

measured for length frequency. Regulatory discards, including sub-legal weakfish, and non-marketable species, were to be sorted, weighed and a sub-sample would be taken for length frequency. These fish were to be properly disposed of, and would not be sold. ESA and other protected species would have been handled as required by law; observers would have recorded and reported all discarded red drum and striped bass. The flynet characterization was to be terminated if takes (lethal or non-lethal) of loggerhead or Kemp's ridley sea turtles exceeded one half of the numbers (20 and 2) allowed in the Incidental Take Statement of the 1997 BO (that is, 10 or 1, in any one year). Further, analysis of the study data was to be coordinated by NCDMF and NMFS staff and the Commission was to be briefed through annual and final reports that would provide maps of the sample areas overlaid with the location of each tow, species encountered, total weights, numbers, and length frequency distributions of selected species. The final report was also to summarize the findings from each year and attempt to relate variability in catches and species composition with environmental variables. The report was also to summarize all interactions with sea turtles and include a discussion on the use of TEDs in the flynet fishery.

Newly Proposed EFP

Unfortunately, due to poor weather and insufficient availability of fish, NCDMF was unable to complete its year one experiments in the 2-year study. Accordingly, NCDMF seeks to reapply for EFPs to conduct an identical two year characterization study under identical terms, this time for the 2004 and 2005 years. Specifically, the NCDMF proposes to complete the first year of the 2-year flynet characterization study using the same means and methods as described above for last year's EFP. The flynet characterization study would be conducted in a closed area south of Cape Hatteras by two participating flynet vessels, each with its own EFP and observer aboard, conducting up to a total of 18 trips per year over each of two seasons, from 15 January through 1 April, in 2004 and 2005, for a maximum of 36 trips.

The EFP would exempt up to three vessels from the requirements of the Atlantic weakfish regulations according to the provisions at 50 CFR 600.745 and 697.22, as follows: (1) prohibiting of the use of flynets in the closed area of the EEZ off North Carolina as defined at § 697.7(a)(5); and (2) fishing for, harvesting, possession or retention of any weakfish less than 12 inches (30.5

cm) in total length from the EEZ as specified at § 697.7(a)(1) and (2) for data collection purposes.

The environmental assessment prepared for the proposed flynet characterization study in 2003 found that no significant environmental impacts would result from the proposed action.

Dated: November 26, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125290-3290-01; I.D. 111203D]

RIN 0648-AQ97

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: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast for the fishing season January 1, 2004, through December 31, 2004. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

DATES: Comments must be received by December 17, 2003.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. The report *Stock Assessment of Pacific Sardine with Management Recommendations for 2004* may be obtained at this same address. An environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) for this proposed rule may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Southwest Region, NMFS, 562-980-4040.

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

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species 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, and then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 and ends on December 31 of each year.

The Team meeting took place at the Southwest Fisheries Science Center in La Jolla, CA on October 14, 2003. A public meeting between the Team and the Subpanel was held at the same location that afternoon. The Council reviewed the report at its November meeting in Del Mar, CA and heard comments from its advisory bodies and the public.

Public comments are requested on how the fishery might be conducted for the 2004 fishing season to achieve but not exceed the harvest guideline while minimizing impacts on the harvest of other CPS.

In view of the above, the following would be implemented for the January 1 through December 31, 2004, fishing season.

Based on a biomass estimate of 1,090,587 metric tons (mt)(in U.S. and Mexican waters), using the FMP formula, the harvest guideline for

Pacific sardine in U.S. waters for January 1, 2004, through December 31, 2004, is 122,747 mt. The biomass estimate is slightly higher than last year's biomass estimate; however, the difference between this year's biomass is not statistically significant from the biomass estimates of recent years. Therefore, the impacts of the fishery on the stock will be approximately the same as in the year prior. Similarly, the impacts of the fishery on other components of the environment will be similar to those in 2003.

Under the FMP, the harvest guideline is allocated one-third for Subarea A, which is north of 39° 00' N. lat. (Pt. Arena, CA) to the Canadian border, and two-thirds for Subarea B, which is south of 39° 00' N. lat. to the Mexican border. Under this proposed rule, the northern allocation for 2004 would be 40,916 mt; the southern allocation would be 81,831 mt. In 2003, the northern allocation was 36,969 mt and the southern allocation was 73,939 mt.

Normally, an incidental landing allowance of sardine in landings of other CPS is set at the beginning of the fishing season. The incidental allowance would become effective if the harvest guideline is reached and the fishery closed. A landing allowance of sardine up to 45 percent by weight of any landing of CPS is authorized by the FMP. An incidental allowance prevents waste of sardine caught while fishing for other species and protects fishermen from being cited for a violation when sardine occur in catches of other species, while controlling total sardine harvest by reducing the potential to target sardine while claiming to be fishing for other species. Sardine landed with other species also requires sorting at the processing plant, which adds to processing costs. Mixed species in the same load may damage smaller fish. The sardine population was estimated using a modified version of the integrated stock assessment model called Catch at Age Analysis of Sardine Two Area Model (CANSAR TAM). CANSAR-TAM is a forward-casting, age-structured analysis using fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 2003. The CANSAR-TAM was modified to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast. Information on the fishery and the stock assessment are found in the report Stock Assessment of Pacific Sardine with Management Recommendations for 2004 (see ADDRESSES).

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

1. *The biomass of age one sardine and above.* For 2004, this estimate is 1,090,587 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *The portion of the sardine biomass that is in U.S. waters.* For 2004, this estimate is 87 percent, based on the average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters.

4. *The harvest fraction.* This is the percentage of the biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures. A higher fraction is used for warmer ocean temperatures, which favor the production of Pacific sardine, and a lower fraction is used for cooler temperatures. For 2004, the fraction was 15 percent based on three seasons of sea surface temperature at Scripps Pier, California.

As indicated above the harvest guideline for U.S. waters is allocated one-third (40,916 mt) to Subarea A, two-thirds (81,831 mt) to Subarea B.

Classification

These proposed specifications are issued under the authority of, and are in accordance with, the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and 50 CFR part 660, subpart I (the regulations implementing the FMP).

This proposed rule has been determined to be exempt for significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. Specifically, NMFS is requesting that the public provide comments on the range of alternatives considered by NMFS and offer any additional alternatives that NMFS should consider for the Pacific sardine fishery. The IRFA is available from NMFS (see ADDRESSES). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the SUMMARY and in the SUPPLEMENTARY INFORMATION of this proposed rule. A harvest guideline is established by the FMP to limit harvests to levels that protect the resource while providing a source of revenue for the fishing industry and other benefits to society over the long term.

The harvest formula in the FMP is conservative and a significantly higher harvest than that allowed by the FMP could be realized without a detrimental effect on the resource, at least in the short term; this could provide substantial economic benefits to the fishing industry. However, there are both biological and economic reasons to restrain harvests. First, there is uncertainty about the effect of expanded harvests in the northern subarea; that fishery takes larger fish that may play an important role in maintenance of resource productivity. Research into the relationship of the northern and southern components is necessary before allowing higher harvests. Second, the harvest guideline derived by the current formula has provided sufficient resources in recent years to satisfy existing markets; therefore, there would not likely be a significant economic benefit from a higher harvest guideline. The best information available on the economics of the CPS fishery indicates that landings and revenue have increased steadily since recovery of the resource began and could increase in 2004 if additional markets were developed. However, landings in 2003 are projected to be similar to the landings in 2001 and 2002, suggesting that markets are saturated. Therefore, there would not likely be a significant increase in harvests even if more fish were made available. That is, there is little opportunity to increase revenue in 2004.

Implementing the 2003 harvest guideline and allocations (i.e., the no action alternative) would keep the fishery at 2003 levels. There would not be much difference between this alternative and the proposed action as the harvest guideline would be quite similar.

Implementing the new harvest guideline for 2004 without allocating to the different subareas would set up a derby fishery without regard to the allocation procedures in the FMP. The fisheries in Subarea A and in Subarea B could harvest without restriction. There would be a possibility that the fishery in the northern subarea would harvest sardine at a level that would result in either a shift of fishery benefits from south to north or an early closure of the coastwide fishery. There would be increased revenue in the north at the expense of the southern fishery. However, premature closure would also result in substantial idle purse seine capacity in the southern subarea, where the fishery has traditionally been more active in the fall and winter.

Setting a harvest guideline above that authorized by the FMP is conceivable if

the biomass and the harvest guideline were low and recruitment high. The harvest guideline is based on greater than age 1 plus sardine. If the biomass of sardine less than age 1 were known to be high, then some economic benefits would accrue to the fishing industry by allowing a harvest greater than that permitted by the formula in the FMP based on the premise that these fish are short-lived and should be harvested when available. If this situation occurred, economic benefits could be conferred on the fishing industry with the possibility of no negative biological impact. However, this approach faces two difficulties: (1) The higher the harvest is above that authorized by the FMP, the greater the potential for exacerbating a decline of the resource. The risk would be small at high biomass levels such as those of recent years, but as noted there is uncertainty, especially concerning the relationship between the northern and southern components of the stock. Further, there is no need for a higher harvest guideline at this time because, under the current approach, enough sardine has been available for harvest to satisfy existing market. (2) Such an approach (allowing higher harvests) would most likely be viewed favorably by industry if the biomass (and ensuing harvest guideline) were low and the fishery faced economic hardship from a lack of other fishing opportunities. In this situation, the potential for negative biological impacts is substantial. The uncertainty of the estimate of sardine less than age 1 is high. The estimates of biomass and/or recruitment could be high, but natural mortality is high, and how much biomass a zero age class will contribute to the biomass of the resource is uncertain. This increases the likelihood of negative biological impacts. In the final analysis, however, this alternative would have similar results as the proposed action. The proposed harvest guideline is at a level that allows maximum use by existing markets; therefore, there would not likely be significant benefits from a higher harvest guideline. If information on Pacific sardine became available that had not been previously considered indicating a risk of following the harvest formula in the FMP, a more conservative harvest guideline might be implemented to protect the resource. There is no such information at this time. The harvest formula in the FMP, however, sets a conservative harvest policy. Setting a harvest guideline lower than required by the FMP would not likely bestow significant biological benefits at current biomass levels.

In summary, there are no factors that would justify deviation from the harvest guideline formula and allocation approach of the FMP. The requirements of the FMP that specify a harvest guideline action based on scientific data and a formula in the FMP continue to be valid. Setting a harvest guideline less than the proposed harvest guideline could have significant economic impacts. A reasonable assumption is that the harvest guideline will be attained. At an ex-vessel price of \$114/mt (2001–2002 average), this would yield revenue of \$13.9 million. Every 10,000 mt reduction in landings would reduce revenue by \$1.14 million. Setting a harvest guideline above the level derived could generate increased landings (though that is unlikely with current market conditions) but at an unacceptable level of risk of economic dislocation (if northern fisheries expanded too quickly) and ecological difficulties in the future (if the stock is less resilient than thought or the northern component of the stock is more important than is now known).

This proposed rule does not duplicate overlap, or conflict with other Federal rules. There are no reporting, recordkeeping, or other compliance requirements in the proposed rule.

Approximately 100 vessels participate in the CPS fishery off the U.S. West Coast. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no economic impacts resulting from disproportionality between small and large vessels under the proposed action. A limited entry fishery occurs south of 39° N. Lat. A total of 65 vessels are permitted to participate in the limited entry fishery. An open access fishery exists north of 39° N. Lat. in which about 15 vessels participate. These are also small businesses. Vessels harvesting CPS for bait are also small businesses but are unregulated under the FMP.

Fisheries for Pacific sardine occur from Monterey, CA, south throughout the year and off Oregon and Washington in Summer. Since 2000, most of the CPS fleet has obtained an average of 30 percent of its total revenue from Pacific sardine. This has occurred during a period in which there has been an increase in demand for market squid, as well as new markets for sardine that developed since 2000. The average annual revenue from Pacific sardine has been \$9.1 million (2002 dollars) during the last 3 years (2000 through 2002). This is the revenue the industry might expect on average given the amount of sardine available for harvest and market demand. As of October 14, 2003, 65,000

mt had been landed. Based on historical landings, landings may reach 90,000 mt, which is below the harvest guideline. Known factors that have influenced the landings in 2003 is an outbreak of domoic acid in California, which makes Pacific sardine unmarketable, and the availability of market squid in the summer, which provides higher revenue to the fishing industry than sardine. If the harvest guideline is reached during the 2004 fishing season, there will be an increase of \$3.7 million in ex-vessel revenue above that of the 2003 fishing season. With a harvest guideline of 122,747 mt and an average ex-vessel price of \$114.00 per ton, potential revenue could be \$14.0 million. The harvest guideline for the 2003 fishing season was 110,908 mt; however, landings are expected to reach only 90,000 or 95,000 mt by December 31, 2003. Market demand has not supported increased harvests, for the reasons noted above. The proposed action will yield potentially higher revenue (about \$3 million) from Pacific sardine than the current year if the full harvest guideline is taken and prices remain constant.

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

Dated: November 26, 2003.

Rebecca Lent,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 112603A]

Pelagic Fisheries Managed Under the Fishery Management Plan, for the Pelagic Fisheries of the Western Pacific Region

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

ACTION: Supplemental Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (SEIS); Notice of compressed schedule under alternative procedures approved by the Council on Environmental Quality (CEQ).

SUMMARY: In an NOI published on October 17, 2003, the Western Pacific Fishery Management Council (Council) and NMFS announced their intent to