

allocated a quota of 299,551 lb (135,874 kg), and New York was allocated a quota of 1,123,374 lb (509,554 kg).

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director), to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1), in the evaluation of requests for quota transfers or combinations.

Maryland has agreed to transfer 50,000 lb (22,680 kg) of commercial quota to New York. The Regional Director has determined that the criteria set forth in § 625.20(f)(1) have been met, and publishes this notification of quota transfers. The revised quotas for the calendar year 1995 are: Maryland, 249,551 lb (113,194 kg); and New York, 1,173,374 lb (532,233 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216-6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

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

Dated: November 13, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-28415 Filed 11-13-95; 4:50 pm]

BILLING CODE 3510-22-F

50 CFR Part 625

[Docket No. 950206038; I.D. 110395A]

Summer Flounder Fishery; Commercial Quota Transfer from North Carolina to Virginia

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

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 50,658 lb (22,978 kg) of commercial summer flounder quota to the Commonwealth of Virginia. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Lucy Helvenston, 508-281-9347.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 625.20.

The commercial quota for summer flounder for the 1995 calendar year was set equal to 14,690,407 lb (6,663,456 kg), and the allocations to each state were published February 16, 1995 (60 FR 8958). At that time, North Carolina was allocated a quota of 4,031,905 lb (1,828,841 kg), and Virginia was allocated a quota of 3,131,519 lb (1,420,433 kg). A transfer of commercial summer flounder quota of 7,229 lb (3,279 kg) between North Carolina and New Jersey reduced the summer flounder quota for North Carolina to 4,024,676 lb (1,825,562 kg) which was published August 30, 1995 (60 FR 45107).

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director), to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1), in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 50,658 lb (22,978 kg) of commercial

quota to Virginia. The Regional Director has determined that the criteria set forth in § 625.20(f)(1) have been met. The revised quotas for the calendar year 1995 are: North Carolina, 3,974,018 lb (1,802,584 kg); and Virginia, 3,182,177 lb (1,443,411 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216-6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

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

Dated: November 13, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-28414 Filed 11-13-95; 4:50 pm]

BILLING CODE 3510-22-F

50 CFR Part 642

[Docket No. 950725189-5260-02; I.D. 062795A]

RIN 0648-XX24

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Changes in Catch Limits

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

ACTION: Final rule.

SUMMARY: NMFS announces changes in the management measures applicable to the Atlantic migratory groups of king and Spanish mackerel and the Gulf

group of king mackerel, in accordance with the framework procedure for adjusting management measures for the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This rule decreases the total allowable catch (TAC), commercial allocation, and recreational bag limit for Atlantic group king mackerel; increases the TAC and commercial allocation for Atlantic group Spanish mackerel; and changes the commercial vessel trip limits for Gulf group king mackerel. The intended effect is to protect king and Spanish mackerel from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on king and Spanish mackerel.

EFFECTIVE DATE: December 18, 1995, except for § 642.28(b)(2) which is effective November 22, 1995.

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

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642.

In accordance with the framework procedure of the FMP, the Councils recommended, and NMFS published, a proposed rule to change certain management measures applicable to the Atlantic migratory groups of king and Spanish mackerel and the Gulf group of king mackerel (60 FR 39698, August 3, 1995). That proposed rule described the FMP framework procedures through which the Councils recommended the specific changes, and described the need and rationale for them. Those descriptions are not repeated here.

The final rule adopts the proposed decrease in the TAC for Atlantic group king mackerel and the proposed increase in the TAC for Atlantic group Spanish mackerel. Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of the TAC. The TACs and their allocations for the fishing year that commenced April 1, 1995, under the established percentages are as follows:

Species	m. lb	m. kg
Atlantic Spanish Mackerel—TAC	9.40	4.26
Recreational allocation (50%)	4.70	2.13

Species	m. lb	m. kg
Commercial allocation (50%)	4.70	2.13
Atlantic King Mackerel—TAC	7.30	3.31
Recreational allocation (62.9%)	4.60	2.09
Commercial allocation (37.1%)	2.70	1.22

Comments and Responses

Five letters were received during the comment period. One from the South Atlantic Fishery Management Council (South Atlantic Council) supported the actions proposed for the Atlantic groups of king and Spanish mackerel and requested full approval and expedient implementation. The other four—from a U.S. Congressman, a fisherman, a commercial fishermen’s organization, and a seafood association—opposed the commercial trip limits proposed for the Atlantic group king mackerel, contending that the proposals would negatively impact Florida Keys fishermen and are inconsistent with National Standards 1, 2, 4, 5, and 7 of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as discussed below.

Inadequate information in the South Atlantic Council’s analyses of impacts on the Florida Keys fishery, and the inadequate opportunity for public comment during the Council framework process, preclude NMFS from determining at this time, whether the proposed commercial trip limits for Atlantic group king mackerel are consistent with the national standards. Available information suggests that impacted fishermen were not provided timely notice of the South Atlantic Council’s intent to take final action on the proposed trip limits through the FMP framework process at its April 1995 meeting. Previous notices indicated that the trip limits would be considered in Amendment 8, which is being developed by the South Atlantic Council and the Gulf of Mexico Council (Gulf Council). NMFS believes that if the South Atlantic Council been aware of these deficiencies, it may not have approved the trip limits. For these reasons, NMFS has decided not to implement the proposed trip limits at this time.

National Standard 1 and the FMP

Comment: The commenters state that implementation of the trip limits proposed for Atlantic group king mackerel during the 1995–96 season is unnecessary to reduce harvest and safeguard an overrun of the reduced commercial allocation, 2.70 million lb

(1.22 million kg). They commented that the quota will not be reached anyway, and the trip limits would reduce harvest and preclude the taking of the annual commercial allocation and TAC and, thus, the achievement of optimum yield (OY).

Response: Information now available from fishery reporting specialists and the quota monitoring program indicates that the reduced commercial quota will not be reached and the fishery will not be closed during the 1995–96 fishing year, although that was not clear at the time the South Atlantic Council took action. To date, effort and harvest have not increased significantly off southeast Florida as had been expected by the Council; nevertheless, the likelihood of an increase in effort and harvest by presently unemployed fishermen still exists and corrective action may be needed as early as the 1996–97 fishing year. Currently, only a few new entrants, who were displaced from inshore fisheries that closed July 1, 1995, as a result of Florida’s net ban or from closed northeast U.S. groundfish fisheries, have joined the fishery. Also, this year’s production is paralleling that of the previous year, which totaled about 2.02 million lb (0.92 million kg). Thus, immediate implementation of trip limits appears unnecessary to reduce harvest off south and southeast Florida and prevent overrun of the commercial quota and closure of the commercial fishery before the Carolina fisheries have an opportunity to take their traditional fall/winter catch. Although the latest available information indicates that the approved 1995–96 commercial allocation of 2.70 million lb (1.22 million kg) for the Atlantic group king mackerel probably will not be reached this year that does not preclude future implementation of trip limits as a necessary device to keep landings within the quota and user groups within their allocations.

The FMP specifies that commercial trip limits only may be imposed under framework action when necessary to keep user groups within their allocations. Therefore, NMFS recommends that the Councils consider Amendment 8 as the most expedient vehicle to submit trip limits for review. As in a previous review of these proposed trip limits, NMFS affirms that proposals that potentially reallocate the quota and may affect access for certain fishery participants should be addressed through an FMP amendment. Given the complexity and controversial aspects of these trip limit proposals, NMFS believes they will be more appropriately reviewed and resolved under Amendment 8. The trip limit proposals

have been retained as a management option in Amendment 8, and the Gulf Council also has recommended a 125-fish trip limit as a management option for the Florida Keys fishery for Atlantic group king mackerel.

National Standard 2

Comment: The commenters also contend that the proposed commercial trip limits are inconsistent with the best available scientific information, which indicates that the stock is not overfished or in need of more conservative management measures to reduce mortality and prevent early closure and overharvest of the commercial allocation. They reference the 1995 stock assessment, which reports that Atlantic group king mackerel are not overfished. That report estimates the spawning potential ratio at 55 percent, well over the present 30 percent overfishing level defined in the FMP and the 20 percent level recently recommended by scientific advisers. Therefore, they argue that the implementation of trip limits is unnecessary to curtail harvest in the Florida Keys, inferring that the 40,000 to 50,000 lb (18,144 to 22,680 kg) of king mackerel generally taken there during the April season insignificantly affect the status of the Atlantic group king mackerel.

Response: For the reasons stated above in the response under National Standard 1, NMFS is unable at this time to determine whether the trip limits are based on the best available scientific information. However, increased effort and harvest in the future, coupled with lower estimates of acceptable biological catch (ABC) and a lower TAC, may necessitate future implementation of trip limits to prevent quota overruns and keep user groups within their allocations.

National Standard 4

Comment: The commenters believe that the proposed trip limits would unfairly and inequitably discriminate against participants in the Florida Keys fishery. A 50-fish trip limit would exclude many participants, and thus reallocate their traditional share of the quota to more northerly participants. This would inflict an unfair economic burden on dependent businesses and communities. Fishermen would not be able to operate in the April fishery near the Dry Tortugas, because 50 king mackerel would provide insufficient revenue to offset expenses and generate an acceptable profit per trip. Traditionally, fishermen in the Florida Keys take 3- to 5-day fishing trips ranging 30 to 85 nautical miles from

their home landing port. The commenters believe that a 3500-lb (1588-kg) trip limit for Florida fishermen north of Brevard County, who take trips of similar distance and duration to harvest the same group of king mackerel, would be discriminatory. The 3500-lb (1588-kg) trip limit would provide an unfair opportunity for northern participants to harvest up to 7 times as many king mackerel per trip as could be harvested off the Florida Keys under a 50-fish trip limit.

Response: NMFS believes that inaccuracies in the analyses considered by the South Atlantic Council raise questions about the rationale for the trip limits. Specifically, it is unclear how the apparent disadvantage to Florida Keys fishermen that would result from a 50-fish trip limit would maximize overall benefits from the fishery as stated in the analyses. NMFS believes the proposed trip limits, including the 3500-lb (1,588 kg) proposal, have the potential to alter harvest geographically, redistribute catch, and reallocate quotas among user groups. Therefore, these proposals should be reanalyzed and reconsidered before submission for review.

National Standard 5

Comment: The commenters contend that the trip limits would not promote efficiency in the utilization of fishery resources for Florida Keys fishermen. The higher costs of production to harvest Atlantic group king mackerel from more distant fishing grounds require harvests greater than 50 fish per trip to operate efficiently and profitably. They note that the 3500-lb (1588-kg) trip limit proposal was offered only to fishermen operating in the Atlantic exclusive economic zone north of Florida's Brevard County, but not to those in the Florida Keys.

Response: In the Florida Keys fishery, a 50-fish trip limit would appear to decrease harvest while increasing the cost of harvest and operations. However, the impact of these localized inefficiencies on attaining OY or maximizing benefits for the overall fishery cannot be accurately determined based on the rationale and inaccurate analyses provided thus far. Therefore, NMFS at this time is unable to determine whether prosecution of the fishery under a 50-fish trip limit would promote wise and efficient use of natural resources in the fishery.

National Standard 7

Comment: The commenters also contend that the proposed trip limits would not minimize costs, place an undue economic and regulatory burden on Florida Keys fishermen, and add

more micromanagement measures to an already highly regulated fishery that is not overfished or able to take its quota or achieve optimum yield. Consequently, the trip limits are inconsistent with a balanced management strategy and National Standard 7.

Response: See response to previous comment under National Standard 5. In addition, NMFS has advised the South Atlantic Council to reanalyze available information and consider resubmitting the proposed trip limits with supporting rationale specifically addressing the balance of costs and benefits, as part of Amendment 8.

Other Concerns

Comment: Three respondents opposed the 27 percent reduction in the TAC proposed for the Atlantic group king mackerel because of their belief that the reduction is not supported by the best available scientific information (i.e., 1995 Report of the Mackerel Stock Assessment Panel), which indicates that the group is not overfished; its spawning potential ratio is estimated well above the FMP-defined 30 percent overfishing level.

Response: The South Atlantic Council identified legitimate concerns in proposing a TAC at the lower limit of the ABC range, 7.3–15.5 million lb (3.3–7.0 million kg), calculated by the Stock Assessment Panel. The reduced TAC of 7.3 million lb (3.3 million kg) represents a conservative risk-averse strategy that reflects the South Atlantic Council's concern that next year's ABC estimate will be lower; calculation of the 1996 ABC estimate will include a more accurate estimate of juvenile mortality taken as bycatch in the south Atlantic shrimp fishery. The reduced TAC reflects concern for the resource, but still provides an ample harvest level that has been reached or exceeded only four times in the past nine years under FMP quota management. Accordingly, NMFS adopts the revised TAC of 7.30 million lb (3.31 million kg).

Comment: One respondent opposed the commercial trip limits proposed for the Gulf group king mackerel in the Florida west coast sub-zone because of a belief that they would discriminate against the more efficient and productive fishermen, would not resolve overcapitalization problems of too many boats chasing a very small quota, and would remain as a lingering feature in an already complex management system in lieu of implementing a permanent comprehensive solution, e.g., limited entry.

Response: The trip limits are intended to maintain traditional harvest in the Florida west coast commercial fishery for Gulf group king mackerel, thereby preventing disproportionate harvest of the quota by certain user groups that could result in a situation similar to that which required emergency remedial action during the 1994-95 fishing year. From February 1-21, 1995, the hook-and-line fishery in the Florida west coast sub-zone was reopened under a 300,000-lb (136,078-kg) emergency supplement. The fishery was reopened because northwest Florida fishermen harvested most of the quota before king mackerel migrated to traditional winter fishing grounds off the Florida Keys, where historically most of the quota had been taken. Accordingly, the final rule implements the trip limits.

Partial Approval/Deferral

Based on the most recent stock assessment and quota monitoring information, and on comments received during the public comment period, the 1995-96 preseason adjustments have been partially approved. At this time, NMFS is implementing all of the proposed changes except for the trip limits proposed for the commercial fishery for Atlantic group king mackerel. Implementation of those trip limits is being deferred due to inadequate and inaccurate analyses of their impacts on Florida Keys fishermen, insufficient justification for the proposed limits, and possible inconsistencies with the Magnuson Act and the FMP annual framework adjustment process as discussed above. Implementation of the proposed trip limits will be reconsidered if they are resubmitted with adequate and accurate analyses as a part of Amendment 8.

Changes From the Proposed Rule

For the reasons set forth above, the final rule does not implement commercial trip limits for Atlantic group king mackerel. Likewise, the final rule does not include the proposed prohibitions in § 642.27 corresponding to those trip limits. In addition, the final rule corrects an erroneous reference in § 642.7(t).

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on

a substantial number of small entities. The reasons were published in the preamble to the proposed rule (60 FR 39698, August 3, 1995). As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA, finds that good cause exists, under 5 U.S.C. 553(d)(3), to establish an effective date of less than 30 days after the date of publication for the trip limits for commercial hook-and-line vessels that harvest Gulf group king mackerel in the Florida west coast sub-zone. To avoid early closure of the fishery and disproportionate harvest of the quota by certain user groups, these trip limits are effective 5 days after the date of publication.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 9, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out 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, paragraphs (s), (t), and (u) are revised to read as follows:

§ 642.7 Prohibitions.

* * * * *

(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), (b)(1), or (b)(2), 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 on board 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)(1)(ii)(A).

(u) In the Florida west coast sub-zone, on board 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)(1)(ii)(C).

* * * * *

3. In § 642.24, paragraph (a)(1)(ii)(A) is revised to read as follows:

§ 642.24 Bag and possession limits.

(a) * * *

(1) * * *

(ii) * * *

(A) *Northern area*—five per person through December 31, 1995; three per person thereafter.

* * * * *

§ 642.25 [Amended]

4. In § 642.25, in paragraph (a)(2), the numbers “3.71” and “1.68” are revised to read “2.70” and “1.22”, respectively, and in paragraph (b)(2), the numbers “4.60” and “2.09” are revised to read “4.70” and “2.13”, respectively.

§ 642.27 [Amended]

5. In § 642.27(b), the numbers “4.35” and “1.97” are revised to read “4.45” and “2.02”, respectively.

6. In § 642.28, a sentence is added at the end of paragraph (a)(2); in paragraph (c), the phrase “the trip limit change specified in paragraph (a) of this section” is revised to read “the trip limit changes specified in paragraphs (a) and (b) (2) of this section”; and paragraph (b)(1), and paragraph (e) introductory text, are revised effective December 18, 1995, set forth below. Paragraph (b)(2) of § 642.28 is revised effective November 22, 1995, to read as follows:

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

(a) * * *

(2) * * * However, if 75 percent of the sub-zone’s quota has not been harvested by March 1, the vessel limit remains at 50 king mackerel per day until the sub-zone’s quota is filled or until March 31, whichever occurs first.

(b) *Florida west coast sub-zone. (1) Gillnet gear.* (i) In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a permit with a gillnet endorsement has been issued under § 642.4, from July 1, each fishing year, until a closure of the Florida west coast sub-zone’s commercial fishery for vessels fishing with run-around gillnets has been effected under § 642.26—in amounts not exceeding 25,000 lb (11,340 kg) per day.

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

(A) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board 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;

(B) 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

(C) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which such commercial permit with endorsement has been issued.

(2) *Hook-and-line gear.* In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel permitted

under § 642.4(a)(1) and operating under the commercial hook-and-line gear quota in § 642.25(a)(1)(i)(B)(1):

(i) From July 1, each fishing year, until 75 percent of the sub-zone's hook-and-line gear quota has been harvested—in amounts not exceeding 125 king mackerel per day; and

(ii) From the date that 75 percent of the sub-zone's hook-and-line gear quota has been harvested until a closure of the west coast sub-zone's hook-and-line fishery has been effected under

§ 642.26—in amounts not exceeding 50 king mackerel per day.

* * * * *

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

* * * * *

[FR Doc. 95-28348 Filed 11-16-95; 8:45 am]

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