

# **COASTAL PELAGIC SPECIES FISHERY MANAGEMENT PLAN**

**(Amendment 8 to the Northern Anchovy Fishery  
Management Plan)**

**DECEMBER 1998**

6-11-2008



This Coastal Pelagic Species Fishery Management Plan (Amendment 8 to the Northern Anchovy Fishery Management Plan) was published by the Pacific Fishery Management Council pursuant to National Oceanic and Atmospheric Administration Award NA87FC0008.

# TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| 1.0 INTRODUCTION .....  | 1-1         |
| 1.1 History of the Fishery Management Plan .....                                  | 1-1         |
| 1.2 Fishery Management Unit .....   | 1-2         |
| 1.3 Categories of Management .....  | 1-2         |
| 1.4 Operational Definitions of Terms .....  | 1-3         |
| 1.5 Goals and Objectives .....  | 1-4         |
| 2.0 FRAMEWORK MANAGEMENT .....  | 2-1         |
| 2.1 Types of Actions and Procedures .....   | 2-1         |
| 2.1.1 Routine Management Measures .....   | 2-2         |
| 2.1.2 Point-of-Concern Framework .....  | 2-3         |
| 2.1.3 The Socioeconomic Framework .....   | 2-4         |
| 2.1.4 Allocation .....  | 2-4         |
| 2.1.5 Procedures for Specifying Maximum Sustainable Yield and Optimum Yield ..... | 2-5         |
| 2.1.6 Management Agreements with Other Nations .....                              | 2-5         |
| 2.1.7 Management Measures to Protect Noncoastal Pelagic Species .....             | 2-5         |
| 2.2 Other Management Measures .....   | 2-5         |
| 2.2.1 Generic .....   | 2-5         |
| 2.2.1.1 Observers .....   | 2-5         |
| 2.2.1.2 Essential Fish Habitat .....  | 2-6         |
| 2.2.1.3 Vessel Safety Considerations .....  | 2-7         |
| 2.2.1.4 Limited Entry .....   | 2-7         |
| 2.2.2 Domestic Commercial Management Measures .....                               | 2-7         |
| 2.2.2.1 Permits .....   | 2-7         |
| 2.2.2.2 Permit Revocation and Reinstatement .....                                 | 2-8         |
| 2.2.2.3 Catch Restrictions .....  | 2-8         |
| 2.2.2.4 Prohibited Species .....  | 2-8         |
| 2.2.2.5 Gear Restrictions .....   | 2-8         |
| 2.2.2.6 Closed Fishing Areas .....  | 2-9         |
| 2.2.2.7 Reporting Requirements .....  | 2-9         |
| 2.2.2.8 Vessel Identification .....   | 2-9         |
| 2.2.3 Domestic Recreational .....   | 2-9         |
| 2.2.3.1 Permits .....   | 2-9         |
| 2.2.3.2 Catch Restrictions .....  | 2-10        |
| 2.2.3.3 Gear Restrictions .....   | 2-10        |
| 2.2.4 Domestic Vessels in a Joint Venture .....                                   | 2-10        |
| 2.2.5 Foreign Vessels in a Joint Venture or Foreign Fishery .....                 | 2-10        |
| 2.2.5.1 Permits .....   | 2-10        |
| 2.2.5.2 Target Species .....  | 2-10        |
| 2.2.5.3 Incidental Catch .....  | 2-10        |
| 2.2.5.4 Prohibited Species .....  | 2-11        |
| 2.2.5.5 Season and Area Restrictions .....  | 2-11        |
| 2.2.5.6 Reporting and Record Keeping Requirements .....                           | 2-11        |
| 2.2.5.7 Dumping .....   | 2-11        |
| 2.2.5.8 Fishery Closure .....   | 2-11        |
| 2.2.5.9 Observers .....   | 2-11        |
| 2.2.5.10 Other Restrictions .....   | 2-12        |
| 2.2.6 Foreign Recreational .....  | 2-12        |
| 2.2.7 Limited Entry .....   | 2-12        |
| 2.2.8 Exempted Fishing .....  | 2-12        |
| 2.2.9 Other Fees and Permits .....  | 2-13        |
| 2.3 Scientific Research .....   | 2-13        |

|         |   |      |
|---------|---|------|
| 2.4     | Restrictions on Other Fisheries   | 2-13 |
| 2.5     | Procedures for Reviewing State Regulations  | 2-14 |
| 3.0     | LIMITED ENTRY   | 3-1  |
| 3.1     | Problem Addressed by Limited Entry  | 3-1  |
| 3.2     | Goals and Objectives for Finfish Limited Entry  | 3-2  |
| 3.3     | Achievement of Goals and Objectives and Need for Additional Measures to Reduce Capacity                                     | 3-2  |
| 3.4     | Nature of the Interest Created  | 3-2  |
| 3.5     | Scope of Limited Entry  | 3-2  |
| 3.5.1   | Species within the Scope of Limited Entry   | 3-2  |
| 3.5.2   | Geographic Scope of Limited Entry   | 3-2  |
| 3.6     | Limited Entry Permits   | 3-2  |
| 3.6.1   | Initial Issuance of Limited Entry Permits   | 3-2  |
| 3.6.1.1 | Initial Issuance Criteria   | 3-3  |
| 3.6.1.2 | Ownership Restriction   | 3-3  |
| 3.6.1.3 | Limited Entry Permit Held by Owner of Record of the Vessel  | 3-3  |
| 3.6.1.4 | Loss of a Vessel Prior to Permit Issuance   | 3-3  |
| 3.6.1.5 | Appeals Process   | 3-4  |
| 3.6.2   | Permit Renewal Procedures   | 3-4  |
| 3.6.3   | Permit Transfers  | 3-4  |
| 3.6.4   | Procedures for Issuing New Limited Entry Permits in the Future  | 3-5  |
| 3.6.5   | Coastal Pelagic Species Fishing Exempted from Limited Entry   | 3-5  |
| 3.6.5.1 | Exempted Landings   | 3-5  |
| 3.6.5.2 | Recreational Fishing  | 3-5  |
| 3.6.5.3 | Live Bait Coastal Pelagic Species Fishing   | 3-5  |
| 3.6.6   | Additional Management of the Limited Entry Fishery  | 3-5  |
| 3.6.6.1 | Trip Limit  | 3-5  |
| 4.0     | OPTIMUM YIELD, MAXIMUM SUSTAINABLE YIELD CONTROL RULES, AND OVERFISHING DEFINITIONS FOR THE COASTAL PELAGIC SPECIES FISHERY | 4-1  |
| 4.1     | Definition of Optimum Yield   | 4-1  |
| 4.2     | Definition of Maximum Sustainable Yield, MSY Control Rules, and Acceptable Biological Catch                                 | 4-1  |
| 4.3     | Definition of Overfishing   | 4-1  |
| 4.4     | Definition of an Overfished Stock   | 4-2  |
| 4.5     | Rebuilding Programs   | 4-2  |
| 4.6     | Maximum Sustainable Yield Control Rules   | 4-2  |
| 4.6.1   | Default CPS MSY Control Rule  | 4-2  |
| 4.6.2   | MSY Control Rule for Pacific Sardine  | 4-4  |
| 4.6.2.1 | Definition for Overfished Stock for Sardine   | 4-4  |
| 4.6.2.2 | Live Bait Harvest Between the Definition of Overfishing and CUTOFF  | 4-4  |
| 4.6.3   | Maximum Sustainable Yield Control Rule for Pacific (Chub) Mackerel  | 4-4  |
| 4.6.4   | Monitored Stocks  | 4-5  |
| 4.6.4.1 | Northern Anchovy-Central Subpopulation  | 4-5  |
| 4.6.4.2 | Northern Anchovy-Northern Subpopulation   | 4-5  |
| 4.6.4.3 | Jack Mackerel   | 4-5  |
| 4.6.4.4 | Market Squid  | 4-5  |
| 4.7     | Stock Assessment and Fishery Evaluation Report  | 4-6  |
| 4.8     | Annual Specifications and Announcement of Harvest Levels  | 4-6  |
| 4.8.1   | General Procedure for Setting Annual Specifications   | 4-7  |
| 4.8.2   | Factors Considered  | 4-8  |
| 4.8.3   | Guidelines for Choosing Between a Harvest Guideline and Quota   | 4-8  |
| 4.9     | Annual Assessment and Management Cycles   | 4-9  |

|  |     |
|--|-----|
| 5.0 BYCATCH, INCIDENTAL CATCH, AND ALLOCATION .....                                  | 5-1 |
| 5.1 Incidental Catch Allowances .....  | 5-1 |
| 5.1.1 Incidental Catch Allowances When Stocks are Overfished .....                   | 5-1 |
| 5.1.2 Incidental Catch Allowances When Stocks are Not Overfished .....               | 5-1 |
| 5.1.3 Pacific (chub) Mackerel Landed Incidentally .....                              | 5-1 |
| 5.1.4 Incidental Catch Allowances for Live Bait When Stocks are Overfished .....     | 5-1 |
| 5.1.5 Incidental Catch Allowances for Live Bait When Stocks are Not Overfished ..... | 5-1 |
| 5.1.6 Guidelines and Criteria For Setting Incidental Catch Allowances .....          | 5-2 |
| 5.1.6.1 Overfished Stocks .....  | 5-2 |
| 5.1.6.2 Stocks Not Overfished .....  | 5-2 |
| 5.2 North-South Allocation for Directed Fishery .....                                | 5-2 |
| 5.2.1 Definition of Northern and Southern Fishery Segments .....                     | 5-2 |
| 5.2.2 Formulas for Allocating Pacific Sardine .....                                  | 5-2 |



## 1.0 INTRODUCTION

Amendment 8 updates the fishery management plan (FMP) for northern anchovy to manage the entire coastal pelagic species (CPS) fishery along the West Coast of the United States, including Pacific sardine, northern anchovy, Pacific (chub) mackerel, jack mackerel, and market squid. The amendment also changes the name of the plan from the *Northern Anchovy Fishery Management Plan* to the *Coastal Pelagic Species Fishery Management Plan*. Stocks and fisheries are described in Appendix A. All options considered by the Council and analysis of those options is in Appendix B. Costs involved in this FMP are estimated in Appendix C. Essential fish habitat is described in Appendix D. References are included in Appendix E.

### 1.1 History of the Fishery Management Plan

The Council initiated the development of the FMP for northern anchovy in January of 1977. A final draft of the plan was approved and submitted to the U.S. Secretary of Commerce (Secretary) in June of 1978. Regulations implementing the FMP for northern anchovy were published in the *Federal Register* on September 13, 1978. Subsequently, the Council has considered seven amendments.

The first amendment changed the method of specifying the domestic annual harvest for northern anchovy and added a requirement for an estimate of domestic processing capacity and expected annual level of domestic processing. Approval for this amendment was published in the *Federal Register* on July 18, 1979.

The second amendment, which became effective on February 5, 1982, was published in the *Federal Register* on January 6, 1982. The purpose of this amendment was to increase the domestic fishing fleet's opportunity to harvest the entire optimum yield (OY) of northern anchovy from the U.S. exclusive economic zone (EEZ).

During the spring of 1982, the Council considered a third amendment that divided the quota for northern anchovy into two halves and made release of the second half conditional on the results of a mid-season review of the status of the stock. The methods proposed for the mid-season assessment were considered too complex to implement, and the amendment was not approved.

The fourth amendment, which had two parts, was published in the *Federal Register* on August 2, 1983 and became effective on August 13, 1983. The first part abolished the five-inch size limit in the commercial fishery and established a minimum mesh size of 5/8 inch for northern anchovy. The mesh size requirement did not become effective until April 1986 in order to give the fleet additional time to comply without undue economic hardship. The second part established a mid-season quota evaluation that was simpler in design than the method proposed in Amendment 3.

The fifth amendment in 1983 incorporated advances in scientific information concerning the size and potential yield of the central subpopulation of northern anchovy. In addition, the fifth amendment included changes to a variety of other management measures. Two or more alternative actions were considered in each of seven general categories (1) OY and harvest quotas; (2) season closures; (3) area closures; (4) quota allocation between areas; (5) the reduction quota reserve; (6) minimum fish size or mesh size; and (7) foreign fishing and joint venture regulations. The alternatives for the fifth amendment were reviewed by the Council during 1983. The final rule on the fifth amendment measures was published in the *Federal Register* on March 14, 1984.

The sixth amendment in 1990 implemented a definition of overfishing for northern anchovy consistent with National Standard 7 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Council began developing the seventh amendment as a new FMP for CPS in 1990. A complete draft was available in November of 1993, but the Council suspended further work, because NMFS withdrew support due to budget constraints. In July of 1994, the Council decided to proceed with the plan through the public comment period. NMFS agreed with the decision on the condition that the Council also consider the options of dropping or amending the anchovy FMP. Thus, four principal options were considered for

managing CPS (1) drop the anchovy FMP (no federal or Council involvement in CPS); (2) continue with the existing FMP for anchovy (status quo); (3) amend the FMP for northern anchovy; and (4) implement an FMP for the entire CPS fishery. In March of 1995, after considering all four principal options, the Council decided to proceed with the FMP for CPS. Final action was postponed until June 1995 when the Council adopted a draft plan that had been revised to address comments provided by NMFS and the Scientific and Statistical Committee (SSC). Amendment 7 was submitted to the Secretary, but rejected by NMFS Southwest Region as being inconsistent with National Standard 7 of the Magnuson-Stevens Act. NMFS announced its intention to drop the FMP for northern anchovy (in addition to FMPs for other species) in the *Federal Register* on March 26, 1996, but the action was never completed.

Development of Amendment 8 began during a June 23-25, 1997 Council meeting where the Council directed the Coastal Pelagic Species Plan Development Team (CPSPDT) to amend the FMP for northern anchovy to conform to the recently revised Magnuson-Stevens Act and to expand the scope of the FMP to include the entire CPS fishery.

### 1.2 Fishery Management Unit

Stocks managed under this FMP include:

| <u>Common Name</u>                  | <u>Scientific Name</u>       |
|-------------------------------------|------------------------------|
| Pacific sardine                     | <i>Sardinops sagax</i>       |
| Pacific (chub) mackerel             | <i>Scomber japonicus</i>     |
| Northern anchovy                    | <i>Engraulis mordax</i>      |
| Central and northern subpopulations |                              |
| Market squid                        | <i>Loligo opalescens</i>     |
| Jack mackerel                       | <i>Trachurus symmetricus</i> |

Stocks may be added or removed from the management unit through the framework process described in Section 2.0.

### 1.3 Categories of Management

The CPS FMP includes two management categories for CPS fish stocks: "Active" management and "Monitored" management. "Active" is for stocks and fisheries with biologically significant levels of catch, or biological or socioeconomic considerations requiring relatively intense harvest management procedures. The second category, "Monitored", is for stocks and fisheries not requiring intensive harvest management and where monitoring of landings and available abundance indices are considered sufficient to manage the stock.

The purpose of Active and Monitored management is to use available agency resources in the most efficient and effective manner while satisfying goals and objectives of the FMP. The distinction enables managers and scientists to concentrate efforts on stocks and segments of the CPS fishery that need greatest attention or where the most significant benefits might be expected.

Active management may be characterized by periodic stock assessments, and/or periodic adjustments of target harvest levels based on maximum sustainable yield (MSY) control rules. Monitored management, in contrast, involves tracking trends in landings and qualitative comparison to available abundance data, but without periodic stock assessments, or periodic adjustments to target harvest levels. Species in both categories may be subject to management measures such as catch allocation, gear regulations, closed areas, closed seasons, or other forms of Active management.

Explicit MSY control rules, definitions of overfishing and overfished stocks must be developed for all Actively managed species. Monitored management, in contrast, may use "generic" or general definitions of overfishing and overfished stocks that do not have specific fishing mortality or biomass cutoffs. Essential fish habitat (EFH) must be described for all stocks in the management unit, including Actively managed and Monitored species.

The Coastal Pelagic Species Management Team (CPSMT) will review all CPS stocks annually and make recommendations to the Council and agencies regarding appropriate management categories for each stock ("Active" or "Monitored"). Changes to the appropriate management category for each species can be made annually by the Council based on all available data, including acceptable biological catch (ABC) levels and MSY control rules, and the goals and objectives of this FMP. Changes in a management category may be accomplished according to any of the four procedures for establishing and adjusting management measures described below in Section 2.0. In addition, CPS in the Monitored management category can be reassigned to Active management on short notice under the point-of-concern framework.

#### 1.4 Operational Definitions of Terms

Actively managed species (AMS) means CPS the Secretary has determined to require federal management by harvest guideline or quota according to the provisions of the FMP.

Coastal Pelagic Species Advisory Subpanel (CPSAS) the CPSAS is comprised of members of the fishing industry and public appointed by the Council to review proposed actions for managing the coastal pelagic species fisheries.

Biomass means the estimated amount, by weight, of a CPS population. The term biomass means total biomass (age one and above) unless stated otherwise.

Coastal pelagic species (CPS) means northern anchovy (*Engraulis mordax*), Pacific mackerel (*Scomber japonicus*), Pacific sardine (*Sardinops sagax*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*).

Coastal Pelagic Species Management Team (CPSMT) means the individuals appointed by the Council to review, analyze, and develop management measures for the CPS fishery.

Council means the Pacific Fishery Management Council, including its CPSMT, CPSAS, SSC, and any other committee established by the Council.

Finfish means northern anchovy, Pacific (chub) mackerel, Pacific sardine, and jack mackerel.

Fishery Management Area means the EEZ off the coasts of Washington, Oregon, and California between three and 200 nautical miles offshore, bounded in the north by the Provisional International Boundary between the United States and Canada, and bounded in the south by the International Boundary between the United States and Mexico.

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require complete closure of a fishery.

Harvesting vessel means a vessel involved in the attempt or actual catching, taking or harvesting of fish, or any activity that can reasonably be expected to result in the catching, taking or harvesting of fish.

Limited entry fishery means the fishery comprised of vessels fishing for CPS in the CPS management zone under limited entry permits issued under this FMP.

Live bait fishery means fishing for CPS for use as live bait in other fisheries.

Monitored species (MS) means those CPS the Secretary has determined not to need management by harvest guidelines or quotas according to the provisions of the FMP.

Nonreduction fishery means fishing for CPS for use as dead bait or for processing for direct human consumption.

Owner, as used in this subpart, means a person who is identified as the current owner in the Certificate of Documentation (CG-1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel.

Person, as used in this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or to process means the preparation or packaging of CPS to render the fish suitable for human consumption, pet food, industrial uses or long-term storage, including; but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless there is additional preparation.

Quota means a specified numerical harvest objective for a single species of CPS, the attainment (or expected attainment) of which causes the complete closure of the fishery for that species.

Reduction fishery means fishing for CPS for the purposes of conversion into: fish flour; fish meal; fish scrap; fertilizer; fish oil; other fishery products; or byproducts for purposes other than direct human consumption.

Regional Administrator means the Administrator, Southwest Region, NMFS, or a designee.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year for specific purposes, such as for individual harvesting groups to ensure equitable distribution of the resource or to allow for uncertainties in preseason estimates of DAP and JVP.

Sustainable Fisheries Division (SFD) means the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, or a designee.

Totally lost means that the vessel being replaced no longer exists in specie, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

### 1.5 Goals and Objectives

Goals and objectives for the CPS FMP (not listed in order of priority):

1. Promote efficiency and profitability in the fishery, including stability of catch.
2. Achieve OY.
3. Encourage cooperative international and interstate management of CPS.
4. Accommodate existing fishery segments.
5. Avoid discard.
6. Provide adequate forage for dependent species.
7. Prevent overfishing.
8. Acquire biological information and develop long term research program.
9. Foster effective monitoring and enforcement.
10. Use resources spent on management of CPS efficiently.
11. Minimize gear conflicts.

## 2.0 FRAMEWORK MANAGEMENT

The framework approach to management of coastal pelagic species (CPS) allows changes and modifications to management procedures to be made in a timely and efficient manner without need to amend the fishery management plan (FMP). The FMP establishes two framework procedures through which the Council is able to recommend establishment and adjustment of management measures. The "point-of-concern" framework allows the Council to develop management measures in response to resource conservation and ecological issues. The "socioeconomic" framework allows the Council to develop management measures in response to social and economic issues.

Management measures may be imposed, adjusted, or removed at any time during the year. Management measures may be imposed for resource conservation, social, or economic reasons consistent with FMP procedures, goals, and objectives.

Analyses of biological, ecological, social, and economic impacts will be considered when a particular change is proposed. As a result, time required to take action will vary depending on the type of action (see below), its impacts on the fishing industry, resource, and environment, as well as review of these impacts by interested parties. Satisfaction of legal requirements for other applicable laws (e.g., the Administrative Procedure Act, Regulatory Flexibility Act, Executive Order 12866, etc.) for actions taken under this framework requires analysis and public comment before measures may be implemented by the U.S. Secretary of Commerce (Secretary).

Management measures addressing resource conservation or ecological issues must be based on the point-of-concern framework consistent with procedures and criteria listed in Section 2.1.2.

Management measures addressing social or economic issues must be based on the socioeconomic framework consistent with procedures and criteria described in Section 2.1.3.

### 2.1 Types of Actions and Procedures

Under the point-of-concern or the socioeconomic frameworks, there are four different types of management actions, requiring slightly different processes. Management measures may be established, adjusted, or removed using any of these four actions:

1. **Automatic Actions** may be initiated by the National Marine Fisheries Service (NMFS) Regional Administrator without prior public notice, opportunity to comment, or a Council meeting. These actions are non-discretionary and the impacts must previously have been taken into account. Examples include closure of the directed fishery when the directed portion of the harvest guideline is attained, an inseason release of geographic allocations (all species and fishery segments), or closure of the fishery when the total harvest guideline is attained. The Secretary will publish a single notice in the *Federal Register* making the action effective.
2. **"Notice" Actions** require at least one Council meeting and one *Federal Register* notice. These include all management actions other than automatic actions that are either non-discretionary or have probable impacts that have been previously analyzed.

Notice actions are intended to have temporary effect and the expectation is that they may need frequent adjustment. They may be recommended at a single Council meeting, although the Council will provide as much advance information to the public as possible concerning the issues it will be considering. The primary examples are management actions defined as routine in Section 2.1.1. These include release of surplus incidental catch harvest guideline to the directed fishery (if necessary), and inseason changes to incidental catch allowances. In addition, annual specifications, including the total harvest guideline consisting of a directed and incidental portion, and any specifications for joint venture processing (JVP) or total allowable level of foreign fishing (TALFF) will be 'notice' actions as described in Section 4.8. Previous analysis must have been specific as to species and gear type before a management measure can be defined as routine and acted upon at a single Council meeting. If recommendations are

approved, the Secretary may waive, for good cause, the requirement for prior notice and comment in the *Federal Register* and will publish a single notice in the *Federal Register* making the action effective. This category of actions presumes the Secretary will find that the extensive notice and opportunity for comment along with other information provided by the Council will serve as good cause to waive the need for additional prior notice and comment in the *Federal Register*.

3. **Abbreviated Rulemaking Actions** normally require at least two Council meetings and one *Federal Register* rule. These include all management actions intended to have permanent effect and be discretionary in nature with impacts that have not been previously analyzed. The Council will develop and analyze the proposed management actions over the span of at least two Council meetings and provide public advance notice and opportunity to comment on proposals and analysis prior to and at the second Council meeting. If the NMFS Regional Administrator approves the Council's recommendation, the Secretary may waive, for good cause, the requirement for prior notice and comment in the *Federal Register* and publish a final rule in the *Federal Register* which will remain in effect until amended. If a management measure is designated as routine by final rule under this procedure, specific adjustments of that measure can subsequently be announced in the *Federal Register* by notice as described in this FMP. The Secretary may waive the opportunity for prior notice and comment in the *Federal Register*.

The primary purposes of the previous two categories of notice and abbreviated rulemaking procedures are (1) to accommodate the Council's meeting schedule for developing annual management recommendations; (2) to satisfy the Secretary's responsibilities under the Administrative Procedures Act; and (3) to address the need to implement management measures by a specified date each fishing year.

The two-Council meeting process refers to two decision meetings. The first meeting to develop proposed management measures and their alternatives, and the second meeting to make a final recommendation to the Secretary. Identification of issues and the development of proposals normally will begin at a Council meeting prior to the first decision meeting.

4. **Full Rulemaking Actions** normally require at least two Council meetings and two *Federal Register* rules (Regulatory Amendment). These include any highly controversial management measure. The Council will follow the two meeting procedures described for the abbreviated rulemaking category. The Secretary will publish a proposed rule in the *Federal Register* with an appropriate period for public comment followed by publication of a final rule in the *Federal Register*.

#### 2.1.1 Routine Management Measures

Routine management measures are those the Council determines likely to be adjusted annually or more frequently. Measures are classified as routine by the Council through either full or abbreviated rulemaking process. In order for a measure to be classified as routine, the Council will determine that the measure addresses an issue at hand and may, in the near future, require further adjustment to achieve its purpose.

Once a management measure has been classified as routine through the abbreviated or full rulemaking procedures, it may be modified thereafter through the single meeting notice procedure if (1) modification is proposed for the same purpose as the original measure; and (2) impacts of the modification are within the scope of the impacts analyzed when the measure was originally classified as routine. Analysis need not be repeated when the measure is subsequently modified if the Council determines impacts do not differ substantially from original analysis. The Council may change a routine classification for an action without following any prespecified procedure.

Any measure designated as routine for one specific species, species group, or gear type may not be treated as routine for a different species, species group, or gear type without first having been classified as routine through the rulemaking process.

To facilitate this process, the Coastal Pelagic Species Management Team (CPSMT) will make recommendations to the Council and agencies regarding assessment or management needs.

The following measures are classified as routine measures at the outset of this FMP:

1. Reallocation of surplus incidental harvest guideline to the directed fishery (all species and fishery segments).
2. Inseason changes in the incidental catch allowance.
3. Specification of annual harvest guidelines or quotas.

#### 2.1.2 Point-of-Concern Framework

The point-of-concern process is the Council's primary tool (along with setting harvest guidelines and harvest quotas) for exercising resource stewardship responsibilities. The process is intended to foster continuous and vigilant review of Pacific Coast CPS stocks and fisheries. The process is also to prevent overfishing or any other resource damages. The CPSMT will monitor the fishery throughout the year, and account for any new information on status of each species or species group to determine if a resource conservation or ecological issue exists. Point-of-concern criteria are intended to assist the Council in determining when a focused review on a particular species is warranted and may require implementation of specific management measures. This framework provides the Council authority to act based solely on a point-of-concern. Thus, the Council may act quickly and directly to address resource conservation or ecological issues. In conducting this review, the CPSMT will utilize the most current catch, effort, abundance and other relevant data from the fishery.

In the course of the continuing review, a "point-of-concern" occurs when one or more of the following is found or expected:

1. Catch is projected to exceed the current harvest guidelines or the harvest quota.
2. Any adverse or significant change in the biological characteristics of a species (age composition, size composition, age at maturity, or recruitment) is discovered.
3. An overfishing condition appears to be imminent or likely within two years.
4. Any adverse or significant change in the availability of CPS forage for dependent species or in the status of a dependent species is discovered.
5. Developments in a foreign fishery occur that affect the likelihood of overfishing of CPS.
6. An error in data or a stock assessment is detected that significantly changes estimates of impacts due to current management.
7. Maximum sustainable yield (MSY) control rule (harvest policy) parameters or approach require modification.
8. Projected catches for a Monitored species are expected to exceed the acceptable biological catch (ABC) using either a species-specific control rule or the default control rule. This could require moving a Monitored species to the Actively managed classification.

Once a point-of-concern is identified, the CPSMT will evaluate current data to determine if a resource conservation or ecological issue exists and will provide its findings in writing at the next scheduled Council meeting. If the CPSMT determines a resource conservation or ecological issue exists, it will provide its recommendation, rationale, and analysis for appropriate management measures that will address the issue.

Direct allocation of a resource between different segments of a fishery is, in most cases, not the appropriate response to a resource conservation or ecological issue. Council recommendations to directly allocate the resource will be developed according to criteria and processes in the socioeconomic framework described in Section 2.1.3 and Section 2.1.4.

After receiving the CPSMT report, the Council will take public testimony and, if appropriate, recommend management measures to the NMFS Regional Administrator accompanied by supporting rationale and analysis of impacts. The Council analysis will include a description of (1) resource conservation or ecological issues consistent with FMP objectives; (2) likely impacts on other management measures and other fisheries; (3) socioeconomic impacts; and (4) costs and benefits to commercial and recreational segments of the CPS fishery. The recommendation will explain the urgency in implementation of the measure(s), if any.

The NMFS Regional Administrator will review the Council's recommendation and supporting information and will follow appropriate implementation processes described in this FMP, following public notice and comment. If the Council contemplates frequent adjustments to the recommended measures, it may classify them as "routine" through the appropriate process described in Section 2.1.1.

If the NMFS Regional Administrator does not concur with the Council's recommendation, he/she will notify the Council in writing of the reasons for rejection. Nothing prevents the Secretary from exercising authority to take emergency action under Section 305 (c) and (d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Nothing precludes or limits Council access to the point-of-concern framework.

### 2.1.3 The Socioeconomic Framework

Nonbiological issues may arise which require the Council to recommend management actions to address certain social or economic conditions in the fishery or to achieve FMP objectives. Resource allocation, fishing seasons, or landing limits based on market quality and timing, safety measures, and prevention of gear conflicts are examples of possible management issues with a social or economic basis. Actions that are permitted under this framework include all categories of actions authorized under the point-of-concern framework with the addition of direct resource allocation and access-limitation measures.

If the Council concludes that management action is necessary to address a social or economic issue, it will prepare a report containing the rationale supporting its conclusion. The report will include proposed management measures, a description of viable alternatives, and analyses addressing (1) achievement of FMP goals and objectives, (2) likely impacts on other fisheries and other management measures, (3) sociobiological impacts, (4) socioeconomic impacts, and (5) costs and benefits to the CPS fishery.

The Council, following review of the report, supporting data, public comment and other relevant information, may recommend management measures to the NMFS Regional Administrator accompanied by relevant background data, information, and public comment. The recommendation will explain the urgency in implementation of the measure(s), if any.

The NMFS Regional Administrator will review the Council's recommendation, supporting rationale, public comments and other relevant information and, if it is approved, will undertake the appropriate method of implementation. Rejection of the recommendation will be explained in writing.

Procedures specified in this FMP do not affect authority of the Secretary to take emergency regulatory action under Section 305(c) or (d) of the Magnuson-Stevens Act.

If conditions warrant, the Council may designate a management measure developed and recommended to address social and economic issues as a routine management measure provided that the criteria and procedures in Section 2.1.1 are followed.

### 2.1.4 Allocation

In addition to other requirements in this FMP, the Council will consider the following factors when considering direct allocation of the resource:

1. Present participation in and dependence on the fishery, including alternative fisheries.
2. Historical fishing practices in, and historical dependence on, the fishery.
3. Economics of the fishery.
4. Agreements or negotiated settlements between the affected participants in the fishery.
5. Potential biological impacts on any species affected by the allocation.
6. Consistency with the Magnuson-Stevens Act national standards.
7. Consistency with the goals and objectives of this FMP.

Modification of a direct allocation cannot be designated as "routine" unless the specific criteria for the modification have been established in the regulations.

#### 2.1.5 Procedures for Specifying Maximum Sustainable Yield and Optimum Yield

As data become available, improve, or are updated, MSY control rules and OY specifications or procedures for setting MSY control rules or OY specifications may need to be modified. Changes and additions to these formulas are authorized by the FMP and may be accomplished through the point-of-concern mechanism or the socioeconomic mechanism.

#### 2.1.6 Management Agreements with Other Nations

In the event that a management agreement between the U.S. and a foreign nation concerning CPS occurs, this FMP authorizes changes or modifications to any management measure through Council processes described herein.

#### 2.1.7 Management Measures to Protect Noncoastal Pelagic Species

CPS fishing activities may directly impact certain non-CPS species including birds, marine mammals, and other fishes. This FMP authorizes implementation of measures to control CPS fishing to support conservation objectives identified under overfishing definitions adopted by the Council, the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), or other applicable law, while minimizing disruption of the CPS fishery. Any measures described in this FMP may be employed to control fishing impacts on non-CPS species. However, allocation may not be the primary intention of any such regulation.

The process for implementing and adjusting such measures may be initiated at any time under the point of concern or socioeconomic frameworks. In addition, measures to protect non-CPS may be designated as routine as described in Section 2.1.1, which will allow adjustment at a single meeting based on relevant information available at the time if (1) modification is proposed for the same purpose as the original measure, and (2) impacts of the modification are within the scope of the impacts analyzed when the measure was originally classified as routine.

Generally, the Council will initiate the process of establishing or adjusting management measures when a resource problem with a non-CPS is identified, and it has been determined that CPS fishing regulations will reduce the total impact on that species or stock. It is anticipated this will generally occur when a state or federal resource management agency (such as the U.S. Department of the Interior, NMFS, or a state fishery agency) presents the Council with information substantiating its concern for a particular species. The Council will review the information and refer it to the Scientific and Statistical Committee, CPSMT or other appropriate technical advisory group for evaluation. If the Council determines that management measures may be necessary to address requirements of the ESA, MMPA, international agreements, or other relevant federal law or policy, it may implement appropriate management measures in accordance with the procedures identified in Section 2.1. The intention of the measures may be to share conservation burdens while minimizing disruption of the CPS fishery, but under no circumstances may the intention be simply to provide more fish to a different user group or to achieve other allocation objectives.

### 2.2 Other Management Measures

#### 2.2.1 Generic

These management measures apply to all vessels participating in the CPS fishery.

##### 2.2.1.1 Observers

All fishing vessels operating in this management unit, including catcher/processors, at-sea processors, and vessels that harvest in Washington, Oregon, or California and land catch in another area, may be required to accommodate NMFS certified observers on board to collect scientific data. An observer program will be

considered only for circumstances where other data collection methods are deemed insufficient for management of the fishery. Implementation of any observer program will be in accordance with appropriate procedures outlined under this framework.

As determined by the NMFS Regional Administrator, there may be a need for observers on at-sea processing vessels to collect data normally collected at shore-based processing plants. Processing vessels must accommodate on board observers and may be required to provide the NMFS certified observers prior to issuance of any required federal permits. Observers are required on foreign vessels operating in U.S. waters.

#### 2.2.1.2 Essential Fish Habitat

The Magnuson-Stevens Act requires Councils to include descriptions of essential fish habitat (EFH) in all federal FMPs. In addition, the Magnuson-Stevens Act requires federal agencies to consult with NMFS on activities that may adversely affect EFH. Appendix D of this FMP includes a description of EFH for the five CPS included in this plan (northern anchovy, Pacific [chub] mackerel, jack mackerel, market squid, and Pacific sardine), fishing effects on EFH, non-fishing effects on EFH, and options to avoid or minimize adverse effects on EFH or promote conservation and enhancement of EFH.

#### Magnuson-Stevens Act Directives Relating to EFH

Magnuson-Stevens Act directives and NMFS guidance on implementation are addressed in greater detail in Appendix D. The Magnuson-Stevens Act defines EFH as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” To clarify this definition, the following interpretations are made: “waters” include aquatic areas and their associated physical, chemical, and biological properties that are used by fish, and may include areas historically used by fish where appropriate; “substrate” includes sediment, hard bottom, structures underlying the waters, and associated biological communities; “necessary” means the habitat required to support a sustainable fishery and the managed species’ contribution to a healthy ecosystem; and “spawning, breeding, feeding, or growth to maturity” covers the full life cycle of a species. The definition of EFH may include habitat for an individual species or an assemblage of species, whichever is appropriate to the FMP.

The Magnuson-Stevens Act requires councils to describe in FMPs any fishing activities that may adversely affect EFH. The Magnuson-Stevens Act also requires FMPs to include management measures that minimize adverse effects on EFH from fishing, to the extent practicable.

In addition, the EFH regulations require identification of non-fishing adverse impacts on EFH. The Magnuson-Stevens Act specifies that councils may comment on and make recommendations to the Secretary and any federal or state agency concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded or undertaken, by any state or federal agency that, in the view of the Council, may affect the habitat, including EFH, of a fishery resource under its authority. If the Secretary receives information that an activity of a state or federal agency would adversely affect EFH, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat. Nonfishing impacts on EFH and corresponding potential conservation measures are included in Appendix D.

#### Definition of Essential Fish Habitat for CPS

The CPS fishery includes four finfish (Pacific sardine, Pacific [chub] mackerel, northern anchovy, and jack mackerel) and the invertebrate, market squid. CPS finfish are pelagic (in the water column near the surface and not associated with substrate), because they generally occur or are harvested above the thermocline in the upper mixed layer. For the purposes of EFH, the four CPS finfish are treated as a complex because of similarities in their life histories and similarities in their habitat requirements. Market squid are also treated in this same complex because they are similarly fished above spawning aggregations.

The definition of EFH for CPS finfish is based on a thermal range bordered by the geographic area where CPS occur at any life stage, where CPS have occurred historically during periods of similar environmental

conditions, or where environmental conditions do not preclude colonization by CPS. The identification of EFH for CPS accommodates the fact that the geographic range of CPS varies widely over time in response to the temperature of the upper mixed layer of the ocean.

The east-west geographic boundary of EFH for CPS is defined to be all marine and estuarine waters from the shoreline along the coasts of California, Oregon, and Washington offshore to the limits of the EEZ and above the thermocline where sea surface temperatures range between 10°C to 26°C. The southern boundary is the United States-Mexico maritime boundary. The northern boundary is more dynamic, and is defined as the position of the 10° C isotherm, which varies seasonally and annually. Appendix D provides a more detailed description of this variability.

#### Management Measures To Minimize Adverse Impacts on EFH from Fishing

The Council may use any of the following management measures to minimize adverse effects on EFH from fishing, if there is evidence that a fishing activity is having an identifiable adverse effect on EFH. Currently, there is not evidence that a fishing activity is having an identifiable adverse effect on CPS EFH. Such management measures shall be implemented under the point-of-concern framework as described in Section 2.1.2.

- Fishing Gear Restrictions
- Time/Area Closures
- Harvest Limits, or other applicable measures

In determining whether it is practicable to minimize an adverse effect from fishing, the Council should consider whether, and to what extent, the fishing activity is adversely impacting EFH, including the fishery; the nature and extent of the adverse effect on EFH; and whether management measures are practicable. This determination should take into consideration the long and short term costs and benefits to the fishery and EFH, along with other appropriate factors, consistent with National Standard 7 (conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication).

##### 2.2.1.3 Vessel Safety Considerations

The Council will consider and may provide, after consultation with the U.S. Coast Guard and persons utilizing the fishery, temporary adjustments for access to the fishery by vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of the vessels.

##### 2.2.1.4 Limited Entry

This FMP authorizes changes and modifications to any effort limitation programs established herein and development of additional effort limitation programs. Changes may include, but are not limited to, requirements for obtaining, maintaining, and renewing permits in any effort limitation system.

#### 2.2.2 Domestic Commercial Management Measures

All measures, unless otherwise specified, apply to all domestic vessels regardless of whether catch is landed and processed on shore or processed at sea.

##### 2.2.2.1 Permits

Federal permits may be required for individuals or vessels that harvest CPS, and for individuals or facilities (including vessels) that process CPS or purchase live CPS. In determining whether to require a harvesting or processing permit, and in establishing the terms and conditions for issuing a permit, the Council may consider any relevant factors including whether a permit:

1. Will enhance the collection of biological, economic, or social data.
2. Will provide better enforcement of laws and regulations, including those designed to ensure conservation and management and those designed to protect consumer health and safety.
3. Will help achieve the goals and objectives of the FMP.
4. Will help prevent or reduce overcapacity in the fishery.
5. May be transferred, and under what conditions.

Separate permits or endorsements may be required for harvesting and processing, or for vessels or facilities based on size, type of fishing gear used, species harvested or processed, or such other factors that may be appropriate. The permits and endorsements are also subject to sanctions, including revocation, as provided by Section 308 of the Magnuson-Stevens Act.

In establishing a permit requirement, the Council will follow the rulemaking procedures as described in Section 2.1.

#### 2.2.2.2 Permit Revocation and Reinstatement

This FMP allows National Oceanic and Atmospheric Administration (NOAA), under procedures of 15 CFR Part 904, to revoke or suspend any permit issued under authority of the CPS FMP.

#### 2.2.2.3 Catch Restrictions

This FMP authorizes the commercial and recreational harvest of CPS and provides for limiting the harvest of CPS managed under this plan. Catch restrictions may be modified under the framework provisions.

#### 2.2.2.4 Prohibited Species

This FMP does not authorize the taking, retaining, or possessing of any species by CPS gears, if such taking or possessing is prohibited by other state or federal regulations. Species identified as prohibited must be returned to the sea as soon as practical with a minimum of injury after allowing for sampling by an observer, if any. Exceptions may be made for recovery of tagged fish.

This FMP authorizes the designation of other prohibited species in the future, or the removal of a species from this classification, consistent with other applicable law for that species.

#### 2.2.2.5 Gear Restrictions

This FMP authorizes the use of net gear, hook-and-line, pots (traps), longlines, and any other type of gear as legal gear for the commercial harvest of CPS, unless such gear is specifically prohibited by state law. A complete listing of current state regulations in Washington, Oregon, and California is in Appendix B.

Implementation and modification of specific management measures regarding gear, such as definitions of legal gear, mesh size restrictions, gear marking, or other gear restrictions are authorized by this FMP. Gear restrictions may be established, modified, or removed under the point-of-concern or socioeconomic frameworks. Any changes in gear regulations should be scheduled to minimize costs to the fishing industry, insofar as this is consistent with achieving the goals of the change.

#### 2.2.2.6 Closed Fishing Areas

Currently, there are certain areas closed to commercial round-haul fishing or fishing for reduction processing (Figure 1). Those areas were originally closed by the State of California to avoid commercial fishing conflicts with sport fisheries and reduce potential impacts on sport fish and salmon. This FMP authorizes the issuance of exempted fishing permits in Section 2.2.8 for fishing in closed areas consistent with the goals and objectives of the FMP.

Closed areas shall be implemented or changed through the procedures described in Section 2.1.

#### 2.2.2.7 Reporting Requirements

This FMP authorizes domestic annual harvest (DAH) survey, exempted fishing permit (EFP) application, and foreign vessel reporting and records keeping requirements. This FMP authorizes other domestic vessel permit applications and reporting requirements in the future.

#### Surveys to Determine Domestic Annual Harvest

Surveys of the domestic industry will be conducted by NMFS at the appropriate time to determine amounts of fish not needed by the domestic processing industry, which then may be made available to joint venture or foreign fishing.

#### Other Reporting and Record Keeping Requirements

Catch, effort, biological, and other data necessary for implementation of this FMP will continue to be collected by the states of Washington, Oregon, and California under existing state data collection provisions. Federal reporting requirements, such as logbooks, will be implemented only when data collection and reporting systems operated by state agencies fail to provide the Secretary with statistical information for adequate management. Any special reporting requirement should be imposed only if it is expected to enhance the Council's and NMFS' ability to manage the CPS fishery more effectively.

Conditions may develop in the CPS fishery that make current state reporting requirements insufficient. For example, a large capacity vessel such as a factory trawler might operate within state waters but outside the area of limited entry trip limit restrictions (i.e., north of 39° N latitude), harvest substantial amounts of CPS, and either unload catch after a period of delay or outside the management area. It is possible that delays in obtaining catch data or missing catch data could affect stock assessments or other management efforts. To address these potential future problems, the FMP authorizes implementation of federal reporting requirements in addition to those of the various states. The purpose of these measures would be to enhance Council's ability to manage CPS stocks effectively. Additional reporting requirements would be developed under framework management procedures and announced in the *Federal Register*.

#### 2.2.2.8 Vessel Identification

The FMP authorizes vessel identification requirements which may be modified as necessary to facilitate enforcement and vessel recognition.

### 2.2.3 Domestic Recreational

Measures described in this section apply to domestic recreational fisheries only, although most measures could be used to manage foreign recreational fisheries as well.

#### 2.2.3.1 Permits

Washington, Oregon, and California have state laws concerning recreational licenses and permits. In the event that a federal licenses or permits become necessary, they may be required under this FMP.

### 2.2.3.2 Catch Restrictions

This FMP authorizes establishment of catch restrictions on the recreational fishery consistent with FMP goals and objectives and national standards established by the Magnuson-Stevens Act.

### 2.2.3.3 Gear Restrictions

There are no federal restrictions on legal recreational gear for CPS. Existing state regulations apply in Washington, Oregon, and California. This FMP authorizes federal recreational regulations for CPS.

## 2.2.4 Domestic Vessels in a Joint Venture

U.S. vessels operating in joint ventures on the West Coast are domestic vessels and traditionally have been treated the same as U.S. vessels delivering to shore facilities. However, conditions in the fishery could warrant separate treatment in the future. Although all U.S. vessels have been subject to the same regulations, joint venture catcher operations may be affected indirectly by restrictions (such as closed areas) placed on the foreign processing vessels that receive U.S. catch at sea.

## 2.2.5 Foreign Vessels in a Joint Venture or Foreign Fishery

These measures apply to foreign vessels that process fish taken by U.S. catcher-boats under joint venture processing or to foreign vessels that operate in a fishery directed at a species for which there is a TALFF. The CPS FMP provides authority to establish, modify or remove future regulations including, but not limited to, harvest guidelines, harvest quotas, seasons, area closures, incidental harvest restrictions, trip and landing limits, and gear restrictions.

### 2.2.5.1 Permits

All foreign vessels operating in this management area shall have on board a permit issued by the Secretary pursuant to the Magnuson-Stevens Act.

### 2.2.5.2 Target Species

A foreign nation may conduct joint venture operations only for species for which there is a JVP and only using boats with appropriate permits. Directed fishing is allowed only for species for which the foreign nation has received an allocation of TALFF.

### 2.2.5.3 Incidental Catch

Incidental catch refers to CPS which are unavoidably caught while fishing for another species. It is recognized that incidental harvest of domestically fully utilized CPS is unavoidable in joint venture and foreign fisheries. Minimal incidental allowances consistent with the status of the stocks and the efficiency of the joint venture or foreign fisheries will usually be allowed. These incidental allowances are not to be considered as surpluses to domestic processing needs and are allowed only to provide for full utilization of the species targeted in the joint venture or foreign fishery.

Allowances for incidental harvest in joint ventures or foreign fisheries may be percentages or some other quantity at the Council's discretion. Incidental allowances may be changed at any time during the year, but are published at least annually, concurrent with the annual specifications of JVP.

The Council may modify incidental catch allowances inseason to reflect changes in the condition of the resource and performance of the U.S. industry. The Council will consider public testimony and consider the following factors before establishing or changing incidental allowances, (1) observed catch rates in any previous joint venture or foreign fishery; (2) current estimates of relative abundance and availability of species caught incidentally; (3) ability of the foreign vessels to take the JVP or TALFF; (4) past and projected

foreign and U.S. fishing effort; (5) status of stocks; (6) impacts on the domestic industry; and (7) other relevant information. Inseason changes will be made as a routine management measure.

#### 2.2.5.4 Prohibited Species

Prohibited species means salmonids or any species of fish that a joint venture or foreign vessel is not authorized to retain. Prohibited includes fish received in excess of any authorization, landing limit, or harvest guideline. These species must be immediately returned to the sea with a minimum of injury after allowing for sampling by an observer, if any. This FMP authorizes the designation of other prohibited species in the future, or the removal of a species from this classification if consistent with the applicable law for that species.

#### 2.2.5.5 Season and Area Restrictions

There is no season restriction unless otherwise specified according to this FMP. There is no area restriction, unless otherwise specified according to this FMP. Joint venture and foreign fisheries for CPS may not be conducted within the limited entry area south of 39° N latitude.

Season and area restrictions for foreign vessels operating in a joint venture or foreign fishery may be established, modified, or removed at any time during the year in accordance with the procedures in Sections 2.1.2 and 2.1.3 or by foreign vessel permit conditions.

#### 2.2.5.6 Reporting and Record Keeping Requirements

Foreign nations receiving U.S. harvested fish in a joint venture or participating in a foreign fishery are required to submit detailed reports of fishing effort, location, amount, and disposition by species or species group, and transfer of fish or fish products, as needed for monitoring and management of the fishery. Reports may be required at specified time intervals. The NMFS Regional Administrator may require daily reports when a specified fraction of JVP, TALFF, or incidental allowance is reached. In addition, each country may be required to report arrival, departure, and positions of each of its vessels, as specified under the regulations and permit conditions, as needed for monitoring fleet deployment. Logbooks may be required to fulfill fishery conservation, management, and enforcement purposes of Magnuson-Stevens Act. These logs may include, but are not limited to, communications logs, transfer logs, or daily joint venture logs with haul by haul and daily receipt data, effort, and production information.

#### 2.2.5.7 Dumping

Foreign and other vessels are prohibited from dumping pollutants and fishing gear which would degrade the environment or interfere with domestic fishing operations.

#### 2.2.5.8 Fishery Closure

A joint venture or directed foreign fishery shall cease each year when, (1) the JVP or TALFF is reached; (2) the maximum incidental catch allowance for that nation of any species or species group is reached; (3) the overall harvest guideline or harvest quota for the allocated species is reached; (4) the applicable open season is ended; or (5) as necessary for resource conservation reasons under the point-of-concern mechanism.

#### 2.2.5.9 Observers

Observers shall be placed on each foreign vessel while it is operating in a foreign or joint venture fishery, as provided by Title II of the Magnuson-Stevens Act. The law provides for the following exceptions to this requirement:

1. If observers are aboard motherships of a mothership/catcher vessel fleet.

2. If the vessel is in the exclusive economic zone (EEZ) for such a short time that an observer would be impractical.
3. If facilities for quartering an observer are inadequate or unsafe.
4. For reasons beyond the control of the Secretary an observer is not available.

#### 2.2.5.10 Other Restrictions

The Secretary may impose additional requirements for the conservation and management of fishery resources covered by the vessel permit or for national defense or security reasons. These restrictions include, but are not limited to, season, area, and reporting requirements.

The highest priority of this FMP is to provide for conservation of the resource. Any restriction on the joint venture fishery may be modified under the point-of-concern mechanism for resource conservation reasons.

#### 2.2.6 Foreign Recreational

Foreign recreational fishing refers to any fishing from a foreign vessel not operated for profit or scientific research, and not involved in the sale, barter, or trade of any part of the catch. This FMP authorizes establishment of catch restrictions on the foreign recreational fishery which are consistent with the goals and objectives of this FMP and the national standards established by the Magnuson-Stevens Act.

#### 2.2.7 Limited Entry

Research and monitoring programs may need to be developed and implemented for the CPS fishery so that information required in a limited entry program is available. Such data should indicate the character and level of participation in the fishery, including but not limited to, (1) investment in vessel and gear; (2) the number and type of units of gear; (3) the distribution of catch; (4) the value of catch; (5) the economic returns to the participants; (6) mobility between fisheries; (7) purchase or sale prices of limited entry permits; various social and community considerations.

#### 2.2.8 Exempted Fishing

"Exempted fishing" is defined to be fishing practices that are new to the fishery or not allowed under the FMP. Under this FMP, the NMFS Regional Administrator may authorize the targeted or incidental harvest of CPS for experimental or exploratory fishing that would otherwise be prohibited. The NMFS Regional Administrator may restrict the number of experimental permits by total catch, time, or area. The NMFS Regional Administrator may also require any level of industry-funded observer coverage for these experimental permits.

Exempted fisheries are expected to be of limited size and duration and must be authorized by an EFP issued for the participating vessel in accordance with the criteria and procedures specified in 50 CFR §600.745. The duration of EFPs will ordinarily be one year. Permits will not be renewed automatically. An application must be submitted to the Regional Administrator for each year. A fee sufficient to cover administrative expenses may be charged for EFPs. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested as long as the proposed activity is compatible with limited entry and other management measures in the FMP.

This FMP authorizes mandatory data reporting and mandatory on-board observers with exempted fishing permits. Installation of vessel monitoring units aboard vessels with exempted fishing permits may be required.

Nothing in this FMP is intended to exclude or to limit use of CPS, markets, or processing methods as long as the process in question is compatible with measures and intentions of this FMP.

Priorities for issuing EFPs are as follows:

1. Domestic boats delivering to domestic processors and domestic factory trawlers (with equal priority).
2. Domestic catcher-boats delivering to a foreign offshore processor.

Boats already involved in developing a fishery for an underutilized species (i.e., boats with a catch history or previous EFP) should receive highest priority in applying for and renewing permits.

#### 2.2.9 Other Fees and Permits

Nothing in this FMP is intended to exclude use of additional fees or permits in the future as long as the fee or permit is consistent with applicable law, management measures, and intent of this FMP. It may, for example, become desirable to issue permits for processing CPS in onshore plants or processing vessels offshore. It may be desirable to charge fees sufficient to cover administrative costs of issuing additional types of permits. Changes in requirements for obtaining, maintaining, and renewing permits are authorized.

#### 2.3 Scientific Research

Nothing in this FMP is intended to inhibit or prevent any scientific research involving CPS which is acknowledged by the Secretary through procedures set out in 50 CFR §600.745.

Proposed activity is not scientific research unless it is submitted in writing to the Secretary in the form of a research proposal which addresses all of the factors below. An activity may be acknowledged as scientific research if its primary objective, purpose, or product is the acquisition of data, information, or knowledge as determined by consideration of all of the following factors:

1. The proposed program will result in information useful for scientific or management purposes.
2. The application of existing knowledge alone is insufficient to solve the scientific or management subject or problem presented by the scientific research proposal.
3. Facts/data/samples will be collected or observed and analyzed in a scientifically acceptable manner and the results will be formally prepared and available to the public.
4. Recognized scientific experts, organizations, or institutions with expertise in the field or subject matter area are conducting, sponsoring or are otherwise affiliated with the activity.

#### Secretarial Acknowledgement of Scientific Research

If the Secretary agrees that an activity constitutes scientific research involving CPS, a letter of acknowledgment should be issued to the applicant and operator or master of the vessel conducting the scientific research. The letter will include information on the purpose, scope, location, and schedule of the acknowledged activities. Any activities not in accordance with the letter of acknowledgment should be subject to all provisions of the Magnuson-Stevens Act and its implementing regulations. The Secretary should transmit copies of letters of acknowledgment to the Council, state or federal administrative and enforcement agencies to ensure they are aware of the research activities.

CPS taken under the scientific research exclusion may be sold to offset all or part of the cost of carrying out the research plan including costs associated with operating the research vessel.

#### 2.4 Restrictions on Other Fisheries

For each non-CPS fishery, a reasonable limit on the incidental CPS catch may be established that is based on the best available information. The objectives of restrictions on other fisheries under this framework are to:

1. Minimize discards in the non-CPS fishery by allowing retention and sale, thereby increasing fishing income.
2. Discourage targeting on CPS by the non-CPS fleet.

Incidental limits may be imposed or adjusted in accordance with appropriate procedures described in this FMP. The Secretary may accept or reject but not substantially modify the Council's recommendations.

## 2.5 Procedures for Reviewing State Regulations

This FMP acknowledges that state regulations are a fundamental part of CPS management. All existing state regulations at the time of implementation of this plan are consistent with this FMP. Those regulations are listed in Section 2.2.5.2 of Appendix B.

This FMP establishes a review process by which any state may obtain a determination that its regulations are consistent with the FMP and the national standards. As necessary, the Council may also recommend to NMFS that duplicate or different federal regulations be implemented in the EEZ. While the Council retains the authority to recommend federal regulations be implemented in the EEZ, the preference is to continue to rely on state regulations in that area as long as they are consistent with the FMP.

While states are not required to submit regulations which they wish to apply in the EEZ to the Council for a consistency determination, regulations which have not received a consistency determination run the risk of being declared inconsistent and invalid if challenged in a state law enforcement proceeding. The Council invites submission of all present and future state fishery regulations relating to the harvest of species managed under this FMP which are to apply in the EEZ.

### Review Procedure

Any state may propose that the Council review a particular state regulation for the purpose of determining its consistency with the FMP and the need for complementary federal regulations. Although this procedure is directed at the review of new regulations, existing regulations affecting the harvest of CPS managed by the FMP may also be reviewed under this process. The state making the proposal will include a summary of the regulation in question and concise arguments in support of consistency.

Upon receipt of a state's proposal, the Council may make an initial determination whether or not to proceed with the review. If the Council determines that the proposal has insufficient merit or little likelihood of being found consistent, it may terminate the process immediately and inform the petitioning state in writing of the reasons for its rejection.

If the Council determines sufficient merit exists to proceed with a determination, it will review the state's documentation or prepare an analysis considering, if relevant, the following factors:

1. How the proposal furthers or is not otherwise consistent with the objectives of the FMP, the Magnuson-Stevens Act, and other applicable law.
2. Likely effect on or interaction with any other regulations in force for the fisheries in the area concerned.
3. Expected impacts on the species or species group taken in the fishery sector being affected by the regulation.
4. Economic impacts of the regulation, including changes in catch, effort, revenue, fishing costs, participation, and income to different sectors being regulated as well as to sectors which might be indirectly affected.
5. Any impacts in terms of achievement of harvest guidelines or harvest quotas, maintaining year-round fisheries, maintaining stability in fisheries, prices to consumers, improved product quality, discards, joint venture operations, gear conflicts, enforcement, data collection, or other factors.

The Council will inform the public of the proposal and supporting analysis and invite public comments before and at the next scheduled Council meeting. At its next scheduled meeting, the Council will consider public testimony, public comment, advisory reports, and any further state comments or reports, and determine whether or not the state regulation is consistent with the FMP and whether or not to recommend implementation of complementary federal regulations or to endorse state regulations as consistent with the FMP without additional federal regulations.

If the Council recommends the implementation of complementary federal regulations, it will forward its recommendation to the NMFS Regional Administrator for review and approval. The NMFS Regional Administrator will publish the proposed regulation in the *Federal Register* for public comment, after which, if approved, he/she will publish final regulations as soon as practicable. If the Regional Administrator disapproves the proposed regulations, he/she will inform the Council in writing of the reasons for disapproval.



### 3.0 LIMITED ENTRY

This fishery management plan (FMP) establishes a limited entry program for coastal pelagic species (CPS) finfish including northern anchovy, Pacific (chub) mackerel, jack mackerel, and Pacific sardine landed south of 39° N latitude.

#### 3.1 Problem Addressed by Limited Entry

Vessels currently participating in the CPS finfish fishery are capable of harvesting more CPS finfish than is available under current or likely future biomass conditions. Fisheries characterized by excess harvesting capacity are described as overcapitalized in terms of the number of vessels, and the amount of gear and equipment devoted to harvesting. As fisheries become overcapitalized, harvesting costs increase while catches remain the same. This situation represents an economically inefficient use of society's productive resources, and causes several problems for managers and the fishing industry when abundance declines and catches are reduced. As harvest capacity in the fisheries increases, problems arising from the need for more restrictive management measures and resolution of allocation issues become more acute. No relief from these problems will occur if harvest capacity continues to rise.

There were 640 vessels with CPS finfish landings for the period January 1, 1993 through November 5, 1997. Forty-one of these vessels, six percent, accounted for more than 95% of finfish landings for the five-year period (Appendix B, Table 3.8.7-1). Available information indicates that present participants could harvest at least as much CPS finfish as would be available under conditions of greater availability. Current capacity may be as much as 20% greater than the combined maximum sustainable yield (MSY) for anchovy, Pacific (chub) mackerel, and sardine (about 400,000 mt per year).<sup>1/</sup> Recent experience in the fishery and some crude calculations indicate that about 75 vessels would have sufficient harvesting capacity to take almost all of the CPS finfish likely to ever be available.

In addition to current CPS finfish participants, newcomers are likely to be attracted to the fishery, because of the expanding sardine biomass and squid fishery, and as competition in other Pacific Coast fisheries becomes more intense. In the latter instance, nearly all groundfish stocks are now fully harvested by domestic fishers in the Pacific Coast groundfish fishery. Potential participants in the CPS finfish fishery consist of fishers leaving other West Coast and North Pacific fisheries that have grown increasingly more restrictive and overcrowded relative to available harvests.

In the Pacific Coast CPS finfish fishery, excess harvest capacity is likely to result in an increasing number and complexity of regulations. Accordingly, the Council will face increased pressure to balance the conflicting need to protect the resource with the need to provide sufficient allowable catch to sustain the fishery.

Increased number and complexity of regulations have many adverse impacts in such areas as fleet costs, resource utilization, safety, enforcement costs and effectiveness. Moreover, there is a point beyond which additional regulations, which interfere with day to day vessel operations (e.g., trip limits or mesh size regulations), will not improve the Council's ability to accomplish its management goals. Pressures on industry arise not only from management measures which restrict operations, but also from increased competition for the allowable catches among larger numbers of vessels.

---

1/ The estimate 400,000 mt per year is the sum of estimated MSY for each stock reduced by a crude estimate of the fraction of the stock in U.S. waters. It is unlikely that all stocks would be abundant at the same time and that 400,000 mt of catch would be available in any one year.

### 3.2 Goals and Objectives for Finfish Limited Entry

The goals and objectives for this FMP are presented in Section 1.5. The most important of these in the context of limited entry are:

- A. Promote efficiency and profitability in the fishery.
- B. Achieve optimum yield (OY).
- C. Accommodate existing fishery segments.
- D. Use resources spent on management of CPS efficiently.

Not all these objectives are complementary. The challenge is to create a limited entry program which strikes a balance between increasing net returns from the fishery, achieving OY, accommodating participation by those with substantial investments in the fishery, and efficiently using management resources.

### 3.3 Achievement of Goals and Objectives and Need for Additional Measures to Reduce Capacity

The limited entry program for CPS finfish adopted under this amendment to the northern anchovy FMP will not in itself immediately accomplish the goals and objectives the Council has established for the fishery. It is a first step that may slow or prevent the worsening of conditions which impede the Council from achieving the overall goals and objectives for the fishery. The limited entry fleet size and transferability provisions represent a balance between the limited entry goals of accommodating existing fishery participants (goal C) and promoting efficiency and profitability in the fishery (goal A). Establishment of this limited entry system will provide a starting point for any future programs which may be necessary to further reduce harvest capacity.

### 3.4 Nature of the Interest Created

CPS limited entry permits confer a privilege to participate in the West Coast CPS finfish fishery in accordance with the limited entry system established under this FMP and implementing regulations, or any future amendment to the FMP and implementing regulations. Future amendments to the FMP may modify or even abolish the limited entry system. The permits are also subject to sanctions including revocation, as provided by the Magnuson-Stevens Act, 16 USC 1858(g) and 15 CFR part 904.

### 3.5 Scope of Limited Entry

#### 3.5.1 Species within the Scope of Limited Entry

The provisions of this chapter apply only to CPS finfish, including northern anchovy, Pacific (chub) mackerel, jack mackerel, and Pacific sardine.

#### 3.5.2 Geographic Scope of Limited Entry

The provisions of this chapter establish a CPS finfish limited entry program for the fishery south of 39° N latitude (approximately Point Arena, California). In the context of limited entry, fishing for and landing CPS finfish south of 39° N latitude is defined as landing CPS finfish. Fishing for and landing of CPS finfish north of 39° N latitude is not affected by limited entry requirements. CPS finfish fishing in the northern area would be managed as an open access fishery. This does not preclude effective management or future extension of limited entry in the north.

### 3.6 Limited Entry Permits

#### 3.6.1 Initial Issuance of Limited Entry Permits

1. Each qualifying vessel will entitle the current owner to one limited entry permit.
2. A vessel qualifies for a limited entry permit by meeting the initial issuance criteria in Section 3.6.1.1.
3. A given vessel cannot receive more than one limited entry permit.

4. Fees may be charged to cover National Marine Fisheries Service (NMFS) administrative costs associated with issuance or transfer of permits.
5. Permits are assigned to one vessel at a time.
6. The vessel owner is responsible for maintaining the permit and any other documentation required on board each vessel with a permit to fish for CPS.
7. A limited entry permit may not be used with a vessel unless it is registered for use with that vessel.
8. Limited entry permits will be registered for use with a vessel and a registered vessel may be changed only according to procedures outlined in the FMP and regulations.
9. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the Regional Director and placed aboard the vessel before the vessel is used to fish for CPS.

#### 3.6.1.1 Initial Issuance Criteria

The owner of a CPS vessel will receive a limited entry permit if, during the window period of January 1, 1993 to November 5, 1997, the vessel landed or delivered a cumulative total of 100 mt of CPS finfish. No more than one limited entry permit will be issued for each qualifying vessel. The permit will be issued only to the current owner of the vessel, unless (1) the previous owner of a vessel qualifying for a permit has, by the express terms of a written contract, reserved the right to the permit, in which case the permit will be issued to the previous owner based on the catch history of the qualifying vessel; or (2) a vessel that would have qualified for a limited entry permit was totally lost before a permit was issued. In this case, the owner of the vessel at the time it was lost retains the right to the permit, unless the owner conveyed the right to another person by the express terms of a written contract.

#### 3.6.1.2 Ownership Restriction

Only entities (human beings, corporations, etc.) qualified to own a U.S. fishing vessel may be issued or may hold (by ownership or otherwise) a limited entry permit.

#### 3.6.1.3 Limited Entry Permit Held by Owner of Record of the Vessel

1. The vessel owner is responsible for acquiring and holding a limited entry permit for each vessel that is required to have a limited entry permit to catch CPS finfish under this limited entry section.
2. The vessel owner is responsible for maintaining NMFS required documentation of the limited entry permit on board the vessel.
3. The limited entry permit will be used with one vessel only. That vessel must be declared and registered with the NMFS issuing authority. Registration is incomplete and limited entry permits may not be used until acknowledged in writing by NMFS.
4. A vessel owner may not use a vessel, or allow a vessel to be used, to catch any Council-managed CPS finfish under the limited entry regulations unless the vessel owner holds a limited entry permit which explicitly allows such catch and the limited entry permit has been registered with NMFS for use with that vessel.

#### 3.6.1.4 Loss of a Vessel Prior to Permit Issuance

1. A limited entry permit will be issued for a vessel which qualified for a permit but is lost before permits are issued. The vessel must be replaced within two years of the loss unless otherwise determined by the NMFS Regional Director. The replacement vessel must be of equal or less net tonnage.
2. For a vessel that would qualify an owner for a limited entry permit, in the case of a vessel's sinking or total loss, all rights to a permit from the fishing history of the vessel prior to the sinking or total loss remain with the owner unless specifically transferred.

### 3.6.1.5 Appeals Process

If an application for a permit is denied, the applicant may appeal the denial to the NMFS Regional Administrator. The appeal must be in writing, state the action being appealed, and reasons. The appellant may request an informal hearing before a hearing officer and the NMFS Regional Administrator will decide if a hearing is required. If required, hearings will be carried out in a timely fashion (normally within 30 days of the receipt of sufficient information).

The NMFS Regional Administrator will decide the appeal in accordance with the criteria for limited entry permits specified in this FMP and implementing regulations. The NMFS Regional Administrator will consider the information submitted by the appellant, the summary record of the hearing and hearing officer's recommendation (if any) and other relevant information.

### 3.6.2 Permit Renewal Procedures

1. Permits must be renewed every two calendar years in order to remain valid for the following calendar year. The renewal date for limited entry permits will be January 1 at two year intervals beginning in the year after implementation.
2. Notice of upcoming renewal periods will be sent at the appropriate time every two years to the most recent address as provided to the permit issuing authority by the permit holder. It shall be the permit holder's responsibility to provide the permit issuing authority with address changes in a timely manner.
3. An annual fee will be charged which reflects the administrative costs of maintaining the permit system.
4. Failure to renew during this period will result in expiration of the permit at the end of the calendar year.
5. Once a permit has expired because of failure to renew during the renewal period, it may not subsequently be renewed or reissued, except through a process as specified in Section 3.6.1.5.

### 3.6.3 Permit Transfers

Limited entry permits are affixed to the vessel. Within one year from implementation of the limited entry program, permits are transferable to another vessel one time only.

After the first year, permits become nontransferable, except in cases where:

1. The permitted vessel is stolen, lost, or no longer will participate in a federally managed commercial fishery.
2. The application for the permit transfer to a replacement vessel originates from the vessel owner who must place it on a replacement vessel of the same or less net tonnage within one year of disability of the permitted vessel.

#### Procedures for Transferring Permit to Replacement Vessel

After the first year of the program, and if the conditions in Section 3.6.3 (a) and (b) are met, the following procedures for transfer must be followed:

1. Limited entry permits may be transferred by the owner only if the vessel is lost, stolen, or will not participate in any federally managed fishery in the future.
2. When an owner wishes to transfer a limited entry permit to a different vessel, he or she must notify the NMFS issuing authority of the intent to change.
3. The owner will demonstrate to NMFS that the original vessel was lost or stolen, or the owner will demonstrate that the original vessel will no longer participate in a federally managed fishery. Although there is currently no way to demonstrate and or enforce that a vessel will not participate in a federally managed fishery, if a mechanism to do so is developed, this provision will be incorporated by regulation.
4. The owner will demonstrate that the replacement vessel is of equal or less net tonnage than the original vessel.
5. The NMFS will approve the transfer when the NMFS Regional Administrator determines all requirements have been met.

6. A permit transfer is not effective until the new permit has been issued.
7. Nothing in these provisions prevents a permit owner from modifying the original vessel to which the permit was issued.

### 3.6.4 Procedures for Issuing New Limited Entry Permits in the Future

The Council may issue new limited entry permits consistent with the parameters of a framework that may be developed in the future.

### 3.6.5 Coastal Pelagic Species Fishing Exempted from Limited Entry

#### 3.6.5.1 Exempted Landings

Vessels landing small quantities of CPS finfish on a per trip basis do not require a limited entry permit. The Council will set, by regulation, a level of landings per trip that is exempt from limited entry. This level must be between one mt and five mt per trip. The level specified by the Council will remain in place until changed by rulemaking.

#### 3.6.5.2 Recreational Fishing

Recreational fishing for CPS finfish does not require a limited entry permit. However, the Council may choose to restrict recreational harvest quotas, implement area closures or impose any other type of management measure.

#### 3.6.5.3 Live Bait Coastal Pelagic Species Fishing

Fishing CPS species for use as live bait does not require a limited entry permit. This includes live bait harvested for use in recreational and commercial fisheries.

### 3.6.6 Additional Management of the Limited Entry Fishery

#### 3.6.6.1 Trip Limit

The Council may set a trip limit, by regulation, of up to 125 mt on landings of CPS finfish. In this context, a trip is defined as any activity (e.g., catching, landing, transporting or delivering) by a vessel that harvests CPS finfish with a limited entry permit; (i.e., a possession limit that applies to harvesting operations only). Also in this context, a trip limit should not be confused with trip limits used in other fisheries (e.g., groundfish) to lengthen the season without exceeding harvest guidelines or to manage bycatch.



#### 4.0 OPTIMUM YIELD, MAXIMUM SUSTAINABLE YIELD CONTROL RULES, AND OVERFISHING DEFINITIONS FOR THE COASTAL PELAGIC SPECIES FISHERY

This fishery management plan defines optimum yield (OY), maximum sustainable yield (MSY) control rules, and defines overfishing and overfished stocks. All aspects of harvest policies for coastal pelagic species (CPS) including the MSY control rule, definition of overfishing, definition of overfished stocks and rebuilding criteria can be modified using framework procedures described in Section 2.0.

##### 4.1 Definition of Optimum Yield

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) defines the term "optimum", with respect to the yield from a fishery, as the amount of fish which:

- (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;
- (B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and
- (C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery [50 CFR §600.310(f)(1)(i)].

OY for a CPS stock is defined to be the level of harvest which is less than or equal to acceptable biological catch (ABC) estimated using a MSY control rule, consistent with the goals and objectives of this fishery management plan (FMP), and used by the Council to manage the stock. The ABC is a prudent harvest level calculated based on an MSY control rule (see below). In practice, OY will be determined with reference to ABC. In particular, OY will be set less than ABC to the degree required to prevent overfishing.

##### 4.2 Definition of Maximum Sustainable Yield, MSY Control Rules, and Acceptable Biological Catch

For CPS, an MSY control rule is defined to be a harvest strategy that provides biomass levels at least as high as the  $F_{MSY}$  approach while also providing relatively high and relatively consistent levels of catch. According to federal regulations (50 CFR §600.310(b)(1)(ii)), an MSY control rule is "a harvest strategy which, if implemented, would be expected to result in a long-term average catch approximating MSY." Similarly, MSY stock size "means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate units, that would be achieved under an MSY control rule in which the fishing mortality rate is constant." The definition of an MSY control rule for CPS is more general, because it includes the definition in National Standard 1. The definition for CPS is more conservative, because the focus for CPS is oriented primarily towards stock biomass levels at least as high as the MSY stock size. The primary focus is on biomass, rather than catch, because most CPS (Pacific sardine, northern anchovy, and market squid) are very important in the ecosystem for forage.

##### 4.3 Definition of Overfishing

By definition, overfishing occurs in a fishery whenever fishing occurs over a period of one year or more at a rate that is high enough to jeopardize the capacity of the stock to produce MSY on a continuing basis if applied in the long term. Overfishing in the CPS fishery is "approached" whenever projections indicate overfishing will occur within two years. The definition of overfishing is in terms of a fishing mortality or exploitation rate. Depending on the exploitation rate, overfishing can occur when CPS stocks are at either high or low abundance levels. The Council must take action to eliminate overfishing when it occurs and to avoid overfishing when exploitation rates approach the overfishing level.

In operational terms, overfishing occurs in the CPS fishery whenever catch exceeds ABC and overfishing is approached whenever projections indicate that fishing mortality or exploitation rates will exceed the ABC level within two years. The definition of an overfished stock is an explicit part of the MSY control rule for CPS stocks.

#### 4.4 Definition of an Overfished Stock

By definition, an overfished stock in the CPS fishery is a stock at a biomass level low enough to jeopardize the capacity of the stock to produce MSY on a continuing basis. An overfished condition is approached when projections indicate that stock biomass will fall below the overfished level within two years. The Council must take action to rebuild overfished stocks and to avoid overfished conditions in stocks with biomass levels approaching an overfished condition.

#### 4.5 Rebuilding Programs

Management of overfished CPS stocks must include a rebuilding program that can, on average, be expected to result in recovery of the stock to MSY levels in ten years. It is impossible to develop a rebuilding program that would be guaranteed to restore a stock to the MSY level in ten years, because CPS stocks may remain at low biomass levels for more than ten years even with no fishing. The focus for CPS is, therefore, on the average or expected time to recovery based on realistic projections. If the expected time to stock recovery is associated with unfavorable ecosystem conditions and is greater than ten years, then the Council and the U.S. Secretary of Commerce (Secretary) may consider extending the time period as described at 50 CFR §600.310(e).

Rebuilding programs for CPS may be an integral part of the MSY control rule or may be developed or refined further in the event that biomass of a CPS stock reaches the overfished level.

#### 4.6 Maximum Sustainable Yield Control Rules

MSY control rules in the CPS fishery may vary depending on the nature of the fishery, management goals, assessment and monitoring capabilities, and available information. Under the framework management approach used for CPS, it is not necessary to amend the CPS FMP in order to develop or modify MSY control rules or definitions of overfishing.

The use of an MSY control rule for Actively managed stocks is to provide managers with a tool for setting and adjusting harvest levels on a periodic basis while preventing overfishing and overfished stock conditions. All Actively managed stocks must have stock-specific MSY control rules, a definition of overfishing and a definition of an overfished stock.

The main use of an MSY control rule for a Monitored stock is to help gauge the need for Active management. MSY control rules and harvest policies for Monitored CPS stocks may be more generic and simple than those for Actively managed stocks with significant fisheries. Any stock supporting catches approaching the ABC or MSY levels should be Actively managed unless there is too little information available or other practical problems.

##### 4.6.1 Default CPS MSY Control Rule

The Council may use the default MSY control rule, defined below, for Monitored species unless a better species-specific rule is available. The default MSY control rule can be modified under framework management procedures.

The default MSY control rule (intended primarily for a stocks that are Monitored) sets ABC for the entire stock (U.S., Mexico, Canada, and international fisheries) equal to 25% of the best estimate of the MSY catch level. Overfishing occurs whenever the total catch (U.S., Mexico, Canada, and international fisheries) exceeds ABC for the or whenever fishing occurs at a rate that is high enough to jeopardize the capacity of the stock to produce MSY. Overfishing of a Monitored CPS stock is "approached" whenever projections or estimates indicate that the overfishing will occur within two years.

In making decisions about Active management, Council may choose to consider ABC and catches in U.S. waters only. ABC in U.S. waters is the ABC for the entire stock prorated by an estimate of the fraction of

the stock in U.S. waters. Active management may not be effective if U.S. catches are small and overfishing is occurring in Mexico, Canada, or in international waters outside the jurisdiction of federal authorities.

#### General MSY Control Rule for Actively Managed Species

The general form of the MSY control rule utilized for the California CPS fisheries was designed to continuously reduce the exploitation rate as biomass declines. The general formula used is :

$$H = (\text{BIOMASS-CUTOFF}) \times \text{FRACTION}$$

H is the harvest target level, CUTOFF is the lowest level of estimated biomass at which directed harvest is allowed and FRACTION is the fraction of the biomass above CUTOFF that can be taken by the fishery. BIOMASS is generally the estimated biomass of fish age 1+ at the beginning the season. The purpose of CUTOFF is to protect the stock when biomass is low. The purpose of FRACTION is to specify how much of the stock is available to the fishery when BIOMASS exceeds CUTOFF. It may be useful to define any of the parameters in this general MSY control rule so that they depend on environmental conditions or stock biomass. Thus, the MSY control rule could depend explicitly on the condition of the stock or environment.

The formula generally uses the estimated biomass for the whole stock in one year (BIOMASS) to set harvest for the whole stock in the following year (H) although projections or estimates of BIOMASS, abundance index values or other data might be used instead. BIOMASS is an estimate only, it is never assumed that BIOMASS is a perfect measure of abundance. Efforts to develop a harvest formula must consider probable levels of measurement error in BIOMASS which typically have CVs of about 50% for CPS.

The general MSY control rule for CPS (depending on parameter values) is compatible with the Magnuson-Stevens Act and useful for CPS that are important as forage. If the CUTOFF is greater than zero, then the harvest rate (H/BIOMASS) declines as biomass declines. By the time BIOMASS falls as low as CUTOFF, the harvest rate is reduced to zero. The CUTOFF provides a buffer of spawning stock that is protected from fishing and available for use in rebuilding if a stock becomes overfished. The combination of a spawning biomass buffer equal to CUTOFF and reduced harvest rates at low biomass levels means that a rebuilding program for overfished stocks may be defined implicitly. Moreover, the harvest rate never increases above FRACTION. If FRACTION is approximately equal to  $F_{\text{MSY}}$ , then the MSY control rule harvest rate will not exceed  $F_{\text{MSY}}$ . In addition to the CUTOFF and FRACTION parameters, it may be advisable to define a maximum harvest level parameter (MAXCAT) so that total harvest specified by the harvest formula never exceeds MAXCAT. MAXCAT is used to guard against extremely high catch levels due to errors in estimating biomass, to reduce year to year variation in catch levels, and to avoid overcapitalization during short periods of high biomass and high harvest. MAXCAT also prevents the catch from exceeding MSY at high stock levels and spreads the catch from strong year classes over a wider range of fishing seasons.

Other general types of control rules may be useful for CPS and this FMP does not preclude their use as long as they are compatible with National Standards and the Magnuson-Stevens Act.

#### Transboundary Issues

Management of transboundary stocks is one of the most difficult problems in management of CPS. Ideally, transboundary CPS stocks would be managed cooperatively by the U.S., Canada, and Mexico on the basis of common policy. At present, there are no cooperative management agreements with Mexico or Canada.

In the absence of a cooperative management agreement, the default approach in the CPS FMP sets harvest levels for U.S. fisheries by prorating the total target harvest level according to the portion of the stock resident in U.S. waters or estimating the biomass in U.S. waters only. In practice, this approach is similar to managing the U.S. and Mexican portions of a stock separately since harvest for the U.S. fishery in a given year depends ultimately on the biomass in U.S. waters.

Other approaches that may be developed in the future are not precluded by this default. If the portion of the stock in U.S. waters can not be estimated or is highly variable, then other approaches may be used. It may

be more practical, for example, to use of a high CUTOFF in the MSY control rule to compensate for stock biomass off Mexico or Canada.

#### 4.6.2 MSY Control Rule for Pacific Sardine

The MSY Control Rule for Pacific sardine sets ABC for the entire sardine stock based on an estimate of biomass for the whole sardine stock, a CUTOFF equal to 150,000 mt, a FRACTION between five percent and 15% (depending on oceanographic conditions as described below), and MAXCAT of 200,000 mt. The U.S. ABC is calculated from the target harvest for the whole stock by prorating the total ABC based on proportion of total biomass in U.S. waters.

FRACTION in the MSY control rule for Pacific sardine is a proxy for  $F_{MSY}$  (i.e., the fishing mortality rate for deterministic equilibrium MSY). FRACTION depends on recent ocean temperatures because  $F_{MSY}$  and productivity of the sardine stock is higher under ocean conditions associated with warm water temperatures (Appendix B, Section 4.2.3.4). An estimate of the relationship between  $F_{MSY}$  for sardine and ocean temperatures is:

$$F_{MSY} = 0.248649805 T^2 - 8.190043975 T + 67.4558326$$

where T is the average three season sea surface temperature at Scripps Pier, California during the three preceding seasons. The MSY control rule for sardine sets the control rule parameter FRACTION equal to  $F_{MSY}$  except that FRACTION is never allowed to be higher than 15% or lower than five percent.

Although  $F_{MSY}$  may be greater or lesser, FRACTION can never be greater than 15% or less than five percent unless the MSY control rule for sardine is revised, because five percent and 15% are policy decisions taken by Council based on social, economic, and biological criteria. In contrast, relationships between FRACTION,  $F_{MSY}$  and environmental conditions are technical questions and estimates or approaches may be revised by technical teams to accommodate new ideas and data.

##### 4.6.2.1 Definition for Overfished Stock for Sardine

An overfished sardine population is one with an 1+ stock biomass on July 1 of 50,000 mt or less. No directed fishing is allowed in any year or season while the stock is overfished. The Council is required to minimize fishing mortality on an overfished stock to the extent practicable and to undertake a rebuilding program which may be implicit to the MSY control rule or explicit.

##### 4.6.2.2 Live Bait Harvest Between the Definition of Overfishing and CUTOFF

The small live bait fishery which supplies live CPS to recreational and commercial fisheries will be allowed to operate when estimated biomass falls below the CUTOFF, which is currently set at 150,000 mt (and other directed fishing is precluded) but is still above the definition of an overfished stock, currently set at 50,000 mt. This does not prevent the Council from undertaking any measure authorized under this FMP that may be necessary to manage the live bait fishery and sardine stock. The live bait fishery could, for example, be managed by harvest guideline or quota, season, or gear restrictions at any point under the framework management process.

#### 4.6.3 Maximum Sustainable Yield Control Rule for Pacific (Chub) Mackerel

The MSY control rule for Pacific mackerel sets the CUTOFF and the definition of an overfished stock at 18,200 mt and the FRACTION at 30%. Overfishing is defined as any fishing in excess of ABC calculated using the MSY control rule. No MAXCAT is defined because the U.S. fishery appears to be limited to about 40,000 mt per year by markets. The target harvest level is defined for the entire stock in Mexico, Canada, and U.S. waters (not just the U.S. portion), and the U.S. target harvest level is prorated based on relative abundance in U.S. waters.

#### 4.6.4 Monitored Stocks

Northern anchovy (northern and central subpopulations), jack mackerel and market squid will be monitored at the outset of the CPS FMP. The default MSY control rule and overfishing specifications will be used for Monitored stocks.

##### 4.6.4.1 Northern Anchovy-Central Subpopulation

The central subpopulation of northern anchovy ranges from approximately San Francisco, California, to Punta Baja, Mexico. The default MSY control rule gives an ABC of 25% of the total biomass estimate. The resulting ABC would then be prorated by the portion of the stock in U.S. waters to arrive at ABC in U.S. waters.

##### 4.6.4.2 Northern Anchovy-Northern Subpopulation

The northern subpopulation of anchovy ranges from San Francisco north to British Columbia with a major spawning center off Oregon and Washington that is associated with the Columbia River plume. The northern subpopulation supports small but locally important bait fisheries and is likely an important source of forage to local predators, including depleted and endangered salmonid stocks.

The recommended default MSY control rule gives an ABC for the entire stock equal to 25% of MSY catch but MSY catch has not been estimated. The portion of the northern subpopulation of northern anchovy resident in U.S. waters is unknown. It is likely that some biomass occurs in Canadian waters off British Columbia. ABC in U.S. waters cannot be calculated at this time.

##### 4.6.4.3 Jack Mackerel

The ABC level for jack mackerel is calculated by age/area from mid-range potential yield values. ABC in U.S. waters will be prorated according to the portion of the stock in US waters. If jack mackerel catches increase and become significant, managers may decide to address management of different age groups and areas independently. This question does not need to be addressed at this time because catches are low (generally less than 2,000 mt per year since 1990).

##### 4.6.4.4 Market Squid

The default MSY control rule gives an ABC for the entire stock equal to 25% of MSY catch, but MSY catch for market squid has not been estimated. The portion of the market squid stock resident in U.S. waters is unknown. It is likely that some biomass occurs in Mexican waters off Baja California and Canadian waters off British Columbia. ABC in U.S. waters cannot be calculated at this time, because basic information about life history and fisheries biology is not yet available for market squid (Appendix A, Section 1.5).

Scientific research currently underway, improvements to squid port sampling, and the moratorium on new squid permits under California state law (Appendix A, Section 1.5.5) constitute a plan for stock assessment and close monitoring of fishing effort that will make it possible to manage the market squid fishery if conditions change and Active management is required.

The Council makes decisions about Active and Monitored management for CPS annually based on socioeconomic framework management procedures (Section 2.1.3). State managers under state law and federal managers under this FMP can be expected to manage the fishery intensively when sufficient data indicate a need.

Council and state authorities will continue to monitor squid landings while research continues. If landings increase or a biological risk to the stock develops, Council can be expected to promote squid to Active management quickly under the "point-of-concern" framework management procedures (Section 2.1.2).

#### 4.7 Stock Assessment and Fishery Evaluation Report

The Coastal Pelagic Species Management Team (CPSMT) will prepare an annual Stock Assessment and Fishery Evaluation (SAFE) report describing the status of the CPS fishery. The SAFE report provides information to the Councils for determining annual harvest levels for each stock, documenting significant trends or changes in the resource, marine ecosystems, and fishery over time, and assessing the relative success of existing state and Federal fishery management programs. This includes landings, prices, revenues, and economic, biological or environmental conditions not covered elsewhere in assessments for Actively managed species. In particular, the SAFE report shall include:

1. Current status of CPS resources.
2. A description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, along with information by which the Council may determine:
  - (a) Whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished, whether the rate or level of fishing mortality applied to any stock or stock complex is approaching the maximum fishing mortality threshold, and whether the size of any stock or stock complex is approaching the minimum stock size threshold.
  - (b) Any management measures necessary to provide for rebuilding an overfished stock or stock complex (if any) to a level consistent with producing the MSY in such fishery.
3. The total and U.S. target levels, if calculated, along with all available information about bycatch, domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) used to specify harvest guidelines or quotas.
4. Recent and historical catch statistics (landings and value).
5. Recommendations for use of harvest guideline or quotas by species.
6. A brief history of the harvesting sector for the fishery.
7. A brief history of CPS management.
8. A summary of recent economic conditions, including information such as number of vessels and performance by gear type, including recreational and commercial fishing interests, fishing communities, and fish processing interests.
9. Safety considerations.
10. Ecosystem information.
11. Bycatch summary.
12. Any necessary expansions to previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.
13. Other relevant biological, sociological, economic, and ecological information that may be useful to the Council.

The Council will make SAFE reports available to the public by such means as mailing lists and newsletters and will provide copies on request.

#### Monitored Species

The annual SAFE report prepared by the CPSMT will include all available information that may be used to determine if a point of concern exists (e.g., overfishing) or if a stock should be considered for Active management or for Monitored management. At a minimum, the report should contain landings' data for Monitored stocks and any available information about trends in abundance.

#### 4.8 Annual Specifications and Announcement of Harvest Levels

Each year, the Secretary will publish in the *Federal Register* the final specifications of (1) OY for U.S. fisheries in the form of a target harvest level, (2) DAH, (3) DAP, (4) JVP, and (5) TALFF for all CPS Actively managed by the Council. The total U.S. harvest will be allocated to the various fisheries as harvest guidelines or as quotas.

In calculating harvest guidelines and quotas for each species, an estimate of the incidental catch of each species caught while fishermen are targeting other species will be taken into account. Therefore, the total harvest guideline will consist of an incidental catch portion and a directed fishery portion. This will be done to minimize the chances of exceeding the target harvest level.

If the harvest guideline for the directed fishery is reached the directed fishery will be closed by an automatic action and incidental catch will continue to be allowed under the incidental catch allowance, which is expressed in an amount of fish or a percentage of a load (Section 5.1). If the estimated incidental catch portion of the harvest guideline has been set too high, resulting in the probability of not attaining the target harvest level by the end of the fishing season, the remaining incidental catch portion may be allocated to the directed fishery through the "routine" management procedures. This reallocation of the remaining incidental catch portion of the harvest guideline to the directed fishery is not likely to be necessary unless substantial errors are discovered in calculations or estimates.

#### 4.8.1 General Procedure for Setting Annual Specifications

The intent of the management approach under the FMP is to reassess the status of each Actively managed species at frequent intervals and preferably every year (although a full analytic stock assessment may not be necessary or possible in some cases). The general procedure for making the annual specifications for CPS is as follows:

1. The CPSMT will produce a SAFE report as specified in Section 4.7, that documents the current estimates of biomass for each coastal pelagic species assessed and status of the fishery. In the report, the CPSMT will recommend either harvest guidelines or quotas for Actively managed species, including a directed portion and an incidental portion, an initial incidental catch allowance to be used when harvest guidelines are reached together with an estimate of total incidental catch, and will make all calculations of the specifications as required by this FMP.
2. Documents will be sent to the NMFS Regional Administrator, Southwest Region, the Council, members of the Council's Scientific and Statistical Committee (SSC), members of the Coastal Pelagic Species Advisory Subpanel (CPSAS), and all interested parties for review.
3. A public meeting or meetings will be announced in the *Federal Register* and held with the CPSMT and the CPSAS to discuss the proposed annual specifications and to obtain public comments.
4. At its first opportunity, the Council will review all information compiled for the annual specifications, consult with its SSC, CPSMT, CPSAS, and hear public comments. The Council also will review any important social and economic information at that time, then make a recommendation to the NMFS Regional Administrator on the final specifications, including OY levels, harvest guidelines, quotas, allocations, and other management measures for the fishing season.
5. Following the Council meeting, the NMFS Regional Administrator will consider all comments and make a determination of the final specifications. This determination will be published in the *Federal Register* with a request for additional public comment.
6. Alternate Procedure: If assessment and season schedules warrant, the NMFS Regional Administrator may make preliminary OY, harvest guideline, and/or quota specifications quickly (without prior discussion at a Council meeting) to allow fishing to begin without delay. As soon as practicable, the Council will review all background documents contributing to the determination of the biomass estimates and make a final recommendation for the resulting target harvest level, harvest guidelines and quotas. Following the meeting of the Council, the NMFS Regional Administrator will consider all comments and make a determination of whether any changes in the final specifications are necessary. If such changes are warranted, they will be published in the *Federal Register*.

If assembling the data and producing a report would require enough time that permitting a complete public review before the beginning of the fishing season could reduce the season, then this alternate procedure should be used.

7. NMFS will monitor the fishery throughout the year, tracking incidental catch and harvest guidelines and quotas. If a harvest guideline or quota for any species is or is likely to be reached prematurely, a "point of concern" will occur, triggering a mandatory review of the status of the stock. If the directed harvest portion of a harvest guideline or quota is reached, then directed fishing will be prohibited and the prespecified incidental trip limit will be imposed as an automatic action through publication of a notice in the *Federal Register*.

The NMFS Regional Administrator would be responsible for setting the harvest guidelines based on the estimated biomass and the standards set in the FMP. This is the same process that has been used in the northern anchovy fishery and would be adapted for Actively managed CPS. The formulas used to set harvest guidelines for CPS are straightforward and provide little latitude for judgement, therefore, there is less discretion involved in setting annual specifications for CPS than for other fisheries.

Harvest guidelines for CPS are based on the current biomass estimate multiplied by a fixed harvest rate. The portion of the resource in U.S. waters may change over time, but in any one year is the best estimate available. The amount of the harvest guideline needed for incidental trip limits when the fishery is nearing closure will vary depending on when the harvest guideline is projected to be achieved, but the incidental amount and the amount harvested directly must equal the total harvest guideline.

Following the determination of the estimated biomass, a public meeting would be held between the CPSMT and CPSAS. The biomass estimate and resultant harvest guideline would be reviewed, public comments obtained, and all information forwarded to the Council. At its meeting, the Council, after hearing public comments, would either adopt the annual specifications or recommend changes, accompanied by a justification for why the change should be made.

The intention of the proposed regulations is to have public review of and a Council recommendation on the estimated biomass and harvest guidelines before the fishing season begins; however, the NMFS Regional Administrator is not precluded from announcing the harvest guidelines in the *Federal Register* before the process is completed so that fishermen can plan their activities and begin harvesting when the fishing season begins.

#### 4.8.2 Factors Considered

The following factors will be considered when making the annual specifications:

1. The current estimated biomass and any other biological information.
2. The MSY control rule described in the FMP, which is specific for each Actively managed species.
3. Results of comments of domestic processors and joint venture operations about processing capacity and planned utilization.
4. Results of an analysis of the fishing capacity and planned utilization of recent years modified by new information and comments by the fishing industry relating to intended use.
5. Any relevant historical information on the utilization of CPS resources.

All data used to make annual specifications will be available for public inspection during normal business hours at the Southwest Regional Office of NMFS.

#### 4.8.3 Guidelines for Choosing Between a Harvest Guideline and Quota

Quotas are specified numerical harvest objectives, the attainment of which results in automatic closure of the fishery for that species. Retention, possession, and landing of a species after attainment of its quota is prohibited. A quota is a single numerical value, not a range.

Harvest guidelines are specified numerical harvest objectives that differ from quotas in that closure of a fishery (i.e., prohibition of retention, possession, and landing) is not automatically required upon attainment of the objective. A harvest guideline may be either a range or a point estimate.

The preferred approach for managing domestic coastal pelagic resources is by harvest guideline. Foreign fisheries will normally be managed by quotas. Harvest guidelines are used for the domestic fishery because bycatch of one coastal pelagic species is common when fishing for another, and curtailing the harvest of one species may limit the harvest of another and prevent achieving target harvest levels.

Harvest guidelines will be used as long as the following conditions are met:

1. Allowing an imprecise cap on total harvest will still ensure long term productivity of the resource and the economic well-being of the fishery and dependent species.
2. Unavoidable bycatch would occur after a quota was reached and further landings prohibited, curtailing the harvest of other resources or creating discards.
3. Fishing in excess of a harvest guideline is not expected to significantly affect future yields.
4. Overfishing is not likely to occur.

Generally, a quota will not be used for domestic fisheries unless extra protection of an individual species becomes important. Foreign fishing allocations (TALFFs) will generally be quotas. Quotas should be used for domestic fisheries when:

1. A high degree of protection of one species is needed to ensure the future well-being of the fishery or dependent species.
2. Permitting bycatch after a harvest guideline is reached cannot be accepted if the objectives of the FMP are to be met.
3. Fishing in excess of a harvest guideline would significantly affect future yields.
4. Overfishing may occur and is less likely under quota management.

The choice of a numerical specification of a harvest guideline or quota is based on a balance of its social, economic, and biological effects as stated above.

#### 4.9 Annual Assessment and Management Cycles

This FMP specifies that annual schedules for Actively managed CPS be developed based on the Council's workload and meeting schedule, opportunity for industry and technical review of biomass estimates and harvest guidelines or quotas, seasonal patterns in the fishery, collection and processing of CalCOFI data during the peak spawning season, collection of other data, time required for notification of fishers, and workload of the CPSMT and CPSAS. The FMP does not specify what those schedules will be, since they will be implemented through regulations.

The annual assessment and management cycles determine the start and close date (season) for each Actively managed fishery. These may be changed by abbreviated rulemaking as described in Section 2.1.



## 5.0 BYCATCH, INCIDENTAL CATCH, AND ALLOCATION

This fishery management plan (FMP) establishes incidental catch allowances for coastal pelagic species (CPS) and a geographic allocation for Pacific sardine.

### 5.1 Incidental Catch Allowances

"Bycatch" is defined in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as "fish which are harvested in a fishery, but not sold or kept for personal use and includes economic discards and regulatory discards". In the CPS fisheries, fish are caught and sold incidental to catching other species, because they sometimes school together. Incidental catch allowances permit fishermen to land a certain percentage of fish that would otherwise be considered bycatch. Incidental catch allowances can be expressed as an amount or percentage of catch, landings, or deliveries.

Incidental catch allowances will be set by the Council, based on recommendation from the Coastal Pelagic Species Management Team (CPSMT), and consistent with Sections 5.1.1 through 5.1.6 of this FMP. Estimates of total incidental catch expected under the incidental catch allowances will be factored into harvest guidelines and quota recommendations. As described in Section 4.8, estimates of total incidental catch will normally be combined with the directed fishery harvest guideline to arrive at a total optimum yield (OY). The purpose of this adjustment is to ensure that overfishing does not occur due to incidental catch.

Incidental catch allowances are the primary method for managing bycatch in the CPS fishery. Other management approaches, such as fishing seasons or area restrictions, might also be required to reduce bycatch or incidental catch. The incidental catch allowances described here do not exclude the possibility of trip limits or other regulations imposed to reduce bycatch, prolong the directed fishery, or for other purposes.

#### 5.1.1 Incidental Catch Allowances When Stocks are Overfished

When a stock is overfished according to the definition of overfishing in this FMP, incidental catch allowances for commercial fishing shall be set at zero percent to 20% of landed weight, as recommended by the Council.

#### 5.1.2 Incidental Catch Allowances When Stocks are Not Overfished

When a stock is not overfished according to the definition of overfishing in the FMP, incidental catch allowances for commercial fishing shall be set at zero percent to 45% of landed weight, as recommended by the Council.

#### 5.1.3 Pacific (chub) Mackerel Landed Incidentally

When the Pacific (chub) mackerel resource is not overfished, and total landings for the directed fishery established under a harvest guideline have been caught, the Council may set an allowable incidental trip limit of one mt or lower.

#### 5.1.4 Incidental Catch Allowances for Live Bait When Stocks are Overfished

When a stock is overfished according to the definition of overfishing in the FMP, incidental catch allowances for live bait fishing shall be set to no more than 15% of landed weight, as determined by the Council.

#### 5.1.5 Incidental Catch Allowances for Live Bait When Stocks are Not Overfished

When a stock is not overfished according to the definition of overfishing in the FMP, no restrictions are placed on live bait harvest.

### 5.1.6 Guidelines and Criteria For Setting Incidental Catch Allowances

In setting incidental catch allowances, Council will consider existing regulations, goals and objectives of this FMP, best available data, scientific and management advice available, guidelines given below, and other policies established by the Council. If decision by the by the NMFS Regional Administrator about incidental catch allowances is necessary due to time constraints, it will be made based on consultation with the Council Chair, Director of the California Department of Fish and Game, CPSMT, Coastal Pelagic Species Advisory Subpanel (CPSAS), other representatives appointed by the Council, and interested parties as appropriate.

#### 5.1.6.1 Overfished Stocks

In order of priority, the Council's goals in setting incidental catch allowances for overfished stocks should be to (1) minimize fishing mortality on overfished stocks, and (2) minimize discards of overfished stocks. Incidental catch allowances for overfished stocks should approximate rates of incidental catch when fishing is conducted in a manner that minimizes catch of the overfished stock.

The Council must set incidental catch allowances for all overfished stocks. Once set, incidental catch allowances for overfished stocks remain in force until they are changed. Incidental catch allowances for overfished stocks can be revised during the fishing season if conditions warrant or new information becomes available.

#### 5.1.6.2 Stocks Not Overfished

Incidental catch allowances for stocks that are not overfished are enforced once a the directed fishery harvest guideline has been reached, and the directed fishery has been closed. Goals in setting incidental catch allowances for stocks that are not overfished should be to (1) avoid unnecessary discard, (2) ensure that optimum yield is taken, but not exceeded, and (3) promote efficiency and profitability in the fishery. Estimates of total incidental catch (based on past or current incidental catch rates, incidental catch allowances, harvest guidelines and other conditions in the fishery) are normally considered when harvest guidelines are set. Thus, incidental catch allowances should be set at the same time and in concert with harvest guidelines.

Incidental catch allowances are meant to accommodate catches that are difficult to avoid during normal fishing directed at other species. Therefore, incidental catch allowances should be set at levels that approximate incidental catch rates during normal fishing activities.

### 5.2 North-South Allocation for Directed Fishery

This FMP authorizes allocations of Pacific sardine harvest guideline to participants by northern and southern areas (defined below). Nothing in this FMP precludes additional allocations based on other geographic areas or other factors developed under the authority of this FMP.

#### 5.2.1 Definition of Northern and Southern Fishery Segments

The division between northern and southern areas for the U.S. Pacific sardine fishery is Point Piedreas Blancas (35° 40' N latitude). Landings (or catches if their location is known) north of Point Piedreas Blancas and south of 39° N latitude apply to the northern area. U.S. landings (or catches if their location is known) south of Point Piedreas Blancas apply to the southern area.

#### 5.2.2 Formulas for Allocating Pacific Sardine

The northern area allocation is 33% of the of Pacific sardine harvest guideline, and the southern area allocation is 66% of the of Pacific sardine harvest guideline. Nine months after the start of the fishing season, any uncaught portion of the harvest guideline will be totaled and reallocated with 50% of the total allocated to the northern area and 50% of the total allocated to the southern fishery area. Reallocation will be carried out by the NMFS Regional Administrator as an automatic measure as described in Section 2.1.