

agricultural conversion of remaining pockets of wildland habitats by the Bureau of Reclamation. Actions that may affect the Tipton kangaroo rat in these areas may also affect the federally-listed endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and blunt-nosed leopard lizard, which are already protected under the provisions of the Act. No major conflicts are known or expected at this time. The involved Federal agencies already are consulting with the Service, and any additional impacts because of this listing are expected to be minimal.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful

activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

Eisenberg, J.F. 1963. The behavior of heteromyid rodents. Univ. California Publ. Zool. 69:1-100.  
 Grinnell, J. 1920. A new kangaroo rat from the San Joaquin Valley, California. J. Mamm. 1:78-179.  
 Grinnell, J. 1921. Revised list of the species in the genus *Dipodomys*. J. Mamm. 2:94-97.  
 Merriam, C.H. 1894. Preliminary description of eleven new kangaroo rats in the genera *Dipodomys* and *Perodipus*. Proc. Biol. Soc. Washington 9:109-116.  
 Williams, D.F. 1985. A review of the population status of the Tipton kangaroo rat, *Dipodomys nitratoides nitratoides*. Final report prepared for the U.S. Fish and Wildlife Service, Sacramento Endangered Species Office.  
 Williams, D.F. 1986. Mammalian species of special concern in California. Report prepared for the California Dept. of Fish and Game, Nongame Wildlife Investigation. Report No. 86-1.

**Author**

The primary author of this final rule is Mr. Ted Rado, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 2800 Cottage Way, Room E-1823, Sacramento, California 95825 (916/978-4866 or FTS 460-4866).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulation Promulgation**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under **MAMMALS**, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

(h) . . . . .

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
<b>MAMMALS:</b>							
Rat, Tipton, kangaroo	<i>Dipodomys nitratoides nitratoides</i>	U.S.A. (CA)	Entire	E	312	NA	NA

Dated: June 27, 1988.  
 Susan Recca,  
 Acting Assistant Secretary for Fish and Wildlife and Parks.  
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 BILLING CODE 4310-55-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 642**

[Docket No. 80621-8131]

**Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Fishery Conservation and Management**

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

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Commerce (Secretary) issues a notice of changes in the total allowable catch (TAC), allocations, and quotas for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel and in the bag limits for the Atlantic group of king mackerel and the Gulf group of Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice (1) for the Gulf migratory group of

king mackerel, increases TAC, allocations, and quotas; (2) for the Gulf migratory group of Spanish mackerel, increases TAC, allocations, and bag limits; (3) for the Atlantic migratory group of king mackerel, reduces TAC and allocations and reduces the bag limit applicable to the southern area (the exclusive economic zone (EEZ) off Florida); and (4) for the Atlantic migratory group of Spanish mackerel, increases TAC and allocations. The intended effects are to protect the mackerels while still allowing catch by the important recreational and commercial fisheries that are dependent on these species.

**EFFECTIVE DATE:** July 1, 1988.

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

**SUPPLEMENTARY INFORMATION:** The mackerel fisheries are regulated under the FMP, which was prepared and amended jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642.

In accordance with the FMP and its implementing regulations, the Councils recommended and NOAA published a preliminary notice of changes in TACs, allocations, quotas, and bag limits for king and Spanish mackerel (53 FR 22036, June 13, 1988). 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

Four letters commenting on the proposed adjustments were received during the public comment period.

Ten Florida east coast charterboat owner/operators from Port Canaveral expressed support for bag limits as a means to preserve mackerel fisheries. However, they recommended elimination of the recreational allocation as a means of regulating the fishery because they question the credibility of the statistical data used to monitor the recreational catch and determine when the quota has been reached. Furthermore, they wish to

avoid the king mackerel recreational harvest prohibition experienced during the 1987/88 fishing year for the Gulf group, which they contend "devastated" the charterboat industry. As an alternative, they would prefer that bag limits be set, either on a per angler or per boat basis, at a level that would support an uninterrupted year-round fishery.

NOAA agrees that bag limits should ideally maintain harvest throughout the fishing year; during the annual pre-season adjustment process the Councils are provided analyses to achieve this. In recent years this goal has been difficult to accomplish because most mackerel groups were considered overfished and are now in the early stages of long-term rebuilding programs. Fishing mortality must be decreased by reducing allocations in order to rebuild the spawning stock biomass.

The Councils may recommend bag limits be adjusted downward to maintain recreational catches within allocations. In consideration of industry recommendations, however, the bag limit has usually been lowered only to a level that would not discourage potential customers and adversely impact charterboat businesses. In some cases, these considerations have prevented the Councils from lowering bag limits to levels that would sustain harvest throughout the fishing year.

As outlined in the FMP, the conditions of the stocks are annually evaluated by the Stock Assessment Panel. The panel provides to the Councils a range of acceptable biological catch (ABC) for each mackerel group. The Councils then propose a TAC for each group, within the range of the ABC for that group, to avoid overfishing. Once TACs are set, recreational and commercial allocations automatically follow from fixed percentages established in Amendment 1 to the FMP. ABCs, TACs, allocations, and quotas are measured in pounds. Accordingly, monitoring of recreational and commercial allocations/quotas is accomplished by systematically determining the poundage of fish caught both in State and Federal (EEZ) waters. When allocations and quotas are reached or projected to be reached, the Secretary publishes in the Federal Register a notice to close the commercial fishery or, after consulting with the Councils, to reduce the bag limit to zero for the recreational fishery when that group is overfished. Under this management system, both recreational and commercial fisheries

are treated equitably and both share in the responsibility to restrict fishing mortality to levels that reduce the risks of overfishing and promote stock rebuilding. Consequently, NOAA cannot effectively or equitably manage recreational fisheries solely by bag limits when stocks are depleted.

Two respondents opposed the two-fish bag limit for Atlantic group king mackerel in the southern area. One offered no basis for his objection. A southeast Florida recreational fishing club, representing 575 members, strongly opposed the reduction in bag limit from three to two fish per person per trip because they felt Florida anglers are unfairly bearing the burden to reduce the catch while a driftnet fishery for king mackerel in the same area continues to expand.

NOAA supports the bag limit reduction for Atlantic group king mackerel. The reduction was recommended by a Florida Council member to achieve compatibility with Florida's Statewide, two-fish bag limit for king mackerel. The Councils subsequently adopted this measure to promote effective law enforcement and to accommodate a lowered TAC by reducing fishing pressure in the southern area, where king mackerel are considered to be available throughout more of the year, occur closer to shore, and are more accessible to a greater number of fishermen than in the northern area. Commercial and recreational allocations are based on fixed percentages and are monitored separately. Drift gillnet gear competition within the commercial sector does not affect the recreational allocation.

The club also opposed the four-fish bag limit for Atlantic group Spanish mackerel in the southern area while anglers in the northern area (EEZ off Georgia, South Carolina and North Carolina) enjoy a ten-fish bag limit.

NOAA continues its support for the ten-fish/four-fish bag limit for Atlantic group Spanish mackerel for the same reasons as stated in last year's final notice (52 FR 25012; July 2, 1987). Briefly, the ten-fish bag limit in the northern area apports more of the Spanish mackerel resource to an area where they are seasonally less available and more widely dispersed. In the southern area of Florida, the lower four-fish bag limit was prescribed to proportionately reduce fishing pressure in this region where Spanish mackerel are present year-round and are more accessible to a

greater number of fishermen. NOAA finds these Council decisions consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act).

A minority report on the proposed Spanish mackerel differential bag limit of ten fish in the western Gulf and four fish in the eastern Gulf was submitted by ten members of the Councils. The report challenged the basis for the ten/four bag limit and its potential effects on the magnitude and the temporal and spatial distribution of the harvest. The report further contended that the differential bag limit violates national standards 3 and 4 of the Magnuson Act.

NOAA disagrees on all counts. Available data indicate that Spanish mackerel are less accessible in the western Gulf off Alabama, Mississippi, Louisiana, and Texas, and that during the past 3 fishing years most of the recreational catch occurred in the eastern Gulf off Florida. According to NMFS data, most Spanish mackerel caught off the two highest-producing western Gulf states (Mississippi and Alabama) were taken in the EEZ. Consequently, Council members supported the ten/four bag limit to more equitably apportion the recreational allocation among the States. Further, NMFS data presented at the April 1988 joint Council meeting indicated that little change in harvest was expected under the ten/four bag limit and Councils discussed its possible effect on the duration of the recreational fishing year. In the western area, NMFS projected no reduction in catch under a ten-fish bag limit for Alabama and Mississippi. In the eastern area, an 8 percent decrease in catch is expected, assuming 100 percent angler compliance with the present Florida four-fish bag limit. In addition, one Council member suggested that a full year of fishing may be completed because the TAC proposed for 1988/89 has been doubled. Last year, under a 1.08 million-pound recreational allocation, the bag limit reverted to zero on December 16, 5 1/2 months into the season. If recreational catch characteristics for this year are similar to those experienced last year, NMFS expects the recreational harvest to continue into May or June 1989 under the 2.15 million-pound allocation.

NOAA believes that Gulf group Spanish mackerel are being managed as a unit stock in conformance with national standard 3. Unit stock management objectives are set forth in the FMP and are carried out through the annual stock assessment, pre-season adjustments, and monitoring of harvest to ascertain when allocations/quotas

have been reached and closures should be effected. Throughout this process and throughout the defined geographic boundaries, each Spanish mackerel migratory group (Atlantic and Gulf) is treated as a separate unit. Within each management unit, fish in State or Federal waters are undifferentiated. According to the FMP, the management unit shall include the EEZ, the territorial sea, and internal waters of the various States when considering and determining maximum sustainable yield, optimum yield, and TAC for each unit stock.

Councils have previously subdivided management areas to administer different regulations on a geographical basis while still maintaining the national standards set forth in the Magnuson Act. Such regulations are usually designed to mitigate disproportionate resource usages resulting from variable migration patterns, seasonal availability, distance from shore (principally EEZ), and scattered distributions. The regulations also follow Councils' desire to foster State/Federal compatibility for more effective law enforcement. Although the secondary objective may be to more equitably distribute the resource on a geographical basis, the Councils' overriding goal is to manage each stock as a unit. Examples of regional management regulations currently in place or proposed follow: three are from the FMP:

- (1) A ten/four bag limit for Atlantic group Spanish mackerel implemented for the 1987/88 fishing year is again proposed for the 1988/89 fishing year.
- (2) The commercial allocation for Gulf group king mackerel is divided into eastern and western zones to protect the resource and to provide for a commercial catch in each of these two areas.
- (3) A three/two bag limit for Atlantic group king mackerel was adopted for the 1988/89 fishing year.
- (4) Amendment 1 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico established primary and secondary management areas in the Gulf of Mexico.
- (5) Regulations governing the ocean salmon fishery off Washington, Oregon, and California establish a number of management areas subject to differing measures.

Finally, NOAA does not agree that the ten/four bag limit violates national standard 4. Rather NOAA believes that this measure will promote fairness and equitability. National standard 4 should be satisfied in that the necessary allocation and assignment of fishing

privileges among various U.S. fishermen is carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

According to NMFS catch and effort data, during the past 3 fishing years approximately 45 to 66 percent of the effort was in the Gulf eastern area and produced 66 to 88 percent of the recreational catch of Spanish mackerel in the Gulf of Mexico. The Councils considered this catch distribution unfair and proposed differential bag limits for eastern and western areas to redistribute the catch more evenly across the Gulf in both space and time. Differential bag limits are proposed on a regional, and not on a per State, basis.

In summary, the most recently compiled data support the Council's proposed ten/four bag limit. Allocation adjustments and processes are the major responsibility of the Councils. Their decision to more fairly distribute the recreational catch on a regional basis was based on the best available scientific information. NOAA's review of relevant discussions and considerations by the Councils indicates that the actions recommended are in compliance with the Magnuson Act.

**Other Matters**

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.

Dated: July 5, 1988.

James W. Brennan,

Assistant Administrator, for Fisheries, National Marine Fisheries Service.

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

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

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, the numbers are revised in the following places to read as follows:

Paragraph	Re- moved	Added
(a)(1), introductory text .....	0.7	1.09
(a)(1)(i) .....	0.48	0.75
(a)(1)(ii) .....	0.22	0.34
(a)(2), First sentence .....	3.59	2.60
(b)(1) .....	1.5	2.31
(b)(2) .....	6.09	4.40
(c)(1) .....	1.42	2.85

Paragraph	Re- moved	Added
(c)(2)	2.36	3.04
(d)(1)	1.06	2.16
(d)(2)	0.74	0.96

3. In § 642.28, paragraphs (a)(2) and (3) are revised, paragraph (a)(4)(iii) is removed, and a new paragraph (a)(5) is added to read as follows:

**§ 642.28 Bag and possession limits.**

(a) \* \* \*

(2) *King mackerel Atlantic migratory group.* (i) Possessing two king mackerel

per person per trip from the southern area.

(ii) Possessing three king mackerel per person per trip from the northern area.

(3) *Spanish mackerel Gulf migratory group.* (i) Possessing four Spanish mackerel per person per trip from the eastern area.

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

(5) *Areas.* (f) For the purposes of paragraphs (a)(2) and (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.

(ii) For the purposes of paragraph (a)(3) of this section, the boundary between the eastern and western areas (identical to the eastern and western zones in the commercial fishery) is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ.