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Dated: January 24, 2014.

Gina McCarthy,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 131203999-4061-01]

RIN 0648-XD020

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: Proposed rule.

SUMMARY: NMFS proposes to implement an annual catch limit (ACL), harvest guideline (HG), annual catch target (ACT), and associated annual reference points for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for a one-time interim harvest period of January 1, 2014, through June 30, 2014, and to set annual harvest levels, such as overfishing limit (OFL), available biological catch (ABC), annual catch limit (ACL), for Pacific sardine for the whole calendar year 2014. This rulemaking is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP), and reflects the proposed change to the starting date of the annual Pacific sardine fishery from January 1 to July 1 as published in the **Federal Register** on December 23, 2013. The proposed 2014 ACT or maximum directed HG is 19,846 (mt). Based on the seasonal allocation framework in the FMP, this equates to a first period (January 1 to June 30) allocation of 6,946 mt (35% of ACT). This rulemaking also proposes an adjusted directed non-tribal harvest allocation for this period of 5,446 mt. This value was reduced from the total first period allocation by 1000 mt for potential harvest by the Quinault Indian Nation as well as 500 mt to be used as an incidental set aside for other non-tribal commercial fisheries if the 5,446 mt limit is reached and directed fishing for sardine is closed. This rulemaking is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Comments must be received by March 6, 2014.

ADDRESSES: You may submit comments on this document identified by NOAA-NMFS-2013-0180 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0180, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- Mail: Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; Attn: Joshua Lindsay.

- Instructions: Comments sent by any other method, to any other address or individual, 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 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

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 sardine is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species (CPS) Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and 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), available biological catch (ABC), annual catch limit (ACL) and harvest guideline (HG), along with 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 the National Marine Fisheries Service (NMFS). Each year NMFS then implements regulations that set the annual quota for the Pacific sardine fishing year that currently begins January 1 and ends December 31.

However, on December 23, 2013 NMFS published a proposed rule (78 FR 77413) to change the start date of the 12-month Pacific sardine fishery from January 1 to July 1, thus changing the fishing season from one based on the

calendar year to a fishing year that will begin on July 1 and extend till the following June 30, as well as establish a one-time interim harvest period for the 6 months from January 1, 2014, through June 30, 2014. The purpose of this change is to better align the timing of the research and science that is used in the annual stock assessments with the annual management schedule. Under this proposed scenario, the start of the next complete fishing season would begin on July 1, 2014, and extend through June 30, 2015. Because the current 2013 fishing season ended on December 31, 2013, it is necessary to implement interim management measures and harvest specifications for the period January 1, 2014 to June 30, 2014, to allow for fishing opportunities to continue during a transition from the current start of the fishing season to the proposed new start on July 1. Therefore this rule assumes that the proposal will be approved and implemented to allow for the establishment of interim harvest specifications for the January 1 through June 30, 2014, period. The purpose of this proposed rule is to implement the quota for the January 2014 through June 2014 period, as well as the other annual harvest levels (OFL, ABC and ACL) for the whole calendar year 2014, with the expectation that the latter will be replaced for the new fishing year, beginning in July 2014, based on a new stock assessment and Council action in April 2014. The Council is scheduled to address complete year (12-month) sardine management (July 1 to June 30) at its April 2014 meeting.

The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. The HG is based, in large part, on the current estimate of stock biomass. The harvest control rule in the CPS FMP is $HG = [(Biomass - Cutoff) * Fraction * Distribution]$ with the parameters described as follows:

1. *Biomass*. The estimated stock biomass of Pacific sardine age one and above.

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

3. *Distribution*. The average portion throughout the year of the Pacific sardine biomass estimated to occur in the EEZ off the Pacific coast in any given year. The FMP established this level at is 87 percent.

4. *Fraction*. The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

At the November 2013 Council meeting, the Council adopted a report completed by NMFS Southwest Fisheries Science Center providing a biomass projection estimate for Pacific sardine of 378,120 mt. This report and the resulting biomass estimate were endorsed by the Council's SSC as the best available information on the stock status. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is proposing, and OFL of 59,214 metric tons (mt), an ABC of 54,052 mt, an ACL of 54,052 mt (equal to the ABC), and a HG of 29,770. The current 2014 biomass estimate represents a 42 percent decrease from the updated stock assessment previously adopted by the Council in November, 2012. This current biomass estimate is based on a catch-only projection model that included updated catches from 2012 and 2013, but did not include other fishery or survey data collected over the past year. New data will, however, be incorporated in the next full assessment that will serve as the basis for the complete 12-month fishery management cycle beginning July 1, 2014.

The Council also adopted and NMFS is proposing an ACT or maximum directed HG of 19,846 (mt) as the maximum harvest level from which to calculate the first period allocation. Based the seasonal allocation framework in the FMP, this equates to a January 1 to June 30 allocation of 6,946 mt (35% of HG/ACT). The Council then adopted and NMFS is proposing an adjusted non-tribal harvest allocation for this period of 5,946 mt. This number has been reduced from the total allocation for this period by 1,000 mt for potential harvest by the Quinault Indian Nation. A 500 mt incidental catch set aside is also being proposed for this period, leaving 5,446 mt as the non-tribal directed fishing allocation for the period of January 1, 2014, through June 30, 2014. The purpose of the incidental set-aside allotment and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed to reduce bycatch and allow for continued prosecution of other important CPS fisheries. If during this period the directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed. For the remainder of the period, any incidental Pacific sardine landings would be

counted against that period's incidental set-aside. As an additional accountability measure, the proposed incidental fishery would also be constrained to a 40 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine and reduce potential discard of sardine. In the event that an incidental set-aside is projected to be attained, the incidental fishery will be closed for the remainder of the period. If the total January 1 to June 30 allocation of Pacific sardine is reached or is expected to be reached, the Pacific sardine fishery would be closed until it re-opens at the beginning of the next fishing season. The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure.

For the last two years, the Quinault Indian Nation requested, and NMFS approved, set-asides for the exclusive right to harvest Pacific sardine in the Quinault Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to the 1856 Treaty of Olympia (Treaty with the Quinault). For the interim harvest period of January 1, 2014, through June 30, 2014, the Quinault Indian Nation has again requested that NMFS provide the Quinault with a tribal set-aside. The Quinault Indian Nation has requested a 1,000 mt set-aside for this interim period and NMFS is considering the request.

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.

Classification

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

These proposed specifications are exempt from review under Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 3 of the Regulatory

Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The results of the analysis are stated below. For copies of the IRFA, and instructions on how to send comments on the IRFA, please see the **ADDRESSES** section above.

The purpose of this proposed rule is to implement harvest specifications for the Pacific sardine fishery in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an OFL, ABC, ACL and HG or ACT for the Pacific sardine fishery based on the specified harvest control rules in the FMP.

On December 23, 2013, NMFS published a proposed rule (78 FR 77413) to change the start date of the 12-month Pacific sardine fishery from January 1 to July 1, thus changing the fishing season from one based on the calendar year to a fishing year that will begin on July 1 and extend until the following June 30, as well as establish a one-time interim harvest period for the 6 months from January 1, 2014, through June 30, 2014. The purpose of this change is to better align the timing of the research and science that is used in the annual stock assessments with the annual management schedule. Under this proposed scenario, the start of the next complete fishing season would begin on July 1, 2014, and go until June 30, 2015. Because the 2013 fishing season ended on December 31, 2013, it is necessary to implement interim management measures and harvest specifications for the period January 1, 2014 to June 30, 2014, to allow for fishing opportunities to continue during the transition from January 1, the current start of the fishing season, to the proposed new start on July 1. Therefore, the purpose of this proposed rule is to implement the quota and associated management measures for the January 2014 through June 2014 interim harvest period, as well as the other annual harvest levels (OFL, ABC, and ACL) for 2014, with the expectation that these annual reference points will be replaced when complete year (12-month) sardine management (July 1 to June 30) is addressed in a subsequent rulemaking in Spring 2014.

On June 20, 2013, the U.S. Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for

Finfish Fishing from \$4.0 million to \$19.0 million, Shellfish Fishing from \$4.0 million to \$5.0 million, and Other Marine Fishing from \$4.0 million to \$7.0 million. NMFS conducted its analysis for this action using the new size standards.

As stated above, the U.S. Small Business Administration now defines small businesses engaged in finfish fishing as those vessels with annual revenues of or below \$19 million. Under the former, lower size standards, all entities subject to this action in previous years were considered small entities, and under the new standards they continue to be considered small. The small entities that would be affected by the proposed action are the vessels that fish for Pacific sardine as part of the West Coast CPS finfish fleet. In 2013 there were approximately 96 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast, 55 vessels in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. The average annual per vessel revenue in 2013 for the West Coast CPS finfish fleet was well below \$19 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, 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. Therefore this rule will not create disproportionate costs between small and large vessels/businesses.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2013 fishing year, approximately 19,000 mt were available for harvest by the directed fishery during the 6-month time period of January 1, 2013 through June 30, 2013. Approximately 4,000 mt (approximately 2,500 mt in California and 1,500 mt in Oregon and Washington) of this allocation was harvested during that time period, for an estimated ex-vessel value of \$850,000. Using these figures, the average 2013 ex-vessel price per mt of Pacific sardines was approximately \$215 during that time period.

The proposed annual catch target (ACT) or maximum directed HG that is used to calculate the first period allocation of January 1, 2014 to June 30,

2014 is 19,846 (mt). This value is approximately 40,000 mt less than the maximum directed HG used to calculate the three seasonal allocations in 2013. Based on the seasonal allocation framework in the FMP, this equates to an allocation of 6,946 mt (35% of the 19,846 HG/ACT) for the interim harvest period of January 1, 2014 to June 30, 2014. From this value, the proposed non-tribal directed fishing allocation for this period, accounting for a tribal set-aside and an incidental harvest allocation, is 5,446 mt. This equates to a decrease of approximately 12,000 mt between the first period (January-June) directed harvest allocation for 2014 compared to the same period in 2013. If the fleet were to take the entire January 1 through June 30, 2014, allocation, and assuming a coastwide average ex-vessel price per mt of \$230 (average 2013 ex-vessel price per mt), the potential revenue to the fleet would be approximately \$1.25 million. Therefore, because the proposed non-tribal directed fishing allocation for the January 1, 2014 to June 30, 2014 period is 12,000 mt less than for the same period in 2013, this proposed rule will decrease the effected small entities' potential profitability during this same time period when compared to the same period last season.

However, although there is a decrease in potential profitability to sardine harvesting vessels for the January 1, 2014 to June 30, 2014 time period based on this rule compared to last season, as stated above, only approximately 4,000 mt of the allocated 19,000 mt were landed in 2013 during the first allocation period, therefore it is difficult to predict whether the proposed allocation will ultimately restrict the harvesting capacity of the fleet for this period. Additionally, revenue derived from harvesting Pacific sardine is typically only one factor determining the overall revenue for a majority of the vessels that harvest Pacific sardine; 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. For example, market squid have been readily available to the fishery in California over the last three years with total annual ex-vessel revenue averaging approximately \$66 million over that time, compared to an annual average ex-

vessel from sardine of \$16 million over that same time period.

These vessels typically rely on multiple species for profitability because abundance of sardine, like the other CPS stocks, is highly associated with ocean conditions and different times of the year, and therefore are harvested at various times and areas 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, it has necessitated that the CPS fishery as a whole rely on a group of species for its annual revenues. Therefore, although there will be a potential reduction in sardine revenue for the small entities affected by this proposed action when compared to the previous season, it is difficult to

predict exactly how this reduction will impact overall annual revenue for the fleet.

There are no significant alternatives to this proposed rule that would accomplish the stated objectives of the applicable statutes and would also minimize any significant economic impact of this proposed rule on the affected small entities. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the HG. Therefore, if the estimated biomass decreases or increases from one year to the next, the HG will correspondingly decrease or increase. Because the current stock biomass estimate decreased from 2013 to 2014, the HG

and subsequent first period allocation also decreased.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap, or conflict with this proposed rule.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

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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