

## NATIONAL MARINE FISHERIES SERVICE REPORT ON COASTAL PELAGIC SPECIES - PACIFIC SARDINE REBUILDING PLAN AND CURRENT HARVEST SPECIFICATIONS

### **Background**

During the 2019–2020 Pacific sardine fishing year, the estimated biomass of the northern subpopulation of Pacific sardine (Pacific sardine hereafter) dropped below its minimum stock size threshold of 50,000 mt, which triggered an overfished determination process. The National Marine Fisheries Service (NMFS) accordingly declared the stock overfished on June 26, 2019, and notified the Pacific Fishery Management Council (Council) on July 9, 2019. Within the statutory 2 years, NMFS and the Council developed a Pacific sardine rebuilding plan, which was finalized on June 24, 2021 as Amendment 18 to the CPS FMP (86 FR 33142).

In a complaint filed in July 2021, the environmental advocacy organization Oceana challenged NMFS' approval of the rebuilding plan (*Oceana v. Raimondo, et al.*, No. 5:21-cv-05407-VKD N.D. Cal.). Following a hearing on the Parties' cross-motions for summary judgment, Oceana amended its complaint to include a challenge to the final rule setting harvest specifications for the 2023–2024 fishing year (88 FR 41040, June 23, 2023).

### **Court Findings on Rebuilding Plan and 2023-2024 Pacific Sardine Harvest Specifications**

On April 22, 2024, the U.S. District Court for the Northern District of California issued an order in the sardine rebuilding plan litigation. The Court granted in part, and denied in part, Oceana's motion for summary judgment, and granted in part, and denied in part, NMFS's cross-motion for summary judgment. The Court ruled similarly on the 2023-2024 harvest specifications, including that NMFS failed to demonstrate that it relied on the best available science when using the CalCOFI based  $E_{MSY}$  to set the overfishing limit. The Court directed the parties to submit briefing on proposals for the remedy that it should order in light of these rulings.

On June 28, 2024, the Court issued its ruling on remedy: the Court vacated the portions of Amendment 18 it had concluded violated the Magnuson-Stevens Act and the Administrative Procedure Act and vacated the EA prepared in connection with Amendment 18. The Court ordered that NMFS prepare and implement a compliant rebuilding plan for Pacific sardine, and conduct the necessary NEPA analysis, by **June 1, 2025**. The Court declined to issue additional equitable relief requested by Oceana, but directed NMFS to implement interim specifications effective July 1, 2024, that were no less restrictive than the 2023–2024 specifications. The Court stated that those interim specifications would remain in effect until the earlier of August 1, 2024, or the date on which NMFS promulgated the 2024–2025 annual specifications.

### **Further Background on Pacific Sardine Harvest Specifications**

At the Council’s April 2024 meeting, the Council made its recommendations to NMFS on the 2024–2025 Pacific sardine specifications and management measures. The Court’s April 22 order was issued during NMFS’ promulgation of the proposed rule. Accordingly, NMFS halted publication of the proposed rule to review the Council’s recommendations in consideration of the Court’s findings regarding the 2023-2024 specifications and Amendment 18. NMFS preliminarily found that the recommendations were based on the best scientific information available and described these findings in the supplementary information of the proposed rule. NMFS published the proposed specifications on June 21, 2024, with a 15-day comment period ending on July 8, 2024 ([89 FR 52005](#)).

Recognizing that the final specifications would not be effective before the 2023–2024 specifications expired on June 30, the Court’s June 28 order on remedy attempted to provide equitable relief by addressing the lapse in regulations that were imminent. However, it ordered NMFS to implement interim specifications within one business day (July 1) that would expire on August 1. While NMFS acted immediately to comply, it was not possible to implement a rulemaking in one day, and an expiration date of August 1 would have resulted in an additional “gap” in regulation, as the final 2024–2025 specifications were not expected to publish until August 19. NMFS filed a motion for reconsideration stating these concerns. The Court granted this motion and amended its order on July 10, but by that date, the first court-ordered interim specifications were scheduled for publication by the Office of the Federal Register ([89 FR 57093](#); effective July 11 – August 1, 2024), because NMFS had to proceed to comply with the Court’s order in the absence of further guidance. To comply with the amended order, NMFS published another interim rule ([89 FR 62668](#); effective July 29, 2024, until the 2024–2025 final specifications are implemented).

NMFS expects to implement the final rule for the 2024–2025 Pacific sardine harvest specifications and management measures prior to the September Council meeting.

### **Next Steps**

The Court vacated parts of Amendment 18 and its EA and remanded them to NMFS for further proceedings. NMFS must finalize a new rebuilding plan and accompanying NEPA analysis by June 1, 2025. This would be a new amendment to the CPS FMP. NMFS intends to provide future guidance on how to proceed regarding EMSY by the 2025–2026 annual specifications process.

To meet the June 1 deadline, NMFS has determined that a draft rebuilding plan and all accompanying analyses that address the remanded portions of Amendment 18 and its EA must be completed by the end of December. Therefore, NMFS requests that an agenda item be added to the November 2024 Council meeting for the Council to take final action on a new sardine rebuilding plan. NMFS understands that a one meeting process is not the typical Amendment

process; however, this schedule is the only way to allow Council participation and not necessitate NMFS undertaking a unilateral Secretarial action. To that end, we are prepared to begin assisting Council staff with working towards a new rebuilding plan and achieving the objective of the Council being able to make a recommendation at the coming November meeting.