

persons, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

#### Appendix A to Part 234—[Amended]

60. Footnote 1 to appendix A of part 234 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### PART 236—[AMENDED]

61. The authority citation for part 236 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

#### § 236.0 [Amended]

62. Section 236.0(f) is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### Appendix A to Part 236—[Amended]

63. Footnote 1 to appendix A of part 236 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### PART 240—[AMENDED]

64. The authority citation for part 240 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

#### § 240.11 [Amended]

65. Section 240.11 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the

following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### Appendix A to Part 240—[Amended]

66. Footnote 1 to appendix A of part 240 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

Issued in Washington, D.C. on February 27, 1998.

**Jolene M. Molitoris,**

*Administrator, Federal Railroad Administration.*

[FR Doc. 98-5876 Filed 3-9-98; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Part 377

RIN 2125-AD96

#### Payment of Transportation Charges; Authority Correction

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule; technical correction.

**SUMMARY:** This document makes a technical amendment to the authority statement for the regulation on payment of transportation charges in order to remove the obsolete authority citations provided in the subparts. This correction is necessitated by changes in the statute and the transfer of regulatory functions to the FHWA from the former Interstate Commerce Commission (ICC) as a result of the ICC Termination Act of 1995 (ICCTA). This amendment would remove the outdated ICC authority citations in 49 CFR part 377 of the Code of Federal Regulations.

**DATES:** This final rule is effective March 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael J. Falk, Office of the Chief Counsel, Motor Carrier Law Division,

(202) 366-1384, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** The ICCTA, Pub. L. 104-88, 109 Stat. 803, abolished the ICC and transferred certain functions to the Department of Transportation. On October 21, 1996, the FHWA published a final rule that transferred and redesignated certain motor carrier transportation regulations from 49 CFR chapter X, to the FHWA in 49 CFR chapter III. In part 377, of title 49 CFR, "Payment of Transportation Charges," subparts A and B (formerly parts 1052 and 1320, respectively) included the new statutory authority at the part level, but inadvertently failed to remove the outdated ICC authority citations at the subpart levels.

In consideration of the foregoing, the FHWA removes the former ICC authority at the subpart levels and retains the part level authority statement as set forth below:

#### PART 377—[AMENDED]

The authority citation for 49 CFR part 377 continues to read as follows and the authority citations for subparts A and B are removed:

**Authority:** 49 U.S.C. 13101, 13301, 13701-13702, 13706, 13707, and 14101; 49 CFR 1.48.

Issued: March 3, 1998.

**Frank L. Calhoun,**

*Assistant Chief Counsel, Federal Highway Administration.*

[FR Doc. 98-6111 Filed 3-9-98; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 38

RIN 1018-AE19

#### Supplemental Regulations for Administration of Midway Atoll National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides for the administration of the Midway Islands and Midway Atoll National Wildlife Refuge. Under the provisions of Executive Order 13022 of October 31, 1996, the Midway Islands were transferred from the jurisdiction and control of the Department of the Navy

to the Department of the Interior for administration as a national wildlife refuge by the Service. These regulations supplement existing National Wildlife Refuge System regulations which also apply to Midway Atoll National Wildlife Refuge.

**DATES:** This rule is effective March 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mark Strong, U.S. Fish and Wildlife Service (ARW/OPR), Telephone (503) 231-2075.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior (Secretary) is authorized under the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*) to permit uses of units of the National Wildlife Refuge System (System) which he determines are compatible with the purposes for which the unit was established as a refuge (16 U.S.C. 668dd(d)(1)). Executive Order 13022 of October 31, 1996 (61 FR 56875, November 4, 1996), vests in the Secretary legislative and executive authority necessary for the administration of the Midway Islands as the Midway Atoll National Wildlife Refuge (Refuge).

The purposes of part 38 are to provide supplemental regulations for the administration of the Refuge in addition to those contained in 50 CFR parts 25-32; and to delegate certain powers, duties, and responsibilities to appropriate officers of the Service for the administration of the Refuge.

The Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k); and the National Wildlife Refuge System Administration Act (NWRSA) of 1966, as amended (16 U.S.C. 668dd), govern the administration and use of national wildlife refuges. The Refuge Recreation Act authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established.

The Hawaii Omnibus Act (48 U.S.C. 644a), provides for the civil administration of Midway Island by the agencies and officials authorized by the President. The President has authorized administration of the Midway Atoll National Wildlife Refuge by the Secretary of the Interior through the U.S. Fish and Wildlife Service and delegated to the Secretary executive and legislative authority necessary for such administration. Executive Order 13022 (October 31, 1996). The Act of June 15, 1950, 64 Stat. 217, and 48 U.S.C. 644a

provide, in part, that the District Court for the District of Hawaii has jurisdiction over all civil and criminal cases arising on or within the Midway Islands.

The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105-57) amends and builds upon the NWRSA in a manner that provides an "Organic Act" for the Refuge System similar to those which exist for other public lands. It serves to ensure that the Refuge System is effectively managed as a national system of lands, waters and interests for the protection and conservation of our nation's wildlife resources. The RRA, NWRSA and National Wildlife Refuge System Improvement Act of 1997 (NWRSA) authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses. The NWRSA states first and foremost that the mission of the National Wildlife Refuge System be focused singularly on wildlife conservation—"Wildlife First."

Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and not inconsistent with public safety. Except for timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges, no other determinations or findings are required to be made by the refuge official under this Act or the Refuge Recreation Act for wildlife-dependent recreation to occur. Specifically, section 4(d)(1)(A) of the NWRSA authorizes the Secretary, under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that uses are compatible with the major purpose(s) for which the area was established. The RRA, NWRSA and NWRSA also authorizes the Secretary to issue regulations to carry out the purposes of the Act and regulate uses.

The executive authority at the Midway Islands is vested in the Secretary. The Director of the Service and the Refuge Manager, Midway Atoll National Wildlife Refuge, exercise the Secretary's executive authority with respect to the Refuge.

In the August 27, 1997, issue of the **Federal Register** (62 FR 45381-45384) the Service published a proposed rulemaking and invited public comment on these regulations. The Service received no public comments. The Service has determined that any further delay in implementing these

supplemental regulations for administration of Midway Atoll National Wildlife Refuge would not be in the public interest in that it would hinder law enforcement and the effective planning and administration of the refuge. Therefore, the Service finds good cause to make this rule effective upon publication (5 U.S.C. 553(d)(3)).

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*, 5 CFR Part 1320, Pub. L. 04-13)**

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

**Executive Order 12866**

This rulemaking is not a significant rule subject to Office of Management and Budget review under Executive Order 12866.

**Regulatory Flexibility Act Determination (5 U.S.C. *et seq.*)**

Under the provisions of Executive Order 13022, the Midway Islands were transferred from the jurisdiction and control of the Department of the Navy to the Department of the Interior for administration as a national wildlife refuge by the Service. There are no private businesses owned or organizations found on the Island, other than Service cooperators/contractors brought in to carry out agreed upon functions.

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities such as businesses, organizations and governmental jurisdictions in the area under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

**Federalism Assessment (E.O. 12612)**

This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the Service has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

**Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*, Pub. L. 104-4, E.O. 12875)**

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost

of \$100 million or more in any given year on local or State governments or private entities.

**Takings (Personal Property Rights) Implication Assessment (E.O. 12630)**

The Service has determined that the rule has no potential takings of private property implications as defined by Executive Order 12630.

**Civil Justice Reform (E.O. 12988)**

The Department has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

**National Environmental Policy Act (42 U.S.C. 432 et seq., 40 CFR Part 150, 516 DM)**

In accordance with 516 DM 2, Appendix 1, the Service has determined that this rule is categorically excluded from the National Environmental Policy Act (NEPA) process because it is limited to "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." 516 DM 2, Appendix 1, Sec. 1.10. Also, the Service has determined that this rule will not alter the existing use of Midway Atoll National Wildlife Refuge. The Service exclusion found at 516 DM 6, App. 1.4B(5) is also employed here as this rule is considered "[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures."

**Section 7 Consultation (16 U.S.C. 1531 et seq., 50 CFR Part 402)**

The Service consulted with the National Marine Fisheries Service on May 13, 1996 on general operations of the refuge, and have now reviewed these Supplemental Regulations for the Administration of Midway Atoll National Wildlife Refuge with regards to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543). The Service finds that this action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species. In particular, this action is not likely to adversely affect the Hawaiian monk seals, green sea turtles, or Hawaiian monk seal critical habitat.

**Intergovernmental Review of Federal Programs (E.O. 12372, 43 CFR Part 9, and the Intergovernmental Corporation Act of 1968)**

The Service reviewed this rule under E.O. 12372 and accommodated the

recommendations of state and local governments concerning Federal programs affecting their jurisdictions.

**Primary Author**

The primary author of this rule is Mark Strong, Fish and Wildlife Service, Pacific Region (ARW/OPR).

**List of Subjects in 50 CFR Part 38**

Authority delegations (Government agencies), Law enforcement, Midway Atoll, Penalties, Wildlife, Wildlife refuges.

Accordingly, the Service amends subchapter C of chapter I, title 50 of the Code of Federal Regulations, by adding a new part 38 to read as follows:

**PART 38—MIDWAY ATOLL NATIONAL WILDLIFE REFUGE**

**Subpart A—General**

Sec.

38.1 Applicability.

38.2 Scope.

**Subpart B—Executive Authority; Authorized Powers; Emergency Authority**

38.3 Executive authority; duration.

38.4 Authorized functions, powers, and duties.

38.5 Emergency authority.

**Subpart C—Prohibitions**

38.6 General.

38.7 Adopted offenses.

38.8 Consistency with Federal law.

38.9 Breach of the peace.

38.10 Trespass.

38.11 Prostitution and lewd behavior.

38.12 Alcoholic beverages.

38.13 Speed limits.

38.14 Miscellaneous prohibitions.

38.15 Attempt.

38.16 Penalties.

**Subpart D—Civil Administration**

**§ 38.17 General.**

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k et seq., 664, 668dd, 742(f), 3901 et seq.; 48 U.S.C. 644a; sec. 48, Pub. L. 86-624, 74 Stat 424; E.O. 13022, 61 FR 56875, 3 CFR, 1996 Comp., p. 224.

**Subpart A—General**

**§ 38.1 Applicability.**

(a) The regulations of this part apply to the Midway Atoll National Wildlife Refuge. For the purpose of this part, the Midway Atoll National Wildlife Refuge includes the Midway Islands, Hawaiian Group, between the parallels of 28 deg. 5' and 28 deg. 25' North latitude, and their territorial seas located approximately between the meridians of 177 deg. 10' and 177 deg. 30' West longitude, as were placed under the jurisdiction and control of the Interior Department by the provisions of Executive Order No. 13022 of October 31, 1996 (3 CFR, 1996 Comp., p. 224).

(b) Administration of Midway Atoll National Wildlife Refuge is governed by the regulations of this part and parts 25-32 of title 50, Code of Federal Regulations; the general principles of common law; the provisions of the criminal laws of the United States in their entirety including the provisions of 18 U.S.C. 13 and those provisions that were not specifically applied to unincorporated possessions; the laws applicable under the special maritime jurisdiction contained in 48 U.S.C. 644a; and the provisions of the criminal laws of the State of Hawaii to the extent the criminal laws of the State of Hawaii do not conflict with the criminal laws of the United States.

**§ 38.2 Scope.**

The provisions of this part are in addition to the regulations of 50 CFR parts 25-32 which also apply to Midway Atoll National Wildlife Refuge.

**Subpart B—Executive Authority; Authorized Powers; Emergency Authority**

**§ 38.3 Executive authority; duration.**

The executive authority of the Secretary of the Interior over the Midway Islands will be exercised by the Service Regional Director. The executive authority of the Service Regional Director may be redelegated to the Refuge Manager, Midway Atoll National Wildlife Refuge.

**§ 38.4 Authorized functions, powers, and duties.**

The executive authority of the Regional Director concerning the Midway Islands includes:

(a) Issuance of citations for violations of this part and 50 CFR parts 25-32;

(b) Abatement of any public nuisance upon the failure of the person concerned to comply with a removal notice;

(c) Seizure of evidence;

(d) Investigation of accidents and offenses;

(e) Custody and disposal of lost or abandoned property;

(f) Regulation of aircraft and boat traffic and safety;

(g) Imposition of quarantines;

(h) Evacuation of hazardous areas;

(i) Lawful restraint, detention, confinement, and care of persons prior to their prompt transfer to the custody of the United States District Court for the District of Hawaii;

(j) Lawful removal of person from the Midway Atoll National Wildlife Refuge for cause;

(k) Regulation of vehicle traffic and safety;

(l) Performance of other lawful acts necessary for protecting the health and safety of persons and property on Midway Atoll National Wildlife Refuge; and

(m) Issuance of lawful notices and orders necessary to the exercise of executive authority under this section.

#### § 38.5 Emergency authority.

During the imminence and duration of any emergency, the Regional Director may perform any lawful acts necessary to protect life and property on Midway Atoll National Wildlife Refuge.

#### Subpart C—Prohibitions

##### § 38.6 General.

In addition to any act prohibited by this part or 50 CFR part 27, any act committed on the Midway Atoll National Wildlife Refuge that would be a violation of the criminal laws of the United States or of the State of Hawaii as specified in subpart A of this part, as they now appear or as they may be amended or recodified; or any act committed on the Midway Atoll National Wildlife Refuge that would be criminal if committed on board a merchant vessel or other vessel belonging to the United States pursuant to the provisions of 48 U.S.C. 644a, is prohibited and punishable, in accordance with the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd, the criminal laws of the United States or the State of Hawaii as specified in subpart A of this part, as they now appear or as they may be amended or recodified; or according to the laws applicable on board United States vessels on the high seas pursuant to the provisions of 48 U.S.C. 644a.

##### § 38.7 Adopted offenses.

Any person who commits any act or omission on Midway Atoll National Wildlife Refuge which, although not made punishable by an enactment of Congress, would be punishable if committed within the United States under the United States criminal code at the time of such act or omission, including any provisions of the United States criminal code that are not specifically applied to unincorporated possessions of the United States, will be guilty of a like offense and subject to like punishment. Any person who commits any act or omission on Midway Atoll National Wildlife Refuge which, although not made punishable by an

enactment of Congress, would be punishable if committed within the State of Hawaii by the laws thereof at the time of such act or omission, will be guilty of a like offense and subject to like punishment to the extent the laws of the State of Hawaii do not conflict with the criminal laws of the United States.

##### § 38.8 Consistency with Federal law.

Any provisions of the laws of the State of Hawaii, as they now appear or as they may be amended or recodified, which are adopted by this part will apply only to the extent that they are not in conflict with any applicable Federal law or regulation.

##### § 38.9 Breach of the peace.

No person on Midway Atoll National Wildlife Refuge will:

(a) With intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, engage in fighting, threatening, or other violent or tumultuous behavior; or make unreasonable noise or offensively coarse utterances, gestures, or displays, or address abusive language to any person present; or create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit;

(b) Having no legal privilege to do so, knowingly or recklessly obstruct any roadway, alley, runway, private driveway, or public passage, or interfere with or unreasonably delay any emergency vehicle or equipment or authorized vehicle, boat, vessel, or plane, or any peace officer, fireman, or other public official engaged in or attempting to discharge any lawful duty or office, whether alone or with others. "Obstruction" as used in this paragraph means rendering impassable without unreasonable inconvenience or hazard;

(c) When in a gathering, refuse to obey a reasonable request or order by a peace officer, fireman, or other public official:

(1) To prevent an obstruction of any public road or passage;

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a public hazard; or

(d) With intent to arouse or gratify sexual desire of any other person, expose one's genitals under circumstances in which one's conduct is likely to cause affront or alarm.

##### § 38.10 Trespass.

No person on Midway Atoll National Wildlife Refuge will:

(a) Loiter, prowl, or wander upon or near the assigned living quarters and adjacent property of another without lawful purpose, or, while being upon or

near the assigned living quarters and adjacent property of another, peek in any door or window of an inhabited building or structure located thereon without lawful purpose;

(b) Enter upon any assigned residential quarters or areas immediately adjacent thereto, without permission of the assigned occupant;

(c) Enter or remain in, without lawful purpose, any office building, warehouse, plant, theater, club, school, or other building after normal operating hours for that building; or

(d) Enter or remain in any area or building designated and posted as "restricted" unless authorized by proper authority to be there.

##### § 38.11 Prostitution and lewd behavior.

No person on Midway Atoll National Wildlife Refuge will:

(a) Engage in prostitution. "Prostitution" means the giving or receiving of the body for sexual intercourse for hire; or

(b) Commit any lewd act in a public place which is likely to be observed by others who would be affronted or alarmed.

##### § 38.12 Alcoholic beverages.

No person on Midway Atoll National Wildlife Refuge will:

(a) Sell any alcoholic beverages to any person who, because of age, would be prohibited from purchasing that beverage in a civilian establishment in Hawaii.

(b) Present or have in possession any fraudulent evidence of age for the purpose of obtaining alcoholic beverages in violation of this section.

(c) Be substantially intoxicated on any street, road, beach, theater, club, or other public place from the voluntary use of intoxicating liquor, drugs or other substance. As used in this paragraph, "substantially intoxicated" is defined as an actual impairment of mental or physical capacities.

##### § 38.13 Speed limits.

No person on Midway Atoll National Wildlife Refuge will exceed the speed limit for automobiles, trucks, bicycles, motorcycles, or other vehicles. Unless otherwise posted, the speed limit throughout the Midway Atoll National Wildlife Refuge is 15 miles per hour.

##### § 38.14 Miscellaneous prohibitions.

No person on Midway Atoll National Wildlife Refuge will:

(a) Smoke or ignite any fire in any designated and posted "No Smoking" area, or in the immediate proximity of any aircraft, fueling pit, or hazardous material storage area;

(b) Knowingly report or cause to be reported to any public official, or willfully activate or cause to be activated, any alarm, that an emergency exists, knowing that such report or alarm is false. "Emergency," as used in subpart B of this part, includes any condition which results, or could result, in the response of a public official in an emergency vehicle, or any condition which jeopardizes, or could jeopardize, public lives or safety, or results or could result in the evacuation of an area, building, structure, vehicle, aircraft, or boat or other vessel, or any other place by its occupants; or

(c) Intentionally report to any public official authorized to issue a warrant of arrest or make an arrest, that a crime has been committed, or make any oral or written statement to any of the above officials concerning a crime or alleged crime or other matter, knowing such report or statement to be false.

#### **§ 38.15 Attempt.**

No person on Midway Atoll National Wildlife Refuge will attempt to commit any offense prohibited by this part.

#### **§ 38.16 Penalties.**

Any person who violates any provision of this part will be fined or imprisoned in accordance with 16 U.S.C. 668dd(e) and Title 18, U.S. Code.

### **Subpart D—Civil Administration**

#### **§ 38.17 General.**

Civil administration of Midway Atoll National Wildlife Refuge shall be governed by the provisions of this part, 50 CFR parts 25–32, and the general principles of common law.

Dated: February 9, 1998.

**Donald J. Barry,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 98–5898 Filed 3–9–98; 8:45 am]

BILLING CODE 4310–55–M

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 622**

[Docket No. 980129023–8023–01; I.D. 030498B]

### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

#### **ACTION:** Closure.

**SUMMARY:** NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast subzone. This closure is necessary to protect the overfished Gulf king mackerel resource.

**DATES:** Effective 12:01 a.m., local time, March 5, 1998, through June 30, 1998.

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

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS recently implemented (63 FR 8353, February 19, 1998) a commercial quota for the Gulf of Mexico migratory group of king mackerel in the Florida west coast subzone of 1.17 million lb (0.53 million kg). That quota was further divided into two equal quotas of 585,000 lb (265,352 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(2)). The fishery was opened February 20, 1998 (63 FR 9158, February 24, 1998), to allow harvest of the remaining balance between the newly implemented quota and the former, lower quota of 432,500 lb (196,179 kg).

In accordance with 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached or is projected to be reached by publishing a notification in the **Federal Register**. NMFS has determined that the commercial quota of 585,000 lb (265,352 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the Florida west coast subzone was reached on March 4, 1998. Accordingly, the commercial fishery for king mackerel for such vessels in the Florida west coast subzone is closed effective 12:01 a.m., local time, March 5,

1998, through June 30, 1998, the end of the fishing year.

The Florida west coast subzone extends from 87°31'06" W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1998; and (2) 25°48' N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1998, through October 31, 1998.

NMFS previously determined that the commercial quota for king mackerel for vessels using run-around gillnet gear in the Florida west coast subzone of the eastern zone of the Gulf of Mexico was reached and closed that segment of the fishery on February 24, 1998 (63 FR 10154, March 2, 1998). Thus, with this closure, all commercial fisheries for king mackerel in the Florida west coast subzone are closed through June 30, 1998.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel permitted to fish under a commercial quota may fish for Gulf group king mackerel in the EEZ of the Florida west coast subzone or retain Gulf group king mackerel in or from the EEZ of the closed subzone. A person aboard a vessel for which the permit indicates both commercial king mackerel and charter/headboat for coastal migratory pelagic fish may continue to retain king mackerel under the bag and possession limit set forth in 50 CFR 622.39(c)(1)(ii), provided the vessel is operating as a charter vessel or headboat.

During the closure, king mackerel from the closed subzone taken in the EEZ, including those harvested under the bag limit, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed subzone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

#### **Classification**

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

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

Dated: March 4, 1998.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 98–6133 Filed 3–5–98; 3:11 pm]

BILLING CODE 3510–22–F