stated above, the CPS FMP dictates that when the estimated biomass drops below a certain level (150,000 mt), the HG is zero. Because there is again no directed fishing for the 2024–2025 fishing year, as has been the case for the last 10 years, this proposed rule will not change the potential profitability compared to the previous fishing year or years following the closure of the directed fishery. Additionally, the proposed 2024–2025 ACL is still expected to account for the various fishery sector needs (*i.e.,* live bait, incidental catch in other CPS fisheries, EFPs, and minor directed fisheries).

The revenue derived from harvesting Pacific sardine is typically only one of the sources of fishing revenue for the commercial vessels that participate in this fishery. As a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation.

From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and, in particular, squid, making Pacific sardine only one component of a multi-species CPS fishery. Additionally, some sardine vessels that operate off of Oregon and Washington also fish for salmon in Alaska or squid in California during the times of the year when sardine are not available. The purpose of the incidental catch limits proposed in this action are to ensure the vessels impacted by a prohibition on directly harvesting sardine can still access these other profitable fisheries while minimizing Pacific sardine harvest.

CPS vessels typically rely on multiple species for profitability because abundance of Pacific sardine, like the other CPS stocks, is highly associated with ocean conditions and seasonality. Variability in ocean conditions and season results in variability in the timing and location of CPS harvest throughout the year. Because each species responds to ocean 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 relied on a group of species for its annual revenues.

Therefore, the proposed action, if adopted, will not have a significant economic impact on a substantial number of 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 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: June 14, 2024.

Samuel D. Rauch, III,

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

[FR Doc. 2024–13530 Filed 6–20–24; 8:45 am]

BILLING CODE 3510–22–P