

(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 by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the Florida west coast sub-zone of 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 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)).

In accordance with 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached, or is projected to be reached, by publishing a notification in the Federal Register. NMFS has determined that the commercial quota of 432,500 lb (196,179 kg) for Gulf group king mackerel for vessels using run-around gillnets in the Florida west coast sub-zone was reached on January 7. Hence, the commercial fishery for king mackerel for such vessels in the Florida west coast sub-zone is closed effective 12:01 noon, local time, January 7, 1997, through June 30, 1997, the end of the fishing year.

The Florida west coast sub-zone 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 Dade/Monroe County, FL, boundary) through March 31, 1997; and (2) 25°48' N. lat. (due west the Monroe/Collier County, FL, boundary) from April 1, 1997, through October 31, 1997.

Classification

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: January 6, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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50 CFR Parts 648 and 649

[Docket No. 9609262275-6372-02; I.D. 091196A]

RIN 0648-A183

Fisheries of the Northeastern United States; Amendments to the Northeast Multispecies, Atlantic Sea Scallop, and American Lobster Fishery Management Plans

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 8 to the Northeast Multispecies, Amendment 6 to the Atlantic Sea Scallop, and Amendment 6 to the American Lobster Fishery Management Plans (FMPs) to provide a framework abbreviated rulemaking process to address gear conflicts in the New England and Mid-Atlantic regions. These amendments: Add an objective to the Atlantic Sea Scallop and Northeast Multispecies FMPs to allow management of gear conflicts in these fisheries (the American Lobster FMP currently has an objective sufficiently broad in scope to allow management of gear conflicts), adapt the framework process currently in place for the Northeast multispecies and Atlantic sea scallop conservation management programs to allow implementation of a gear conflict management program for all three FMPs, and add a list of management measures to each FMP from which the Council could select future solutions to gear conflicts through the framework adjustment process. The intent of this action is to provide mechanisms to reduce the economic loss caused by gear conflicts.

EFFECTIVE DATE: February 10, 1997.

ADDRESSES: Copies of the amendments, their regulatory impact review and the environmental assessment are available from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508-281-9273.

SUPPLEMENTARY INFORMATION: Amendment 8 to the Northeast Multispecies, Amendment 6 to the Atlantic Sea Scallop, and Amendment 6 to the American Lobster FMPs were prepared by the New England Fishery Management Council (Council) in

consultation with the Mid-Atlantic Fishery Management Council. A notice of availability for the proposed amendment was published on September 20, 1996 (61 FR 49430), and a proposed rule was published on October 9, 1996 (61 FR 52903). Details of this action are described in the proposed rule and will not be repeated here.

Approved Management Measures

These amendments add an objective to the Atlantic Sea Scallop and Northeast Multispecies FMPs to allow management of gear conflicts in these fisheries. This final rule amends the fisheries' framework process to allow implementation of a gear conflict management program for the FMPs and adds the following list of management measures to each FMP from which the Council could select future solutions to gear conflicts through the framework adjustment process: (1) Designation of restricted areas in one degree square increments (2700 nm), (2) mandatory monitoring of a radio channel by fishers, (3) fixed gear location reporting and plotting requirements, (4) standards of operation when gear conflicts occur, (5) fixed gear marking and setting practices, (6) gear restrictions for specific areas (including time and area closures), (7) vessel monitoring systems, (8) restrictions on the number of fishing vessels or amount of gear, and (9) special permit conditions.

Each framework adopted and submitted by the Council under this process would be an individual action to be reviewed under the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law. Approval of these amendments implements a process and provides a list of measures as potential options that may be used to resolve gear conflicts. This final rule does not implement any of the measures listed above. To implement one or more of the measures listed, an individual framework action would require documentation and analyses sufficient to determine consistency with all applicable laws.

A framework action would only be used to address gear conflicts occurring in Federal waters. The Council determined, and NMFS agrees, that the gear conflict framework procedure is principally designed to address true gear conflicts and not as a proxy for addressing what may be an allocation issue between users.

For the purpose of these amendments, the definition of gear conflict (at 50 CFR 600.10) is any incident at sea involving

one or more fishing vessels: (1) In which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and (2) that results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

Comments and Responses

Written comments were received from the U.S. Coast Guard (USCG), the U.S. Department of State, and two individuals. Specific comments are discussed and responded to below.

Comment: The USCG, the U.S. Department of State, and two individuals support implementation of the amendments to provide a framework process to address gear conflicts in the New England and Mid-Atlantic regions.

Response: The comments have been noted and the amendments are approved.

Comment: The USCG expressed concern over the burdensome requirement of fixed gear location reporting and plotting. They state that any economic benefits achieved by implementing this measure would be significantly reduced by the costs to manage it. *Response:* NMFS understands this problem and does not intend to approve future framework actions with this management measure until these problems are sufficiently worked out.

Classification

The Regional Administrator, Northeast Region, NMFS, determined that the amendments are necessary for the conservation and management of the Northeast multispecies, Atlantic sea scallop, and American lobster fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Specific findings supporting that conclusion were summarized in the proposed rule and are not repeated here. No public comments on the certification were received. As a result, no regulatory flexibility analysis was prepared.

NMFS reinitiated consultation on the Northeast Multispecies, Atlantic Sea Scallop and American Lobster FMPs, which was completed on December 13, 1996. These consultations considered new information concerning the status

of the northern right whale. Based on the reinitiation of the Section 7 consultation, NMFS determined that: (1) The fishing activities carried out under the Northeast Multispecies and American Lobster FMPs are likely to jeopardize the continued existence of the northern right whale, but a reasonable and prudent alternative has been developed and is being implemented with this rulemaking, to avoid jeopardy, (2) the prosecution of the multispecies, lobster, and scallop fisheries will not adversely modify right whale critical habitat, (3) the fishing practices allowed under the American Lobster FMP and the Northeast Multispecies FMP may affect, but are not likely to jeopardize, the continued existence of the harbor porpoise and the distinct population segment of Atlantic salmon stocks found in certain Maine rivers, which are both currently proposed to be listed as threatened, and (4) no new information has become available that changes the basis for previous determinations that the Atlantic Scallop FMP and prosecution of the scallop fishery is not likely to adversely affect endangered, threatened, or proposed species, or adversely modify critical habitat. The new information provided above does not change the basis for the conclusions of the 1994 Biological Opinion that the fishing activities carried out under the American Lobster and Northeast Multispecies FMPs may affect, but are not likely to jeopardize the continued existence of the other endangered and threatened whale and sea turtle species under NMFS' jurisdiction.

List of Subjects

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 649

Fisheries.

Dated: January 6, 1997.

Charles Karnella,
*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 648 and 649 are amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.55, the section heading is revised, paragraphs (d) through (f) are redesignated as paragraphs (f) through (h), respectively, new paragraphs (d)

and (e) are added, and newly redesignated paragraph (f)(3) is revised to read as follows:

§ 648.55 Framework specifications.

* * * * *

(d) The Council may make recommendations to the Regional Director to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under 50 CFR 600.10. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2700 mi² (5000.4 km²), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Director. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

- (1) Monitoring of a radio channel by fishing vessels.
- (2) Fixed gear location reporting and plotting requirements.
- (3) Standards of operation when gear conflict occurs.
- (4) Fixed gear marking and setting practices.
- (5) Gear restrictions for specific areas (including time and area closures).
- (6) Vessel monitoring systems.
- (7) Restrictions on the maximum number of fishing vessels or amount of gear.
- (8) Special permitting conditions.

(e) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(f) * * *

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

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3. In § 648.90, paragraph (b) introductory text and paragraph (b)(1) are revised, paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4), respectively, a new paragraph (b)(2) is added and newly redesignated paragraph (b)(3)(iii) is revised to read as follows:

§ 648.90 Framework specifications.

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(b) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Northeast Multispecies FMP or to address gear conflicts as defined under § 600.10 of this chapter.

(1) *Adjustment process.* After a management action has been initiated,

the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, and any other management measures currently included in the FMP.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflict as defined under 50 CFR 600.10, in accordance with the procedure specified in § 648.55(d) and (e).

(3) * * *

(iii) Whether there is an immediate need to protect the resource or to

impose management measures to resolve gear conflicts.

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PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. In § 649.44, the section heading is revised, paragraphs (e) through (g) are redesignated as paragraphs (f) through (h), respectively, new paragraph (e) is added, and newly redesignated paragraph (f)(3) is revised to read as follows:

§ 649.44 Framework specifications.

* * * * *

(e) The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10 in accordance with the procedure specified in § 648.55(d) and (e).

(f) * * *

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

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