

50 CFR Part 642

[Docket No. 70605-7141]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic; Total Allowable Catch and Bag Limits for King and Spanish Mackerel**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Notice of final total allowable catch and bag limits for king and Spanish mackerel.

SUMMARY: The Secretary of Commerce issues a notice of changes in the total allowable catch (TAC) for the Gulf migratory group of king mackerel and the Atlantic and Gulf migratory groups of Spanish mackerel and bag limits for Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This notice (1) reduces TAC and allocations for the Gulf migratory group of king mackerel, (2) changes TAC and allocations for the Atlantic and Gulf migratory groups of Spanish mackerel, and (3) establishes bag limits for Spanish mackerel from both migratory groups. The intended effects are to protect the mackerel and still allow a catch by the important recreational and commercial fisheries that are dependent on these species.

EFFECTIVE DATE: June 30, 1987.**FOR FURTHER INFORMATION CONTACT:** William N. Lindall, 813-893-3721.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642. Amendment 1 to the FMP was implemented September 22, 1985 (50 FR 34843, August 28, 1985). Amendment 2 is being implemented concurrently with this notice on June 30, 1987 (52 FR 23836, June 25, 1987).

This notice specifies bag limits for Spanish mackerel that were not specified in the rule which implemented Amendment 2, increases the TACs and allocations for Spanish mackerel above those specified in Amendment 2, and reduces the TAC and allocations for the Gulf migratory group of king mackerel from those specified in Amendment 2.

A preliminary notice of the changes in TACs and bag limits for king and Spanish mackerel was published on June 10, 1987 (52 FR 21977). That notice (1) described the framework procedures of the FMP through which the Councils recommended changes in TACs, allocations, quotas, and bag limits, (2) specified the recommended changes, and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here; the specifications implemented by this final notice are the same as those proposed in the preliminary notice.

Comments and Responses

Comments on the proposed changes were received from seven sources.

The Florida Marine Fisheries Commission (FMFC) commented that for the Atlantic group of Spanish mackerel a 4-fish bag limit should be approved throughout the range rather than off Florida only because (1) the creation of new fishing zones with dual bag limits is an improper exercise of notice action authority, (2) a 10-fish bag limit off States north of Florida will violate the expressed intent of distributing the catch throughout the fishing year, and (3) the proposed zones and dual bag limits, when combined with the fishing season, violate national standard 4 by discriminating between residents of different States and violate national standard 5 because the measures have economic allocation as their sole purpose. NOAA does not agree.

These changes are being made under the framework procedure of the FMP and its implementing regulations and have involved a 15-day public comment period and a regulatory impact review.

Depending on the amount of recreational fishing effort, a 4-fish bag limit on the entire Atlantic group of Spanish mackerel could extend the open season over a longer period of the fishing year. The Councils considered this and concluded that a uniform 4-fish bag limit would provide a disproportionate share of the resource to the southern zone off Florida owing to the year-round fishing opportunity, near-shore access to the resource, and the greater number of fishermen in that zone. North of Florida, the fish are present for a shorter season and are

more widely dispersed. NOAA desires to support the allocation decisions of the Councils to the extent the decisions are consistent with the Magnuson Fishery Conservation and Management Act. In this case, NOAA finds that the decisions are consistent.

Geographical allocations are an integral part of fisheries management. The Spanish mackerel bag limits, like other allocations and quotas, are based on biological, social, and economic considerations. They do not discriminate against the citizens of any State nor do they have economic allocation as their sole purpose. Because of the more limited seasons and more dispersed resource north of Florida, the uniform bag limit proposed by FMFC might well discriminate against citizens north of Florida. The 4-fish bag limit in the southern zone complements the 4-fish bag limit in Florida's waters, thus enhancing enforceability.

The FMFC further commented that if NOAA could not partially approve the changes then it should fully disapprove the Atlantic bag limit provision for Spanish mackerel and use whatever powers are available, including emergency regulations, to ensure that the objectives of the plan are met. NOAA cannot continue to manage the Spanish mackerel fishery under the emergency regulatory provisions of the Magnuson Act. The existing emergency regulations on Spanish mackerel expire on June 29, 1987. Thus, NOAA must either approve or disapprove the bag limit. NOAA rejects the disapproval option because, with no bag limit, the entire recreational allocation could be taken in a small geographical area, thus denying fishermen in other areas the opportunity to retain fish.

A South Carolina conservation association favored the recommended TACs and bag limits even though the bag limits represent a severe restriction on anglers. The association believes such measures are necessary for the long-term health of the resource. NOAA agrees.

Three commercial fishermen commented that the quota (0.5 million pounds) for the eastern zone of the Gulf migratory group of king mackerel is too low; that counting all mackerel that are sold against the commercial allocations and quotas, even though some are caught under a bag limit, significantly reduces the mackerel available for true commercial fishermen; and that sales of mackerel taken under a bag limit have continued after a commercial closure. These fishermen recommended that, if any fish caught under a bag limit are to be counted against the commercial allocations and quotas, separate quotas

should be established for net fishermen and for hook-and-line fishermen.

The reduced quota for the eastern zone of Gulf migratory group king mackerel is within the recommended range of the allowable biological catch in the FMP, as amended. It reflects the Council's desire to implement conservation regulations which further conserve the resource and accelerate rebuilding of the stocks.

Comments regarding the inequity of including fish caught under a bag limit in the commercial allocations and the suggestion to establish separate hook-and-line and net quotas are not within the scope of this notice action. However, the allocations that were established for commercial and "recreational" harvesters took into consideration the fact that some mackerel caught under a bag limit are sold.

After a commercial closure, the sale of mackerel caught in the exclusive economic zone (EEZ) under a bag limit is illegal. Enforcement is difficult, however, since the origin of the catch in the EEZ must be proven. To help alleviate this situation and provide for equitable, uniform law enforcement, NOAA has requested that States alter their mackerel regulations so that sales of mackerel caught in State waters will be banned at the same time that such sales are banned for mackerel caught in the EEZ.

A commercial fisherman protested the reduction in the quota for the western zone of the Gulf migratory group of king mackerel. The response above regarding the reduced quota for the eastern zone is equally applicable to the western zone.

A fisherman protested the possible closure of the king or Spanish mackerel recreational fishery if a recreational allocation is reached and complained that recreational fishermen are treated inequitably.

After consulting with Councils, NOAA may reduce the bag limit to zero when the recreational allocation for a particular migratory group is reached or is projected to be reached. After such a closure, mackerel caught from that group from recreational vessels must be released. Such a closure is essential to prevent overfishing of the resource.

Allocations between commercial and recreational fishing are established by fixed percentages in the FMP. Consequently, whenever a TAC is changed, the commercial and recreational sectors are affected equally.

Changes from the Preliminary Notice

Since the preliminary notice was published, Part 642 has been amended by the rule implementing Amendment 2 to the FMP. To conform to the

redesignations and revisions made by that rule, the following changes from the preliminary notice are made:

The heading of § 642.21 is changed to "Allocations and quotas."

In § 642.28(a), introductory text, reference to Figure 2 is removed, reference to § 642.4 is changed to § 642.4(a)(1), and reference to § 642.24(b) is changed to § 642.24(d); and § 642.28(a)(4)(iii) is revised to clarify that the boundary between the northern and southern areas for Spanish mackerel bag limits is the Florida/Georgia border.

Because of confusion which might be caused by concurrent implementation of this notice and the rule implementing Amendment 2 to the FMP, §§ 642.21 and 642.28(a) are printed in their entirety in this notice.

Classification

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 29, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended 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. Section 642.21 is revised to read as follows:

§ 642.21 Allocations and quotas.

(a) *Commercial allocations and quotas for king mackerel.* (1) The commercial allocation for the Gulf migratory group of king mackerel is 0.7 million pounds per fishing year. This allocation is divided into quotas as follows:

(i) 0.5 million pounds for the eastern allocation zone; and

(ii) 0.2 million pounds for the western allocation zone.

(2) The commercial allocation for the Atlantic migratory group of king mackerel is 3.59 million pounds per fishing year. No more than 0.4 million pounds may be harvested by purse seines.

(3) A fish is counted against the commercial quota or allocation when it is first sold.

(b) *Recreational allocations for king mackerel.* (1) The recreational allocation for the Gulf migratory group of king mackerel is 1.5 million pounds per fishing year.

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

(c) *Commercial allocations for Spanish mackerel.* (1) The commercial allocation for the Gulf migratory group of Spanish mackerel is 1.42 million pounds per fishing year.

(2) The commercial allocation for the Atlantic migratory group of Spanish mackerel is 2.36 million pounds per fishing year.

(d) *Recreational allocations for Spanish mackerel.* (1) The recreational allocation for the Gulf migratory group of Spanish mackerel is 1.08 million pounds per fishing year.

(2) The recreational allocation for the Atlantic migratory group of Spanish mackerel is 0.74 million pounds per fishing year.

(e) *Zones.* The boundary between the eastern and western zones established for the quotas under the commercial allocation of the Gulf migratory group of king mackerel in paragraph (a)(1) of this section is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ (Figure 2).

3. Section 642.28(a) is revised to read as follows:

§ 642.28 Bag and possession limits.

(a) *Bag limits.* A person who fishes for king or Spanish mackerel from the Gulf or Atlantic migratory group in the EEZ, except a person fishing under a permit specified in § 642.4(a)(1) and an allocation specified in § 642.21 (a) or (c), or possessing the purse seine catch allowance specified in § 642.24(d), is limited to the following:

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

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

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

(3) *Spanish mackerel Gulf migratory group.* Possessing three Spanish mackerel per person per trip.

(4) *Spanish mackerel Atlantic migratory group.*

(i) Possessing four Spanish mackerel per person per trip from the southern area.

(ii) Possessing ten Spanish mackerel per person per trip from the northern area.

(iii) For the purposes of paragraph (a)(4) of this section, the boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ.

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50 CFR Part 652

[Docket No. 61109-7126]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of allowable surf clam fishing time.

SUMMARY: NOAA issues this notice to establish allowable fishing time for surf clams at 30 hours for the third quarter of 1987 for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. This action will provide flexibility to operators in the use of fishing time during the period. The intended effect is to match fishing effort to the available quota for the area.

EFFECTIVE DATE: July 5 through October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617-281-3600 ext. 232.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the

year with a minimum of changes. The Regional Director during the first quarter of 1987 decided, with the unanimous support of the Mid-Atlantic Fishery Management Council, to exercise his authority under § 652.22(a)(3) to allocate fishing time by quarter and allow each operator the maximum flexibility possible to schedule that time to his best advantage. That program was continued in the second quarter with some modifications required to promote enforcement.

Based on the rate of harvest and utilization of available quota in the first and second quarters and the projected trends in fishery activity during the third quarter, the Regional Director has decided to allocate 30 hours of fishing time for the quarter. That time must be scheduled in five 6-hour fishing periods, which may be taken on any five separate days during the normal daily and weekly fishing times established in § 652.22(a)

If fishing experience indicates that the quota for the third quarter will not be harvested, additional fishing time will be allotted later in the quarter.

The fishing trips must be scheduled with 15 days' advance, written notice to the Surf Clam Coordinator, NMFS, 2 State Fish Pier, Gloucester, MA 01930. If this publication appears too late to allow such notice for those wishing to schedule trips during the first week of the quarter, trips for that week only can be scheduled by calling 617-281-3600, ext. 232.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: June 29, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

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