

Dated: August 10, 1999.

**Myron O. Knudson,**

*Acting Regional Administrator, Region VI.*

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 171

#### General Information, Regulations, and Definitions

##### *CFR Correction*

In Title 49 of the Code of Federal Regulations, parts 100 to 185, revised as of Oct. 1, 1998, on pages 88, 89, and 91, §§ 171.11 (d)(9)(iii), 171.12 (b)(8)(iii), and 171.12a (b)(5)(iii) are corrected by removing the word "POISON" the first time it appears and adding in its place the words "POISON INHALATION HAZARD".

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 990506120-9220-02; I.D. 032499E]

RIN 0648-AL80

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

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

**ACTION:** Final rule.

**SUMMARY:** In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS implements several management changes. For Atlantic group king mackerel, total allowable catch (TAC) is increased. For Atlantic group Spanish mackerel, TAC is decreased; the allocation of TAC between the commercial and recreational sectors is revised; and an incidental catch allowance for vessels using gillnets with

a mesh size less than 3.5 inches (8.9 cm) is established. For Gulf group king mackerel, a commercial trip limit is established in the western zone, and a 0-fish bag limit is established for captain and crew on for-hire vessels. For both Gulf and Atlantic group king mackerel, the minimum size limit is increased. The intended effects of this rule are to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by commercial and recreational fisheries.

**DATES:** This rule is effective September 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, 727-570-5305.

**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 622.

In accordance with the framework procedures of the FMP, the Councils recommended, and NMFS published, a proposed rule (64 FR 29622, June 2, 1999) to implement the following measures: (1) For Atlantic group king mackerel, increase the commercial quota and the recreational allocation and revise the commercial trip limits off North Carolina and the Mid-Atlantic states; (2) for Atlantic group Spanish mackerel, decrease the commercial quota and recreational allocation; change the commercial/recreational allocation from 50/50 to 55/45; and establish an incidental catch allowance for vessels using gillnets with a mesh size less than 3.5 inches (8.9 cm); (3) for Gulf group king mackerel, establish a commercial trip limit in the western zone and establish a 0-fish bag limit for captain and crew on for-hire vessels; and (4) for both Gulf and Atlantic group king mackerel, increase the minimum size limit. That proposed rule described the need and rationale for these revisions. Those descriptions are not repeated here.

#### Comments and Responses

NMFS received five comments.

**Comment 1:** After reviewing the 1999 Mackerel Stock Assessment Report (MSAP), the South Atlantic Council requested that NMFS not implement the proposed trip limit decrease from 3,500 to 2,000 lb (1588 to 907 kg) for Atlantic group king mackerel for commercial vessels operating north of the North Carolina/South Carolina border and south of the New York/Connecticut border, nor the proposed trip limit

increase from 50 to 75 fish for Gulf group king mackerel in the Florida east coast subzone. The 1999 MSAP indicated that the TAC for Atlantic group king mackerel could be increased. Thus the trip limit reduction for the king mackerel fishery north of the North Carolina/South Carolina border was unnecessary. The Council anticipates that the fishery should be able to continue year-round without a closure with the existing 3,500 lb (1,588 kg) trip limit, thereby increasing the economic benefits of the fishery. The fishery for Gulf group king mackerel in the Florida east coast subzone closed on March 13, 1999, under a 50-fish trip limit. Thus the Council believed that increasing the bag limit would shorten the season further, and lessen the social and economic benefits to the fishery.

**Response:** NMFS considers the Council's comment as a request to withdraw the proposed reduction in the commercial trip limit for Atlantic group king mackerel north of the North Carolina/South Carolina border and the proposed increase in the commercial trip limit for Gulf group king mackerel in the Florida east coast subzone as was described in the proposed rule. NMFS agrees with the Council's rationale for not implementing the subject proposed trip limit changes and has withdrawn them from the final rule. The Atlantic group king mackerel stock is not overfished, and the 1999 MSAP indicates that an increase in TAC for this stock is appropriate; a reduced trip limit for fisheries on Atlantic group king mackerel is no longer necessary to slow the rate of harvest in regard to the annual commercial quota. Furthermore, given that the fishery for the Gulf group king mackerel in the Florida east coast subzone closed during the 1998/1999 fishing year under a 50-fish trip limit, NMFS agrees that increasing the trip limit to 75 fish would result in an even earlier closure thus reducing the social and economic benefits of the fishery. Not implementing these proposed trip limit changes also should avoid confusion in the fishery by maintaining long-standing trip limits, to which the fishermen are accustomed and should not have any adverse biological consequences regarding the conservation of the affected stocks.

**Comment 2:** The South Atlantic Council requested that NMFS promulgate the catch specifications for Atlantic group king and Spanish mackerel that the Council recommended at its June 1999 meeting rather than the specifications that were previously recommended and that were included in the proposed rule. These

recommendations included: Increasing TAC to 10.0 million lb (4.5 million kg) for Atlantic group king mackerel; increasing the commercial trip limit for southeast Florida from 50 to 75 fish per day; increasing TAC for Atlantic group Spanish mackerel to 7.1 million lb (3.2 million kg); and increasing the recreational bag limit for Atlantic group Spanish mackerel from 10 to 15 fish per day.

*Response:* NMFS is not promulgating the specifications recommended by the Council at its June 1999 meeting because the public has not had an adequate opportunity to review and comment on them. Additionally, the impacts of those specifications need to be evaluated by preparing a regulatory impact review/environmental assessment, and the affected states have not had an opportunity to evaluate the new recommended specifications in relation to their states' coastal zone management plans.

*Comment 3:* The Gulf Council and the fishing association requested that NMFS disapprove the proposal to reduce the bag limit of Gulf group king mackerel to zero for captain and crew on for-hire vessels. Based on the report of the 1999 MSAP, the Council decided that the 0-fish bag limit is neither needed nor justified, and that a mid-season implementation would cause unnecessary disruption and confusion within the for-hire fishery. The fishing association questioned the accuracy of the Marine Recreational Fishery Statistical Survey (MRFSS) database which indicated the need for this proposed measure to reduce recreational harvest.

*Response:* NMFS disagrees that the 0-fish bag limit for the captain and crew of for-hire vessels fishing for Gulf group king mackerel is unnecessary. NMFS has approved this measure and is implementing it by this rule. The per-angler overages calculated by the MRFSS were substantiated by data collected through the NMFS Panama City, FL charterboat survey and the ongoing pilot charterboat survey co-managed by NMFS and the Gulf States Marine Fisheries Commission. These latter two data sources consist of reports of entire trip/boat activity as provided by the captains themselves, and include harvest by all anglers/passengers (excepting captain and crew) onboard the vessel, as opposed to the MRFSS approach of individual angler interviews. Nevertheless, considering the differences in methodologies used by these independent sampling programs, the compatibility and consistency of the results among the three surveys strengthen the

conclusions regarding the effect of allowing a bag limit for captain and crew. MRFSS data indicate that the for-hire sector accounts for 50 to 65 percent of the recreational harvest, and per-angler and per-trip average catches are in excess of the allowable bag limits unless captain and crew are included. The catch attributable to the captain and crew contributes to the persistent overruns in the recreational allocation. Additionally, enforcement of a daily bag limit for captain and crew of for-hire vessels is difficult where those vessels and crews make multiple trips within a day. NMFS also believes that a 0-fish bag limit for Gulf group king mackerel for captain and crew on for-hire vessels will reduce in-season recreational sales, which are then counted against the commercial quota. This leads to situations where the fish are counted twice: once as a recreational catch, and once as a commercial sale. This double counting of fish can contribute to an "artificial" overrun of the commercial quotas. Elimination of this double counting should foster a more accurate depiction of fishing mortality, thus providing more accurate stock assessments. Therefore, NMFS believes that a 0-fish bag limit for the captain and crew of for-hire vessels is necessary for the adequate conservation and management of this overfished resource.

*Comment 4:* One commenter opposed the increase in the minimum size limit from 20 to 24 inches (51 to 61 cm) fork length (FL) proposed for king mackerel. The commenter believes that this measure is unnecessary in light of the lower and more stable recreational landings information provided in the 1999 reports of the MSAP and the Social and Economic Panel (SEP), and the recommendations developed by the Gulf Council at its May 1999 meeting.

*Response:* NMFS disagrees and has approved the size limit increase and is implementing it by this rule. The SEP report, which indicated stable recreational landings, considered catches in the Gulf of Mexico, but this does not include all fishing mortality on the Gulf group king mackerel stock. During a part of the year, a percentage of the mortality on the Gulf group king mackerel stock occurs from catches on the Atlantic coast of Florida. The MSAP report does take this additional catch and mortality into consideration. That report illustrated that, with the exception of the 1998/1999 season, the recreational harvest of Gulf group king mackerel exceeded the recreational allocation by 15 to 50 percent each year since 1986. In addition to reducing the overall harvest by the recreational sector, the proposed 24-inch (61-cm)

size limit is intended to reduce the harvest of immature fish. Approximately 50 per cent of the females are mature at sizes of 22 to 24 inches (56 to 61 cm) FL.

*Comment 5:* One commenter stated that NMFS was negligent in its late publication and announcement of proposals, and did not adequately advise the public that the Councils had developed the proposals last year for the 1998/99 fishing year.

*Response:* Catch specifications are associated with the most recent stock assessment, not a fishing year. The Councils consider the most recent assessment and make any proposed catch specification changes. Additionally, the regulations are not annual; they remain in effect until changes are proposed by the Councils. NMFS recognizes that the implementation of these particular catch specifications has been delayed. In part, these delays stemmed from combining the proposed catch specifications as proposed by the Gulf of Mexico and South Atlantic Councils. To ensure more timely implementation of catch specifications, NMFS has restructured its process for the review of mackerel proposals submitted by the Councils under the FMP framework provisions. For the 1999/2000 proposed catch specifications, the proposals by each Council will be processed separately.

*Comment 6:* Two commenters supported the implementation of the 3,000-lb (1361-kg) trip limit for Gulf group king mackerel in the western zone. One commented that it would help to eliminate derby fishing and extend the season.

*Response:* NMFS agrees that the implementation of the 3,000-lb (1361-kg) trip limit in the western zone will benefit the fisheries of that region and has approved it and implemented it through this rule.

#### **Changes From the Proposed Rule**

As requested by the South Atlantic Council (see Comments and Responses), NMFS has withdrawn the proposed reduction in the commercial trip limit for Atlantic group king mackerel north of the North Carolina/South Carolina state boundary and the proposed increase in the commercial trip limit for Gulf group king mackerel in the Florida east coast subzone. Accordingly, the respective changes in the proposed rule to § 622.44(a)(1)(i) and § 622.44(a)(2)(i) are not included in this final rule. As a result, the proposed redesignations within § 622.44(a)(1) are no longer necessary and have been removed from the final rule.

**Classification**

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

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 16, 1999.

**Andrew A. Rosenberg,**

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.37, paragraph (c)(2) is revised to read as follows:

**§ 622.37 Minimum sizes.**

\* \* \* \* \*

(c) \* \* \*

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—24 inches (61.0 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.42(c)(1) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

\* \* \* \* \*

3. In § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Gulf migratory group king mackerel—2, except that for an operator or crew member of a charter vessel or headboat, the bag limit is 0.

\* \* \* \* \*

4. In § 622.41, paragraph (c)(3)(ii)(A) is revised to read as follows:

**§ 622.41 Species specific limitations.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) \* \* \* (A) The minimum allowable mesh size for a gillnet used to fish for Spanish mackerel in the Gulf, Mid-Atlantic, or South Atlantic EEZ is 3.5 inches (8.9 cm), stretched mesh.

(1) A vessel in the Gulf EEZ, or having fished on a trip in the Gulf EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(2) A vessel in the South Atlantic or Mid-Atlantic EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may possess or land on the day of that trip no more than 500 lb (227 kg) of incidentally caught Spanish mackerel.

\* \* \* \* \*

5. In § 622.42, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 3.12 million lb (1.42 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

\* \* \* \* \*

(2) \* \* \*

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 3.63 million lb (1.65 million kg).

\* \* \* \* \*

6. In § 622.44, paragraph (a)(2)(iv) is added, and paragraph (a)(2) introductory text, the headings of paragraphs (a)(2)(i) and (a)(2)(ii), and the first sentence of paragraph (b)(2) are revised to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* \* \*

(a) \* \* \*

(2) *Gulf group.* Commercial trip limits are established in the eastern and western zones as follows. (See § 622.42(c)(1)(i) for specification of the eastern and western zones and § 622.42(c)(1)(i)(A)(3) for specifications of the subzones in the eastern zone.)

(i) *Eastern zone—Florida east coast subzone.* \* \* \*

(ii) *Eastern zone—Florida west coast subzone.* \* \* \*

\* \* \* \* \*

(iv) *Western zone.* In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial

permit for king mackerel has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the western zone's fishery has been effected under § 622.43(a)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) \* \* \*

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.38 million lb (1.53 million kg).

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 990304062-9062-01; I.D. 081399B]

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 16, 1999, through 2400 hrs, A.l.t., December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of Pacific ocean perch in the West Yakutat District of the GOA was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 820 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii). The