

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 050309066-5164-02; I.D. 030105D]

RIN 0648-AS53

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 15

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 15 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This final rule establishes a limited access system for the commercial fishery for Gulf and Atlantic migratory group king mackerel by capping participation at the current level. The final rule also changes the fishing year for Atlantic migratory group king and Spanish mackerel to March through February. The intended effects of this final rule are to provide economic and social stability in the fishery by preventing speculative entry into the fishery and to mitigate adverse impacts associated with potential quota closures.

DATES: This final rule is effective August 8, 2005.

ADDRESSES: Copies of the Final Regulatory Flexibility Analyses (FRFA) may be obtained from the Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter; telephone: 727-551-5796; fax: 727-824-5308; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are managed under the FMP. The FMP was prepared jointly by the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council (Councils), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS approved Amendment 15 on May 26, 2005. NMFS published a

proposed rule (70 FR 13152, March 18, 2005) to implement Amendment 15 and requested public comment on the proposed rule through May 2, 2005. The rationale for the measures in Amendment 15 is provided in the preamble to the proposed rule and is not repeated here.

Comment and Response

Following is a summary of the comment NMFS received on Amendment 15 and the associated proposed rule, along with NMFS' response.

Comment: Do not change the Atlantic king mackerel fishing year to start March 1. At this time of year, the Gulf stock king mackerel are still in the Florida Keys and along the east coast of Florida. A March 1 opening will incorrectly count Gulf stock king mackerel against the Atlantic stock quota.

Response: The change in the fishing year for Atlantic groups of mackerel does not affect the manner in which the fishery is divided for management purposes. For management purposes, the Gulf migratory group of king mackerel is considered to seasonally migrate out of the Gulf of Mexico northward along the east coast of Florida. From November 1 through March 31, king mackerel found in the exclusive economic zone off the east coast of Florida between the Miami-Dade/Monroe County boundary and the Volusia/Flagler County boundary are considered to be Gulf migratory group fish. King mackerel north of the Volusia/Flagler boundary are considered to be Atlantic migratory group fish all year.

The change of the fishing year for Atlantic groups of king and Spanish mackerel does not affect the times that these subzone designations would change. From March 1 through March 31, the fishing year change would only apply to Atlantic migratory group king mackerel caught north of the Volusia/Flagler boundary. King mackerel caught south of the Volusia/Flagler boundary would still be considered Gulf migratory group fish. Beginning April 1, when the subzones are redesignated, king mackerel caught south of the Volusia/Flagler boundary would also be counted as Atlantic migratory group fish.

Classification

The Administrator, Southeast Region, NMFS, has determined Amendment 15 is necessary for the conservation and management of the coastal migratory pelagics fishery and is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared a FRFA for this action. The FRFA incorporates the IRFA and a summary of the analyses completed to support the action. No comments were received in response to the IRFA. A copy of the FRFA is available from NMFS (see **ADDRESSES**). Following is a summary of the analysis.

This final rule will establish a limited access system for the commercial fishery for Gulf and Atlantic group king mackerel and change the Atlantic migratory group king and Spanish mackerel fishing year to begin March 1 rather than the current April 1. The purpose of the rule is to provide stability in the Southeast commercial king mackerel fishery as part of the overall strategy to achieve optimum yield and maximize the overall benefits to the Nation provided by the fishery and insure that the Atlantic group king mackerel fishery is open in March. The Magnuson-Stevens Act provides the statutory basis for the rule.

No significant issues were raised by the public comment about the IRFA or the economic impacts of the rule. Therefore, no changes were made in the final rule as a result of such comments.

No duplicative, overlapping, or conflicting Federal rules have been identified.

An estimated 1,740 vessels were permitted to fish for commercial king mackerel in 2003, down from 2,172 in 1998. Approximately half of the vessels with permits had logbook-reported landings: 1,066 vessels in 1998 and 951 vessels in 2003. The median annual gross revenue from all logbook-reported sales of finfish by these vessels ranged from approximately \$11,000 to \$12,000 during this period. The median percentage of gross revenues attributable to king mackerel ranged from 22 percent to 33 percent. Although participation in the fishery has declined since 1998, this decline has been voluntary and presumed attributable to economic conditions in this fishery and fishing in general and not due to regulatory restrictions. Although a permit moratorium has been in place in this fishery since 1998, permit transfer is not restricted, and those seeking to enter the fishery can purchase a permit from permit holders. Such transfers in fact occur, and 309 of the 1,740 permits in 2003 were permits that had been transferred since 1998. Thus, entry into the fishery occurs; however, total participation, in terms of both the number of permits and the number of permitted vessels that land fish, has consistently declined since 1998,

indicating that entry is not limited by a lack of available permits.

This rule will affect all current participants in the fishery. The rule will similarly affect all entities interested in entering the fishery. No estimate of this number can be provided, though it is not expected to be substantial due to the decline in total participation in the fishery despite available entry opportunities.

This rule will not change current reporting, recordkeeping, and other compliance requirements under the FMP. These requirements include qualification criteria for the commercial vessel permit and logbook landing reports. All of the information elements required for these processes are standard elements essential to the successful operation of a fishing business and should, therefore, already be collected and maintained as standard operating practice by the business. The requirements do not require professional skills. Because these compliance requirements are unchanged under this rule, the requirements are not deemed to be onerous.

One general class of small business entities will be directly affected by this rule--commercial fishing vessels. The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to \$3.5 million per year. Based on the revenue profiles provided above, all commercial entities operating in the king mackerel fisheries are considered small entities.

This rule will apply to all entities that operate in the commercial king mackerel fishery and those entities interested in or seeking to enter the fishery. This rule will, therefore, affect a substantial number of small entities.

Whether a rule has a "significant economic impact" can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All the vessel operations affected by the rule are considered small entities, so the issue of disproportionality does not arise in the present case.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? This rule will continue the limited access system in the fishery. Continuation of this system is expected to increase profitability for the entities remaining in the fishery if participation

continues to decline, as has occurred since 1998. Should the decline in participation cease, profits would be expected to continue at current levels. Should the fishery revert to open access, participation would be expected to increase, and average profit per participant would be expected to decline, possibly to the point of elimination of all profits from this fishery. The specification of the fishing year is essentially an administrative action because no closures of either the Atlantic migratory group king or Spanish mackerel fisheries are expected. Thus, change of the start of the fishing year is not expected to have any effect on profits of fishery participants.

This rule will continue the requirement to have a vessel permit in order to participate in the commercial king mackerel fishery. The cost of the permit is \$50, and renewal is required every other year (the permit is automatically renewed the second year). Because this is a current requirement, there will be no additional impacts on participant profits as a result of this requirement.

Three alternatives were considered to establishment of the limited access system defined by the final rule. The no action alternative would allow the fishery to revert to open access. Open access conditions would be expected to lead to an increase in the number of permitted vessels (1,740 vessels in 2003), or, at least, slow the rate of decline in participation that has occurred. Any increase in the number of vessels landing king mackerel would lead to an expected decrease in producer surplus from that in 2003, which was estimated at \$142,650 to \$380,400.

Two alternatives would continue the current moratorium on issuing new king mackerel commercial permits for 5 years or 10 years, respectively, compared to the final rule that will establish an indefinite limited access program. Thus, the fishery would continue as a limited access fishery under each of these alternatives. It is not possible to distinguish these alternatives from the final rule empirically in terms of fishery behavior using available data. However, it is reasonable to assume that fishermen believe that regardless of the duration of the program specified, a precedent for indefinite use of private market mechanisms to allow entry into the fishery has been established, given the history of successfully functioning private markets for vessel permits. Thus, the outcomes of these three alternatives are expected to be functionally equivalent. As stated previously, under the current permit moratorium program,

the fishery is estimated to have generated \$142,650 to \$380,400 in producer surplus. Assuming the increase in producer surplus mirrors the rate of fleet contraction exhibited from 1998 through 2003 (2.2 percent), the resultant estimates of producer surplus are approximately \$166,000 to \$443,000 by 2010, and \$185,000 to \$494,000 by 2015. Each alternative would also continue to provide for market-based compensation for vessels that exit the fishery, and the permit market would continue to provide an economically rational basis for regulating the entry of vessels into the commercial king mackerel fishery and allocating access to fishery resources among competing users in the commercial fisheries.

Although the final rule may imply a more permanent system than the other alternatives, the system established under any alternative could be suspended at any time through appropriate regulatory action. Establishing an indefinite duration, however, eliminates the need for action to continue the system at specific time intervals, thereby eliminating the costs associated with the regulatory process. The administrative and development cost of the current action is estimated to be \$200,000. Further, the final rule may better address the Councils' purpose of providing stability in the commercial and recreational fisheries for king mackerel, preventing speculative entry into the commercial fisheries, and achieving optimum yield. The status quo alternative would not achieve the Councils' objectives.

Three alternatives were considered for the change in the fishing year for Atlantic migratory group king and Spanish mackerel. The status quo alternative would maintain the current fishing year, April 1 through March 31, while a second alternative would establish a January 1 through December 31 fishing year. The Councils' objective is to insure that the Atlantic group mackerel fisheries are open in March, because other fishing opportunities are limited during this month. Both the fishing year established by the final rule and a January 1 opening would reduce the potential of a March closure. However, only the final rule would guarantee that the fishery is open in March, absent a 0-lb (0-kg) quota. Thus, the final rule best meets the Councils' objectives.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with

the rule, and shall designate such publications as "small entity compliance guides." As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all permit holders for the coastal migratory pelagic fishery.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 30, 2005.

Rebecca Lent

Deputy Assistant Administrator for Regulatory Programs, 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 § 622.4, paragraphs (a)(2)(ii), (a)(2)(iii), (g)(1), (o), and (q) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(ii) *Gillnets for king mackerel in the southern Florida west coast subzone.* For a person aboard a vessel to use a run-around gillnet for king mackerel in the southern Florida west coast subzone (see § 622.42(c)(1)(i)(A)(3)), a commercial vessel permit for king mackerel and a king mackerel gillnet permit must have been issued to the vessel and must be on board. See paragraph (o) of this section regarding a limited access system applicable to king mackerel gillnet permits and restrictions on transferability of king mackerel gillnet permits.

(iii) *King mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel, at least 25 percent of the applicant's earned income, or at least \$10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the three calendar years preceding the application. See

paragraph (q) of this section regarding a limited access system applicable to commercial vessel permits for king mackerel, transfers of permits under the limited access system, and limited exceptions to the earned income or gross sales requirement for a permit.

* * * * *

(g) * * *

(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

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(o) *Limited access system for king mackerel gillnet permits applicable in the southern Florida west coast subzone.* Except for applications for renewals of king mackerel gillnet permits, no applications for king mackerel gillnet permits will be accepted. Application forms for permit renewal are available from the RA.

(1) An owner of a vessel with a king mackerel gillnet permit issued under this limited access system may transfer that permit upon a change of ownership of a permitted vessel with such permit from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. Such permit also may be transferred to another vessel owned by the same entity.

(2) A king mackerel gillnet permit that is not renewed or that is revoked will not be reissued. A permit is considered

to be not renewed when an application for renewal is not received by the RA within one year after the expiration date of the permit.

* * * * *

(q) *Limited access system for commercial vessel permits for king mackerel.* (1) No applications for additional commercial vessel permits for king mackerel will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (q)(2) through (q)(5) of this section, and are subject to the requirement for timely renewal in paragraph (q)(6) of this section.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this limited access system to another vessel owned by the same entity.

(3) An owner whose percentage of earned income or gross sales qualified him/her for the commercial vessel permit for king mackerel issued under this limited access system may request that NMFS transfer that permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for king mackerel for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the percentage of earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income or gross sales requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may request that NMFS transfer the permit to the income-qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income or gross

sales requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(6) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

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■ 3. In § 622.30, paragraph (b)(2) is revised, and paragraph (b)(3) is added to read as follows:

§ 622.30 Fishing years.

* * * * *

(b) * * *

(2) *Gulf migratory group Spanish mackerel*—April through March.

(3) *South Atlantic migratory group king and Spanish mackerel*—March through February.

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■ 4. In § 622.44, paragraph (a)(2)(ii)(A) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(A) *Gillnet gear.* (1) In the southern Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued, as required under § 622.4(a)(2)(ii), in amounts not exceeding 25,000 lb (11,340 kg) per day, provided the gillnet fishery for Gulf group king mackerel is not closed under § 622.34(p) or § 622.43(a).

(2) In the southern Florida west coast subzone:

(i) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial vessel permit for king mackerel and a king mackerel gillnet permit.

(ii) King mackerel from the southern west coast subzone landed by a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(2)(j).

(iii) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050331089-5172-02; I.D. 031005A]

RIN 0648-AS74

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for Georges Bank Cod, Haddock, and Yellowtail Flounder in the U.S./Canada Management Area for Fishing Year 2005

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

ACTION: Final rule.

SUMMARY: The following Total Allowable Catches (TACs) in the U.S./Canada Management Area are implemented for the 2005 fishing year (FY): 260 mt of Georges Bank (GB) cod, 7,590 mt of GB haddock, and 4,260 mt of yellowtail flounder. This action is intended to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: This rule is effective July 7, 2005, through April 30, 2006.

ADDRESSES: Copies of the Transboundary Management Guidance Committee's (TMGC) 2004 Guidance Document and copies of the Environmental Assessment of the 2005 TACs (including the Regulatory Impact Review and Regulatory Flexibility Analysis (FRFA)) may be obtained from: Sustainable Fisheries Division, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930; telephone (978) 281-9315.

NMFS prepared a summary of the FRFA, which is contained in the Classification section of this final rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135, e-mail Thomas.Warren@NOAA.gov.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published on April 14, 2005 (70 FR 19724), with public comments accepted through May 16, 2005. A detailed description of the administrative process used to develop the TACs was contained in the preamble of the proposed rule and is not repeated here. The Northeast (NE) Multispecies Fishery Management Plan (FMP) specifies a procedure for setting annual hard (i.e., the fishery or area closes when a TAC is reached) TAC levels for GB cod, GB haddock, and GB yellowtail flounder. The regulations governing the annual development of TACs (§ 648.85(a)(2)) were implemented by Amendment 13 to the FMP (69 FR 22906; April 27, 2004) in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal understanding between the United States and Canada that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution. The TACs apply to the shared GB groundfish resources. The shared stocks of GB cod and haddock in U.S. waters represent portions (subsets) of the stocks of GB cod and haddock managed in the U.S. Exclusive Economic Zone under the FMP. The shared stock of GB yellowtail flounder in U.S. waters represents the entire stock of GB yellowtail flounder managed by the FMP.

On September 16, 2004, the New England Fishery Management Council recommended the following U.S. TACs for FY 2005: 260 mt of GB cod, 7,590 mt of GB haddock, and 4,260 mt of GB yellowtail flounder. These 2005 TACs are based upon stock assessments conducted in June 2004 by the Transboundary Resource Assessment Committee (TRAC). The 2005 cod and yellowtail flounder TACs represent a decrease from 2004 TAC levels, and the 2005 haddock TAC represents an increase from the 2004 TAC. The percentage shares of these stocks for 2004 and 2005 between the U.S. and Canada are presented in the following tables: