

Federal Communications Commission.
John A. Karousos,
*Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.*
[FR Doc. 96-16767 Filed 7-2-96; 8:45 am]
BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 96-140, RM-8824]

Radio Broadcasting Services; Hemphill, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Phillip Burr proposing the allotment of Channel 280A at Hemphill, Texas, as the community first local FM service. Channel 280A can be allotted to Hemphill in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.2 kilometers (1.4 miles) north in order to avoid a short-spacing conflict with the licensed site of Station KBIU(FM), Channel 279C1, Lake Charles, Louisiana. The coordinates for Channel 280A at Hemphill are 31-21-30 and 93-51-24.

DATES: Comments must be filed on or before August 19, 1996, and reply comments on or before September 3, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cary S. Tepper, Booth, Freret & Imlay, P.C., 1233 20th Street, NW., Suite 204, Washington, DC 20554 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96-140, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
John A. Karousos,
*Chief, Allocations Branch, Policy and Rules
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 950725189-6182-03; I.D. 060696A]

RIN 0648-AI92

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Changes in Catch Limits

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 of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes commercial vessel trip limits for the Atlantic migratory group of king mackerel. The intended effects of this rule are to preclude an early closure of the commercial fishery, protect king mackerel from overfishing, and maintain healthy stocks while still allowing catches by important commercial fisheries.

DATES: Written comments must be received on or before July 18, 1996.

ADDRESSES: Comments must be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Send requests for copies of the regulatory amendment document (dated June 1995) and its supplement (dated February 1996), which include the

environmental assessment and regulatory impact review for this action, to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407-4699.

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

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 and is implemented by regulations at 50 CFR part 642.

In accordance with the framework procedures of the FMP, the South Atlantic Council (Council) recommended to the Director, Southeast Region, NMFS (Regional Director), a regulatory amendment, which, among other changes, included establishment of commercial vessel trip limits for the Atlantic migratory group of king mackerel. These vessel trip limits were included in a proposed rule published on August 3, 1995 (60 FR 39698). A final decision by NMFS on whether the trip limits were consistent with the National Standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act) was deferred, and the reasons for the deferral were published in the final rule implementing the approved measures of the regulatory amendment (60 FR 5768, November 17, 1995). The Council revised the proposed trip limits to address cited deficiencies, took additional public comment, and resubmitted a supplemented regulatory amendment for NMFS' review and approval.

The Council proposes daily trip limits for vessels harvesting under the commercial allocation for Atlantic group king mackerel. This segment of the fishery has not been subject to trip limits. As revised, the daily possession/landing limit for a vessel using non-prohibited gear and having a Federal commercial mackerel permit would be 3,500 lb (1,588 kg) of king mackerel in or from the exclusive economic zone (EEZ) year-round in the northern area (i.e., between the New York/Connecticut and Flagler/Volusia County, FL boundaries). Off Volusia County, FL, the daily trip limit would be 3,500 lb (1,588 kg) of king mackerel in or from the EEZ from April 1 through October 31. South of there, between the Volusia/Brevard and Dade/Monroe County boundaries, the daily trip limit would be 500 lb (227

kg) of king mackerel in or from the EEZ from April 1 through October 31. In the southernmost area, off Monroe County (Florida Keys), the daily trip limit would be 1250 lb (567 kg) of king mackerel in or from the EEZ from April 1 through October 31. All trip limits proposed for the Atlantic group king mackerel are daily landing/possession limits that would be reduced to zero for that group when the annual commercial allocation is reached.

The Council desires implementation as soon as possible in the fishing year that began April 1, 1996, to preclude excessive early season harvest of king mackerel, early closure, disproportionate harvest of the allocation by regional fisheries, subsequent negative socioeconomic impacts, recruitment overfishing, and waste.

In its resubmitted proposal, the Council revised the original trip limit proposals by converting limits on the number of fish that may be possessed or landed to equivalent pounds of fish. The Council determined that this change was necessary to prevent waste caused by high-grading (i.e., the act of discarding smaller fish and replacing them with larger ones to maximize aggregate poundage landed while complying with the daily trip limit on the number of fish landed). Such waste causes estimates of release and fishing mortality to be lower than the actual mortality and results in an inaccurate evaluation of the status of the stocks and of the fishery impacts on the resource.

Trip limits were first proposed in conjunction with a proposed decrease in total allowable catch (TAC) from 10.0 million lb (4,536 metric tons (mt)) to 7.3 million lb (3,311 mt) for the Atlantic group king mackerel for the 1995/96 fishing year (August 3, 1995, 60 FR 39698). The reduced TAC was approved by NMFS and implemented through a final rule (November 17, 1995, 60 FR 57686). Further decreases were expected for the 1996/97 fishing year. The 7.3-million lb TAC decreased the commercial allocation for the 1995-96 fishing year from the previous level of 3.71 million lb (1,683 mt) to 2.70 million lb (1,225 mt). The Council reduced TAC to the lower range of the acceptable biological catch (ABC) in anticipation of a lower ABC for the 1996/97 fishing year, and expressed concerns about the status of both the Atlantic and Gulf groups of king mackerel and recent low catches.

As the Council expected and the 1995 Mackerel Stock Assessment Panel Report projected, the 1996 Report of the Mackerel Stock Assessment Panel presented lower estimates of the

spawning potential ratio (SPR) and the ABC for Atlantic group king mackerel. Although some of the decreases in these parameters may be attributed to new analytical methods, most are attributable to the inclusion of more accurate estimates for the mortality of juvenile and subadult mackerels taken as incidental bycatch in the Atlantic shrimp trawl fishery off southeastern states. The 1996 modal SPR estimate of 32 percent is down by about 36 percent from the approximate 50 percent level estimated for previous years, and the 1996 ABC is about half of 1995 estimates. The 1996 ABC range estimate is 4.1 - 6.8 million lb (mode: 5.5 million lb) (1,860 - 3,084 mt, mode: 2,495 mt) compared to the 1995 estimate of 7.3 - 15.5 million lb (mode: 10.9 million lb) (3,311 - 7,031 mt, mode: 4,944 mt). The Council sets TAC within the ABC range usually at or below the modal value suggesting that the 1996/97 TAC will be even lower than last year's 7.3 million lb (3,311 mt) that yielded commercial and recreational allocations of 2.70 (1.225 mt) and 4.60 M (2.087 mt), respectively.

Although the 1996 estimate of SPR indicates that the Atlantic group king mackerel is not overfished, the lower SPR value suggests, as the Council previously suspected, that stock size may not be as large as previous estimates indicated. The modal 1996 SPR estimate is reduced to 32 percent, well below the 1995 estimate of 55 percent and just above the 30 percent overfished level currently defined in the FMP. Even though the estimated 32 percent SPR level is well above the overfishing level of 20 percent SPR proposed in FMP Amendment 8, it is below the Council's proposed target SPR of 40 percent for achieving maximum sustainable yield or long-term optimum yield (OY). Moreover, the actual total catch (commercial and recreational combined) may have reached its lowest level (5.92 million lb; 2,685 mt) in 15 years during the 1994/95 season; preliminary estimates indicate that the 1995/96 catch will remain at this same low level. In the past nine years, total catch has exceeded 7.30 million lb (3,311 mt) four times.

The Council also proposed the trip limits, in anticipation of increased effort in the fishery, to prevent excessive harvest of pre-spawning and spawning fish and recruitment overfishing. The Council is concerned that a number of new entrants may join the fishery as a result of the recent prohibition on gillnet use in Florida waters (July 1, 1995) and New England fishery closures.

The Council recommended the trip limits not only to provide increased protection for Atlantic group king mackerel but also for the Gulf group. The trip limits would prevent the detrimental effects of excessive catches of the Atlantic group throughout the spring/summer spawning season and of the Gulf group during April. King mackerel harvest in April, unrestricted by daily vessel trip limits, could result in the unintentional taking of large quantities of Gulf group king mackerel when such fish are still located within the boundaries of the Atlantic group. Tag and recapture information indicate that king mackerel off south Florida from late fall through early spring, particularly off the Florida Keys, mostly belong to the Gulf migratory group.

The fishing season for Atlantic group king mackerel fishery opens annually on April 1, and vessels targeting fish with hook-and-line, run-around gillnet, and purse seine gear are not restricted by trip limits. Consequently, excessive capture of Gulf group king mackerel could occur off south Florida in April if conditions delay emigration to spring/summer spawning grounds.

The Council considers such catches "double-dipping" (i.e., overrunning of quotas that have already been harvested). In the past two years, hook-and-line and run-around gillnet quotas for Gulf group king mackerel were reached or exceeded, and respective fisheries were closed, after large February catches off the Florida Keys. The Gulf group king mackerel stock is still considered overfished; preliminary calculations for the 1996/97 fishing year suggest that this group would remain in the overfished status even under the less restrictive overfished/overfishing definitions proposed in Amendment 8.

Excessive capture of king mackerel, unrestrained by trip limits and under a reduced commercial allocation, could result in a disproportionately large harvest off south Florida and an early closure of the commercial fishery for the Atlantic group. Fishery participants in the northern area might then lose the opportunity to harvest their traditional and equitable share of the allocation. Atlantic group king mackerel support an important fall fishery off North Carolina. An early fishery closure would adversely affect these traditional fisheries and could lead to severe socioeconomic impacts and subsequent requests for relief through emergency action.

To keep the recreational catch within the reduced allocation of 4.6 million lb (2,087 mt), the recreational bag limit for the EEZ from New York through Georgia was reduced on January 1, 1996, from

five to three fish per person. The Council determined that this reduction would be sufficient to maintain catch within the decreased allocation without changing the two-fish bag limit off Florida. Recreational catch estimates indicated that the bag limit reduction in the northern area (Georgia through New York) would provide about a 10 percent reduction in catch. In addition, 1995 catch estimates for the 1988/89 through 1990/91 fishing years, when the bag limit was three fish in the northern area and two fish off Florida, were below 4.6 million lb (2,087 mt).

Although a recreational bag limit reduction was approved to reduce catch in alignment with the decreased 1995/96 recreational allocation, NMFS deferred the decision to approve or disapprove the collateral commercial vessel trip limits until certain analytical and procedural deficiencies were corrected. The Council has addressed the deficiencies and revised and resubmitted the trip limit proposals. In conjunction with the public review of Amendment 8 to the FMP, additional public hearings were conducted to review the proposed trip limits. Thereafter, the Council revised its proposal to convert the units for the trip limits from numbers of fish to pounds of fish to reduce waste from the practice of high-grading and to allow vessels operating in the commercial fishery off Monroe County (Florida Keys) from April 1 through October 31 to possess or land up to 1250-lb (567-kg) per trip, thus reducing socioeconomic impacts on that sector. Preliminary review of the revised supporting documents indicates that the Council has addressed the deficiencies previously noted in the initial analyses. As discussed below, NMFS' preliminary review of the Council's re-submission did not reveal any inconsistencies with the national standards.

Consistency with the National Standards

In regard to the original trip limit proposals, as discussed in the preamble to the final rule implementing the approved measures of the Council's regulatory amendment (60 FR 57686; November 17, 1995), inaccuracies and inconsistencies in the analyses of impacts and inadequate opportunity for public comment prevented NMFS from determining if the proposals were consistent with the National Standards (N.S.). Some letters received during the comment period, which was announced in the proposed rule (60 FR 39698; August 3, 1995), contended that the trip limit proposals would preclude achievement of OY (N.S. 1), were not

based on the best available information (N.S. 2), would be unfair and inequitable to fishery participants throughout the management area (N.S. 4), would unnecessarily promote harvest inefficiency (N.S. 5), and would constitute unjustifiable administrative costs and burdens (N.S. 7).

After reviewing the revised impact analyses, findings of the 1996 mackerel stock assessment concerning the status of the Atlantic group king mackerel, and results from additional public hearings, NMFS has made a preliminary determination that the proposed commercial vessel trip limits are consistent with the N.S. as discussed below. Previous problems related to the Council's analyses of the potential impacts of the 50-fish trip limit on the Florida Keys fishery and not providing sufficient notice to impacted fishermen appear to have been corrected. Impact analyses were revised and the Council held additional public hearings. In response to the comments received at those hearings, the Council increased the proposed trip limit for the Florida Keys area from 500 to 1250 pounds (initially proposed as 50 to 125 fish) per vessel per day.

National Standard 1

Newly available information contained in the 1996 Report of the Mackerel Stock Assessment Panel probably will compel the Council to recommend further reductions in TAC for Atlantic group king mackerel. The forthcoming TAC recommendation for the 1996/97 fishing year probably would reduce both commercial and recreational allocations to levels that have been harvested during the past two years. Consequently, NMFS expects that TAC will be taken and OY achieved for the 1996/97 fishing year even with the imposition of trip limits. To provide the socioeconomic benefits that the Council intends while preventing overfishing, the proposed trip limits appear necessary.

National Standard 2

Recent review of the proposed trip limits and supporting documents, increased effort and king mackerel landings off southwest Florida this April (1996), and findings of the 1996 stock assessment indicate that the proposed trip limits are based on the best available scientific information. In a recent review, NMFS Southeast Fisheries Science Center (Center) advised that the revised proposed trip limits appear to be based on the best available scientific information. Further, the Center advised that the proposals clearly are risk averse in that they

would maintain stock levels that would not be at risk of recruitment overfishing.

Although the 1996 SPR estimate indicates that the Atlantic group king mackerel is not overfished, the lower estimated value suggests, as the Council previously suspected, that stock size may not be as large as previous estimates indicated. The 1996 SPR estimate is reduced to 32 percent, near the 30 percent SPR overfished level currently defined in the FMP and above the 20 percent level in proposed Amendment 8. Nevertheless, the current 32 percent SPR estimate is below the proposed SPR target of 40 percent for achieving maximum sustainable yield (MSY) or long-term OY. Therefore, the best available scientific information is not inconsistent with the Council's recommendations for more conservative management measures that reduce fishing mortality and, thus, prevent early closure and quota overruns, and decrease the risk of recruitment overfishing.

National Standard 4

NMFS believes the revised proposed trip limits have the potential to maintain traditional harvest and quota distribution among user groups. Initially, the proposed trip limit for the Florida Keys fishery was 50 fish throughout the Florida east and southwest coast areas. The 50-fish limit was requested and was strongly supported by many southeast Florida king mackerel fishermen.

In response to comments received at public hearings, the Council increased the proposed trip limit for the Florida Keys to 1250-lb (567-kg) to provide sufficient revenue to operate in the April fishery near the Dry Tortugas. This proposal is equivalent to the 125-fish trip limit for the Gulf group king mackerel hook-and-line fishery that begins in that area on November 1. Consequently, the proposed 1250-lb (567 kg) trip limit would appear to provide fair access while preventing excessive catches, early closures, and quota overruns, and thus satisfies the requirements of N.S. 4 regarding fairness and equity to all fishery participants throughout the management area.

For the fishery from northeast Florida through New York, the Council proposed the 3500-lb (1588-kg) trip limit. Available landings information reviewed by the Council indicates that proposal would have essentially no effect on harvest. Moreover, the Council does not expect the proposed increased trip limit for this area to alter the status quo or provide increased harvesting advantage. If inordinate large northern

landings do occur in the future, the Council will reconsider and revise the 3500-lb (1588-kg) trip limit to prevent inequitable quota distribution and recruitment overfishing.

National Standard 5

The Council's impact analyses indicate that the proposed trip limits would have restricted less than 6 percent of the trips in any given area. However, the 500-lb (227-kg) and 1250-lb (567-kg) trip limits proposed for south Florida would have substantially reduced some individual vessel landings and total catch for those areas for some years. Data examined by the Council indicated that the 3500-lb (1,588 kg) trip limit would have impacted no trips off Volusia County (Florida) and would have only minimally impacted trips between the Volusia/Flagler County (Florida) and New York/Connecticut boundaries. Such impacted trips landed at North Carolina ports would have exceeded that state's landing limit (i.e., 3500 lb). The Council's analyses were based on landings estimates for Florida (1991/92 through 1994/95 seasons) and North Carolina.

National Standard 7

The revised proposed trip limits appear consistent with a management strategy to balance costs and benefits; the Council's impact analyses indicate that the trip limits will not inordinately affect costs or place an undue economic and regulatory burden on fishermen or fisheries.

The Regional Director initially concurs that the Council's recommendations are necessary to protect king mackerel stocks and prevent overfishing and that they are consistent with the objectives of the FMP, the N.S., and other applicable law. Accordingly, the Council's proposed revised trip limits are published for comment.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel 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. Historical landings data for the last four fishing seasons indicate that the percentage of fishing trips that would have been affected by the proposed trip limits ranged from 0 to 5.4 percent. Although

it is not possible to directly translate number of fishing trips into number of fishing firms impacted, it appears that less than 20 percent of the small business entities involved in harvest of Atlantic king mackerel would be affected. The proposed trip limits are estimated to reduce the harvest of Atlantic king mackerel and the associated net revenue by about five percent. Compliance costs will not be affected by this action. There are no differential small and large business impacts because all affected entities are small entities. No capital costs of compliance are expected, and there is no information indicating that two or more percent of the existing harvesting firms will cease business operations as a result of this rule. The proposed trip limits are designed, in part, to moderate the rate of harvest, thereby minimizing the probability of early closures and the associated adverse socioeconomic impacts. Therefore, the trip limits are expected to provide small increases in long-term benefits to the industry. For these reasons, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 27, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

2. In § 642.7, paragraphs (q) and (r) are revised to read as follows:

§ 642.7 Prohibitions.

* * * * *

(q) Exceed a commercial trip limit for Atlantic group king or Spanish mackerel, as specified in § 642.27(a) or (b).

(r) Transfer at sea from one vessel to another an Atlantic group king or Spanish mackerel subject to a commercial trip limit, as specified in § 642.27(f).

* * * * *

3. In § 642.27, paragraphs (a) through (e) are redesignated as paragraphs (b) through (f), respectively; in newly redesignated paragraph (b), the introductory text is removed; in newly

redesignated paragraphs (c) and (d), the references to "paragraph (a)(2) of this section" are removed and "paragraph (b)(2) of this section" is added in their places; in newly redesignated paragraph (f) introductory text and in newly redesignated paragraph (f)(2) the term "Spanish mackerel" is removed and "king or Spanish mackerel" is added in its place; the section heading is revised; and paragraph (a) and newly redesignated paragraph (b) heading are added to read as follows:

§ 642.27 Commercial trip limits for Atlantic group king and Spanish mackerel.

(a) *Atlantic group king mackerel.* (1) North of a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25' N. lat.) to the outer limit of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

(2) In the area between lines extending directly east from the northern and southern boundaries of Volusia County, Florida (29°25' N. lat. and 28°47.8' N. lat., respectively) to the outer limit of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg) from April 1 through October 31.

(3) In the area between lines extending directly east from the Volusia/Brevard County, Florida boundary (28°47.8' N. lat.) to the outer limit of the EEZ and directly east from the Dade/Monroe County, Florida boundary (25°20.4' N. lat.) to the outer boundary of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 500 lb (227 kg) from April 1 through October 31.

(4) In the area between lines extending directly east from the Dade/Monroe County, Florida boundary (25°20.4' N. lat.) to the outer boundary of the EEZ and directly west from the Monroe/Collier County, Florida boundary (28°48' N. lat.) to the outer boundary of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 1250 lb (567 kg) from April 1 through October 31.

(b) *Atlantic group Spanish mackerel.*

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