

September 2002



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE

Southwest Region
 501 West Ocean Boulevard, Suite 4200
 Long Beach, California 90802-4213

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PFMC

Heather M. Munro
 President
 Munro Consulting
 P.O. Box 1515
 Newport, Oregon 97365

Dear Heather:

This is a response to your letter stating that an emergency exists in the fishery for Pacific sardine and that a rule should be published reallocating the unharvested portion of the harvest guideline before the October 1 date specified in the Coastal Pelagic Species Fishery Management Plan (FMP). After reviewing the status of the fishery north and south of Pt. Piedras Blancas, I have determined that the current status of the fishery does not justify action to reallocate any portion of the remaining harvest guideline before the scheduled date. This decision is based on the language in the FMP, the performance of the fishery, and National Marine Fisheries Service guidelines regarding the use of emergency rules.

The purpose of the allocation procedure is to ensure that no segment of the fishing industry preempts other segments of the industry by taking advantage of seasonal availability of the resource in particular areas along the coast. The procedure in the FMP should be maintained as long as there is substantial compliance with the purpose for which it was designed. If improvements in the procedure can be made, then the FMP should be amended.

As expected, landings north of Pt. Piedras Blancas have been higher this year than last year, and, as a result, we have been monitoring the fishery closely. The allocation north of Pt. Piedras Blancas is 39,481 metric tons (mt) and approximately 24,000 mt has been landed as of August 21. A little more than 15,000 mt remains before the scheduled reallocation. From the information available at this time, the allocation may be achieved before October 1, but it is not likely to be achieved much before that date, especially with the tapering off of landings in September in Oregon and Washington that has occurred in recent years.

Policy on the use of emergency rules was published in the *Federal Register* on August 21, 1997 (62 FR 44421). Emergency action under the authority of section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act should be reserved for extremely urgent, special circumstances, where substantial harm to or disruption



of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures. In the case of reallocating Pacific sardine, substantial harm from following normal procedures does not seem likely. The standard rulemaking procedure to reallocate Pacific sardine is relatively simple.

Considering the above, reallocation before October 1 is not justified. The northern fishery is virtually a new commercial fishery with which we have only a few years experience. On the science side, we lack knowledge about the biomass of Pacific sardine and whether or not there is more than one interbreeding stock of sardines. Such information would improve management as well as our understanding of the relationship of sardine to other trophic levels in the California Current System. On the management side, with the aim of eventually making recommendations to the Pacific Fishery Management Council, the Coastal Pelagic Species Advisory Subpanel is reviewing recent experience in the fishery and is considering several alternatives to modify the allocation system to better meet the needs of the industry. The Southwest Region will work with all segments of the fishing industry to improve knowledge of the resource and bring about any needed improvements in management.

Sincerely,



Rodney R. McInnis

for Rodney R. McInnis
Acting Assistant Administrator

cc: PFMC, D. McIssac ✓
F/NWR, R. Lohn
DB Pleschner & Associates,
D. Pleschner-Steele