

Subpanel recommended that an inseason review of the mackerel season be completed for the March 2004 Council meeting, with the possibility of reopening the directed fishery as an inseason action if sufficient amount of the harvest guideline reserved for the incidental fishery remains unharvested. At its June 2003 meeting, the Council made these recommendations to NMFS. A proposed rule was published on July 29, 2003 (68 FR 44518). The public comment period ended on August 13, 2003. No comments were received.

In view of the above, the following would be implemented for the fishing season that began on July 1, 2003, and continuing through June 30, 2004.

Based on the estimated biomass of 68,924 mt and the formula in the FMP, a harvest guideline of 10,652 mt will be in effect for the fishery that began on July 1, 2003. This harvest guideline will be available for harvest for the fishing season that began at 12:01 a.m. on July 1, 2003, and continues through June 30, 2004, unless the harvest guideline is attained and the fishery is closed before June 30, 2004. All landings made after July 1, 2003, will be counted toward the 2003/2004 harvest guideline of 10,652 mt. There shall be a directed fishery, followed by an incidental fishery of 3,152 mt. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS will become effective after the date 7,500 mt of Pacific mackerel is estimated to have been harvested. A landing of 1 mt of Pacific mackerel per trip will be permitted during the incidental fishery for trips in which no other CPS is landed.

Classification

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

NMFS prepared an initial regulatory flexibility analysis that describes the economic impact the proposed rule, if adopted, would have on small entities. No comments were received on the economic impacts of the proposed rule. NMFS prepared a FRFA for this final rule. The FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** of this final rule. A harvest guideline is required by the FMP to protect the resource while providing a source of revenue for the fishing industry and other benefits to society. The FMP requires that the harvest guideline be calculated by a specific formula applied to the current estimated biomass.

Separating the harvest guideline into a directed and incidental fishery is done to minimize the potential of restricting fishing for other species, such as Pacific sardine, which may occur in mixed schools with Pacific mackerel. If the harvest guideline of Pacific mackerel is reached, a prohibition on landings of Pacific mackerel will hinder the Pacific sardine fishery, increasing the cost of fishing and increasing bycatch of Pacific mackerel. If the Pacific mackerel harvest guideline is large enough to be unlikely to interfere with harvesting other species, there is no need to have an incidental fishery. When the harvest guideline is small, many alternatives to the specific amounts of the harvest guideline allocated to the directed and incidental fisheries are possible, but the amounts essential for an efficient fishery are not predictable because market demand, species availability, and the market for species other than Pacific mackerel vary widely from year to year. The preferred alternative for incidental harvest allowance of 40 percent for the current fishing season was based on experience in recent years. Although changes to the incidental harvest allowance during the fishing season can be made, the Council reserved a significant amount of Pacific mackerel for an incidental fishery and recommended a high incidental harvest rate, which would minimize the need for in-season management actions, thereby minimizing costs and potential interference with the CPS fishery.

This final rule does not duplicate overlap, or conflict with other Federal rules. There are no reporting, record-keeping, or other compliance requirements of the rule.

Approximately 83 vessels harvest Pacific mackerel off the U.S. West Coast. This includes 65 vessels with limited entry permits, which are authorized to fish south of 39° N. lat. (a point north of Monterey, CA). Approximately 18 vessels harvest CPS species in southern California for bait; however, little Pacific mackerel is used for bait. The primary harvesters of Pacific mackerel are the vessels with limited entry permits from Monterey, CA south. Some of the vessels in Monterey may move south to harvest CPS, but may not relocate to harvest Pacific mackerel in all years. All of these vessels would be considered small businesses under the Small Business Administration standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. CPS vessels typically harvest a number of other species, including anchovy, Pacific sardine, and market squid.

Cost data are not available for the 65 vessels with limited entry permits; therefore, average gross revenue per vessel is used as a proxy for changes in profitability. With an estimated increase of \$960,000 in gross revenue, the average gross revenue per vessel would be \$14,769. Setting a harvest guideline is required by the FMP and Federal regulations. However, for the purposes of measuring impacts, if there is sufficient biomass to allow a fishery, the fishing season begins on July 1 even if a harvest guideline is not determined. Unless action were taken to curtail the fishery, unlimited amounts of Pacific mackerel could be harvested. With such a low biomass, exceeding the MSY would be likely, which would lower the biomass estimate the following year along with the harvest guideline. This would reduce potential future revenue to the fleet. Nevertheless, market conditions and availability of Pacific mackerel in the area of the fishery have a strong effect on landings. Since 1994, fleet revenue has averaged \$29.9 million and revenue obtained from Pacific mackerel has averaged 7.8 percent of that revenue. Based on the final harvest guideline, revenue from Pacific mackerel is likely to average less than 7.8 percent because squid landings contribute substantial revenue to the fleet, and squid availability is not expected to be depressed by an El Nino during the 2003–2004 Pacific mackerel season as it was in 1998. In an unrestricted Pacific mackerel fishery, average revenue would be more likely to approach 7.8 percent. In view of the above, the relatively low harvest guideline for the 2003–2004 fishing season will provide a slight increase in revenue and will not have a substantial effect on overall vessel profitability.

The average annual revenue from Pacific mackerel in 2002 in the last 10 years, from 1993 through 2002, is almost \$1.8 million. This is the revenue the industry might expect on average given the amount of mackerel available for harvest and market demand. With a harvest guideline of 10,652 mt and an average ex-vessel price per ton of \$144.55, potential revenue could be \$1.5 million. The harvest guideline for the 2002–2003 fishing season was 12,535 mt; however, only 3,884 mt was landed, primarily because of the lack of availability of the resource in the area of the fishing fleet. Therefore, if the harvest guideline is reached during the 2003–2004 fishing season, there will be an increase of more than \$978,000 in ex-vessel revenue above that of the 2002–2003 fishing season. The increase would be beneficial for fishermen and