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Synopsis of Order on Reconsideration

1. On its own motion, the Commission reconsiders the conditions under which it will lift its voluntarily-imposed stay of the horizontal ownership rules, 47 CFR 76.503. These rules were adopted and stayed in part on October 8, 1999 at 64 FR 67198 (Dec. 1, 1999).

2. In the *Second Order on Reconsideration* in this proceeding, the Commission continued its stay of the effective date of the horizontal ownership rules pending a decision by the U.S. Court of Appeals for the District of Columbia Circuit on challenges to the horizontal ownership rules and Section 613(f)(1)(A) of the Communications Act, as amended, 47 U.S.C. 533(f)(1)(A). The Commission decided that parties exceeding the horizontal limit must come into compliance with the rules within 60 days of a judicial decision upholding the rules and the statute.

3. The statute was challenged in the U.S. District Court, and the rules were challenged in the U.S. Court of Appeals for the District of Columbia Circuit. In 1993, the district court held the statute unconstitutional. The district court also decided that, because "there is substantial ground for difference of opinion" as to the constitutionality of the underlying statute, it would stay its proceedings and the issuance of any relief to the plaintiffs pending appeal. In August 1996, the D.C. Circuit Court consolidated the appeal of the district court decision and the D.C. Circuit Court challenge. The D.C. Circuit Court held the consolidated proceedings in abeyance pending the Commission's decision on the petitions for reconsideration of the rules. Once the Commission issued the *Second Order on Reconsideration*, the D.C. Circuit Court lifted its stay on its consideration of the consolidated proceedings. The appeal is currently pending.

4. In the *Third Report and Order* in this proceeding, the Commission again declined to lift its stay of the horizontal ownership rules. In fact, the Commission, on its own motion, held that the horizontal ownership rules will become effective immediately upon the issuance of a decision upholding the rules and the statute, and that affected

parties must come into compliance within 180 days after the court issues its mandate. The Commission reasoned that 180 days, rather than 60 days, was a more reasonable amount of time for affected parties to dispose of property necessary to come into compliance with the rules.

5. On November 2, 1999, the D.C. Circuit issued an order deconsolidating the challenge to the rules and the statute. The court allowed the challenge to the statute to proceed, but held the challenge to the rules in abeyance.

6. The Commission originally stayed its rules in deference to the district court's decision and to give the D.C. Circuit Court an opportunity to review that decision. Now that the challenge to the rules has been separated from the challenge to statute, it is no longer necessary to maintain the stay while the challenge to the rules remains in abeyance or otherwise under consideration by the court. Instead, the Commission holds that the horizontal ownership rules will become effective upon the issuance of a decision upholding the statute. Affected parties must come into compliance with the rules within 180 days following the issuance of that decision.

7. The Commission has decided to use the date on which the court decision issues, not the date on which the mandate issues, as the triggering event for affected parties to come into compliance with the rules. Thus, affected parties are expected to come into compliance with these rules within 180 days after the issuance of a court decision upholding the statute. The Commission finds that requiring affected parties to come into compliance with its rules within 180 after the issuance of a court decision provides more certainty to the public and affected parties. There is potentially a wide variance between the date a decision issues and the date the mandate issues. The Commission finds that the issuance date of the court decision is a superior benchmark for lifting the stay and requiring parties to come into compliance with the rules.

8. *Accordingly, it is Ordered* that the Commission's horizontal ownership rules are stayed until the U.S. Court of Appeals for the D.C. Circuit issues a decision upholding the constitutionality of Section 613(f)(1)(A) of the Act, as amended, 47 U.S.C. 533(f)(1)(A). Parties not in compliance with the rules on the date the U.S. Court of Appeals for the D.C. Circuit issues such a decision must come into compliance within 180 days.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235-7235-01; I.D. 030300A]

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 group king mackerel resource.

DATES: Effective 12:01 a.m., local time, March 6, 2000, through June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Mark.Godcharles@noaa.gov.

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 (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on February 19, 1998 (63 FR 8353), NMFS implemented 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)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of 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 5, 2000. 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 6, 2000, through June 30, 2000, 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 Miami-Dade/Monroe County, FL, boundary) through March 31, 2000; and (2) 25°48' N. lat. (due west the Monroe/Collier County, FL, boundary) from April 1, 2000, through October 31, 2000.

NMFS previously determined that the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on August 25, 1999 (64 FR 46596, August 26, 1999). Subsequently, NMFS determined that the commercial quota of king mackerel for vessels using run-around gillnets 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 15, 2000 (65 FR 8067; February 17, 2000). Thus, with this closure, all commercial fisheries for Gulf group king mackerel in the EEZ are closed from the U.S./Mexico border through the Florida west coast subzone through June 30, 2000.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. Note, however, that the bag limit for an operator or crew member of a charter vessel or headboat is zero. A charter vessel or headboat that also has a commercial king mackerel permit is

considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones 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 responds to the best available information recently obtained from the fishery. The closure must be implemented immediately to prevent an overrun of the commercial quota (50 CFR 622.42(c)(1)) of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Overruns could potentially lead to further overfishing and unnecessary delays in rebuilding this overfished resource. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

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 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039-0039-01; I.D. 030100D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area 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 cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 4, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 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.

In accordance with § 679.20(c)(3)(iii), the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area was established as 24,538 metric tons (mt), by the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 24,238 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).