

50 CFR Part 642

[Docket No. 930819-3269; ID #081793B]

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

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

ACTION: Final rule.

SUMMARY: NMFS changes the management regime for the Gulf of Mexico migratory group of king mackerel in the eastern zone, in accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Specifically, this rule implements trip limits for Gulf group king mackerel in each of two sub-zones of the eastern zone, the Florida east coast and Florida west coast sub-zones, which have been created by a separate rulemaking. The intended effects of this rule are to reduce daily catches, thus preventing market gluts and extending the season, and to reduce the likelihood of exceeding the king mackerel quotas.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and in the Gulf of Mexico only, bluefish) is managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented through regulations at 50 CFR part 642, under the authority of the

Magnuson Fishery Conservation and Management Act (Magnuson Act).

In accordance with the FMP and its implementing regulations, the Councils recommended and NMFS published a proposed rule containing changes in certain management measures applicable to Gulf group king mackerel in the eastern zone (58 FR 47428, September 9, 1993). That proposed rule (1) described the framework procedures of the FMP through which the Councils recommended the changes; (2) specified the recommended changes; and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here.

Comments and Responses

Five responses from participants in the commercial fishery were received during the comment period. A minority report signed by three members of the Gulf of Mexico Fishery Management Council also was received. Three commercial fishermen opposed the unlimited harvest season proposed for the Florida west coast fishery. A fourth commentator and the minority report expressed opposition to the trip limits proposed for the Florida east coast. In contrast, the fifth respondent supported the east coast trip limit proposal as a well-reasoned, fair approach that would benefit both the fishing industry and the resource. Specific comments and responses, by category, are as follows.

Florida West Coast Sub-Zone Trip Limits

Comment: Three commercial hook-and-line fishermen from southwest Florida opposed taking the first 75 percent of the west coast sub-zone quota without daily harvest constraints. They contended that unrestrained harvest under the unlimited daily vessel possession/landing limits would trigger derby fishing thereby conferring unfair harvest advantage on a small number of gillnet fishermen who have demonstrated capacity to take most, if not all, of the quota within a few days. They believe that the resultant rapid harvest and abbreviated season will penalize all fishermen, in varying degrees, by glutting the market with a low quality product that will decrease both exvessel prices and profits. They fear that catches under the short unlimited harvest season and the final 25 percent of the quota reserved for the season-ending 50-fish trip limit may be insufficient to meet expenses, thus causing socioeconomic hardships. To avoid such potential socioeconomic problems, they recommend prohibition of net gear from the fishery or, if that is not feasible, the establishment of

separate and equitable quotas for the two permitted gear types, hook and line and run-around gillnets.

Response: The Councils and NMFS believe that the trip limits recommended for the west coast sub-zone, although not ideally suited to all participants, represent a reasonable compromise to manage the fishery during the 1993/94 fishing year. Failing to determine a specific trip limit amount (pounds or numbers of fish) that would satisfy and meet the specific operational requirements of both hook-and-line and gillnet fishermen, the Councils decided that an unlimited harvest season was the most viable alternative, given the time available to develop, review, and implement a program for this fishing year. The Councils had only a limited amount of time to prepare a program that would avoid the socioeconomic problems experienced during the previous fishing year.

The Councils believe that the unlimited harvest period will afford vessel operators the opportunity to equitably compete for the available quota while independently determining the optimum amount to harvest each trip. Operators will have leeway to determine their optimal catch per trip depending on hold capacity, duration of trip, distance to fishing grounds, and encumbered expenses. Also, for certain vessels that have economic dependency on other concurrent seasonal fisheries (e.g., Spanish mackerel, bluefish, spiny lobster, stone crab, etc.), the unlimited daily harvest will promote quick realization of their quota share and transition to the desired coincident fishery. For those fishermen having no such alternatives and desiring a slower king mackerel harvest rate over a more extended fishing period, the Councils recommended a 50-fish daily trip limit for the taking of the last quarter of the quota. This reduced harvest rate also will reduce the risks of overrunning the quota, which would delay achievement of the FMP goal to rebuild the overfished Gulf group king mackerel resource by the 1996/97 fishing year.

NMFS believes that, in recognition of their historical participation in the Florida king mackerel fishery, both hook and line and run-around gillnets are entitled to an equitable share of the quota even under the current overfished status and reduced allocations. Accordingly, for these two permitted gear types, the Councils have developed management measures that will provide fair and equitable harvesting access. Additional measures are being developed under Amendment 7 to manage Florida's commercial fishery for Gulf group king mackerel. Amendment

7 is scheduled for implementation prior to the onset of the 1994/95 season. In addition to various trip limit options and establishment of equal quotas for Florida's east and west coast fisheries, the Councils in Amendment 7 are recommending equal apportionment of the west coast sub-zone quota between hook-and-line and gillnet sectors. Recent and historic lands suggest equal seasonal harvest between the two gear sectors, and many fishery participants, including some of those who commented on this rule, also seem supportive of a 50/50 quota split. Previously, this option was considered but rejected during the development of amendment 5, which was implemented in August 1990.

Florida East Coast Sub-Zone Trip Limits

Comment: The minority report expressed strong opposition to the 50-fish daily vessel trip limit proposed for harvesting the first half of the Florida east coast quota. The three Gulf Council signatories believe that this proposal is inconsistent with national standard 4 because it, along with the 25-fish trip limit proposed for taking the final half of the quota, would unfairly exclude run-around gillnet use in that area, thereby allocating the entire east coast quota to the hook-and-line sector. They further contended that these trip limits, if implemented, will permanently exclude the more efficient gillnets from the fishery even if the overfished Gulf group king mackerel resource improves and the commercial allocation is increased.

Response: In view of the recent landings and the quota history for the past 8 years under the management measures implemented by Amendment 1, NMFS does not concur that the trip limits proposed for the Florida east coast are inconsistent with national standard 4. Run-around gillnet harvest has been non-apparent or insignificant in the east coast fishery for the past 8 years. Since the implementation of regulations under FMP Amendment 1 (August 1985), the determining factors precluding gillnet harvest have been low quotas and closures before February and March when king mackerel previously became vulnerable to gillnet capture. Moreover, this year's east coast sub-zone quota again appears insufficient to support gillnet harvest. Like quotas for the previous 8 years, it is much lower than the unregulated yields of the 1970s and early 1980s that once supported east coast gillnet fishing. Also, no TAC increase was approved for Gulf group king mackerel for the 1993/94 fishing year.

Furthermore, NMFS does not concur that future use of gillnets off the east coast will be denied permanently by implementing this regulatory amendment. Rather, future access will be dependent upon increased quotas related to the recovery of the overfished Gulf group king mackerel resource, management changes affected by stock identification studies, and other pertinent changes approved under annual adjustments (e.g., vessel trip limits, gear restrictions, closed seasons or areas, etc.) and amendment processes. During the interim, no vessel holding a Federal commercial mackerel permit will be excluded from commercially fishing for Gulf group king mackerel under the trip limits and quotas.

Management of king mackerel in the Florida east coast winter mixing area may be changed significantly under future FMP amendments. Stock identification findings to be reported next spring could support a program to apportion winter catches in this area between the Gulf and Atlantic migratory groups of king mackerel based on a scientifically determined mixing ratio. Considering that preliminary analyses suggest the Atlantic group is the predominant group in this area, some gillnet catches in the future may be available under vessel trip limits that may be proposed for this group.

Comment: One Florida east coast hook-and-line fisherman opposed the 50-fish vessel trip limit proposed for taking of the first half of the sub-quota. He contended that the 50-fish daily landing limit is insufficient to support commercial king mackerel fishing off the most northern part (Volusia County) of the Florida east coast sub-zone. If implemented, he believes it will cause economic hardships for fishermen in his area who have unique needs because they are further removed from adjacent offshore fishing grounds than more southern participants. To offset expenses and make a profit under these conditions, he indicated that fishermen must make multiple day trips (usually 2 to 3 days) and capture quantities of king mackerel in excess of 50 fish. He further asserts, that the smaller fish (ca. 6-pound (2.72-kg) average) captured in this area, make profitable trips nonachievable under the daily 50-fish vessel possession/landing limit. Therefore, he argues that an initial vessel landing limit in this area must be greater than 50-fish; however, he would accept the implementation of the 50-fish trip limit after 50 to 75 percent of the quota was taken. In addition, he does not believe that the expected benefit of higher ex-vessel prices will be sustained

throughout the season. He perceives that prices will decline with increasing market competition from the Florida west coast and North Carolina.

Response: NMFS believes that the Council's recommended vessel trip limits for the Florida east coast fishery satisfy the FMP objective of optimizing the social and economic benefits of the coastal migratory pelagic fisheries. Although the Councils initially considered a higher initial trip limit as a concession to more northern fishery participants, they ultimately determined that the 50/25-trip limit regime was the most reasonable option to accommodate the fishing habits and provide the most equitable distribution of the quota among most Florida east coast king mackerel fishermen. Their determination also reflected historical/traditional production and socioeconomic considerations of associated industry and community infrastructure. The Councils, therefore, determined that the foremost objective desired by fishermen, to prolong harvest and optimize exvessel price, was reasonably achievable through the 50/25 trip limit proposal. Many Florida east coast fishermen offered testimony to the Councils supporting the trip limits, even those from the four southernmost counties (Martin, Palm Beach, Broward, and Dade) where about 10 percent of the catch has been taken from 1985-1993.

In making their decision, the Councils also considered the declining king mackerel production off Volusia County taken by a small number of participants, the economic necessity and historical trend for fishermen to follow migrating king mackerel to major east coast production ports, the reported success of the 25-fish trip limit during the February/March 1993 emergency, and the economic importance of supplying Lenten season markets when Florida east coast production is expected to dominate and subsequently command a higher price. The Councils also realized that greater daily production during the early season under a higher trip limit, which may have helped more northern participants, would have speeded quota harvest, accelerated closure, and decreased the opportunity to capture potentially lucrative Lenten markets, thus, diluting the major objective to prolong harvest and increase revenue to fishermen. Finally, the Councils recognize that the trip limits are not permanent and can be changed under the FMP as needed.

Approval of the Framework Measure

The Director, Southeast Region, NMFS, concurs that the Council's recommendations are necessary to

protect the stocks and prevent overfishing and that they are consistent with goals and objectives of the FMP, the Magnuson Act, and other applicable law. Accordingly, the proposed rule, which contained the Councils' recommended changes, is adopted as final.

Emergency Rule

The trip limits of this final rule apply when the eastern zone of Gulf group king mackerel is separated into Florida east coast and Florida west coast sub-zones and separate quotas are established in each. Such sub-zones and quotas have been implemented by an emergency rule (58 FR 51789, October 5, 1993) that is effective through January 3, 1994. It is expected that the effectiveness of the emergency rule will be extended through March 31, 1994.

Classification

The Councils prepared a regulatory impact review on this action, the conclusions of which were summarized in the proposed rule and are not repeated here.

The Councils prepared an initial regulatory flexibility analysis (initial RFA) for this action. The initial RFA has been adopted as final without change. The final RFA concludes that this final rule will have a significant economic impact on a substantial number of small entities, as summarized in the proposed rule.

On November 1, each fishing year, the boundary separating the Gulf and Atlantic migratory groups of king mackerel shifts from the west coast to the east coast of Florida. On November 1, 1993, the Florida east coast sub-zone and quota come into existence via the emergency rule discussed above. To attain the full benefit of the trip limits in this final rule, it is necessary that they become effective at the same time as the east coast sub-zone and quota. Accordingly, the Assistant Administrator finds for good cause under section 553(d)(3) of the Administrative Procedure Act that the effective date of this rule should not be delayed later than November 1, 1993.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 27, 1993.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the 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.*

2. In § 642.7, a new paragraph (u) is added to read as follows:

§ 642.7 Prohibitions.

(u) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.31(a), or transfer at sea such king mackerel, as specified in § 642.31(e).

3. A new § 642.31 is added, to read as follows:

§ 642.31 Commercial trip limits for Gulf group king mackerel in the eastern zone.

The provisions of this section apply when the eastern zone of Gulf group king mackerel is separated into Florida east coast and Florida west coast zones and separate quotas are established in each. See § 642.25(a)(1) for such zones and quotas.

(a) *Trip limits.* (1) *Florida east Coast Zone.* In the Florida east coast zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4.

(i) From November 1, each fishing year, until 50 percent of the zone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day; and

(ii) From the date that 50 percent of the zone's fishing year quota of king

mackerel has been harvested until a closure of the Florida east coast zone has been effected under § 642.26—in amounts not exceeding 25 king mackerel per day.

(2) *Florida west coast zone.* In the Florida west coast zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4.

(i) From July 1, 1993, until 75 percent of the zone's fishing year quota of king mackerel has been harvested—in unlimited amounts of king mackerel; and

(ii) From the date that 75 percent of the zone's fishing year quota of king mackerel has been harvested until a closure of the Florida west coast zone has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

(b) *Notice of trip limit changes.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(1) and (a)(2) when the requisite harvest levels have been reached or are projected to be reached.

(c) *Closures.* A closure of the Florida east coast zone or the Florida west coast zone will be effected as specified in § 642.26(a). During the period of effectiveness of such a closure, the provisions of § 642.26(b) apply.

(d) *Combination of trip limits.* A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a)(1) or (a)(2)(ii) of this section applies may not transfer at sea from one vessel to another a king mackerel—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such king mackerel was taken.

[FR Doc. 93-26855 Filed 10-28-93; 10:38 am]

BILLING CODE 3510-22-M

