

50 CFR Part 642**[Docket No. 50587-6042]****Fishery Conservation and Management; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic****AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Final rule; change in total allowable catch, permit requirements, and bag limits for the Atlantic migratory group of king mackerel.

SUMMARY: The Secretary of Commerce issues a notice of changes in the total allowable catch (TAC), permitting requirements, and bag limits for the Atlantic migratory group of king mackerel in accordance with the framework procedure under Amendment 1 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic. This notice reduces TAC and allocations for Atlantic migratory group king mackerel based on recent catch data, requires permits for commercial vessels, and bag limits for recreational fishermen. The intended effects are to protect the Atlantic migratory group of king mackerel and still allow catches by the important recreational and commercial fisheries that are dependent on this species and to implement a permit requirement for commercial vessels for the purpose of improved management.

EFFECTIVE DATE: March 17, 1986.**FOR FURTHER INFORMATION CONTACT:** Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The king mackerel fishery is regulated under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) and final regulations (50 CFR Part 642). An amendment to the FMP (Amendment 1) was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and implemented September

22, 1985 (50 FR 34846, August 28, 1985). On January 8, 1986 (51 FR 769) a notice of preliminary changes in the total allowable catch, permitting requirements, and bag limits for the Atlantic migratory group of king mackerel in accordance with the framework procedure under Amendment 1 to the FMP was published for public comment. The comment period ended January 23, 1986.

The preamble to the preliminary notice contained a description of the need and rationale for implementing the changes in TAC, permitting requirements, and bag limits. These discussions are not repeated here.

Comments and Responses

Seventeen comments on the preliminary notice were received from seven commenters including fishermen, a seafood technologist, a recreational fishing organization, a marina operator, and a boat manufacturer.

Sale of Recreational Catches

A recreational fishing organization and a seafood technologist stated that recreational fishermen should not be allowed to sell their catch because they cannot ensure a quality product since they are either unfamiliar with proper storage techniques or unable to adequately care for their catch. Both commenters also stated that allowing the sale of recreational catches encourages recreational fishermen to compete with commercial fishermen for the fish and market. NOAA does not agree. Purchasers of the catch determine the quality, thus fishermen with less than adequate quality fish will be unable to sell their catch. The bag limit on recreational fishermen should prevent any significant competition with the unrestricted catch of an individual permitted to fish under the commercial quota.

Quotas and Allocations

A recreational fishing organization stated that the 18 percent reduction in total allowable catch of the Atlantic migratory group was insufficient to prevent the collapse of the resource because the best available scientific information was not used. NOAA does not agree. NOAA acknowledges there are data deficiencies, but concludes that the Councils used the best scientific information available. Allowable catches will be adjusted annually, on a pre-season basis, as additional information is gathered.

One commenter opposed any restrictions because he did not believe that the Councils' decisions are sound and based on the best scientific

information available. NOAA disagrees. As stated above, the Councils utilized the best scientific data available.

Two commenters opposed quotas and allocations because of negative effects on tournaments. One commenter suggested a special concession for major tournaments. The Councils fully considered the impact of the allocations and quotas on tournaments and determined that tournament participants must share the burden for the conservation of king mackerel. NOAA agrees with the Councils' decision.

Bag Limits

One recreational fisherman questioned whether a size limit rather than a bag limit would achieve the same purpose. The Councils considered the advantages and disadvantages associated with size and bag limits. Since king mackerel are migratory, the Councils selected the bag limit because this allows the residents of different States to participate in this fishery in a fair and equitable manner. A size limit favors the areas where the larger fish occur during migration. NOAA agrees with the Councils' decision in selecting the bag limit.

One recreational fisherman questioned how the bag limit will be enforced. Based on comments from Federal and State law enforcement personnel, the Councils concluded that the bag limit was enforceable. NOAA also concluded that this measure was enforceable. The bag limit will be enforced by Federal agencies such as the U.S. Coast Guard and National Marine Fisheries Service and by State agencies through Federal/State cooperative agreements.

One recreational fisherman questioned whether any government body could unilaterally impose such a rule without public participation in the rule-making process. The Councils that developed these measures are composed of representatives from the coastal States' governments, the recreational and commercial fishing communities, and the Federal government. As required by the Magnuson Act, the Councils obtained public participation through fourteen public hearings held on Amendment 1 under which this notice action has been developed. During these hearings, the Councils solicited public comments on the use of bag limits for the recreational fishery in the area of the Atlantic migratory group. The public had opportunity also to comment during the 15-day public review period for this notice action that ended January 23, 1986.

A recreational fisherman inquired as to why there was no mention of restrictions on the west coast of Florida (including the Keys) and the Gulf of Mexico. This notice action is applicable only to the Atlantic migratory group. In Amendment 1, the Councils previously reviewed the status of the Gulf of Mexico king mackerel migratory group and concluded that this group is overfished. As a result the total allowable catch was reduced by 22 percent.

A recreational fisherman did not believe that the recreational sector could catch enough king mackerel to overfish the Atlantic migratory group and therefore, should not be included with commercial net vessels. A sport fishing organization recommended that the taking of king mackerel be restricted to hook-and-line commercial and rod and reel recreational fishermen. Historically, the recreational and commercial sectors have taken 62.9 and 37.1 percent, respectively, of the total harvest. The Councils reviewed this information and concluded that both sectors must be managed to prevent overfishing of the Atlantic group. NOAA agrees with the Council's decision.

A recreational fisherman inquired as to the commercial quota amount, the identity of the enforcing agency, and the foreign catch inside the fishery conservation zone (FCZ). The Councils reviewed the best available scientific information and set the commercial quota at 3.59 million pounds as measured by the commercial sales reported by dealers. The quota will be enforced by NMFS, the U.S. Coast Guard, and State agencies through the Federal/State cooperative agreements. Since the domestic sectors catch the entire optimum yield, there is no surplus available for foreign fishing. Any foreign vessel fishing for king mackerel in the FCZ is in violation of the Magnuson Act. Furthermore, such violation is unlikely since all foreign vessels fishing in the FCZ must have a NMFS observer aboard. NOAA agrees with the Councils' decision regarding the commercial quotas.

Changes From the Preliminary Notice

Section 642.4

Paragraph (b) is revised to allow commercial king mackerel fishermen to submit one application for permits to fish either or both the Atlantic migratory group and the Gulf migratory group. This will lessen the paperwork burden on fishermen. Permits for fishing the two migratory groups will be issued during the two months prior to the start of the

respective migratory groups' fishing year.

Paragraph (g) is modified to require that a copy of the executed (signed) bill of sale be available for inspection aboard a newly purchased permitted vessel while the new owner is awaiting issuance of a new permit. This will assist in enforcement of the permitting requirement under paragraph (a) and reduce the possibility for inconvenience to the vessel owner in the event he is inspected prior to receipt of his new permit.

Section 642.7

Paragraph (a)(2) is revised by deleting the reference to § 642.22 since closures under this section are addressed in other paragraphs of § 642.7. Paragraphs (a)(17), (19), and (20) are modified to reflect the amended designations for paragraphs (c), (d), and (e) of § 642.21. Paragraph (a)(28) is added to clarify that king mackerel harvested by recreational fishermen may not be sold after closure of the respective king mackerel group allocation or quota under § 642.21. Paragraphs (a)(29) and (30) are added for application of paragraphs at § 642.28 (e) and (f).

Section 642.24

Paragraph (c) is corrected by changing the word "abroad" to "aboard" wherever it occurs in the paragraph.

Section 642.28

Paragraph (c) is revised for clarification and the reference to persons fishing under the bag limit selling their fish has been deleted. Paragraph (d) is added to address the selling of king mackerel harvested under the bag limit.

Paragraph (e) is added to clarify that fishermen may not combine the bag and possession limits applicable to the FCZ and State waters.

Paragraph (f) is added to identify the operator of a vessel as the person responsible for the cumulative bag limit of king mackerel applicable to the vessel. This conforms with the responsibilities of vessel operators described under § 642.2 Definitions.

Changes to the Permit Application Process

Due to procedural delays, applications for 1986-1987 commercial fishing permits to fish the Atlantic migratory group of king mackerel or to fish the Atlantic and Gulf migratory groups of king mackerel will be received until May 19, 1986. The Regional Director or his designee will issue a 1986-1987 commercial fishing permit to fish Atlantic migratory group king mackerel,

after a permit application is submitted as specified above. The Atlantic migratory group king mackerel 1986-1987 fishing year will still begin April 1, 1986. Commercial fisherman may fish commercially for Atlantic migratory group king mackerel without a permit during the permit application period, ending May 19, 1986.

Other Matters

This action is taken under the authority of 50 CFR 642.27 and is taken in compliance with Executive Order 12291. This action is covered by the supplemental regulatory impact review and supplemental regulatory flexibility analysis which concluded that the authorizing regulations could have a significant economic impact on a substantial number of small entities.

This rule contains a collection of information requirement subject to the Paperwork Reductions Act. The collection of this information has been approved by the office of Management and Budget, OMB Control Number 0648-0097.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 17, 1986.

Joseph W. Angelovic,
Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is revised as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

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

2. In Part 642, the Table of Contents is amended by revising the heading for § 642.21 from "Quotas" to "Quotas and allocations".

3. Section 642.2 is amended by revising the definition of "Charter vessel" to read as follows:

§ 642.2 Definitions.

* * * * *

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. Charter vessels with commercial permits to fish Atlantic migratory group king mackerel are under charter when there are more

than three (3) persons aboard including captain and crew.

4. Section 642.4 is amended by revising paragraphs (a), (b) introductory text, (b)(7), (d), (f) and (g), and adding a new paragraph (b)(8) to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability* (1) Owners or operators of fishing vessels which fish for king mackerel under the commercial quotas (§ 642.21) are required to obtain an annual vessel permit.

(2) Owners or operators of charter vessels and headboats that fish for Gulf migratory group king mackerel are excluded from eligibility for a vessel permit unless they will charter only in the Atlantic migratory group area.

(3) Owners or operators of charter vessels may obtain a permit to fish Atlantic migratory group king mackerel provided they adhere to bag limits while under charter.

(b) *Application for permits.* An application for a permit must be submitted and signed by the owner or operator of the vessel. Applications for permits to fish both the Atlantic and Gulf migratory groups of king mackerel or for a permit to fish only the Atlantic migratory group of king mackerel must be submitted to the Regional Director or his designee within 60 days prior to April 1 each year. Applications for permits to fish only the Gulf migratory group of king mackerel must be submitted to the Regional Director or his designee 60 days prior to July 1 of each year. Owners or operators of newly registered or documented vessels may submit an application at any time during a fishing year provided it is received by the Regional Director within 60 days after registration or documentation. In cases of demonstrated hardship the Regional Director may accept applications at other times. Permit applicants must provide the following information:

(7) Any other information concerning vessel, gear characteristics and fishing area requested by the Regional Director; and

(8) The migratory group of king mackerel that will be fished.

(d) *Issuance.* The Regional Director or his designee will issue a permit to the applicant only during February and March of each year to fish Atlantic migratory group king mackerel and May and June of each year to fish Gulf migratory group king mackerel, after permit applications are submitted according to paragraph (b) of this

section. The Regional Director may issue permits at other times to newly registered or documented vessels, or in case of demonstrated hardship. Until the permit is received, fishermen must comply with the bag limits under § 642.28 and have a copy of an executed bill of sale per § 642.4(g).

(f) *Duration.* A permit is valid only for the period of the year for which it is issued (July 1–June 30 for the Gulf migratory group and April 1–March 31 for the Atlantic migratory group) unless revoked or suspended pursuant to Subpart D of 15 CFR Part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. New owners purchasing a permitted vessel to fish under the Gulf or Atlantic migratory groups' quotas must comply with the provisions of paragraph (b) of this section. The application must be accompanied by an executed (signed) bill of sale. New owners who have purchased a permitted vessel may fish with the preceding owner's permit until a new permit has been issued, but for a period not to exceed 60 days from date of purchase. Until a new permit is received, a copy of the executed (signed) bill of sale must be aboard the vessel and available for inspection by an authorized officer.

5. Section 642.6 is amended by revising paragraph (a) introductory text to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in fishing for king mackerel under a commercial quota and the permit specified in § 642.4 must—

6. Section 642.7 is amended by revising existing paragraphs (a) (2), (19), (20), (21), (22), and (25); revising the reference that reads "§ 642.21(b)" to "§ 642.21(c)" in paragraph (a)(17); changing the period at the end of paragraph (a)(27) to a semicolon and adding new paragraphs (a) (28), (29), (30), and (31), to read as follows:

§ 642.7 [Amended]

(a) * * *

(2) Fish for king or Spanish mackerel in violation of any area closures or season closures as specified in § 642.28;

(19) Fish for king or Spanish mackerel in the FCZ with purse seines after the quotas specified in § 642.21(c) and (e) have been reached and closure has been

invoked as specified in § 642.22 (Table 2);

(20) Fish for or have in possession aboard Spanish mackerel in or from the FCZ or purchase, sell, barter, trade or accept in trade, Spanish mackerel after the total allowable catch specified in § 642.21(d) is reached and closure has been invoked as specified in § 642.22 (Table 2);

(21) Land, consume at sea, sell, or have in possession at sea or at time of landing king mackerel in excess of the bag limits specified in § 642.28 except as provided for under § 642.21;

(22) Fish for king mackerel from the Gulf and Atlantic migratory groups in the FCZ as defined in § 642.29 under the quotas specified in § 642.21(a) without a permit as specified in § 642.4;

(25) Land king mackerel in other than an identifiable form as specified in § 642.28(b);

(28) Possess king mackerel harvested from the FCZ under the recreational allocation set forth at § 642.21(b) after closure has been invoked as specified in § 642.22;

(29) Sell king mackerel harvested under the recreational bag limits in § 642.28(a) except as specified in § 642.28(d);

(30) Combine the bag and possession limits for king mackerel under § 642.28(a) with bag and possession limits applicable to State waters as specified under § 642.28(e); or

(31) Operate a vessel that fishes king mackerel in the FCZ with king mackerel aboard in excess of the cumulative bag limit, based on the number of persons aboard, applicable to the vessel, as specified in § 642.28(f).

7. Section 642.21 is amended by revising the last two sentences of paragraph (a), redesignating existing paragraphs (b) through (e) as (c), (d), (e) and (i), and adding a new paragraph (b) to read as follows:

§ 642.21 Quotas and allocations.

(a) *Commercial quotas for king mackerel.* * * * The commercial allocation for the Atlantic migratory group of king mackerel is 3.59 million pounds per fishing year. A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Recreational allocations for king mackerel.* The recreational allocation for the Atlantic migratory group of king mackerel is 6.09 million pounds per fishing year.

8. Section 642.22 is amended by designating the existing paragraph as (a), amending paragraph (a) by inserting the reference "§ 652.21(a), (c), and (e)" in place of "§ 642.21" throughout the paragraph, and adding a new paragraph (b) as follows:

§ 624.22 Closures.

(b) The Secretary, by publication of a notice in the Federal Register, will close the recreational fishery for king mackerel of the Atlantic migratory group when the allocation for that group under § 642.21(b) is reached or is projected to be reached.

§ 642.24 [Amended]

9. In § 642.24, paragraph (c) is amended by changing the word "abroad" to "aboard" wherever it occurs.

10. Section 642.28 is revised to read as follows:

§ 642.28 Bag and possession limits.

(a) *Recreational allocation bag limits.* Persons who fish for king mackerel from the Gulf or Atlantic migratory group (see Figure 2) in the FCZ, except those fishing under the permits and quotas specified in § 642.4; § 642.21(a); and § 642.24(c), are limited to the following:

(1) *Gulf migratory group.* (i) Possessing three (3) king mackerel per person per trip, excluding the captain and crew or possessing two (2) king mackerel per person per trip, including the captain and crew, whichever is the greater, when fishing from a charter vessel.

(ii) Possessing two (2) king mackerel per person per trip when fishing from other vessels.

(2) *Atlantic migratory group.* Possessing three (3) king mackerel per person per trip.

(b) All king mackerel must be landed in an identifiable form as to number and species (with the understanding that head and tail can be removed).

(c) (1) After a closure under § 642.22(a) is invoked for the quota(s) (specified in § 642.21(a)) for either or both Gulf allocation zone(s), vessels permitted under § 642.4 may not fish for Gulf migratory group king mackerel in that zone(s) under the bag limit specified in paragraph (a) of this section.

(2) Charter vessels permitted to fish under the commercial quota of Atlantic migratory group king mackerel may fish under the bag limit specified in (a)(2) of this section provided they are under charter (more than three (3) persons aboard including captain and crew) and

the recreational fishing allocation for Atlantic migratory group king mackerel under § 642.21(b) has not been closed under § 642.22(b).

(d) Recreational fishermen may sell their catch of Gulf and Atlantic migratory group king mackerel taken under the bag limits in paragraph (a) of this section unless the respective king mackerel migratory group allocation or quota in § 642.21 has been closed under § 642.22. King mackerel sold by recreational fishermen are counted against the appropriate commercial allocation or quota in § 642.21(a) for the area where they are in effect.

(e) Persons who fish for king mackerel in the FCZ may not combine the bag and possession limits of this part with any bag or possession limits applicable to State waters.

(f) The operator of a vessel that fishes for king mackerel in the FCZ is responsible for the cumulative bag limit, based on number of persons aboard, applicable to that vessel.

11. Part 642 is amended by designating Tables 1 and 2 and Figures 1 through 3 as Appendix A to the part. Table 2 is amended by revising the "King Mackerel—Atlantic" line and adding a new "King Mackerel—Atlantic Recreational" line to read as follows:

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES ¹

Migratory group(s)	Fishing year	Gear	Allocation zone	Fishing year quota/TAC (million lbs)	Prohibition on sale and/or catch invoked when—
King Mackerel:					
Atlantic Commercial	1 Apr-31 Mar	All types	Entire range ²	3,590	Sales from migratory group are projected to reach quota. Catches from migratory group are projected to reach allocation.
Atlantic Recreational	1 Apr-31 Mar	All types	Entire range ²	6,090	

¹ See Figure 2 for delineation of migratory group ranges and allocation zones.
² The range of migratory groups varies by season (§ 642.25). See Figure 2.