

mirror. As stated in the Request for Comments, although convex mirrors are permitted on the passenger side of light vehicles, the agency still receives complaints from consumers about these mirrors. "There have been other problems associated with the use of convex mirrors that include double vision, eyestrain, and nausea." (68 FR 2993, 2994 (January 22, 2003))

In response to the Request for Comments, most commenters stated that length should be the only relevant factor in determining the use of a mirror of unit magnification or a convex mirror in a vehicle and that NHTSA should undertake further study to determine the maximum allowable length for a given mirror type. However, the Alliance and Ford stated that an outside passenger-side mirror of unit magnification may be needed for certain loading dock and other off-road backing maneuvers. Thus, if a vehicle such as the Hummer H1 were to tow a long object such as a trailer, the view provided by the interior mirror of unit magnification may be obstructed. In such situations, an outside passenger-side mirror of unit magnification would be beneficial during lane change and backing maneuvers.

As to the argument that certain foreign jurisdictions permit use of passenger-side convex mirrors on vehicles with similar weights, we do not find that argument compelling, because the existence of such regulations does not resolve our previously-discussed concerns regarding the efficacy of such mirrors in judging speed and distance of approaching vehicles. As noted above, we have concerns that the Hummer H1's interior mirror of unit magnification may be obstructed during certain applications. The agency has long held the position that in general MPVs, trucks, and buses with a GVWR of 4,536 kg (10,000 pounds) or more must be equipped with exterior mirrors of unit magnification with a reflective surface of not less than 323 cm². Our analysis of the available information does not support a change to that requirement for the exterior mirror on the side of the vehicle opposite of the driver. Some vehicles of similar size to the Hummer H1 have no rear windows, are not equipped with an interior mirror, but are equipped to tow a trailer. Therefore, it would be beneficial for these vehicles to have a flat exterior mirror on the side of the vehicle opposite the driver for use during lane change and backing maneuvers.

In accordance with 49 CFR part 552, this completes the agency's technical review of the petition for rulemaking. For the reasons discussed above,

NHTSA has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Therefore, the agency has decided to terminate the present rulemaking action.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: August 23, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050819225-5225-01; I.D. 080505A]

RIN 0648-AS59

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 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. The intended effect of this action is to propose allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Comments must be received by September 13, 2005.

ADDRESSES: You may submit comments on this proposed rule identified by I.D. 080505A by any of the following methods:

- E-mail: 0648-AS59.SWR@noaa.gov. Include I.D. 080505A in the subject line of the message.
- Federal e-Rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (562) 980-4047.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region,

NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

The report *Assessment of the Pacific Mackerel (Scomber japonicus) Stock for U.S. Management in the 2005-2006 Season*, and an economic analysis may be obtained at the address above.

FOR FURTHER INFORMATION CONTACT:

Tonya L. Wick, Southwest Region, NMFS, (562) 980-4036.

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 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 are 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 of the following year.

The Team meeting took place at the office of the NMFS, Southwest Fisheries Science Center, in La Jolla, California, on May 18, 2005. The Subpanel and SSC meetings took place in conjunction with the June 13-18, 2005, Council meeting in Foster City, California.

The size of the Pacific mackerel population was estimated using a newly modified version of the integrated stock assessment model called Age-structured Assessment Program (ASAP). Using this new ASAP model was recommended by the Coastal Pelagic Species Stock Assessment Review panel meeting held on June 16, 2004, in La Jolla, California. This new ASAP model replaces the old modified virtual population analysis stock assessment model used in previous years. ASAP is a flexible

forward-simulation that allows for the efficient and reliable estimation of a large number of parameters. ASAP uses parameters such as fishery dependent (commercial and recreational landings) and fishery independent (e.g., aerial spotter survey index, commercial passenger fishing vessel logbook catch per unit effort, and California Cooperative Oceanic Fisheries Investigations surveys) data to obtain annual estimates of Pacific mackerel abundance, year-class strength, and age-specific fishing mortality for 1983 through 2004. The biomass was calculated through the end of 2004, then estimated for the fishing season that begins July 1, 2005, based on (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2005, (2) modeled estimates of fishing mortality during 2004, (3) assumptions for natural and fishing mortality through the first half of 2005, and (4) estimates of age-specific growth. Based on this approach, the biomass for July 1, 2005, would be 101,147 metric tons (mt). Applying the formula in the FMP results in a harvest guideline of 17,419 mt, which is 32 percent greater 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 2005, this estimate is 101,147 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 82,947 mt.
3. *The portion of the Pacific mackerel biomass that is in U.S. waters.* 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 fish-spotters. Therefore, the harvestable biomass in U.S. waters is 70 percent of 82,947 mt, that is, 58,063 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 (58,063 mt), which results in 17,419 mt.

Information on the fishery and the stock assessment are found in the report *Assessment of the Pacific Mackerel (Scomber japonicus) Stock for U.S. Management in the 2005–2006 Season*, which may be obtained at the address above (see **ADDRESSES**).

For the last three years, the fishing industry has recommended dividing the harvest guideline into a directed fishery and an incidental fishery, reserving a portion of the harvest guideline for incidental harvest in the Pacific sardine fishery so that the Pacific sardine fishery is not hindered by a prohibition on the harvest of Pacific mackerel. At its meeting on June 15, 2005, the Subpanel recommended for the 2005–2006 fishing season that a directed fishery of 13,419 mt and an incidental fishery of 4,000 mt be implemented. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective if the 13,419 mt of the directed fishery is harvested. The Subpanel also recommended to allow up to 1 mt of Pacific mackerel to be landed during the incidental fishery without the requirement to land any other CPS. This provision provides Pacific mackerel for small specialty markets. The Subpanel recommended that an inseason review of the Pacific mackerel season be completed for the March 2006 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 that time the NMFS Southwest Regional Administrator will review the fishery to assess whether there is a sufficient amount of the unharvested portion of the harvest guideline (i.e., anything in excess of the amount needed to support incidental harvest) to warrant a reopening of the directed fishery. As of June 7, 2005, approximately 4,808 mt of Pacific mackerel had been landed; therefore, an incidental fishery was not necessary.

Classification

This proposed 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 this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of the proposed rule is to implement the 2005–2006 harvest guideline for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. The harvest guideline is derived by a formula applied to the current biomass estimate. The formula leaves little latitude for discretion except when errors are found in the

calculations or in the data. There is no alternative to the harvest guideline as specified; there is no discretion to use an adjusted formula. Further, there is only one stock assessment method recommended for use to establish the adult biomass used to derive the harvest guideline. No changes are proposed in the regulations governing the fishery.

The harvest guideline would apply to approximately 90 small fishing vessels coastwide that fish for Pacific mackerel within U.S. waters. This proposed rule has an equal effect on all of these small entities and therefore will impact a substantial number of these small entities in the same manner. These vessels fish for small pelagic fish (Pacific sardine, Pacific mackerel) all year and for market squid in the winter, and may harvest tuna in the U.S. EEZ seasonally when they are available, usually late in the summer and early fall. These vessels are considered small business entities by the U.S. Small Business Administration since the vessels do not have annual receipts in excess of \$3.5 million. Therefore, there would be no economic impacts resulting from disproportionality between small and large vessels under the proposed action.

There is no limit on the amount of catch that any single vessel can take; the harvest guideline is available until fully utilized by the entire CPS fleet. The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finish fleet. The profitability of these vessels as a result of this proposed rule is based on the average Pacific mackerel ex-vessel price per mt. NMFS used average Pacific mackerel average ex-vessel price per mt to conduct a profitability analysis because it lacked cost data for the harvesting operations of CPS finfish vessels.

For the July 1, 2004, through June 30, 2005, fishing year, the harvest guideline was set at 13,268 mt with an estimated ex-vessel value of \$2.1 million based. As of June 7, 2005, only 4,808 mt had been harvested, valued at an estimated \$741 thousand, reflecting the relatively poor market conditions for Pacific mackerel relative to other species of interest (e.g., Pacific sardine, market squid) and the lack of market orders.

The 2005–2006 Pacific mackerel season began on July 1, 2005, and ends on June 30, 2006, or when the harvest guideline is caught and the fishery is closed. The proposed harvest guideline for the 2005–2006 fishing season is 17,419 mt, which is higher than the 13,268 mt harvest guideline for the prior year. If the fleet were to take the entire 2005–2006 harvest guideline, and assuming no change in the coastwide average ex-vessel price per mt of \$154.35, the potential revenue to the fleet could be approximately \$2.69 million. However, if there is no change in market conditions (i.e., a lack in demand for Pacific mackerel product), it is not likely that the full harvest guideline will be taken in the 2005–2006 fishing year in which case profits may be lower than if the entire harvest guideline were to be landed. Additionally, the full harvest guideline may not be taken because of the lack of availability of the Pacific mackerel resource in the area of the fishery. The potential lack of availability of

the resource to the fishing fleet could also cause reduction in the amount of Pacific mackerel that could be harvested in which case would reduce total revenue to the fleet. NMFS does not anticipate a drop in profitability based on this rule as, if anything, it allows fishermen to harvest more than last year. Based on the disproportionality and

profitability analysis above, NMFS does not believe that there will be a significant economic impact to a substantial number of these small entities. As a result, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

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

Dated: August 24, 2005.

James W. Balsiger,

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

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