

document will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if an action may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, CMS defines a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. CMS is not preparing an analysis for section 1102(b) of the Act because it has determined, and the Secretary certifies, that this document will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any regulatory action whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately \$141 million. This document will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed regulatory action (and subsequent final action) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this document does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this document.

**Authority:** Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35; Sec. 1103 of the Social Security Act (42 U.S.C. 1302).

Dated: January 27, 2014.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 130717633-4069-02]

RIN 0648-XC772

#### Fisheries Off West Coast States; 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 this final rule to implement the annual catch limit (ACL), acceptable biological catch (ABC), annual catch target (ACT) and associated annual reference points for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2013, through June 30, 2014. This final rule is implemented according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2013/2014 ACL for Pacific mackerel is 52,358 metric tons (mt). The ACT, which will be the directed fishing harvest target, is 39,268 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the ACL and ACT (which is 13,089 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. This final rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

**DATES:** Effective March 6, 2014, through June 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034.

**SUPPLEMENTARY INFORMATION:** During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), where the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), acceptable biological catch (ABC), annual catch limit (ACL) and annual catch target (ACT) recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the

Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

The final rule will implement the 2013/2014 ACL, ACT and other annual catch reference points, including OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass, for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework in the FMP. For the 2013/2014 fishing season the ACL is set equal to the result of the ABC calculation. This formula is:

$$ABC = \text{Biomass} * \text{Buffer} * F_{MSY} *$$

Distribution with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel for the 2013/2014 management season is 272,932 mt.
2. *Buffer.* Used to addresses uncertainty in the OFL. For the 2013/2014 fishing season the buffer value is 0.913496. This is based on the Council's recommendation of a P\* of 0.45 and the SSC recommended sigma of 0.72. The sigma for this year is double that used for previous years due to a higher level of uncertainty in the biomass estimate.
3. *F<sub>MSY</sub>.* The fishing mortality rate at maximum sustainable yield (MSY) is set to 0.30.

4. *Distribution.* The average portion (currently 70%) of the total Pacific mackerel biomass that is estimated to be in the U.S. EEZ off the Pacific coast.

At the June 2013 Council meeting, the Council recommended management measures for the Pacific mackerel fishery. These management measures and catch specifications are based on the control rules established in the CPS FMP and a biomass estimate of 272,932 mt (the result of a full stock assessment that was completed in 2011 and updated based on a projection estimate for 2013). This biomass estimate was reviewed and approved by the SSC as the best available science for use in management.

In this final rule, based on recommendations from the Council's SSC and other advisory bodies, the Council recommended and NOAA Fisheries (NMFS) is implementing, an OFL of 57,316 mt, an ABC of 52,358 mt, an ACL 52,358 and an ACT of 39,268 mt for the 2013/2014 Pacific mackerel fishing season. The Pacific mackerel fishing season runs from July 1 to June 30 of the following year.

Amendment 13 ("ACL" amendment) to the CPS FMP established a framework

that sets the ACL equal to the calculated ABC (reduced from OFL for scientific uncertainty) or the result of the harvest guideline (HG) equation (maximum quota prior to Amendment 13), whichever value is less. This is the first time in the two years since implementation of Amendment 13 that the ACL (maximum directed fishing quota) is based on the ABC as opposed to the HG; which for 2013 was calculated to be 53,494 mt.

If the ACT is attained, the directed fishery will close, and the difference between the ACL and ACT (13,089 mt) will be reserved as a set aside for incidental landings in other CPS fisheries and other sources of mortality. In that event, incidental harvest measures will be in place for the remainder of the fishing year, including a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS. In other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel, except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS. Upon the fishery attaining the ACL/ABC (52,358 mt), no vessels in CPS fisheries may retain Pacific mackerel. The purpose of the incidental set-aside

and allowance of an incidental fishery is to allow for the restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

On September 18, 2013, a proposed rule was published for this action and public comments solicited (78 FR 57348). No comments were received. For further background information on this action please refer to the preamble of the proposed.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the

NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This final rule is exempt from review under 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 during the proposed rule stage that this action would not have 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.

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

Dated: January 29, 2014.

**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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