

year's biomass estimate. A better way to manage the resource would be to have a management agreement with Mexico and Canada. Nevertheless, the formula in the FMP uses the best information available to account for harvests beyond U.S. jurisdiction and is designed to minimize the potential for overfishing. In 2002, the U.S. fishery left about 18,000 mt of the harvest guideline unharvested.

Comment 6: The proposed option encourages further expansion of the open access fishery, which includes more than 40 additional vessels, even though veteran California fishermen were denied limited entry permits.

Response: In 2002, 26 vessels landed sardine in the open access fishery off Oregon and Washington, of which six vessels held limited entry permits for the southern fishery. By the end of July 2003, however, sardine landings in the Pacific Northwest were about 3,000 mt below the landings through July 2002, about 75 percent of the 2002 landings. Only 18 vessels had participated. At this time, there is no indication that this regulation will lead to a substantial increase in the number of participating vessels in the Northwest. Amendment 8 assumes that since high biomass levels of Pacific sardine are transitory, the limited availability of sardine in the Pacific Northwest will tend to limit the number of participating vessels, while offering an opportunity for more northern fisheries to gain benefits when the sardine biomass is large. To date, neither the Council nor any other source of information has indicated a need to change this approach.

Comment 7: The economics of the fishery were not well addressed in California with regard to the impact of shifting the quotas to Oregon and Washington.

Response: Under the proposed option, an additional 2,200 mt is anticipated to be harvested off California. The proposed option provides the greatest increase in producer surplus for California in relation to the benefits that accrue to California from the nine options analyzed. The increase in the estimated Pacific Northwest harvest is not great enough to invite significant increases in vessels and processors in the Pacific Northwest. If the biomass and the harvest guideline increase substantially in the future, there would be pressure to increase capital investment, but larger harvest guidelines would produce this pressure even under the status quo.

Comment 8: If there is a cold water regime shift and the sardine biomass declines, this is a good reason for precaution and to avoid locking up a

fixed 33 percent of the sardine quota in the open access fishery. A reduced quota will cause economic hardship on the traditional limited entry fishery.

Response: The harvest formula in the FMP is a risk averse approach to fishing mortality, and the proposed option does not allocate a fixed amount to any fishery. One-third of the harvest guideline would be initially allocated to Subarea A (Pacific Northwest); however, the unharvested portions of the harvest guideline in Subarea A and Subarea B (California) are added together and reallocated on September 1, 20 percent to Subarea A and 80 percent to Subarea B. The amount received in either area depends on performance of the individual fisheries and the limit set by the harvest guideline. The Council also intends to revisit this allocation issue in the near future. With regard to the economic impact on California fisheries, if the biomass declines, there would be economic consequences to all sardine fisheries under all options.

Comment 9: The proposed rule incorrectly assumes that southern California vessels can offset economic impact by fishing in Monterey, California, when such long distance travel is not possible for much of this fleet.

Response: The summary of the initial regulatory flexibility analysis states only that some vessels may be able to participate in more northern fisheries. However, there could be mitigation to a certain extent for some vessels by changing fishing locations to land larger, higher-priced sardines.

Comment 10: The regulatory amendment and the proposed rule do not include impacts on processors, many of which are small businesses.

Response: The impact on processors was addressed in the regulatory impact review, which included calculations of producer surplus based on data supplied by cooperating sardine processors. Some processors may be small businesses, but data are not available on processors in the way that ex-vessel revenue is available for individual vessels. In this regard, the best available data were used. No information on profitability of individual vessels was available, so ex-vessel revenue was used as a proxy for vessel profitability. The producer surplus figures are assumed to reflect profitability for processors in general, and the economic effect of the proposed action on processors is assumed to be related to ex-vessel revenue.

In considering the above comments, NMFS did not change the proposed rule.

Classification

The Administrator, Southwest Region, NMFS, determined that the FMP regulatory amendment is necessary for the conservation and management of the coastal pelagic species fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA (AA), finds that this final rule relieves a restriction under 5 U.S.C. 553 (c)(1), and thus is exempt from the 30 day delay in the effective date requirement of 5 U.S.C. 553(d). This rule relieves a restriction because the allocation to Subarea A is likely to be reached before October 1. If the allocation is reached before October 1, the Subarea A fishery will be closed and the fishery will not be able to resume until the reallocation is completed on October 1 under the existing rule. In 2002, the Pacific Northwest fisheries landed more than 36,500 mt before October 1, and the fishery in northern California, which was included in Subarea A in 2002, landed more than 5,000 mt by October 1. The initial allocation to Subarea A in 2003 is 36,969 mt, lower than the allocation in 2002, when an emergency rule was necessary to keep the fishery open following a temporary closure. Keeping the fishery operating will increase landings by about 1,500 mt per week. At an ex-vessel price of \$100/mt, this would generate \$150,000 per week to fishermen and \$300,000 to processors (based on 50 percent recovery rate and a sales price of \$400/mt).

The final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Council prepared an IRFA which was summarized in the proposed rule published on June 26, 2003 (68 FR 37995). The Council prepared an FRFA that describes the economic impact of this action on small entities. Two specific comments were received on the IRFA, one regarding the possibility of some vessels minimizing impacts by fishing in more northern fisheries and one regarding the treatment of processors in the IRFA. Responses to these comments are contained in comments 9 and 10 in the preamble to the final rule. The following is the summary of the FRFA. The need for and objectives of this final rule are contained in the **SUPPLEMENTARY INFORMATION** of the preamble and in the proposed rule. Comments and responses regarding the economic impacts of this rule are contained in the preamble.

Approximately 140 vessels are permitted in the sardine fisheries off the U.S. West Coast; 65 vessels are