

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 030917233-3304-02; I.D. 082703A]

RIN 0648-AP50

Fisheries of the Gulf of Mexico; Coastal Migratory Pelagic Resources; Stock Status Determination Criteria

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 issues this final rule to incorporate into the FMP biomass-based stock status determination criteria consistent with the requirements of the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). Criteria that are incorporated include maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST) and maximum fishing mortality

threshold (MFMT) for king and Spanish mackerel and cobia stocks under the jurisdiction of the Gulf of Mexico Fishery Management Council (Council).

DATES: This final rule is effective April 29, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, telephone: 727-570-5796, fax: 727-570-5583, e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic (CMP) 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 by NMFS and implemented by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure, the Council recommended, and NMFS published a proposed rule (68 FR 59151, October 14, 2003), to establish biomass-based stock status criteria for Gulf migratory groups of king and Spanish mackerel and for a Gulf migratory group of cobia (to be designated via subsequent plan amendment). The most recent scientific evidence indicates that the cobia stock is comprised of separate migratory groups in the Gulf of Mexico and Atlantic. However, the FMP identifies only a single cobia stock. The establishment of separate migratory groups of cobia will require that the FMP be amended. Therefore, implementation of the stock status criteria for a Gulf migratory group of cobia would be deferred pending the development of an amendment to the FMP.

Section 303 of the Magnuson-Stevens Act requires that the regional fishery management 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 MSY. NMFS' national standard guidelines (NSGs) direct the councils to meet these statutory requirements by incorporating into each FMP estimates of certain biomass-based parameters for each stock, including a designation of the stock biomass that will produce MSY (B_{MSY}).

On November 17, 1999, NMFS notified the Council that it had partially approved the Council's Generic Sustainable Fisheries Act Amendment. In that notification, NMFS approved the designation and definition of an MFMT for CMP fish stocks managed under the jurisdiction of the Council, but disapproved the proposed designations of MSY, OY, and MSST because they were not biomass-based, as recommended by the NSGs. Since that time, NMFS has worked cooperatively with the Council to develop acceptable stock status criteria for the Gulf migratory groups of those CMP stocks.

Accordingly, this final rule establishes biomass-based reference points, as identified in the table below, for MSY, OY, and MSST, and amends the existing designations of MFMT for Gulf migratory group king mackerel, Gulf migratory group Spanish mackerel, and a (to be designated) Gulf migratory group of cobia.

	Gulf group king mackerel	Gulf group Spanish mackerel	Gulf group cobia ¹
MSY ²	Yield at $F_{30\%SPR}$ (currently 10.7 million lb or 4.85 million kg)	Yield at $F_{30\%SPR}$ (currently 8.7 million lb or 3.95 million kg)	Yield at F_{MSY} (currently 1.49 million lb or 0.676 million kg)
OY	Yield at $F_{OY} = 0.85^*F_{MSY}$ (currently 10.2 million lb or 4.63 million kg)	Yield at $F_{OY} = 0.75^*F_{MSY}$ (currently 8.3 million lb or 3.76 million kg)	Yield at $F_{OY} = 0.75^*F_{MSY}$ (currently 1.45 million lb or 0.658 million kg)
MFMT	$F_{30\%SPR} = F_{MSY}$	$F_{30\%SPR} = F_{MSY}$	F_{MSY}
MSST ³	$(1-M)^*B_{MSY}$ or 80% of B_{MSY}	$(1-M)^*B_{MSY}$ or 70% of B_{MSY}	$(1-M)^*B_{MSY}$ or 70% of B_{MSY}
Overfished	50% probability $F_{current} > F_{MSY}$	50% probability $F_{current} > F_{MSY}$	50% probability $F_{current} > F_{MSY}$
Overfishing	50% probability $B_{current} < MSST$	50% probability $B_{current} < MSST$	50% probability $B_{current} < MSST$

¹ Implementation deferred pending formal designation of a Gulf migratory group of cobia through an amendment to the FMP.

² F = fishing mortality rate; SPR refers to spawning potential ratio.

³ M, or natural mortality, is estimated at 0.20 for king mackerel, and 0.30 for both Spanish mackerel and cobia. B_{current} represents the current estimates of stock biomass; B_{MSY} represents the estimated stock biomass required to produce MSY.

While these population parameters are part of the FMP, they will not appear in codified text. The parameters establish the bounds within which the Council and NMFS will operate in managing the stock. The parameters themselves are not of general applicability and legal effect in that they

do not bind the general public, but rather guide the Council and NMFS in establishing more specific measures, which are codified in the Code of Federal Regulations and do bind the general public.

On October 14, 2003, NMFS published the proposed rule on which

this final rule is based; comments on the proposed rule were requested through November 13, 2003 (68 FR 59151). No comments were received.

Classification

This final 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 the proposed rule for this action, if adopted,

would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding the certification or the economic impacts of this action. As a result, no regulatory flexibility analysis was prepared.

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

Dated: March 25, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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