

filed. However, in its petition for reconsideration of the *Fifth Report and Order*, the Personal Communications Industry Association ("PCIA") asserted that the FRFA's discussion of small businesses that would be affected by the DTV rules and policies should have included mobile licensees, not just other broadcast licensees. Rejecting PCIA's argument, the Commission notes that the FRFA's scope is limited to small entities directly subject to administrative rules, rather than all entities that are indirectly affected by the results that any rules will produce.

87. Also, the Commission on its own motion has made three minor technical changes to the rules adopted in the *Fifth Report and Order* and one minor substantive change, which are explained above. They do not affect the previous FRFA. These minor rule changes do not alter in any significant way the FRFA or the potential effect of the rules on any small entities that may be subject to them. The Commission shall send a copy of this Supplemental Final Regulatory Flexibility Analysis, along with this *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (a)(1)(A).

Ordering Clauses

88. Accordingly, it is ordered that, pursuant to sections 4(i) & (j), 303(r), 307, 309, and 336 of the Communications Act of 1934 as amended, 47 U.S.C. § 154(i), (j) 303(r), 307, 309, and 336, this Memorandum Opinion and Order is adopted.

89. It is further ordered that the Petitions for Reconsideration in this proceeding are granted to the extent described above, and are otherwise denied.

90. It is further ordered that the rule changes set forth in this document shall become effective May 1, 1998.

91. It is further ordered that, upon release of this Memorandum Opinion and Order, this proceeding is hereby terminated.

List of Subject in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission,
Magalie Roman Salas,
Secretary.

Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

2. Section 73.624 is amended by revising paragraph (c) to read as follows:

§ 73.624 Digital Television Broadcast Stations.

* * * * *

(c) Provided that DTV broadcast stations comply with paragraph (b) of this section, DTV broadcast stations are permitted to offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis. The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations under paragraph (b) of this section. Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.

(1) DTV licensees that provide ancillary or supplementary services that are analogous to other services subject to regulation by the Commission must comply with the Commission regulations that apply to those services, provided, however, that no ancillary or supplementary service shall have any rights to carriage under §§ 614 or 615 of the Communications Act of 1934, as amended, or be deemed a multichannel video programming distributor for purposes of section 628 of the Communications Act of 1934, as amended.

(2) In all arrangements entered into with outside parties affecting service operation, the DTV licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material in the sole judgment of the permittee or licensee. The licensee or permittee is also responsible for all aspects of technical operation involving such services.

(3) In any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, a licensee shall establish that all of its program services on the analog and the DTV spectrum are in the public interest. Any violation of the Commission's rules applicable to

ancillary or supplementary services will reflect on the licensee's qualifications for renewal of its license.

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[FR Doc. 98-8458 Filed 3-31-98; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235-8028-02; I.D. 032598E]

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

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for Atlantic migratory group king mackerel in the exclusive economic zone (EEZ) of the Atlantic. This closure is necessary to protect the Atlantic group king mackerel resource.

DATES: The closure is effective 12:01 a.m., March 29, 1998, through March 31, 1998.

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

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (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 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Atlantic migratory group of king mackerel of 2.52 million lb (1.14 million kg).

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 2.52 million lb (1.14 million kg) for the Atlantic migratory group of king mackerel was reached on March 28, 1998. Accordingly, the commercial fishery for Atlantic group king mackerel is closed effective 12:01 a.m., local time, March 29, 1998, through March 31, 1998, the end of the fishing year.

From November 1 through March 31, the boundary separating the Atlantic and Gulf migratory groups of king mackerel is 29°25' N. lat., which is a line directly east from the Volusia/Flagler County, FL, boundary to the outer limit of the EEZ. The boundary off the northern Atlantic coastal states is between the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council as specified in § 600.105(a).

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel permitted to fish under a commercial quota may fish for Atlantic group king mackerel in the EEZ of the closed migratory group or retain Atlantic group king mackerel in or from the EEZ of the closed migratory group. A person aboard a vessel for which the permit indicates both commercial king mackerel and charter/headboat for coastal migratory pelagic fish may continue to retain king mackerel under the bag and possession limit set forth in 50 CFR 622.39(c)(1)(i), provided the vessel is operating as a charter vessel or headboat.

During the closure, king mackerel from the closed migratory group taken in the EEZ, including those harvested under the bag limit, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed migratory group that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

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: March 26, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 98-8561 Filed 3-27-98; 3:25 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235-8028-02; I.D. 032598D]

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

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the overfished Gulf king mackerel resource.

DATES: The closure is effective 12:01 a.m., March 29, 1998, through June 30, 1998.

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

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (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 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS recently implemented (63 FR 8353, February 19, 1998) a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.05 million lb (0.48 million kg). The fishery was opened February 20, 1998 (63 FR 9158, February 24, 1998), to allow harvest of the remaining balance between the newly implemented quota and the former, lower quota of 0.77 million lb (0.35 million kg).

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 1.05 million lb (0.48 million kg) for the western zone of the Gulf migratory group of king mackerel was reached on March 28, 1998. Accordingly, the commercial fishery for Gulf group king mackerel from the western zone is closed effective 12:01 a.m., local time, March 29, 1998, through June 30, 1998, the end of the fishing year. The boundary between the eastern and western zones is 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary.

NMFS previously determined that the commercial quotas for king mackerel for vessels using run-around gillnet and hook-and-line gears in the Florida west coast subzone of the eastern zone of the Gulf of Mexico were reached and closed those fishery segments on February 24, 1998 (63 FR 10154, March 2, 1998), and March 5, 1998 (63 FR 11628, March 10, 1998), respectively. Thus, with this closure, all commercial fisheries for king mackerel in the EEZ are closed from the U.S./Mexico border through the Florida west coast subzone through June 30, 1998. The Florida west coast subzone 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, 1998; and (2) 25°48' N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1998, through October 31, 1998.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel permitted to fish under a commercial quota may fish for Gulf group king mackerel in the EEZ of the closed zones or retain Gulf group king mackerel in or from the EEZ of the closed zones. A person aboard a vessel for which the permit indicates both commercial king mackerel and charter/headboat for coastal migratory pelagic fish may continue to retain king mackerel under the bag and possession limit set forth in 50 CFR 622.39(c)(1)(ii), provided the vessel is operating as a charter vessel or headboat.

During the closure, king mackerel from the closed zones taken in the EEZ, including those harvested under the bag limit, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.