

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660****[Docket No.0812171612–9134–02]****RIN 0648–XT31****Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting the incidental harvest of Pacific sardine off the coasts of Washington, Oregon and California. This action is necessary because the incidental set aside for the third allocation period of the 2009 Pacific sardine season has been reached. From the effective date of this rule until January 1, 2010, Pacific sardine can only be harvested as part of the live bait fishery.

DATES: Effective December 23, 2009 through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the **Federal Register** establish the annual HG and allowable seasonal harvest levels for

each Pacific sardine fishing season (January 1 - December 31). If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest is allowed and, for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set-aside is attained all fisheries will be closed to the retention of Pacific sardine for the remainder of the period.

On September 23, 2009, NMFS closed the directed harvest of Pacific sardine but provided allowance for incidental harvest when sardine was caught incidental to other fisheries (74 FR 48421). This document announces that based on the best available information recently obtained from the fishery the incidental set aside amount for the third allocation period, and therefore the total third period allocation of 14,737 mt (directed HG and incidental set-aside), was reached approximately during the week of November 30 to December 4. All retention and harvest of Pacific sardine is therefore closed until January 1, 2010. From the effective date of this rule until January 1, 2010, Pacific sardine can only be harvested as part of the CPS live bait fishery and can no longer be landed incidental to other CPS fisheries.

Under 50 CFR 660.509 if the total harvest guideline (HG) or seasonal apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and it is to remain closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional

Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of fishing for Pacific sardine.

For further background information on this action please refer to the final rule implementing the 2009 HG and management measures (74 FR 31199, June 30, 2009).

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the 2009 Pacific sardine fishing season. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to further exceed the seasonal harvest level or total HG. The HG is an important mechanism in preventing overfishing and managing the fishery at optimum yield.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 16, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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