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§ 230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?

No, the rules in subpart B in no way modify the requirements of the Federal Rules of Civil Procedure regarding service of process.

§ 230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?

No, subpart B is intended to provide instructions to Office of Inspector General employees and members of the public. It does not create any right or benefit, substantive or procedural, enforceable by any party against the Office of Inspector General or the Postal Service.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 03-24619 Filed 10-2-03; 8:45 am]

BILLING CODE 7710-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 030430107-3236-02; I.D. 040703A]

RIN 0648-AN87

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Pelagic Sargassum Habitat of the South Atlantic Region

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 Fishery Management Plan for Pelagic Sargassum Habitat of the South Atlantic Region (FMP). This final rule limits the harvest or possession of pelagic sargassum in or from the exclusive economic zone (EEZ) off the southern Atlantic states to 5,000 lb (2,268 kg) annually, restricts fishing for pelagic sargassum in the South Atlantic EEZ to an area no less than 100 nautical miles offshore of North Carolina and to the months of November through June, requires vessel owners or operators to accommodate NMFS-approved observers on all pelagic sargassum fishing trips, and restricts the

mesh and frame sizes of nets used to harvest pelagic sargassum. The FMP also defines the management unit, maximum sustainable yield (MSY), optimum yield (OY), and overfishing parameters. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effects are to conserve and manage pelagic sargassum and to protect essential fish habitat.

DATES: This final rule is effective November 3, 2003.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Robert Sadler, Southeast Region, NMFS, at the above address, and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, phone: 727-570-5305, fax: 727-570-5583, e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The South Atlantic Fishery Management Council (SAFMC) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 17, 2003, NMFS announced the availability of the FMP and requested comments on it (68 FR 18942). NMFS published a proposed rule to implement the FMP and requested comments on the proposed rule through June 30, 2003 (68 FR 32450, May 30, 2003). NMFS partially approved the FMP on July 11, 2003; the designation of essential fish habitat (EFH), EFH-habitat areas of particular concern (EFH-HAPCs), and the estimate of maximum fishing mortality threshold (MFMT) were disapproved. The rationale for the measures in the FMP is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received 22 letters on the FMP and proposed rule. Of those, 18 were in general support of the actions identified in the FMP, 2 were opposed, and 2 letters focused on future research needs regarding the role of pelagic sargassum as habitat in the open ocean

environment. A summary of those comments and NMFS's responses are provided below.

Comment 1: Sargassum is extremely important habitat for a variety of marine species. NMFS is urged to approve this FMP and its implementing regulations, which would limit the harvest of sargassum and protect the resource as essential fish habitat (EFH) and EFH habitat areas of particular concern (EFH-HAPC).

Response: NMFS recognizes the importance of sargassum as EFH for managed species, and sargassum's general importance as habitat in the open ocean environment. NMFS has partially approved the FMP, and regulations implemented through this rule will prohibit the harvest of sargassum south of 34° N. lat. in the SAFMC's area of jurisdiction, and restrict the allowable harvest to 5,000 lb (2,268 kg) annually from waters greater than 100 nautical miles offshore of the North Carolina coast. These actions are intended to provide protection to sargassum habitat, which is designated as EFH for snappers, groupers, and coastal migratory pelagic fishes, and is known to be used by threatened and endangered sea turtles and large quantities of other marine life.

Comment 2: Because of the importance of sargassum as habitat, and its designation as EFH and HAPC for several managed finfish species, all harvest of sargassum should be prohibited.

Response: NMFS previously informed the SAFMC that there was insufficient justification to prohibit all harvest of sargassum. Section 303(a)(7) of the Magnuson-Stevens Act requires that the Councils minimize to the extent practicable adverse effects on EFH caused by fishing, but clearly this does not, in every instance, preclude some loss or damage to EFH from fishing impacts. Given the suggested standing crop of sargassum is 9 to 24 billion lbs (4 to 11 million mt) and there has been a documented harvest of 448,000 lb (203 mt) over a 22-year period, NMFS determined that the administrative record does not provide sufficient evidence that there has been an adverse impact on sargassum as EFH, or that harvest should be prohibited.

Comment 3: Quantities of sargassum found off of the east coast of Florida have declined in recent years. The ongoing harvest of sargassum is detrimental to Florida's offshore fisheries and should not be allowed.

Response: Given that sargassum is dispersed northward from the Sargasso Sea to the north Atlantic Ocean via the Gulf Stream and prevailing winds,

NMFS does not believe that the intermittent and limited harvest of sargassum off North Carolina between 1976 and 1997 affected the quantities of sargassum occurring off of more southerly coastlines. NMFS is unaware of any harvest of sargassum in the South Atlantic EEZ during the last 6 years (see also Comment 5). The abundance and density of sargassum off Florida would more likely be affected by changes in local currents and prevailing winds, such as occurred during the El Nino events of 1998 and 2002. Nevertheless, NMFS agrees that sargassum is important habitat to numerous fishes, and many fisheries operate by fishing near sargassum habitat. Regulations implemented by the promulgation of this rule will prohibit the harvest of any sargassum except from areas more than 100 nautical miles from shore off North Carolina.

Comment 4: Excessive quantities of sargassum impede navigation for the U.S. Navy, Coast Guard and merchant marine vessels, clogging cooling water intake ports. Given these issues, there does not appear to be a need to restrict or prohibit harvest. The total 22-year harvest of 448,000 lb (203 mt) is minuscule compared to the potential of the sargassum standing stock to increase its biomass by as much as 1 to 2.4 billion lb (0.4 to 1.1 million mt) within a few day's time.

Response: NMFS agrees that the biological potential for growth of sargassum makes it a highly renewable natural resource. Nevertheless, NMFS agrees with the SAFMC regarding the benefits of maintaining adequate quantities of sargassum as habitat for numerous marine species, including sea turtles, in an environment that is otherwise devoid of much structure and protective habitat. In addition, limiting harvest to areas offshore of North Carolina, during time periods when turtles and other marine life are expected to be least abundant in the sargassum, is intended to reduce the potential incidental capture and mortality of these species.

Comment 5: Allowing a harvest of 5,000 lb (2,268 kg) wet weight or 500 lb (227 kg) dry weight of sargassum per year would put the one known processing firm out of business. The firm is currently processing twice that amount in a month's time, and anticipates an expansion of its sales that would require an annual harvest of 240,000 lb (108.9 mt) wet weight annually. Additionally, very little sargassum is found off North Carolina from November through June, thus year-round harvest would provide the firm with the flexibility to select times when

sargassum was most abundant and weather conditions were conducive to taking a vessel offshore.

Response: NMFS and the SAFMC were unaware that the one known processing firm was actively engaged in processing sargassum until the firm submitted these comments. NMFS and the SAFMC were under the impression that no harvesting activity had occurred since 1997. The SAFMC's choices for optimum yield (OY) and total allowable catch (TAC) were based on average annual harvest levels from the most recent data available. To ensure that the SAFMC's proposed actions, and NMFS' decisions, were based on the best available information, NMFS contacted the firm's owner to request updated information regarding the harvest of sargassum in the SAFMC's area of jurisdiction.

The owner reported that the firm was not actively fishing for sargassum; the firm's fishing vessel had been sold. The firm was purchasing sargassum from vendors who had harvested the product from areas outside the SAFMC's area of jurisdiction. According to the firm's comment letter, its current monthly use of 10,000 lb (4.54 mt) wet weight of sargassum is approximately half its historical (1976–1997) average annual harvest. Therefore, it appears that the proposed harvesting restrictions would not affect the firm's opportunity to continue its operations. There is no information available to evaluate the firm's current mode of operation of buying raw product compared to purchasing and operating its own vessel to harvest sargassum.

Comment 6: Some of the preferred alternatives identified in the FMP, if modified to include additional considerations, would better address the conservation and management of sargassum.

Response: The Magnuson-Stevens Act, at Section 304(a)(3), provides the Secretary of Commerce (Secretary), or NMFS as the Secretary's designee, with the authority to approve, disapprove, or partially approve the preferred alternative in any FMP or FMP amendment submitted by a fishery management council. The Secretary does not have discretionary authority to select a rejected alternative, or develop a substitute alternative, for approval and implementation.

Comment 7: Several scientific studies have documented the use of sargassum by various forms of marine life, including sea turtles. NMFS is encouraged to develop better estimates of densities of sea turtle neonates in sargassum habitat. Additional questions that need to be addressed include: What

quantity of harvest is acceptable, and what is too much? What seasons are least disruptive in regards to the use of sargassum by the various life stages of finfish and invertebrate species that associate with sargassum? The decision to establish a fishing season appears to be based entirely on an assumption of post-hatchling turtle utilization of the habitat, without accounting for seasonal use of sargassum as a nursery ground by numerous fish species.

Response: NMFS acknowledges that there is a paucity of data regarding the abundance of turtles in sargassum habitat. Several studies, mostly focusing on the western edge of the Gulf Stream, have reported numbers of turtles seen during transect surveys, giving a rough estimate of densities of turtles along this western boundary. The western boundary would be the area that hatchling turtles first encounter during their migration from the nesting beach. Thus, it is likely that densities may decrease toward the eastern Gulf Stream boundary and beyond into the open ocean realm. The FMP notes (page 18) that "Regional trends in the mean abundance of and biomass of young fish show a decrease in abundance across the continental shelf and into the Gulf Stream and Sargasso Sea, and a decrease from spring through fall. Species richness is generally highest on the outer shelf during spring and summer and further offshore during the fall and winter." This same kind of distribution can be assumed for sea turtles as well. To that end, this final rule will prohibit the harvest of sargassum within 100 nautical miles of shore off North Carolina, and during the spring through fall period. The intent of this restriction is to limit the interaction with bycatch during harvesting efforts. The gear restrictions imposed by this final rule are intended to limit those impacts; harvesting nets must be constructed of 4-inch (10.2-cm) stretch mesh or larger fitted to a frame no larger than 4 ft by 6 ft (1.3 m by 2.0 m), which should allow many organisms to escape.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an FRFA, based on the Regulatory Impact Review, for this final rule. A summary of the FRFA follows:

The Magnuson-Stevens Act provides the statutory basis for this final rule. The objectives of the FMP are: establish a management structure to manage sargassum habitat; reduce the impact of the sargassum fishery on essential fish habitat; reduce the potential for conflict;

and direct needed research to better determine distribution, production, and ecology of sargassum habitat. The final rule prohibits all harvest and possession of sargassum from the South Atlantic EEZ south of 34° N. lat., the latitude line representing the North Carolina/South Carolina border; prohibits all harvest of sargassum from the South Atlantic EEZ within 100 nautical miles of shore between 34° N. lat. and the latitude line representing the North Carolina/Virginia border; limits harvest of sargassum from the South Atlantic EEZ to the months of November through June; establishes an annual total allowable catch (TAC) of 5,000 lbs (2,268 kg) landed wet weight; requires that a NMFS-approved observer be present on each sargassum harvesting trip; and requires that nets used to harvest sargassum be constructed of 4-inch (10.2-cm) stretch mesh or larger fitted to a frame no longer than 4 ft by 6 ft (1.3 m by 2.0 m). This action is being considered because sargassum harvest represents removal of essential fish habitat or important developmental or foraging habitat for other federally managed species including threatened/endangered sea turtles; no management structure exists to protect sargassum; potential conflicts could arise if harvest occurs where recreational fishing is occurring; and limited information on distribution, production, and ecology of sargassum exists. The rule establishes strict limits on allowable harvest of sargassum.

This final rule will require an observer on board the vessel to monitor harvest of sargassum and associated bycatch. No other projected reporting, record keeping or other compliance requirements are proposed. No duplicative, overlapping or conflicting Federal rules have been identified.

No directed fishery for sargassum currently exists in the South Atlantic. Therefore, no small business entities will be impacted by this final rule. One small business entity was a historical participant in the fishery. This firm harvested an average annual harvest of 14,333 lb (6,501 kg) wet weight (1995–1997 average harvest), valued at \$43,000 per year, and employed three persons on a full-time basis and other workers on a part-time basis as needed. A total of 52 trips were made between 1976 and 1997 resulting in the harvest of 448,000 lb (203,209 kg) wet weight (44,800 lb (20,321 kg) dry weight) of sargassum. Harvest peaked at 200,000 lb (90,718 kg) wet weight in 1990. The average harvest over the entire 1976–1997 harvest period was 8,615 lb (3,908 kg) wet weight per trip. Harvest was conducted either through contract with commercial finfish fishing vessels that harvested

sargassum in conjunction with their regular fishing trip, or through the use of a converted 63-ft (19.2-m) snapper-grouper vessel acquired to conduct directed harvest trips. No information on harvesting or processing costs is available. Since a small business entity in the commercial fishery is defined as a firm that has annual gross receipts not in excess of \$3.5 million, the historical firm, had it remained in the fishery, would be classified as a small business entity. However, no harvest by this firm or any other business entity has been recorded since 1997. The sole historical participant in the fishery has maintained the processing side of the business operation through the purchase of product from vendors harvesting outside the SAFMC's area of jurisdiction. There is no known harvest, therefore, within the SAFMC's area of jurisdiction that would be adversely impacted.

No significant issues were raised by public comments in response to the IRFA. Therefore, no changes were made in the final rule as a result of such comments.

The determination of significant economic impact can be ascertained by examining two criteria, disproportionality and profitability. The disproportionality question is: Will the regulations place a substantial number of small business entities at a significant competitive disadvantage to large business entities? Since no directed fishery for sargassum currently exists, no business entities, large or small, currently participate in the fishery. The sole historical participant, however, qualified as a small business entity. Since no participants in the fishery currently exist, and the sole historical participant was a small business entity, the issue of disproportionality does not arise.

The profitability question is: Will the regulations significantly reduce profit for a substantial number of small entities? Since no directed fishery for sargassum currently exists, the regulations do not significantly reduce profit for a substantial number of small entities. Had the sole historical participant in the fishery continued operation and been dependent upon product harvested from areas within the Council's jurisdiction, the allowable TAC would have reduced average harvest and revenues by 65 percent, from 14,333 lb (6,501 kg) wet weight (1995–1997 average harvest) to 5,000 lb (2,268 kg), valued at from \$43,000 to \$15,000. Although profit figures are not available, it is obvious that the reduction in profit would also be significant. However, as previously

stated, no directed fishery exists, so no reduction in profits will occur for any small business entities.

Since there is no directed fishery for sargassum, this final rule does not generate any negative economic impacts on small entities. Therefore, the issue of significant alternatives to mitigate economic impacts is not relevant. However, in the event that directed harvest is attempted, only the harvest restrictions will result in direct economic impacts. The harvest restrictions are not believed to be sufficient to allow sustained participation in a directed fishery for sargassum since the allowable harvest is only 5,000 lb (2,268 kg) wet weight per year. Two other alternatives, allowing no harvest and prohibiting harvest after January 1, 2001, would similarly not support sustained participation in the fishery and are, therefore, not relevant significant alternatives in that they would not mitigate the negative economic impacts of the proposed rule.

The no action alternative and an alternative establishing the TAC at 100,000 metric tons wet weight would allow unrestricted harvest. Additional alternatives would specify TAC at 20,000 lb (9,072 kg) wet weight and 200,000 lb (90,718 kg) wet weight, which would allow harvests greater than the historic average harvest per year (8,615 lb (3,908 kg) wet weight for 1976–1997 or 14,333 lb (6,501 kg) wet weight for 1995–1997). Any of these alternatives would, therefore, eliminate all negative economic impacts on a directed fishery. These alternatives, however, are inconsistent with the Council's intent to both discontinue unregulated harvest of sargassum and limit expansion of a sargassum fishery. The Council concluded that severe limitation on harvest is likely to increase the productivity of marine life in the ecosystem and, thus, increase consumptive, non-consumptive, and indirect (value to other species as habitat) use values. Furthermore, the Council concluded that maintaining these consumptive, non-consumptive, and indirect use benefits greatly outweigh the costs resulting from severely limiting harvest. In addition, there was overwhelming public support for a measure to prohibit the directed harvest of sargassum.

Copies of the FRFA are available upon request (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that

collection of information displays a currently valid OMB control number.

This final rule contains the collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been approved by OMB under OMB control number 0648–0205 for notification prior to a fishing trip and OMB control number 0648–0358 for vessel identification requirements. The public reporting burden is estimated to be 45 minutes per vessel for vessel identification requirements and 5 minutes for notification prior to a trip, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspects of the collections of information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 29, 2003.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.1, table 1, the following entry is added in alphabetical order to read as follows:

§ 622.1 Purpose and scope.

* * * * *

TABLE 1.—FMPs IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* * *	* * *	* * *
FMP for Pelagic Sargassum Habitat of the South Atlantic Region.	SAFMC	South Atlantic

TABLE 1.—FMPs IMPLEMENTED UNDER PART 622—Continued

FMP title	Responsible fishery management council(s)	Geographical area
* * *	* * *	* * *

■ 3. In § 622.2, the definition of “Pelagic sargassum” is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Pelagic sargassum means the species *Sargassum natans* or *S. fluitans*, or a part thereof.

* * * * *

■ 4. In § 622.6, paragraph (a)(1)(i) introductory text is revised to read as follows:

§ 622.6 Vessel and gear identification.

(a) * * *

(1) * * *

(i) *Official number.* A vessel for which a permit has been issued under § 622.4, and a vessel that fishes for or possesses *pelagic sargassum* in the South Atlantic EEZ, must display its official number—

* * * * *

■ 5. In § 622.8, paragraphs (a), (b) introductory text, and (c) introductory text are revised to read as follows:

§ 622.8 At-sea observer coverage.

(a) *Required coverage*—(1) *Pelagic sargassum.* A vessel that harvests or possesses pelagic sargassum on any trip in the South Atlantic EEZ must carry a NMFS-approved observer.

(2) *Golden crab.* A vessel for which a Federal commercial permit for golden crab has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

* * * * *

(c) *Observer accommodations and access.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

* * * * *

■ 6. In § 622.35, paragraph (g) is added to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(g) *Pelagic sargassum area and seasonal restrictions*—(1) *Area*

limitations. (i) No person may harvest pelagic sargassum in the South Atlantic EEZ between 36°34'55" N. lat. (directly east from the Virginia/North Carolina boundary) and 34° N. lat., within 100 nautical miles east of the North Carolina coast.

(ii) No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ south of 34° N. lat.

(2) *Seasonal limitation.* No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ during the months of July through October. This prohibition on possession does not apply to pelagic sargassum that was harvested and landed ashore prior to the closed period.

■ 7. In § 622.41, paragraph (k) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(k) *Pelagic sargassum.* The minimum allowable mesh size for a net used to fish for pelagic sargassum in the South Atlantic EEZ is 4.0 inches (10.2 cm), stretched mesh, and such net must be attached to a frame no larger than 4 ft by 6 ft (1.2 m by 1.8 m). A vessel in the South Atlantic EEZ with a net on board that does not meet these requirements may not possess any pelagic sargassum.

■ 8. In § 622.42, paragraph (g) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(g) *Pelagic sargassum.* The quota for all persons who harvest pelagic sargassum in the South Atlantic EEZ is 5,000 lb (2,268 kg), wet, landed weight. See § 622.35(g)(1) for area limitations on the harvest of pelagic sargassum.

■ 9. In § 622.43, paragraph (a)(7) is added and paragraph (b)(2) is revised to read as follows:

§ 622.43 Closures.

* * * * *

(a) * * *

(7) *Pelagic sargassum.* Pelagic sargassum may not be fished for or possessed in the South Atlantic EEZ and the sale or purchase of pelagic sargassum in or from the South Atlantic EEZ is prohibited.

* * * * *

(b) * * *

(2) The prohibition on sale/purchase during a closure for allowable octocoral in paragraph (a)(2) of this section or for pelagic sargassum in paragraph (a)(7) of this section does not apply to allowable octocoral or pelagic sargassum that was

harvested and landed ashore prior to the effective date of the closure.

* * * * *

[FR Doc. 03-25149 Filed 10-2-03; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030721177-3234-02; I.D. 060903C]

RIN A648-AQ96

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: Final rule.

SUMMARY: NMFS issues a final rule to implement the annual harvest guideline for Pacific mackerel in the exclusive economic zone 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. This action adopts allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Effective November 3, 2003.

ADDRESSES: The report *Stock Assessment of Pacific Mackerel with Recommendations for the 2003-2004 Management Season* may be obtained from Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. An environmental assessment/regulatory impact review/final regulatory flexibility analysis (FRFA) may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (562) 980-4036.

SUPPLEMENTARY INFORMATION: The CPS 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 recommendations to NMFS. The annual harvest guideline and season structure is 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 the following year.

The Team and Subpanel meetings took place at the NMFS Southwest Regional Office in Long Beach, CA on May 21, 2003 (68 FR 23703, May 5, 2003). The SSC meeting took place in conjunction with the June 16-20, 2003, Council meeting in Foster City, CA.

A modified virtual population analysis stock assessment model is used to estimate the biomass of Pacific mackerel. The model employs both fishery dependent and fishery independent indices to estimate abundance. The biomass was calculated through the end of 2002, then estimated for the fishing season that begins July 1, 2003, based on: (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2003, (2) modeled estimates of fishing mortality during 2002, (3) assumptions for natural and fishing mortality through the first half of 2003, and (4) estimates of age-specific growth. Based on this approach, the biomass for July 1, 2003, is 68,924 metric tons (mt). Applying the formula in the FMP results in a harvest guideline of 10,652 mt, which is lower 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 2003, this

estimate is 68,924 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 50,724 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 50,724 mt, that is, 35,507 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 (35,507 mt), which results in 10,652 mt.

Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Mackerel with Recommendations for the 2003-2004 Management Season*, which may be obtained at the address above (see **ADDRESSES**).

Following recommendations of the fishing industry and Subpanel for the 2002/2003 fishing season, NMFS established (1) a 9,500-mt directed fishery for Pacific mackerel beginning July 1, 2002, and (2) an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS, which would be imposed only if the 9,500 mt were harvested. A 1-mt landing of Pacific mackerel per trip would have been allowed if no other CPS (northern anchovy, Pacific sardine, jack mackerel, market squid) were landed during a trip. NMFS implemented a directed and incidental fishery last season in response to concerns about how a low harvest guideline for mackerel might interfere with the sardine fishery. Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch of mackerel. As of June 30, 2003, the end of the 2002/2003 fishing season, only 3,884 mt of Pacific mackerel had been landed in the directed fishery; therefore, imposition of an incidental allowance was not necessary.

At its meeting on May 21, 2003, the Subpanel recommended for the 2003/2004 fishing season implementation of a 7,500-mt directed fishery, leaving the remaining 3,152 mt in the event of an incidental fishery. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective only after 7,500 mt of Pacific mackerel is estimated to have been harvested. The Subpanel also recommended to allow 1 mt of mackerel to be landed per trip by any fishing vessel during the incidental fishery without landing any other CPS. The