

NATIONAL MARINE FISHERIES SERVICE REPORT ON COMMENTS ON COURT
ORDERED RULEMAKING ON HARVEST SPECIFICATIONS FOR THE CENTRAL
SUBPOPULATION OF NORTHERN ANCHOVY

The National Marine Fisheries Service (NMFS) provides the following supplemental report to the Pacific Fishery Management Council (Council) to summarize the content of the proposed rule to establish harvest specifications for the central subpopulation of northern anchovy, which is expected to publish on November 18, 2020.

Background

On September 2, 2020, in *Oceana v. Ross, et al.*, the U.S. District Court for the Northern District of California vacated and remanded to NMFS the May 31, 2019, final rule (2019 Rule; [see 84 FR 25196](#)) setting the overfishing limit (OFL), acceptable biological catch (ABC), and annual catch limit (ACL) for the central subpopulation of northern anchovy (central anchovy). The Court ordered NMFS to promulgate a new rule in compliance with the Magnuson-Stevens Fishery Conservation and Management Act and Administrative Procedure Act within 120 days of the Court's order. NMFS had issued the 2019 Rule pursuant to a 2018 decision from the same Court in *Oceana v. Ross*, in which the Court had vacated the ACL established in a 2016 final rule (2016 Rule; [see 81 FR 74309](#)). The purpose of this current proposed rule is to set an OFL, ABC, and ACL in compliance with the control rules for monitored stocks in the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP), which would protect the stock from overfishing and accommodate the needs of fishing communities.

NMFS determined that, with such limited time available to develop and analyze more complex approaches for setting these reference points, the most appropriate path at this time for setting an OFL for central anchovy in accordance with the FMP is to use the same method as in the 2019 Rule, however updated with the most recent information on the current status of central anchovy, the Southwest Fisheries Science Center's (SWFSC) 2019 acoustic trawl methodology (ATM) estimate (810,634 metric tons (mt)).

2016 Rule Data and Calculations

Data:

Estimate of Maximum Sustainable Yield (MSY) in the CPS FMP - 100,000 mt

Calculations:

OFL = MSY

OFL = **100,000 mt**

ABC = 100,000 mt * 0.25 (*i.e.*, 75 percent Scientific Uncertainty Buffer) = **25,000 mt**

ACL = ABC or lower

ACL = **25,000 mt**

2019 Rule Data and Calculations

Data:

2016 Summer ATM survey – 151,558 mt

2017 Spring Daily egg production method (DEPM) survey – 308,173 mt

2018 Summer ATM survey – 723,826 mt

Average = 394,519 mt

Calculations:

EMSY: Average of the four best fit models from 2016 minimum stock size threshold report. The average F_{MSY} from these models is 0.274, which has been converted to an EMSY = 0.239.

OFL = Recent average biomass * EMSY

OFL = 394,519 mt * 0.239 = **94,290 mt**

ABC = OFL * 0.25

ABC = 94,290 mt * 0.25 = **23,573 mt**

ACL = ABC or lower

ACL = **23,573 mt**

Current Proposed Rule Data and Calculations

Data:

2016 Summer ATM survey – 151,558 mt

2017 Spring DEPM survey – 308,173 mt

2018 Summer ATM survey – 723,826 mt

2019 Summer ATM survey – 810,364 mt (new data for current proposed rule)

Average = 498,480 mt

Calculations:

EMSY: Average of the four best fit models from 2016 minimum stock size threshold report. The average FMSY from these models is 0.274, which has been converted to an EMSY = 0.239.

$$\text{OFL} = \text{Recent average biomass} * \text{EMSY}$$

$$\text{OFL} = 498,480 \text{ mt} * 0.239 = \mathbf{119,153 \text{ mt}}$$

$$\text{ABC} = \text{OFL} * 0.25$$

$$\text{ABC} = 119,153 \text{ mt} * 0.25 = \mathbf{29,788 \text{ mt}}$$

$$\text{ACL} = \text{ABC or lower}$$

$$\text{ACL} = \mathbf{25,000 \text{ mt}}^1$$

Potential Additional Management Measures

NMFS also proposed the potential for the selection of two types of additional management measures: 1) limiting the time period that the proposed reference points are effective, and 2) implementing a biomass threshold whereby the ACL is automatically reduced if the SWFSC's ATM abundance estimate drops below the selected threshold for multiple years. NMFS provides a description and rationale for each of these management measures in the proposed rule.

¹ Although there is no management uncertainty that requires reducing the ACL from the ABC, prior environmental analyses have only analyzed an ACL up to 25,000 mt, which is also the Council's previous determination of optimum yield for the stock.