in the development of a conservation and management measure with respect to such matter and any other matter the FNP determines is relevant to the development of a conservation and management measure. An FNP may adopt procedures for the operation of the FNP.

(b) *Roles and duties of representative of the council or NMFS.* The person or persons representing the Council or NMFS on an FNP shall participate in the deliberations and activities of the FNP with the same rights and responsibilities as other members of the FNP, and shall be authorized to fully represent the Council or NMFS in the discussions and negotiations of the FNP.

§ 600.757 Operational protocols.

(a) *Services of conveners and facilitators.* A Council or NMFS may employ or enter into contracts for the services of an individual or organization to serve as a convener or facilitator for an FNP established under § 600.755, or may use the services of a government employee to act as a convener or a facilitator for such an FNP.

(b) *Councils.* For an FNP proposed and established by one or more Councils approved expenses shall be paid out of the Council's operating budget.

(c) *Expenses of FNP members.* Members of an FNP shall be responsible for their own expenses of participation in such an FNP, except that NMFS or the Council may, in accordance with section 7(d) of FACA, pay for a member's reasonable travel and per diem expenses, and a reasonable rate of compensation, if:

(1) Such member certifies a lack of adequate financial resources to participate in the FNP.

(2) The Council or NMFS determines that such member's participation in the FNP is necessary to assure an adequate representation of the member's interest.

(d) *Administrative support.* The Council or NMFS shall provide appropriate administrative support to an FNP including technical assistance.

§ 600.758 Preparation of report.

(a) At the conclusion of the negotiations, an FNP may submit a report. Such report shall specify:

(1) All the areas where consensus was reached by the FNP, including, if appropriate, proposed conservation and management measures.

(2) Any other information submitted by members of the FNP.

(b) Upon receipt of the report, the Council or NMFS shall publish such report in the **Federal Register** for public comment.

§ 600.759 Use of report.

A Council or NMFS may, at its discretion, use all or a part of a report prepared in accordance with § 600.758 in the development of conservation and management measures. Neither a Council nor NMFS, whichever is appropriate, is required to use such report.

§ 600.760 Fishery Negotiation Panel lifetime.

(a) An FNP shall terminate upon either:

(1) Submission of a report prepared in accordance with § 600.758; or

(2) Submission of a written statement from the FNP to the Council or NMFS that no consensus can be reached.

(b) In no event shall an FNP exist for longer than 1 year from the date of establishment unless granted an extension. Upon written request by the FNP to the Council or NMFS, and written authorization from the Council or NMFS (whichever is appropriate), the Secretary may authorize an extension for a period not to exceed 6 months. No more than one extension may be granted per FNP.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 110196D]

RIN 0648–AI13

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: 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 rule to reduce the commercial quotas for Atlantic group king and Spanish mackerel, revise the trip limits for Atlantic group Spanish mackerel, reduce the commercial quota for Gulf group Spanish mackerel, revise the commercial trip limits in the eastern zone for Gulf group king mackerel, and establish a zero bag limit for Gulf group king mackerel for captains and crews of charter vessels and headboats. The intended effects of this rule are to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

EFFECTIVE DATE: June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mark 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 (Councils) and is implemented by regulations at 50 CFR part 622 under the Magnuson-Stevens Fishery. Conservation and Management Act (Magnuson-Stevens Act).

In accordance with the framework procedures of the FMP, the Councils recommended, and NMFS published, a proposed rule to implement, for the 1996/97 fishing year, the following measures: For Atlantic migratory groups, reduced commercial quotas for king and Spanish mackerel and modified commercial trip limits for Spanish mackerel; and, for Gulf migratory groups, reduced commercial quota for Spanish mackerel and revised commercial trip limits and recreational bag limit for king mackerel (61 FR 66008, December 16, 1996). That proposed rule described the FMP's framework procedures through which the Councils recommended the changes and explained the need and rationale for them. Those descriptions are not repeated here.

The 1996/97 fishing year for commercial fisheries for Gulf migratory group king mackerel ends June 30; for all other groups of Spanish and king mackerel, the fishing year ended March 31. The quotas and trip limits adopted here, however, will continue into the 1997/98 fishing year until superseded by future specifications. The zero bag limit for Gulf group king mackerel for captains and crews of charter vessels and headboats will likewise continue until superseded.

Comments and Responses

Eight comments were received during the comment period, all pertaining to changes proposed for Gulf group king mackerel. Two charter boat associations, two charter boat captains, and a marine extension agent opposed approval/implementation of the zero bag limit for captain and crew on charter and

headboat vessels. The other 3 comments, 2 from commercial fishermen and a petition signed by 23 commercial fishermen and charter boat captains, expressed opposition to the revised commercial trip limits proposed for Florida's east and west coast fisheries. A summary of the specific comments with agency responses follows.

Zero Bag Limit for Captain/Crew on Charter Vessel or Headboat

Comment: Two commenters recommended disapproval of the zero bag limit proposal because they believe that the process by which it was considered and selected by the Gulf Council violated section 302(i)(6) of the Magnuson-Stevens Act and the FMP framework procedure for the annual adjustment of catch specifications (framework procedure). Specifically, they believe the Gulf Council did not allow ample time for affected fishermen or Council advisory committees to review and comment on a NMFS report on landings reduction options for the Gulf recreational king mackerel fishery that was presented to the Council one day prior to its making a final decision on the zero bag limit proposal. They also believe that the NMFS report was based on flawed data. They consider this report to be new information and, thus, subject to section 302(i)(6) of the Magnuson-Stevens Act, which requires that:

> At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

Response: NMFS finds the Gulf Council's procedures and deliberation process in recommending the zero bag limit proposal to be consistent with all provisions of the Magnuson-Stevens Act and the FMP framework procedure. The public was provided opportunity to comment on the NMFS report at a public hearing (July 17, 1997) held by the Gulf Council just before making the decision to select the zero bag limit option. As required by the FMP framework process for the annual adjustment of catch specifications, this public hearing was held at the time and place where the Gulf Council considered the reports of the Mackerel Stock Assessment Panel (MSAP), and before it made final decisions on management changes for the 1996/97 fishing year. At similar meetings in previous years, the Councils also considered supplemental reports providing projected landings reductions for various bag limit options. Moreover, public comments on the NMFS report and the Gulf Council's decisions were accepted through December 31, 1996, the end of the comment period for the published proposed rule (61 FR 66008; December 16, 1996) announcing the zero bag limit proposal.

The Marine Recreational Fishery Statistics Survey (MRFSS) data used in the NMFS report in question was reviewed by the MSAP and used in its 1996 reports about the status of the stocks. Those reports subsequently were reviewed by the Gulf Council's Mackerel Advisory Panel and Scientific and Statistical Committee, which considered them the best scientific information available. Data used in the NMFS report also were presented to the Gulf Council's Socioeconomic Panel.

Comment: One commenter maintains that the zero bag limit proposal is based on flawed data from NMFS' MRFSS. He believes that MRFSS recreational catch estimate data contain excessive variability and, therefore, are not sufficiently accurate for stock assessments. Further, he believes that the MRFSS overestimates the number of days charter boats operate in the Florida Keys and target king mackerel.

Response: As stated in the previous response, the NMFS report referenced by the commenters was based on the best available information (i.e., estimates of the recreational landings of king mackerel by the MRFSS, the NMFS Headboat Survey, and the Texas Parks and Wildlife Survey). The estimates from these sources are statistically reliable and are the only available comprehensive, region-wide, catch and effort data for recreational mackerel fisheries. The MRFSS does not estimate the number of days charter boats operate, nor did the NMFS report incorporate such estimates.

Comment: Two charter boat captains believe that the zero bag limit for charter boat captains and crews is an unnecessary measure that would severely and adversely impact the charter boat industry in the Florida Keys and in northwest Florida (i.e., the panhandle area). One suggested that the Gulf Council acted prematurely to reduce recreational harvest because preliminary catch estimates for the 1995/96 fishing year did not indicate an overrun of the recreational allocation.

Response: NMFS believes that the zero bag limit for captain and crew on for-hire vessels is an appropriate and necessary measure to reduce the recreational harvest of Gulf group king mackerel. The latest available recreational catch estimates for the 1995/96 fishing year indicate an overrun of the recreational allocation that corresponds reasonably with the recreational catch reduction projected for the zero bag limit proposal. The catch estimates also indicate that a substantial portion of recent overruns of the recreational allocation for Gulf group king mackerel are attributable to increased landings by the charter vessel and headboat industry.

The Gulf Council selected the zero bag limit option as the least burdensome measure to curtail recreational landings of Gulf group king mackerel. The Gulf Council's regulatory impact review (RIR) of the measure indicated no expectation for forcing any charter operation to cease business. The RIR estimated that the measure would reduce charter gross revenues by 3 to 6 percent, possibly changing the cost structure and profitability of some charter operations, but not substantially. It also projected minimal effects on production and compliance costs and estimated a 5 to 7 percent reduction in the crew's gross income.

Comment: A charter boat captain who represents a Mississippi charter boat organization commented that the zero bag limit proposal is an inappropriate restriction on the recreational fishery. He cited information that suggested Mississippi's recreational fishery is more valuable and less destructive than the commercial fishery, which he believes will eventually destroy the resource. He recommended that, if the zero bag limit proposal is approved, the commercial quota be reduced by an amount equivalent to the pounds of king mackerel that would have been landed and sold by charter vessels and headboats and, hence, would have contributed to filling the commercial quota.

Response: The only actions available to NMFS under the FMP framework procedure are to approve or to disapprove the measures proposed by the Councils. Any changes in size limits, seasonal or areal closures, quotas, or bag limits must first be proposed by the Councils through the framework procedure. The division of total allowable catch (TAC) between the recreational and commercial sectors in the form of allocations and quotas, respectively, is prescribed by the FMP and can be changed only through an FMP amendment. NMFS believes those allocations, based on historical landings, represent a fair and equitable distribution of TAC among all resource users.

Comment: A charter boat captain from central west Florida commented that the zero bag limit was discriminatory and inconsistent with the Magnuson-Stevens Act and the laws of the United States. He believes that denying a king mackerel bag limit to charter vessel and headboat captains and crews is inconsistent with national standard four of the Magnuson-Stevens Act. He finds the proposal to be unfair to such captains and crew considering, in his view, that shrimp trawlers are not prohibited by Federal regulations from taking a huge bycatch of juvenile king mackerel.

Response: NMFS does not find the zero bag limit measure to be discriminatory or inconsistent with national standard four of the Magnuson-Stevens Act or any other applicable Federal law. National standard four requires that any allocation or assignment of fishing privileges among various U.S. fishermen be fair and equitable to all such fishermen, reasonably calculated to promote conservation, and carried out so that no particular individual, corporation, or entity acquires an excessive share of such privileges. Regarding the allocation or assignment of fishing privileges, NMFS finds that the measure is fair and equitable to all affected fishermen, reasonably calculated to promote conservation, and will help assure that no particular individual, corporation, or other entity acquires an excessive share of the privilege to harvest Gulf group king mackerel. Recreational catch estimates for the 1995/96 fishing year indicate an overrun of the recreational allocation that corresponds reasonably with the recreational catch reduction projected for the zero bag limit measure. The catch estimates also indicate that a substantial portion of recent overruns of the recreational allocation for Gulf group king mackerel are attributable to increased landings by the charter vessel and headboat industry.

NMFS believes that the subsequent reduction of recreational harvest under the zero bag limit measure will provide conservation benefits by eliminating or minimizing overrun of the recreational allocation of Gulf group king mackerel. Also, the zero retention of Gulf group king mackerel for captain and crew while under charter will help maintain or restore equity between the private and for-hire sectors in their respective harvests under the recreational allocation. Recreational catch estimates indicate frequent overrun of the recreational allocation in addition to a recent substantial increase in landings by the charter vessel and headboat industry.

Commercial Gulf Group King Mackerel Trip Limits: Florida East Coast Subzone

Comment: Two commenters opposed approval of the revisions to the trip limits for Gulf group king mackerel harvested in the Florida east coast subzone. They believe the revisions were not based on the best available scientific information and, if implemented, would lead to early closure of the fishery, thus resulting in an inequitable geographic distribution of the quota within the subzone, potential exclusion of fishermen within the subzone from more lucrative markets during the Lenten season, and subsequent economic hardships for some fishermen in the subzone. They requested continuation of the status quo to allow more time for the Councils to evaluate landings data and revise the trip limits for next season, suggesting that a trip limit in the 400 pound vicinity would be more appropriate.

Response: In converting king mackerel trip limits from numbers of fish to pounds of fish, the Gulf Council based its selection of the 10–lb (4.5–kg) conversion factor (weight of average-sized fish) on previous decisions and length-weight information available to it at the time of its final action. MRFSS data for Gulf group king mackerel supported its decision. Moreover, as part of a recent action implementing commercial trip limits for Atlantic group king mackerel, the Councils, before submitting the proposals for agency review, converted the south Florida trip limits from numbers of fish to pounds of fish based on an average-sized fish of 10 lb (4.5 kg) (61 FR 48848; September 17, 1996). The Councils' selection of an appropriate trip limit to optimize the benefits of the quota (e.g., a trip limit that will maximize economic returns to fishermen by maintaining an open fishery through the Lenten season when ex-vessel prices for fish are strong) is a predictive process based on historical data and advice from advisory panels and fishermen. NMFS supports and approves the Councils' trip limit proposal for the Florida east coast subzone as a reasonable measure that will increase the opportunity to harvest the quota completely, address socioeconomic needs of participants, and protect the resource by curbing the waste of fish from the practice of high-grading.

Commercial King Mackerel Trip Limits: Florida West Coast Subzone

Comment: Twenty-three charter boat and commercial fishermen from the Florida Keys opposed approval of the trip limit revisions for the Florida west coast subzone (i.e., conversion from numbers of fish to pounds of fish). They believe the trip limit changes would decrease enforceability, shorten the harvest season, depress king mackerel market value, and not preclude high-grading. They requested continuation of the current trip limit (125 fish per vessel per day) in the belief it would produce a longer harvest season, higher quality fish, and higher and more stable prices for fishermen.

Response: NMFS does not believe that enforcement of the daily trip limit will be compromised by the conversion from numbers of fish to pounds of fish. The Gulf Council's intention to reduce the waste of high-grading was the primary reason for converting trip limits from numbers of fish to pounds of fish. However, before taking final action, the Council did consider enforcement information indicating that at-sea enforcement of either trip limit was equally difficult. The Council considered that the inspection time required to unpack fish from ice storage, ascertain aggregate number or weight, and repack could cause prolonged exposure of the product at ambient temperature leading to degraded fish quality. Therefore, dockside enforcement appeared the more practical method to enforce trip limits, particularly if state regulations were compatible. Florida implemented the 1,250–lb (567–kg) trip limit on January 1, 1997.

Although the revised trip limits based on poundage may not preclude high-grading entirely, NMFS believes that they will be more effective in minimizing waste and cryptic mortality than limits based on numbers. Regarding the issues of a potential shortened harvest season and depressed market prices for mackerel, as explained above under a response to comments about the changes in the trip limits for the Florida east coast subzone, NMFS does not believe that the conversion from numbers to pounds for the trip limits for the Florida west coast subzone will have these effects. In fact, NMFS believes that the trip limit change here should increase the opportunity to harvest the entire annual quota and, therefore, bring economic benefits to fishermen. For these reasons, NMFS approved this measure.

Miscellaneous Comments

Comment: One commenter remarked that the July 1 start of the fishing year and the Florida west coast subzone quota system for Gulf group king mackerel are unfair and discriminatory to fishermen in the central area of Florida's west coast. He stated that the

inability of fishermen in this area to harvest king mackerel during spring makes it difficult for them to meet qualifying income requirements for state or Federal permits. He believes the establishment of a separate subzone quota for Gulf group king mackerel for the central west Florida area would be more equitable under the Magnuson-Steven Act.

Response: NMFS offers no response to these comments which are outside the scope of this action. However, in developing FMP Amendment 9, the Councils are considering changes to the Florida west coast quota system for Gulf group king mackerel.

Classification

This final 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 for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (61 FR 66008, December 16, 1996) and are not repeated here. No comments were received that would change the basis for this certification. 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: April 25, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is 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)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2, except that for an operator or member of the crew of a charter vessel or headboat, the bag limit is 0.

* * * * *

3. In § 622.42, paragraphs (c)(1)(ii) and (c)(2) 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 2.52 million lb (1.14 million kg). No more than 0.4 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group*. The quota for the Gulf migratory group of Spanish mackerel is 3.99 million lb (1.81 million kg).

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of Spanish mackerel is 3.50 million lb (1.59 million kg).

* * * * *

4. In § 622.44, paragraphs (a)(2)(i)(A) and (B); (a)(2)(ii)(B)(*1*) and (*2*); (b)(1)(ii)(A), (B), and (C); and (b)(2) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(A) From November 1 each fishing year, until 75 percent of the subzone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 750 lb (340 kg) per day.

(B) From the date that 75 percent of the subzone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast subzone has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day. However, if 75 percent of the subzone's quota has not been harvested by February 15, the vessel limit remains at 750 lb (340 kg) per day until the subzone's quota is filled or until March 31, whichever occurs first.

(ii) * * *

(B) * * *

(*1*) From July 1 each fishing year, until 75 percent of the subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) From the date that 75 percent of the subzone's hook-and-line gear quota has been harvested, until a closure of the west coast subzone's fishery for vessels fishing with hook-and-line gear has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) From April 1 through October 31, in amounts exceeding 1,500 lb (680 kg).

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

(*1*) Mondays, Wednesdays, and Fridays—unlimited.

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

(C) After 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, in amounts not exceeding 1,500 lb (680 kg).

* * * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.25 million lb (1.47 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory 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. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or is projected to be reached.

* * * * *

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