
DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 642

[Docket No. 840553-4223; I.D. 050394A]

RIN 0648-AE98

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 issues this final rule to implement Amendment 7 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Amendment 7 divides the eastern zone commercial quota for the Gulf migratory group of king mackerel into equal quotas for the Florida east and west coast fisheries, further divides the quota for the west coast sub-zone into equal quotas for hook-and-line and run-around gillnet harvesters, and allows persons to fish under the gillnet quota in the west coast sub-zone only aboard vessels that have endorsements on their Federal commercial mackerel permits to fish with gillnets in that sub-zone. The intended effect of this rule is to allocate equitably the eastern zone commercial quota among users and avoid the negative social and economic

emergencies related to a recent, disproportionately large, west coast harvest in the commercial fishery for Gulf group king mackerel off Florida. This rule also informs the public of the approval by the Office of Management and Budget (OMB) of a collection-of-information requirement contained in this rule and publishes the OMB control number for that collection.

EFFECTIVE DATE: September 23, 1994, except that the amendment to § 204.1(b) is effective August 24, 1994; § 642.4(m) is effective August 24, 1994, except for § 642.4(m)(4), which is effective August 24, 1994, through October 31, 1994; and §§ 642.7(t), (u), and (v) and 642.28(b)(2) are effective November 1, 1994.

ADDRESSES: Requests for copies of the final regulatory flexibility analysis (FRFA) may be sent to: Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-570-5305.

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).

The background and rationale for the measures in Amendment 7 were included in the proposed rule (59 FR 28330, June 1, 1994) and are not repeated here.

Comments and Responses

Four letters were received during the comment period in response to the proposed rule. The Gulf of Mexico Fishery Management Council (Gulf Council) submitted a comment regarding the proposed regulations. Two letters from a commercial fishermen's organization expressed opposition to the 50/50 allocation of the eastern zone commercial quota of Gulf group king mackerel between Florida's east and west coast fisheries. The fourth comment received from the Chief Counsel for Advocacy, Small Business Administration (SBA) indicated that the initial regulatory flexibility analysis (IRFA) prepared for Amendment 7 does not comply with the Regulatory Flexibility Act (RFA) because it failed to contain an examination of other alternatives as required by the RFA.

Specific comments and NMFS responses are listed below.

Comment: The Gulf Council expressed concern that the regulatory language contained in the proposed rule would not effectively prevent gillnet vessels operating in the west coast sub-zone from additionally harvesting Gulf group king mackerel under the hook-and-line quota.

Response: NMFS concurs with this concern and has ensured that the final rule language clearly prohibits gillnet vessels from fishing for Gulf group king mackerel in the west coast sub-zone with gear other than a gillnet. The final rule is intended to prevent gillnet vessels from landing king mackerel under both quotas and to be consistent with the provisions of Amendment 7.

Under the final rule, king mackerel may be possessed or landed from a vessel that uses, or has aboard, a run-around gillnet, only when it possesses a Federal commercial mackerel permit with a gillnet endorsement. King mackerel landed from such a vessel will be counted only against the gillnet quota, while those landed by vessels not having a gillnet endorsement will be counted against the hook-and-line quota. Monitoring of mackerel landings by gear type is feasible and will be utilized during the 1994-95 winter season for this fishery. Accuracy in monitoring catches by gear type of this fishery is expected to be similar to that achieved through other quota monitoring programs.

As in those programs, success in limiting catches to quotas will be highly dependent on the good faith and cooperation of the fishing industry, and the ability of NMFS to close the fishery in a timely manner.

Comment: Two letters received from commercial fishermen objected to the proposed 50/50 split of the eastern zone commercial quota for Gulf group king mackerel between Florida's east and west coast fisheries. They preferred an alternative allocation, considered and rejected by the Council, that would establish a 56/44 west/east coast division of the quota, as depicted in Table 1 of Amendment 7. This allocation occurred during the period from the 1985-86 season through the 1992-93 season under quota management initiated with FMP Amendment 1. These commenters contended that actions taken by the Gulf Council in its decision to support the 50/50 west/east split of the quota were inconsistent with the Magnuson Act. Specifically, they argued that the Council's decision was not based on the best available scientific information and that reasonable opportunity was not

provided for interested parties to review and comment on the new data used by the Council as a basis for its final decision.

Response: NMFS has reviewed the Councils' proposed equal allocation between Florida's east and west coast fisheries and has determined that this allocation is consistent with the national standards and other provisions of the Magnuson Act and other applicable law. NMFS believes that the Councils' decision was based on many factors as discussed in Amendment 7, and that the Councils were not obliged to be guided solely by historical landing percentages for each sub-zone.

Equal (50/50) apportionment of the eastern zone commercial quota for Gulf group king mackerel between Florida's east and west coasts has historical precedents and acceptance. Continuation of the State/Federal management regime for Florida's commercial fishery for Gulf group king mackerel appears to be supported by most affected fishermen from both coasts. Amendment 7's delineation of east and west coast sub-zones and establishment of equal quotas for each area is similar to management provided by Florida regulations during the 1990-91 and 1991-92 seasons, vacated during the 1992-93 fishing year, and resumed for the 1993-94 fishing year under a Federal emergency interim rule (58 FR 51789, October 5, 1993).

Withdrawal of enforcement of Florida regulations during the 1992-93 season in response to a Federal court ruling resulted in disproportionate sharing of the eastern zone commercial quota of Gulf group king mackerel among east and west coast fishermen. To remedy socioeconomic hardships resultant from record low east coast catches, an emergency supplemental allocation of 259,000 lb (117,480 kg) was granted to Florida east coast fishermen (58 FR 10990, February 23, 1993). This final rule implementing Amendment 7 is intended to address permanently the fishery conditions that required previous emergency regulatory action.

NMFS disagrees with the contention that the Councils' decision was not based on the best available information. The Councils considered several apportionment ratios for the east coast-west coast allocation, including the preferred alternative, based on the best scientific information available. The Councils concluded, and NMFS concurs, that the 50/50 apportionment is supported by the best available information. Also, the NMFS Science and Research Director, Southeast Fisheries Science Center, has certified

that the scientific information contained in Amendment 7 is the best available.

NMFS also does not agree that insufficient time was allowed for public review and comment on alleged new data presented to and considered by the Gulf Council at its March 1994 meeting when it voted to support the 50/50 west/east coast allocation.

Representatives of the South Atlantic Council presented landings data to the Gulf Council, although in a different form, that had already been the subject of public review and comment and were part of the public record for a substantial period of time prior to the meeting. The same data presented to and considered by the Gulf Council at its meeting were available previously to the public as monthly landings from the Florida Department of Environmental Protection, NMFS, and the Councils. Reliable landings estimates of the most recent fishing year (1992-93 season) were available to the public by mid-1993, 7 to 8 months before the Gulf Council's March 1994 meeting.

Comment: The SBA commented that the IRFA does not comply with the RFA because it fails to contain an examination of other management alternatives as required by the RFA. Specifically, SBA indicated that the IRFA did not include an examination of alternatives that might further protect and enhance the coastal migratory pelagic fisheries of the Gulf of Mexico without unduly burdening small businesses.

Response: NMFS concurs. Consequently, NMFS has included such analyses in the FRFA.

Changes From the Proposed Rule

In § 642.2, the address in the definition of "Regional Director" is corrected.

In § 642.4(m)(4), the proposed rule specified that initial requests for gillnet endorsements on vessel permits must be postmarked or hand delivered "during the 45-day period commencing on the first day of effectiveness of the final rule implementing this measure." In this final rule, the quoted language is replaced with, "not later than October 31, 1994." Advance notification has been given to the limited number of fishermen affected by this new requirement for gillnet endorsements. Accordingly, NMFS believes that the cutoff date of October 31 provides fishermen with adequate time to submit requests for endorsements.

As discussed above, a measure and related prohibition are added at §§ 642.28(b)(2)(iii) and 642.7(u), respectively, to allow vessels with gillnet endorsements to retain king

mackerel in or from the EEZ in the Florida west coast sub-zone only when harvested with run-around gillnet gear.

Additional Changes Proposed

Under the FMP's framework procedure for adjusting management measures, the Councils have proposed changes in the total allowable catch for the Atlantic groups of king and Spanish mackerel and changes in the commercial trip limits for Gulf group king mackerel in the eastern zone. Preliminary notice of these changes was published on August 9, 1994 (59 FR 40509).

Effective Dates

The gillnet endorsement procedural requirements (§ 642.4(m)) and incorporation of the OMB approval number for the collection-of-information requirement associated with applications for gillnet endorsements in the table of OMB Control Numbers for NOAA Information Collection Requirements (§ 204.1(b)) are made effective immediately in that they are not substantive rules subject to a delay in effective date under section 553(d) of the Administrative Procedure Act.

The provisions for the initial applications for gillnet endorsements, contained in § 642.4(m)(4), are temporary. Therefore, that paragraph is effective only through October 31, 1994.

The provisions of new § 642.28(b)(2), which depend on the presence or absence of a gillnet endorsement on a vessel permit, and the related prohibitions at § 642.7(t), (u), and (v), are not effective until November 1, 1994. This will allow sufficient time for fishermen to submit requests for gillnet endorsements and for NMFS to process and issue them.

Classification

The Regional Director determined that Amendment 7 is necessary for the conservation and management of the fishery for coastal migratory pelagic resources and that it is consistent with the Magnuson Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Councils prepared an IRFA as part of Amendment 7, which concluded that this rule may have a significant economic impact on a substantial number of small entities. In response to a comment from the SBA, NMFS prepared an FRFA that provides additional analysis of the effects of management alternatives on small businesses; the FRFA supports the same conclusions regarding significant

economic impacts as were reached by the IRFA. A copy of the FRFA is available from the Councils (or NMFS) (see ADDRESSES).

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act—specifically, applications for gillnet endorsements on vessel permits. This collection of information has been approved by OMB under OMB control number 0648-0205. The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to Edward E. Burgess, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 18, 1994.

Gary C. Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 204 and 642 are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by adding in numerical order, the entry “§ 642.4(m)”, in the first column and the control number “-0205” in the second column.

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

3. The authority citation for part 642 continues to read as follows:

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

4. In § 642.2, the definition of Regional Director is revised to read as follows:

§ 642.2 Definitions.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702, telephone 813-570-5301; or a designee.

5. In § 642.4, new paragraph (m) is added to read as follows:

§ 642.4 Permits and fees.

(m) *Gillnet endorsement.* (1) For a vessel to use a run-around gillnet for king mackerel in the Florida west coast sub-zone (see § 642.25(a)(1)(i)(B)), a vessel for which a king and Spanish mackerel permit has been issued pursuant to this section must have a gillnet endorsement on such permit and such permit and endorsement must be on board the vessel.

(2) An owner of a permitted vessel may add or delete a gillnet endorsement on a permit by returning to the Regional Director the vessel's existing permit with a written request for addition or deletion of the gillnet endorsement. Such request must be postmarked or hand delivered during June, each year.

(3) A gillnet endorsement may not be added or deleted from July 1 through May 31 each year, any renewal of the permit during that period notwithstanding. From July 1 through May 31, a permitted vessel that is sold, if permitted by the new owner for king and Spanish mackerel, will receive a permit with or without the endorsement as was the case for the vessel under the previous owner. From July 1 through May 31, the initial king and Spanish mackerel permit issued for a vessel new to the fishery will be issued without a gillnet endorsement.

(4) The provisions of paragraphs (m)(2) and (m)(3) of this section notwithstanding, the initial requests for gillnet endorsements must be postmarked or hand delivered not later than October 31, 1994.

6. In § 642.7, paragraph (p) is revised, paragraphs (s) and (u) are removed, paragraph (t) is redesignated as paragraph (x), and new paragraphs (s) through (w) are added to read as follows:

§ 642.7 Prohibitions.

(p) After a closure specified in § 642.26(a), sell, purchase, trade, or barter, or attempt to sell, purchase,

trade, or barter a king or Spanish mackerel of the closed species/migratory group/zone/sub-zone/gear type, as specified in §§ 642.22(c), 642.24(a)(4), and 642.26(b)(3).

(s) 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 § 642.28(a) or § 642.28(b)(1)(ii), or transfer at sea such king mackerel, as specified in § 642.28(e).

(t) In the Florida west coast sub-zone, possess or land Gulf group king mackerel in or from the EEZ aboard a vessel that uses or has aboard a run-around gillnet on a trip when such vessel does not have on board a commercial permit for king and Spanish mackerel with a gillnet endorsement, as specified in § 642.28(b)(2)(i).

(u) In the Florida west coast sub-zone, aboard a vessel for which a commercial permit for king and Spanish mackerel with a gillnet endorsement has been issued, retain Gulf group king mackerel in or from the EEZ harvested with gear other than run-around gillnet, as specified in § 642.28(b)(2)(iii).

(v) In the Florida west coast sub-zone, transfer at sea Gulf group king mackerel taken by a vessel for which a commercial permit for king and Spanish mackerel with a gillnet endorsement has been issued, as specified in § 642.28(e).

(w) Violates any prohibitions or restrictions for the prevention of gear conflicts that may be specified in accordance with § 642.29.

7. In § 642.25, paragraph (c) is removed and paragraphs (a)(1) introductory text and (a)(1)(i) are revised to read as follows:

§ 642.25 Commercial allocations and quotas.

(a) * * *

(1) The commercial allocation for the Gulf migratory group of king mackerel is 2.50 million pounds (1.13 million kg) per fishing year. The Gulf migratory group is divided into eastern and western zones separated by a line extending directly south from the Alabama/Florida boundary (87°31'06" W. long.) to the outer limit of the EEZ. Quotas for the eastern and western zones are as follows:

(i) 1.73 million pounds (0.78 million kg) for the eastern zone, which is further divided into quotas as follows:

(A) 865,000 pounds (392,357 kg) for the Florida east coast sub-zone, which is that part of the eastern zone north of a line extending directly east from the

Dade/Monroe County, Florida boundary (25°20.4' N. lat.); and

(B) 865,000 pounds (392,357 kg) for the Florida west coast sub-zone, which is that part of the eastern zone south and west of the Dade/Monroe County, Florida boundary (25°20.4' N. lat.), which is further divided into quotas by gear types as follows:

(1) 432,500 pounds (196,179 kg) for vessels fishing with hook-and-line gear; and

(2) 432,500 pounds (196,179 kg) for vessels fishing with run-around gillnets.

8. Section 642.26 is revised to read as follows:

§ 642.26 Closures.

(a) Notice of closure. The Assistant Administrator, by filing a notice with the Office of the Federal Register, will close the commercial fishery in the EEZ for king mackerel from a particular migratory group, zone, sub-zone, or gear type, and for Spanish mackerel from the Gulf migratory group, when the allocation or quota under § 642.25(a) or § 642.25(b)(1) for that migratory group, zone, sub-zone, or gear type has been reached or is projected to be reached. The commercial fishery for Atlantic group Spanish mackerel is managed under the commercial trip limits specified in § 642.27 in lieu of the closure provisions of this section.

(b) Fishing after a closure. On and after the effective date of a closure invoked under paragraph (a) of this section, for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a):

(1) A person aboard a vessel in the commercial fishery may not fish for king or Spanish mackerel in the EEZ or retain fish in or from the EEZ under a bag limit specified in § 642.24(a)(1) for the closed species, migratory group, zone, sub-zone, or gear type, except as provided for under paragraph (b)(2) of this section.

(2) A person aboard a vessel for which the permit indicates both commercial king and Spanish mackerel and charter vessel for coastal migratory pelagic fish may continue to retain fish under a bag and possession limit specified in § 642.24 (a)(1) and (a)(2) provided the vessel is operating as a charter vessel.

(3) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel of the closed species, migratory group, zone, sub-zone, or gear type is prohibited. This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

§ 642.31 [Removed]

§§ 642.28 through 642.30 [Redesignated as §§ 642.29 through 642.31]

9. Section 642.31 is removed; §§ 642.28 through 642.30 are redesignated as §§ 642.29 through 642.31, respectively; and new § 642.28 is added to read as follows:

§ 642.28 Additional limitations for Gulf group king mackerel in the eastern zone.

(a) Florida east coast sub-zone. In the Florida east coast sub-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:

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

(2) From the date that 50 percent of the sub-zone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast sub-zone has been effected under § 642.26—in amounts not exceeding 25 king mackerel per day.

(b) Florida west coast sub-zone. (1) In the Florida west coast sub-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, 1994, until 75 percent of the sub-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 sub-zone's fishing year quota of king mackerel has been harvested until a closure of the Florida west coast sub-zone has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

(2) In the Florida west coast sub-zone:

(i) King mackerel in or from the EEZ may be possessed aboard or landed from a vessel that uses or has aboard a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement;

(ii) King mackerel from the west coast sub-zone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 642.25(a)(1)(i)(B)(2); and

(iii) Aboard a vessel for which such commercial permit with endorsement has been issued, king mackerel in or from the EEZ harvested with gear other

than run-around gillnet may not be retained.

(c) *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) and (b)(1)(ii) of this section when the requisite harvest levels have been reached or are projected to be reached.

(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) or (b)(1)(ii) of this section or a gear limitation specified in paragraph (b)(2) 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.

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