

NATIONAL MARINE FISHERIES SERVICE GUIDANCE ON PROCESS FOR CHANGING STOCK STATUS, MAGNUSON-STEVENS ACT REQUIREMENTS WHEN A STOCK IS DECLARED OVERFISHED, AND 2019-2020 SARDINE SPECIFICATIONS

The National Marine Fisheries Service (NMFS) offers the following guidance regarding the Pacific Fishery Management Council's (Council) Magnuson-Stevens Fishery Conservation and Magnuson Act (Magnuson-Stevens Act) requirements when a stock is declared overfished. These questions and answers are intended to support the Council in developing specifications and management measures for Pacific sardine for the 2019-2020 fishing year.

**Q: What is the process and timeline for officially changing a stock's status to "overfished?"**

**A:** Once the assessment report is finalized, the West Coast Region will inform the NMFS Headquarters Office of Sustainable Fisheries (OSF) of the need for a stock status change. Jointly, the West Coast Region and OSF will gather supporting information for the stock status change and prepare a memorandum documenting the change in stock status. The Assistant Administrator for Fisheries signs the memorandum once it is complete. The West Coast Region will immediately provide official notification to the Council that it has 15 months to prepare and submit a rebuilding plan to NMFS to ensure it can be implemented within 2 years.

The process to officially change a stock's status to overfished takes approximately six weeks, but can take longer depending on the complexity of the information that contributes to the status change. This means that a Secretarial determination that the stock is overfished will not occur until after the April Council meeting. We plan to target transmitting official notification of a stock status change to the Council prior to the June or September 2019 meetings. The OSF also notifies the public of official changes to stock status that happened during the previous quarter in Federal Register notices.

**Q: What does the Magnuson-Stevens Act require NMFS and the Council to do when a stock is declared overfished?**

**A:** If NMFS declares a stock overfished, then NMFS and the Council are required under the Magnuson-Stevens Act to prepare and implement a Fishery Management Plan (FMP), FMP amendment, or proposed regulations (often referred to as a rebuilding plan) within two years of official notification that the stock is overfished, consistent with the requirements of section 304(e)(3) of the Magnuson-Stevens Act. Implementing a rebuilding plan may require up to three Council meetings and up to two years to implement (15 months for Council development; 9 months for NMFS rulemaking).

**Q: Does the Council need to adjust management measures for the remainder of the 2018-2019 fishing year (between the April Council meeting and June 30, 2019) to address the updated assessment information?**

**A:** The Council is not obligated to change management measures for sardine between the April Council meeting and start of the upcoming fishing year in response to the new assessment information. For example, although the FMP currently requires live bait harvest is limited to 15 percent of a mixed load once a stock is declared overfished, the Council is not obligated to impose that restriction on landing between now and the start of the upcoming fishing year because: 1) we have not officially declared the stock overfished yet; 2) this new assessment provides the estimate of biomass for July 1, 2019, and; 3) the Council already has management measures in place to prevent overfishing this year.

**Q: Does the Council need to include rebuilding plan provisions in the 2019-2020 specifications recommendations to address a potential overfished determination? What should the Council do at this meeting for recommending 2019-2020 specifications?**

**A:** No. The Council does not need to include rebuilding plan provisions in the 2019-2020 specifications recommendations. For the 2019-2020 fishing year, the Council only needs to recommend specifications according to the FMP.

In the interim between official notification and implementing the rebuilding plan, the Council may set management measures for the stock as part of specifications that prevent overfishing and support rebuilding. The Council is not, however, obligated to develop a rebuilding plan until after official notification of an overfished determination for sardine.

**Q: Does the Council need to adjust management measures for the remainder of the 2018-2019 fishing year (between the April Council meeting and June 30, 2019) to address the error that was found in the 2018 assessment?**

**A:** No. The Southwest Fisheries Science Center identified an error in the acoustic trawl method (ATM) abundance estimate used in the 2018 stock assessment. Had that error been identified last year, it would have resulted in a biomass estimate from the stock assessment of only 5,000 metric tons (mt) less, which would have only resulted in overfishing limit and acceptable biological catch values of approximately 1,000 mt less. This means that the management measures NMFS implemented for 2018-2019, including the annual catch limit of 7,000 mt, are still preventing overfishing.

**Q: How should the Council recommend limits for the live bait fishery for 2019-2020, given that Amendment 17 is currently under Secretarial review?**

A: We published the Notice of Availability for Amendment 17 on March 22, 2019 ([84 FR 10768](#)). Amendment 17 would remove the pre-specified incidental landing limit that would become effective for live bait were a stock managed under the Coastal Pelagic Species Fishery Management Plan to become overfished. The public comment period for Amendment 17 ends on May 21, 2019. The final decision date for Amendment 17 is June 20, 2019.

Amendment 17 is still under Secretarial review, but our decision on whether or not to approve Amendment 17 will occur prior to the start of the upcoming sardine fishing year. Therefore, we recommend that, if the Council determines it would like to use the proposed Amendment 17 provisions, it should also recommend measures for the sardine live bait fishery that match the status quo FMP provisions (i.e., no directed live bait for overfished stocks and 15 percent maximum incidental limit on live bait for overfished stocks). In this scenario, the Council's recommendation to NMFS should indicate its intent that NMFS use the live bait fishery recommendation that is consistent with the Amendment 17 provision, which would be the operative recommendation if Amendment 17 is approved.