

5452.233-9001 Disputes: Agreement to Use Alternative Dispute Resolution (ADR).

As prescribed in 5433.214, insert the following clause:

DISPUTES: AGREEMENT TO USE
ALTERNATIVE DISPUTE RESOLUTION
(ADR) xxx 2000)—DLAD

(a) The parties agree to use their best efforts to resolve any disputes that may arise without litigation. If unassisted negotiations are unsuccessful, the parties will use ADR techniques in an attempt to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute. If the ADR is not successful, the parties retain their existing rights.

(b) If you wish to opt out of this clause, check here []. Alternate wording may be negotiated with the contracting officer.

William J. Kenny,

Executive Director, Logistics Policy and Acquisition Management.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000503121-0121-01; I.D. 030600A]

RIN 0648-AN07

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: Proposed rule, request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures (framework procedure) of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes the following: Increase the annual total allowable catch (TAC) and increase the commercial trip limit off the southeast coast of Florida for Atlantic group king mackerel; increase the TAC, modify the commercial trip limits applicable off Florida, and increase the recreational bag limit for Atlantic group Spanish mackerel; and incorporate into the FMP

biomass-based values for maximum sustainable yield (MSY) and stock status determination criteria in compliance with the requirements of the Sustainable Fisheries Act of 1996, which amended the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). The intended effects of this rule are to maintain healthy stocks of king and Spanish mackerel while still allowing catches by important commercial and recreational fisheries.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on May 31, 2000.

ADDRESSES: Written comments on the proposed rule must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or the Internet.

Requests for copies of the South Atlantic Fishery Management Council's framework recommendations for adjustment of harvest levels and related matters, which includes an environmental assessment, social impact assessment/fishery impact statement, and regulatory impact review, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520; e-mail: safmc@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter; telephone: 727-570-5305; fax: 727-570-5583; e-mail: Steve.Branstetter@noaa.gov.

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 and was approved and implemented by NMFS through regulations at 50 CFR part 622. In accordance with the framework procedure, the South Atlantic Fishery Management Council (Council) recommended to the Regional Administrator, Southeast Region, NMFS (RA), management measure changes relating to Atlantic migratory groups of king and Spanish mackerel. The recommended changes are within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48.

Proposed TACs, Allocations, and Quotas

The Council proposed an increase in annual TAC from 8.40 million lb (3.81

million kg) to 10.00 million lb (4.54 million kg) for Atlantic group king mackerel. The commercial quota would be 3.71 million lb (1.68 million kg) and the recreational allocation would be 6.29 million lb (2.85 million kg). The Council proposed an increase in annual TAC from 6.60 million lb (2.99 million kg) to 7.04 million lb (3.19 million kg) for Atlantic migratory group Spanish mackerel. The commercial quota would be 3.87 million lb (1.76 million kg) and the recreational allocation would be 3.17 million lb (1.44 million kg).

Consistent with the framework procedure, these proposed TACs are within the range of the acceptable biological catch established by the Council. The Council believes these TACs represent a conservative management approach, as supported by its Scientific and Statistical Committee and Mackerel Advisory Panel, and are consistent with the attainment of optimum yield (OY) for Atlantic group king and Spanish mackerel, as provided by the FMP. The resulting commercial quotas and recreational allocations would be higher than recent harvest levels; consequently, no early or unexpected fishery closures or quota/allocation overruns would be likely.

Commercial Vessel Trip Limits

The commercial sectors of the king and Spanish mackerel fisheries are managed under both quotas and trip limits. The Council proposed an increase in the trip limit applicable off the southeast coast of Florida (Brevard through Miami-Dade Counties) from 50 to 75 fish per day from April 1 through October 31 for Atlantic group king mackerel. Landings records for the southeast coast of Florida indicate that as many as 10 to 12 percent of all trips land 40 fish or more per trip, and a relatively small proportion of trips (3 to 10 percent) land fish in excess of the trip limit. An increase in landings per trip would be expected to increase the net benefits per trip. It is unlikely that this proposed increase in the trip limit would cause an earlier closure of the fishery given the increased TAC for Atlantic group king mackerel.

The Council proposed to change the commercial trip limits applicable to the fishery off Florida for Atlantic group Spanish mackerel. Currently, the trip limits south of the Georgia/Florida boundary are as follows: From April 1 through October 31 - 1,500 lb (680 kg); from November 1 until 75 percent of the adjusted quota is taken, no trip limit on Monday, Wednesday, and Friday, and 1,500 lb (680 kg) on other days; after 75 percent of the adjusted quota is taken until 100 percent is taken - 1,500 lb (680

kg); and after 100 percent of the adjusted quota is taken until the end of the fishing year - 500 lb (227 kg). The adjusted quota is 3.38 million lb (1.53 million kg), which is derived from the 3.87-million lb (1.76-million kg) quota for Atlantic group Spanish mackerel as reduced to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached.

As proposed by the Council for the Atlantic group Spanish mackerel commercial fishery off Florida, from April 1 through November 30 the trip limit would be 3,500 lb (1,588 kg); from December 1 until 75 percent of the adjusted quota is taken there would be no trip limit on Monday through Friday and on Saturday and Sunday the trip limit would be 1,500 lb (680 kg).

The proposed increase in the commercial trip limit off Florida for the April 1 - November 30 period would benefit those vessels that are currently constrained by the trip limit, since it would increase their net benefits per trip. While the commencement of unlimited trip limits, currently November 1, would be delayed for one month, vessels would be compensated by an increase of two days per week on which unlimited fishing would be allowed.

Recreational Bag Limit

The Council proposed to increase the recreational bag limit for Atlantic group Spanish mackerel from 10 to 15 fish per person per day. It is unlikely that this proposed increase in the recreational bag limit would cause the recreational allocation to be exceeded given the increased TAC for Atlantic group Spanish mackerel. The proposed increase in the bag limit would be expected to increase the economic and social benefits.

Biomass-Based Parameters

Section 303 of the Magnuson-Stevens Act requires that the regional fishery management councils (councils) (1) assess the condition of managed stocks, (2) specify within their fishery management plans objective and measurable criteria for identifying when the stocks are overfished and when overfishing is occurring (referred to by NMFS as stock status determination criteria), and (3) amend their fishery management plans to include measures to rebuild overfished stocks and maintain them at healthy levels capable of producing maximum sustainable yield (MSY). NMFS' national standard guidelines direct the councils to meet these statutory requirements by incorporating into each fishery management plan estimates of certain biomass-based parameters for each

stock, including B_{msy} (B_{msy} is the weight (biomass) of the stock that will produce MSY) and the minimum stock size threshold (MSST) (MSST is a stock status determination criterion that indicates the minimum stock size that is required to produce MSY, below which the stock would be considered overfished). A maximum fishing mortality threshold (MFMT) for determining whether overfishing is occurring is also required for each stock (MFMT is the level or rate of fishing mortality, that if exceeded, will result in overfishing and jeopardize the capacity of a stock to produce MSY on a continuing basis). Heretofore, the Council used spawning potential ratios to indicate whether Atlantic group king and Spanish mackerel stocks were at the MSY level or overfished because it did not have the necessary information for generating the status determination criteria (B_{msy} and MSST). However, based on stock assessment information provided recently by NMFS to the Council, the Council is proposing to incorporate into the FMP, through the framework procedure, the required biomass-based parameters. Accordingly, the Council's proposes the range estimates of MSY, BMSY, MSST, and MFMT shown below. NMFS invites public comment on these estimated parameters.

Atlantic Group	MSY - million lb (million kg)	BMSY*	MSST*	MFMT - fishing mortality rate
King Mackerel	9.4 - 14.5 (4.3 - 6.6)	4.7 - 7.1	4.0 - 6.1	0.32 - 0.48
Spanish Mackerel	5.7 - 7.5 (2.6 - 3.4)	12.2 - 15.8	8.5 - 11.1	0.38 - 0.48

* Biomass values are a unitless relative fecundity estimate in millions.

The FMP's determinations regarding "overfishing" and "overfished" would change with the adoption of these new stock status determination criteria. The Council proposes to define overfishing of a stock as occurring if $F_{current} / F_{msy} > 1.0$ (where $F_{current}$ is the current fishing mortality rate and F_{msy} is the level of fishing mortality that results in MSY). A stock would then be overfished if $B_{current} / MSST < 1.0$, where $MSST = (1.0 - M)B_{msy}$ (where $B_{current}$ is the current stock biomass and M is the natural mortality—a measurement of the rate of removal of fish from a population from natural causes).

The RA initially concurs that the Council's recommendations meet the goals and objectives of the FMP and that they are consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. Accordingly, the

Council's recommended changes are published for comment.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as follows:

For Atlantic group king mackerel, the proposed rule would increase the TAC from 8.4 million lb (3.8 million kg) to 10.0 million lb (4.5 million kg) and would increase the trip limit in the southern zone from 50 to 75 fish. For Atlantic group Spanish mackerel, the

proposed rule would increase the TAC from 6.6 million lb (3.0 million kg) to 7.04 million lb (3.19 million kg), would increase the recreational bag limit from 10 to 15 fish per day, and would modify the commercial trip limit system for the area south of the Florida-Georgia border. The action would also modify MSY, stock status determination criteria, and definitions of "overfishing" and "overfished" for Atlantic group king and Spanish mackerel.

All commercial fishing and for-hire businesses that have permits to harvest Atlantic group king and Spanish mackerel are considered to be small entities, and the Council concluded that a substantial number of these small entities (greater than 20 percent) operating in commercial and for-hire fisheries could be affected by the proposed changes. Although the exact

number of small businesses that actually exercise their permit rights is unknown, the approximate numbers of small businesses holding harvest permits are as follows: Commercial king and Spanish mackerel - 1,200 and for-hire - 600.

Atlantic Group King Mackerel The Council's proposal to increase TAC from 8.4 million lb (3.8 million kg) to 10.0 million lb (4.5 million kg) would provide for a commercial quota of 3.12 million lb (1.42 million kg) or a 590,000-lb (267,620-kg) increase. However, given the fact that commercial landings since 1990 have never exceeded 2.7 million lb (1.2 million kg), the increased TAC would not likely constrain catches. Also, present harvesting capacity may not be sufficient to take advantage of the increased TAC. The TAC increase will result in a recreational allocation of 6.29 million lb (2.85 million kg) or an increase of 1.0 million lb (0.45 million kg). Recreational catches for the 1997/98 and 1998/99 seasons were 5.39 and 3.62 million lb (2.45 and 1.64 million kg) respectively, so there is a small possibility that the increased recreational allocation could be exceeded. However, the recreational fishery is not subject to closure actions regardless of the size of the catch, i.e., recreational catches are not constrained by the recreational allocation. Noting that an increased allocation is based on the fact of increased stock size, catches may increase slightly because catch per unit effort may rise slightly. Nonetheless, any increase in catch will be related to stock size and not to the level of the official allocation.

The other proposed king mackerel measure would increase the daily trip limit from 50 to 75 fish from April 1 through October 31 in the EEZ off Brevard through Miami-Dade counties (Florida). Since this area accounts for about 50 percent of the commercial catches, there is a possibility that raising the trip limit could result in increased catches for the year. Recent data indicate that over 90 percent of commercial trips in this area catch 50 fish or less, and the other trips represent either violations of existing laws or the reporting of multiple trips as one trip. Also, over 80 percent of trips for the last two seasons resulted in catches averaging less than 30 fish. Nonetheless, to the extent that a small percentage of current trips are constrained by the status quo, there may be a small increase in the total catches and a concurrent small increase in associated commercial revenues. This increase is expected to be small enough that no

measurable decrease in price would be expected.

Atlantic Group Spanish Mackerel The Council proposes an increase in TAC for Atlantic group Spanish mackerel from 6.6 million lb (3.0 million kg) to 7.04 million lb (3.19 million kg), or an increase of 440,000 lb (199,581 kg). This will result in a commercial quota of 3.87 million lb (1.76 million kg) or 240,000 lb (108,862 kg) above the current quota. Starting with the 1995/96 season, a ban on the use of nets in Florida waters has constrained commercial landings; the catches have ranged from 2.0 to 3.3 million lb (0.9 to 1.5 million kg) since the ban was instituted. Given these factors, the TAC increase is not expected to result in increased annual commercial landings, and no economic effects on the commercial harvesting sector are expected from the increase in TAC. The recreational allocation under the increased TAC would be 3.17 million lb (1.44 million kg). Since recreational landings have averaged less than 1.2 million lb (0.54 million kg) for the last 5 years, the increase in the recreational allocation is unlikely to have any economic impact on the recreational for-hire fishery.

Since the recreational allocations have not been reached in recent years, the Council also proposes an increase in the recreational daily bag limit from 10 to 15 Spanish mackerel per person. Since some of the for-hire small entities target Spanish mackerel seasonally, there is a possibility that the increase in the bag limit would lead to an increased number of for-hire trips. However, only about 2 percent of for-hire trips target Spanish mackerel and over 97 percent of recent recreational trips result in landing at the current bag limit or less. Consequently, the proposed increase in the bag limit is expected to have a positive, but very small, economic impact on the for-hire sector.

The other proposed Spanish mackerel measure would modify the commercial trip limit system governing commercial catches south of the Georgia/Florida border. Since the landings south of Georgia constitute about 80 percent of the total annual commercial landings of Spanish mackerel, these trip limit changes could possibly affect overall landings. These changes include an increase in the trip limit to 3,500 lb (1,588 kg) from April 1 through November 30, as opposed to the current 1,500 lb (680.4 kg) trip limit for the period April 1 through October 31. In addition, there is a proposal to allow unlimited fishing on all weekdays and to impose a 1,500 lb (680.4 kg) trip limit for Saturday and Sunday starting on December 1 until 75 percent of the

quota is reached, at which point the trip limit would be 1,500 lb (680.4 kg) for all days of the week. The current system provides for unlimited fishing on Monday, Wednesday, and Friday and a 1,500-lb (680.4-kg) trip limit on Tuesday, Thursday, Friday, and Saturday starting on November 1 until 75 percent of the quota is reached at which point the trip limit is set at 1,500 lb (680.4 kg) for all days of the week. The most important parts of this rather complex set of changes concern the increase in the trip limit from 1,500 lb to 3,500 lb (680.4 to 1,588 kg), a shortening of the unlimited season, and an increase in the number of days of unlimited fishing for other parts of the year. Some of these trip limit changes would tend to result in larger annual commercial landings and revenues, while other changes would tend to reduce landings and revenues. The analysis of the expected overall impacts of the trip limit changes for Spanish mackerel is hampered because of limited seasonal, areal, and catch-per-trip data; also, logbooks have only recently been implemented and these data are not yet available. Despite these difficulties, and based on the way the fishery tends to operate seasonally, the tentative conclusion is that the change in the trip limit from 1,500 to 3,500 lb (680.4 to 1,588 kg) is not likely to have the large positive impact expected because this particular change will pertain at a time of the year when Spanish mackerel are not seasonally abundant, and catch-per-trip tends to be less than the current trip limit of 1,500 lb (680.4 kg). Any significant changes in landings would result from the combined effects of shortening the unlimited season and allowing more unlimited days during the unlimited season. Reducing the unlimited season by one month will, in effect, reduce the number of days of unlimited fishing by about 12 days; adding unlimited days during a given week within the shorter unlimited season will add about 16 days of unlimited fishing. Hence, the expectation is for a small increase in the annual commercial catch of Spanish mackerel for all the trip limit changes in aggregate.

The modification of MSY and the incorporation into the FMP of biomass-based stock status determination criteria includes: Setting the king mackerel MSY at 9.4–14.5 million lb (4.3–6.6 million kg); setting the Spanish mackerel MSY at 5.7–7.5 million lb (2.6–3.4 million kg); setting the fishing mortality rate (MFMT) at 0.40 (=F30% Static SPR) consistent with MSY; establishing a Bmsy of 4.7–7.1 for king

mackerel and a BMSY of 12.2–15.8 for Spanish mackerel (the values represent relative fecundity and are unitless); and, setting the minimum stock size threshold (MSST) at 4.0–6.1 for king mackerel and at 8.5–11.1 for Spanish mackerel (the values represent relative fecundity and are unitless). The Council also proposed revised definitions of “overfished” and “overfishing” for Atlantic king and Spanish mackerel. The stocks of Atlantic king and Spanish mackerel are currently neither overfished nor are undergoing overfishing. This means that the proposed MSY modifications and the biomass-based status determination criteria that would be added should have no impact on the TACs proposed by the Council and, hence, no economic impact on small entities.

Other Findings None of the proposals described above would result in increased compliance costs of reporting or record keeping. Also, there would be no differential large business versus small business impacts because the entire population is composed of small businesses. Additionally, the proposals will not create new capital costs, and no businesses are expected to have to cease operations if the proposals are implemented.

The overall determination resulting from an examination of the proposed changes individually and in aggregate is that there is not expected to be a significant economic impact on a substantial number of the small entities engaged in the commercial harvest or for-hire sectors of the Atlantic group king and Spanish mackerel fisheries.

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: May 10, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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 § 622.39, paragraph (c)(1)(iii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(iii) Atlantic migratory group Spanish mackerel—15.

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3. 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 3.71 million lb (1.68 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 3.87 million lb (1.76 million kg).

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4. In § 622.44, paragraph (a)(1)(iii) and paragraphs (b)(1)(ii)(A) and (B) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(iii) In the area between 28°47.8' N. lat. and 25°20.4' N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 75 fish from April 1 through October 31.

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(b) * * *

(1) * * *

(ii) * * *

(A) From April 1 through November 30, in amounts exceeding 3,500 lb (1,588 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(1) Mondays through Fridays—unlimited.

(2) Saturdays and Sundays—not exceeding 1,500 lb (680 kg).

* * * * *

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