

Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a substantial economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 12, 2008.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

- 40 CFR part 52 is amended as follows:

#### **PART 52—[AMENDED]**

- 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart G—Colorado**

- 2. Section 52.320 is amended by adding paragraph (c)(113) to read as follows:

#### **§ 52.320 Identification of plan.**

(c) \* \* \*

(113) On August 1, 2007, the State of Colorado submitted revisions to Colorado's Common Provisions Regulation, 5 CCR 1001-2, that made changes and additions to Section I, "Definitions, Statement of Intent, and General Provisions Applicable to All

Emission Control Regulations Adopted by the Colorado Air Quality Control Commission," and Section II, "General."

(i) Incorporation by reference.

(A) Common Provisions Regulation, 5 CCR 1001-2, Section I.G, "Definitions," effective on March 4, 2007.

(1) The submittal revises Section I.G by removing the definition of "upset conditions" and replacing it with the definition of "malfunction."

(B) Common Provisions Regulation, 5 CCR 1001-2, Section II.E, "Affirmative Defense Provision for Excess Emissions During Malfunctions," effective on March 4, 2007.

(2) The submittal revises Section II.E by removing language which provided an exemption for excess emissions during upset conditions and breakdowns and replacing it with an affirmative defense provision for source owners and operators for excess emissions during malfunctions.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 071030625-7696-02]

**RIN 0648-XJ37**

#### **Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the Commonwealth of Massachusetts**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the 2008 summer flounder commercial quota allocated to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2008, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

**DATES:** Effective 0001 hours, August 6, 2008, through 2400 hours, December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Management Specialist, (978) 281-9244.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2008 calendar year was set equal to 9,462,001 lb (4,292 mt) (72 FR 74197, December 31, 2007). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in a commercial quota of 645,352 lb (293 mt). The 2008 allocation was reduced to 615,218 lb (279 mt) when research set-aside and 2007 quota overages were deducted.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Massachusetts has harvested its quota for 2008.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, August 6, 2008, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2008 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, August 6, 2008, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the

calendar year, or until additional quota becomes available through a transfer from another state.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: July 31, 2008.

**Alan D. Risenhoover,**

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

[FR Doc. E8-18066 Filed 8-1-08; 4:15 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 080326475-8686-02]

**RIN 0648-XJ27**

**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 directed fishing for Pacific sardine. This action is necessary because the directed harvest allocation total for the second seasonal period (July 1 - September 14) is projected to be reached. From date of closure until September 15, 2008, Pacific sardine may only be harvested incidental to other fisheries, with incidental harvest constrained by a 20-percent by weight incidental catch rate.

**DATES:** Effective August 8, 2008 through September 14, 2008

**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 total harvest guideline (HG) and allowable harvest levels for each Pacific sardine fishing season (January 1 - December 31). The total HG for the 2008 Pacific sardine fishing season (January 1, 2008 - December 31, 2008) is 89,093 mt and is

divided into a directed harvest fishery of 80,184 mt and an incidental fishery of 8,909 mt. These directed and incidental harvest amounts are subdivided throughout the year in the following way: January 1-June 30, 26,550 mt is allocated for directed harvest with an incidental set-aside of 4,633 mt; July 1-September 14, 34,568 mt plus any portion not harvested from the initial allocation is allocated for directed harvest with an incidental set-aside of 1,069 mt; September 15-December 31, 19,066 mt plus any portion not harvested from earlier allocations is allocated for directed harvest with an incidental set-aside of 3,207 mt (73 CFR 30811).

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. The incidental fishery will also be constrained to a 20-percent by weight incidental catch rate when Pacific sardine are landed with other CPS to minimize targeting of Pacific sardine and to maximize landings of harvestable stocks. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period will be automatically adjusted to account for the discrepancy.

Under 50 CFR 660.509 if the total HG or these 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** the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution the live bait portion of the Pacific sardine fishery.

**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