

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

prepare an SEIS in accordance with the National Environmental Policy Act of 1969 (NEPA) on the Federal management of pelagic fishery resources in the Western Pacific Region. The Council and NMFS supplement that NOI and now announce their intent to phase, upon completion of the public scoping period identified in the October 17, 2003 NOI, the SEIS and associated NEPA processes into two separate SEISs and two separate NEPA processes. The Council and NMFS also announce their intent to apply alternative procedures approved by the CEQ that will allow for expedited completion of one of the SEISs, specifically, on proposed management measures for the Hawaii-based longline fishery and its potential impact on protected sea turtle populations. The remaining management issues identified in the public scoping process will be addressed in a separate SEIS made available for comment and review under normally applicable NEPA procedures. Notwithstanding these new intents, the public scoping process and schedule identified in the October 17, 2003, NOI, including the times and locations of public scoping meetings, remain in effect and apply to both NEPA processes identified above.

DATES: Written comments on the issues, priorities, range of alternatives, and impacts that should be discussed in either of the two SEISs must be received by December 15, 2003. See

SUPPLEMENTARY INFORMATION for discussion on timing and dates associated with the alternative procedures. See the October 17, 2003 NOI for specific dates, times, and locations of the public scoping meetings.

ADDRESSES: Send written comments to Kitty Simonds, Executive Director, WPFMC, 1164 Bishop St. Suite 1400, Honolulu, HI 96813 or to Samuel Pooley, Acting Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu HI 96814. Comments may also be sent via facsimile (fax) to the Council at (808) 522-8228 or to the Pacific Islands Regional Office at (808) 973-2941. Comments must be received by December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, WPFMC, (808) 522-8220 or Samuel Pooley, Acting Regional Administrator, NMFS, (808) 973-2937.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the United States has exclusive management authority

over all living marine resources found within the Exclusive Economic Zone (EEZ). The management of these marine resources found within the EEZ with the exception of sea birds and some marine mammals, is vested in the Secretary of Commerce (Secretary). Eight Regional Fishery Management Councils prepare fishery management plans which are reviewed for approval and implementation by the Secretary. The Western Pacific Council has the responsibility to prepare fishery management plans for fishery resources in the EEZ of the Western Pacific Region.

The pelagic fisheries that occur in the EEZ and on the high seas of the Western Pacific Region have been managed under the Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region (FMP) and its amendments since 1986. Managed resources include both marketable (primarily billfish and tuna), and non-marketable (primarily sharks) species. Fisheries managed include pelagic longline, troll, handline, pole-and-line (bait boat), and charter boat fisheries. Management measures employed include gear restrictions, vessel size limitations, time and area closures, access limitations and other measures.

The largest fishery managed under the FMP is the Hawaii-based, limited-access pelagic longline fishery. Regulations imposed on this fishery in 2001 eliminated the "shallow set" component of this fishery that targeted swordfish. The remaining component of this fishery is a "deep set" tuna-targeting fishery. On August 31, 2003, the Memorandum Opinion issued in *Hawaii Longline Assoc. v. NMFS* (D. D.C., Civ No. 01-765), invalidated the June 12, 2002 (67 FR 40232) rules as well as the November 15, 2002, Biological Opinion for Pelagic Fisheries of the Western Pacific and the associated incidental take statement. On October 6, 2003, the Court stayed the August 31, 2003 Order, and reinstated the regulations and BiOp until April 1, 2004 (D.D.C. Civ No. 01-0765).

The October 17, 2003, NOI (68 FR. 59771) highlighted a number of issues concerning pelagic fisheries management in the Western Pacific Region. Particular issues mentioned included pelagic longline fisheries interactions with protected species, billfish-related issues, fish aggregation devices, and an emerging industrial-scale squid fishery. However, as a result of Court orders affecting management of the fishery, the Council and NMFS are considering management measures and regulations that must be in place by April 1, 2004.

Consequently, two SEISs, both supplementing the March 30, 2001 Final EIS on the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, will be developed. The SEIS being developed under alternative procedures will address the Hawaii-based longline fishery and its potential impact on endangered and threatened sea turtle populations. The other issues mentioned in the October 17, 2003, NOI, such as seabird interactions, billfish-related issues, fish aggregation devices, and industrial-scale squid fishing, will be addressed in a separate SEIS prepared in accordance with standard NEPA procedures.

Without compressing the schedule, the agency is not able to comply with prescribed time periods required by NEPA. Specifically, based on a schedule accommodating all regulatory requirements, the agency is not able to provide the full public comment period of 45 days for a draft SEIS (40 CFR 1506.10(2)(d)), or the full review period for the final SEIS prior to the agency decision (40 CFR 1506.10(b)(1-2)).

Consequently, NMFS proposed alternative procedures to CEQ. As a matter of practice, the CEQ looks at three factors in the context of requests for alternative procedures for a SEIS(s): (a) Whether the agency can show that it faces extremely difficult timing considerations that it could not have reasonably foreseen; (b) whether considerations of reflected national policy concerns outweigh any burden to the public caused by a deviation from the normal process; and (c) whether the agency is committed to providing effective alternative means for insuring public and agency review. NMFS satisfied the CEQ's criteria for alternative procedures and on November 20, 2003, the CEQ approved NMFS's request. The alternative procedures include that the standard 45-day public comment period for the SEIS will be shortened to 30 days, and the standard 30-day review period between the final SEIS and the agency's Record of Decision may be reduced by as much as 26 days.

As part of the alternative procedures for public input, the Council and NMFS have coordinated several opportunities for public involvement in the NEPA process. Examples include public scoping meetings conducted throughout the Western Pacific Region from October 21, 2003 through December 4, 2003. In addition, opportunities for public involvement and comment have been solicited at several meetings, including the 119th Council meeting, 120th Council meeting, the 121st Council meeting, and at a series of public

meetings convened by the Council's Sea Turtle Conservation Special Advisory Committee.

The SEIS will analyze, among other things, additional alternatives that include an abolition or modification to the southern area closure; the restoration of the swordfish fishery at some reduced level; mitigation measures such as circle hooks and mackerel bait known to reduce interaction rates of sea turtles with longline gear; international conservation measures to increase sea turtle recruitment; and an analysis on the potential impact of such alternatives on the continued existence of endangered and threatened sea turtles.

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

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 679

[Docket No. 031124287-3287-01; I.D. 111703C]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2004 Harvest Specifications for Groundfish

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

ACTION: Proposed 2004 harvest specifications for groundfish; apportionment of Reserves; request for comments.

SUMMARY: NMFS proposes 2004 harvest specifications and prohibited species catch (PSC) allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2004 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI.

DATES: Comments must be received by January 2, 2004.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907-586-7557. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (*see ADDRESSES*) and comments must be received by January 2, 2004. Copies of the final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510-2252 (907-271-2809), or from its homepage at <http://www.fakr.noaa.gov/npfmc>.

FOR FURTHER INFORMATION CONTACT:

Mary Furuness, 907-586-7228 or e-mail at mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background for the 2004 Proposed Harvest Specifications

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the FMP. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (*see* § 679.20(a)(1)(i)). Regulations at § 679.20(c)(1) further require NMFS to solicit public comment on proposed annual TACs and apportionments thereof, PSC allowances and prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock TAC, including pollock Community Development Quota (CDQ), and CDQ reserve amounts established by § 679.20(b)(1)(iii) and to publish proposed specifications in the **Federal Register**. The proposed specifications set forth in Tables 1 through 13 of this action satisfy these requirements. For 2004, the proposed sum of TACs is 1,998,443 mt.

Under § 679.20(c)(3), NMFS will publish the final annual specifications for 2004 after (1) considering comments received within the comment period (*see* DATES), (2) consulting with the Council, which will occur at its next meeting beginning the week of December 8, 2003, and (3) considering new information presented in the EA and the final 2003 SAFE reports prepared for the 2004 groundfish fisheries.

With some exceptions, regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each CDQ reserve established under § 679.20(b)(1)(iii), and one-fourth of each proposed PSC allowance established under § 679.21, become available at 0001 hours, Alaska local time (A.l.t.), January 1, on an interim basis and remain in effect until superseded by the final specifications. Regulations at § 679.20(c)(2)(ii) (A) and (B) require that the proposed first seasonal allowance of non-CDQ and CDQ pollock, Pacific cod and Atka mackerel becomes available at 0001 hours, A.l.t., January 1 on an interim basis and remains in effect until superseded by the final specifications. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for either the hook-and-line and pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) program. Interim TAC specifications and apportionments thereof for the 2004 fishing year will be published in a separate **Federal Register** notice.

Other Rules Affecting the 2004 Specifications

In October 2003, the Council discussed Aleutian Islands pollock fishery management, but made no recommendation to close or open the fishery in 2004. The Council set the proposed Aleutian Islands pollock TAC at 2003 amounts, which is for incidental catch only. The Council may consider apportionment of the TAC of several rockfish species in the Aleutian Islands subarea among the Eastern, Central, and Western Aleutian Districts and separating the shortraker and rougheye rockfish TAC.

Amendment 77 to the FMP, approved by the Secretary of Commerce on October 20, 2003, provides for apportioning the BSAI Pacific cod TAC among hook-and-line and pot gears sector. Table 4 lists the proposed 2004 allocations and seasonal apportionments of the Pacific cod ITAC based on regulations that would implement Amendment 77. For more