

2. The land remains closed to operation of the public land laws, including the mining laws, due to an overlapping segregation under the Recreation and Public Purposes Act.

Dated: September 13, 1989.

Manuel Lujan Jr.,

Secretary of the Interior.

[FR Doc. 89-22082 Filed 9-18-89; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

#### Taking and Importing of Marine Mammals

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

**ACTION:** Notice rescinding a ban on tuna imports.

**SUMMARY:** The NOAA Assistant Administrator for Fisheries announces that the Republic of El Salvador no longer has large purse seine vessels fishing for tuna in the eastern tropical Pacific Ocean. As a result of this finding, the ban on importation of yellowfin tuna from El Salvador is rescinded and yellowfin tuna from El Salvador may be imported into the United States.

**DATES:** This notice is effective September 18, 1989 and remains in effect until superseded.

**FOR FURTHER INFORMATION CONTACT:** E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NOAA Fisheries; at (213) 514-6196.

**SUPPLEMENTARY INFORMATION:** On March 7, 1989 (54 FR 9438), NOAA promulgated interim final rule concerning the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States, any nation which has purse seine vessels of greater than 400 tons carrying capacity operating in the ETP must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals (porpoise) in the tuna fishery and a resultant mortality rate or marine mammals which are comparable to that of the United States.

Yellowfin tuna from El Salvador has been banned from importation into the United States since October 10, 1986 because that nation had not provided

information necessary to determine that they had a marine mammal protection program for their tuna fishery that is comparable to that of the United States. This ban was continued under the interim final rule on yellowfin tuna imports published March 7, 1989. Although El Salvador still has not provided the information required from nations which have purse seine vessels of greater than 400 tons carrying capacity fishing for tuna in the ETP, NOAA has determined that the last purse seine vessel of that size under El Salvador's flag in the ETP has been sold and transferred to the flag of Panama. The Republic of Panama currently has a finding of conformance under the U.S. marine mammal protection regulations.

Therefore, El Salvador no longer need meet the requirements for an ETP harvesting nation to have its yellowfin tuna imported into the United States. The ban on importation of yellowfin tuna from El Salvador is rescinded.

Dated: September 12, 1989.

James W. Brennan,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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#### 50 CFR PART 642

[Docket No. 90639-9208]

RIN 0648-AC55

#### Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule to implement Amendment 4 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This rule reallocates Atlantic migratory group Spanish mackerel. The intended effect of this rule is to allocate more equitably Atlantic migratory group Spanish mackerel between recreational and commercial users.

**EFFECTIVE DATE:** October 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mark F. Godcharles, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils

(Councils), and its implementing regulations at 50 CFR part 642, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 4 addresses the present allocation of total allowable catch (TAC) for Atlantic migratory group Spanish mackerel (76 percent commercial and 24 percent recreational) which is a factor contributing to early recreational harvest restrictions (zero bag limits) and adverse socioeconomic impacts. For Atlantic migratory group Spanish mackerel, Amendment 4 addresses this problem by establishing a procedure to change the allocation to 50 percent recreational and 50 percent commercial as the TAC increases.

Discussion of the development of Amendment 4, background regarding the current commercial/recreational allocation of Atlantic migratory group Spanish mackerel, the issues and their impacts, and the rationale for the Councils' preferred options in Amendment 4 were included in the proposed rule (54 FR 25593, June 16, 1989) and are not repeated here.

#### Comments and Responses

Seven respondents submitted comments on Amendment 4 and the proposed rule. Five, primarily from the recreational sector, supported the amendment. Those in support included a recreational angler, a charterboat owner, a localized fishing club, a national sport fishing organization, and a federal wildlife agency. The two opposing comments were received from the commercial sector: One state and one national commercial fisheries organization.

Comments objecting to the proposed reallocation of total allowable catch (TAC) between the recreational and commercial fisheries centered on inconsistency with national standards 1, 2, 4, and 5 of the Magnuson Act, and the appropriateness of the present allocation ratio (76 percent commercial/24 percent recreational). Comments and responses concerning the proposed rule are categorized and listed below:

#### National Standard 1

**Comments:** Opponents stated that the proposed rule would neither promote conservation nor achieve optimum yield, in violation of national standard 1. They contended that the proposed reallocation of 90 percent of the increased 1989/90 TAC (1.8 million pounds) to the recreational sector would promote overfishing and be inconsistent with catch limitations required under the rebuilding program. This contention

is based on the excessive recreational catches during the past two fishing years, 1987/88 and 1988/89, which exceeded the allocations by 177 percent (1.30 million pounds) and 202 percent (1.94 million pounds), respectively. Objectors also argued that no evidence suggests that the proposed 50/50 reallocation will achieve optimum yield (OY).

*Response:* NOAA does not agree that the reallocation will promote overfishing, in violation of national standard 1. The key to prevention of overfishing is improved compatibility in state regulations, which NOAA is convinced will occur with this reallocation as indicated by each state representative on the South Atlantic Council. Most of the recreational harvest of the Atlantic group Spanish mackerel is now regulated by state and federal bag limits and most of the harvest is taken in state waters. Georgia is the only southeast state that has not implemented compatible bag limits, but it is proposing to do so by September 1989. Currently, only South Carolina reduces to zero its bag limit when the recreational allocation for Atlantic group Spanish mackerel is reached and the federal bag limit is reduced to zero. More significantly, after implementation of Amendment 4, NOAA expects that all the southeast states will adopt recreational harvest limitations that are compatible with the federal management regime. Compatible recreational harvest limitations by all the states will significantly reduce recreational allocation overruns and fishing mortality and will accelerate stock improvement. Regarding OY, its definition within the FMP is equivalent to TAC, which NOAA is convinced will be achieved.

#### National Standard 2

*Comments:* Opponents commented that the 50/50 reallocation proposal is based on inadequate scientific data (national standard 2) and that Council's selection of the early 1970s as the appropriate period from which to gauge historical participation in Atlantic group Spanish mackerel fisheries is arbitrary.

*Response:* NOAA agrees that recreational catch data prior to 1979 are limited and subject to more uncertainty than estimates of recent catches. However, increased commercial landings of Spanish mackerel during the late 1970s and early 1980s may have suppressed recreational catches estimated from 1979-85, the period from which the current 76/24 allocation ratio is based. Accordingly, based on the above occurrences, the greater recreational participation suggested by

pre-1979 angling estimates, and testimony by state fishery managers, the Councils firmly believe that landings during the early 1970s best represent historical participation in this fishery. In addition, a 50/50 commercial/recreational allocation ratio may reflect a more representative balance among commercial and recreational fishermen when considering the nearshore availability and ease of access to Spanish mackerel. NOAA believes, therefore, that the proposed reallocation takes the best information available into account, and that the Councils' decision to select the early 1970s as the period to gauge historical participation is reasonable.

#### National Standard 4

*Comments:* Opponents contend that the amendment is inconsistent with national standard 4 in that it is not fair, equitable, or reasonably calculated to promote conservation. They believe the proposed 50/50 reallocation ratio is unfair and inequitable to commercial fishermen, processors, distributors, and consumers because it misrepresents their historical share of the resource and will increase negative economic impacts on the commercial fishery. Moreover, they contend it unfairly provides an excessive share to the recreational sector that, absent effective regulation, has historically exceeded its allocation. Consequently, the revised ratio would not promote conservation, and commercial fishermen who have been impacted severely, socially and economically, by low quotas and closures would not share equitably in increases to stock and TAC.

*Response:* The Councils are best suited to make the initial fairness and equity determinations associated with allocation decisions. Their decision that this measure is fair and equitable is reasonable, and therefore, NOAA concurs with their decision. This amendment pertains almost exclusively to allocation of the Spanish mackerel resource. Considering that the majority of the catch, particularly the recreational component, is taken in state waters, the sole means of promoting conservation is to allocate the resource based on ratios acceptable to the states so as to encourage the implementation of compatible regulations. Unless the states believe in and support the allocation decisions, compatible and effective regulations required to conserve the resource cannot be attained.

#### National Standard 5

*Comments:* One respondent contended that the proposed rule was

inconsistent with national standard 5 but provided insufficient commentary to explain the objection.

*Response:* NOAA does not consider the proposed rule to be inconsistent with national standard 5. The central issue of Amendment 4 is allocation rather than efficiency. The goal of providing low-cost, American seafood products to the consumer does not appear to be jeopardized.

#### E.O. 12291

*Comments:* Opposing comments indicate that the regulatory impact review (RIR) required by E.O. 12291 does not provide adequate information on the need for and consequences of the proposed action (e.g., short-term and long-term productivity). Moreover, in opposition to the findings of the RIR, the objectors contend that negative impacts resulting from the implementation of Amendment 4 will be significant. This conclusion is based on their belief that negative socioeconomic impacts sustained from the past three years of strict management will continue under the proposed reallocation.

*Response:* NOAA agrees that the economic analyses and assessments within the RIR could benefit from more detailed and in-depth elaboration. Such improvements are curtailed, however, by the limitations of available economic and fisheries data. These deficiencies affect the analyses of impacts on both the commercial and recreational sectors. Nevertheless, the analyses and assessments are based on the best available data.

NOAA finds no basis for disapproval of Amendment 4. Accordingly, the proposed rule is being implemented without change.

#### Classification

The Secretary of Commerce determined that Amendment 4 is necessary for the conservation and management of the coastal migratory pelagic resources and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of

U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a regulatory impact review for Amendment 4. A summary of the economic effects was included in the proposed rule.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The commercial sector will be allocated an amount in excess of their average catch from 1970-74, when the resource was not considered to be overfished. In addition, the current allocation represents a 13 percent increase over the 1986-87 average catch. As a result, a regulatory flexibility analysis was not prepared.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida,

Alabama, Mississippi, and Louisiana. Georgia and Texas do not have approved coastal zone management programs. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. North Carolina, South Carolina, Florida, and Louisiana agreed with the Councils' determination. Alabama and Mississippi did not comment within the statutory time period and, therefore, consistency is automatically implied.

The Councils prepared an environmental assessment (EA) for Amendment 4 and, based on the EA, the Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant adverse impact on the human environment as a result of this rule.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12812.

#### List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 13, 1989.

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 SOUTH ATLANTIC.

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

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

#### § 642.21 [Amended]

2. In § 642.21, in paragraph (c)(2) the number "4.56" is 1.44 revised to read "3.24" and in paragraph (d)(2) the number "1.44" is revised to read "2.76".  
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