

NATIONAL MARINE FISHERIES SERVICE VIEWS ON PROCESS REQUIREMENTS FOR
CHANGING SARDINE ALLOCATION

The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) sets forth the current 1/3 north- 2/3 south Pacific sardine allocation with the October 1 reallocation in equal shares of unused Pacific sardine harvest guideline with the dividing line at Piedras Blancas. The FMP clearly contemplated there would be future consideration and likely adoption of changes in one or more of the allocation factors (shares, timing, dividing line). Section 2.1.4 lists factors to take into account when considering allocations; section 4.8.1 describes the procedure for annual specifications, including allocations. Section 5.2 establishes the allocation process for Pacific sardine but then provides that "Nothing in this FMP precludes additional allocations based on other geographic areas of other factors developed under the authority of this FMP." Thus, it apparently was expected the Pacific Fishery Management Council (Council) would revisit this topic as more experience and information were gained under the FMP.

National Marine Fisheries Service (NMFS) views adjustment of the allocation factors as an action that can be taken under the Socioeconomic Framework of the FMP (section 2.1.3). This essentially calls for two Council meetings with NMFS to determine the appropriate method of implementation, which would be notice and comment rulemaking (i.e., proposed and final rules). NOAA Fisheries believes that allocation issues are very important and thus do not fit well in "abbreviated rulemaking." Further, recent court decisions indicate that abbreviated rulemaking should be avoided. Therefore, notice and comment rulemaking would be used.

In the current situation, the process for adjusting the Pacific sardine allocation would be:

November 2002	Directions to team for analysis of options.
March 2003	First Council consideration of options; clear for public review.
April 2003	Final Council action and submission of documents to NOAA Fisheries.
May 2003	Proposed Rule published for public review.
July 2003	Final Rule published.
August 2003	Adjustment implemented (assuming approval).

This would provide for the new approach to be in place well before the end of the season. Note, however, that if the northern fishery accelerates its landings, there could still be a chance that its "allocation" would be taken before the new allocation is in place. This is not very likely.

Under this approach, the 2003 fishery would begin with the current allocation. Any change in the allocation could be implemented inseason through the final rule.

PFMC
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