

makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: February 5, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 070709302-8019-02]

RIN 0648-AV17

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Atlantic Group Spanish Mackerel Commercial Trip Limit in the Southern Zone; Change in Start Date

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 changes the start date of the commercial trip limit for Atlantic migratory group Spanish mackerel in the southern zone to March 1. The intended effect of this final rule is to conform the trip limit to the beginning of the fishing year for Atlantic migratory group Spanish mackerel.

DATES: This final rule is effective March 12, 2008.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) and the South Atlantic Fishery Management Council's framework procedure for adjustment of the start date of the commercial trip limit for Atlantic migratory group Spanish mackerel in the southern zone and related matters may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: 843-571-4366, toll free 866-SAFMC-10; fax: 843-769-4520; e-mail: safmc@safmc.net.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727-824-5305, fax: 727-824-5308, e-mail: Susan.Gerhart@noaa.gov.

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 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act) by regulations at 50 CFR part 622. In accordance with the framework procedures of the FMP, the South Atlantic Fishery Management Council (Council) recommended and the Regional Administrator, Southeast Region, NMFS approved, a regulatory change relating to Atlantic migratory group Spanish mackerel. The change is within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48(c).

On January 3, 2008, NMFS published a proposed rule to change the start date of the commercial trip limit for Atlantic migratory group Spanish mackerel and requested public comment (73 FR 439). Two public comments were received on the proposed rule. Both comments were in favor of the proposed regulatory action, therefore no changes were made in the final rule as a result of such comments. The rationale for this measure is contained in the Council's framework action and in the preamble to the proposed rule and is not repeated here.

Classification

The Administrator, Southeast Region, NMFS, determined that this regulatory change is consistent with the Council's framework action and is necessary for the conservation and management of the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A FRFA was prepared for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the analysis follows.

This rule will change the start date for the 3,500-lb (1,588-kg) trip limit in the southern zone for Atlantic migratory group Spanish mackerel to March 1. The purpose of this action is to correct an unintended inconsistency created by Amendment 15 to the FMP, effective August 8, 2005 (70 FR 39187, July 5, 2005), which redefined the fishing year for Atlantic migratory group king mackerel and Spanish mackerel from April-March to March-February, but did not specify the Spanish mackerel trip limit for March.

No comments were received on the IRFA or on the economic impacts of the

proposed rule. Therefore, no changes were made in the final rule as a result of such comments.

This rule is expected to affect all federally permitted commercial vessels that harvest Atlantic migratory group Spanish mackerel off the Florida east coast. As of January 2006, 1,333 vessels possessed Federal commercial Spanish mackerel permits. However, only 532 of these vessels had homeports on the Atlantic coast (Maine through Miami-Dade County, Florida), of which 300 vessels had homeports on the Florida east coast, and only 312 vessels reported landings of Atlantic migratory group Spanish mackerel in the required Federal logbook system for the 2005–2006 fishing year. Additional vessels may fish exclusively within state waters, where neither a Federal permit nor logbook reporting is required. While these vessels would not directly be subject to this rule, the State of Florida's commercial trip limits for Spanish mackerel have, to date, been adjusted to mirror those for adjacent Federal waters.

Although the total number of vessels that operate in the Atlantic migratory group Spanish mackerel fishery, as well as their production characteristics, varies from year to year, data on the 312 vessels that reported landings of this species in the 2005–2006 fishing year were used to determine average revenue characteristics for this fishery. Most of the vessels that operate in the Spanish mackerel fishery have permits for and participate in king mackerel, snapper-grouper, and other commercial fisheries. During the 2005–2006 fishing season, these vessels harvested, on average, 5,391 lb (2,445 kg) of Atlantic group Spanish mackerel. This accounted for 24 percent, approximately \$5,300 (2006 dollars), of the estimated average annual gross revenue, approximately \$22,200 (2006 dollars), from all logbook-reported landings. The annual vessel maximum estimated gross revenue from all species harvested by vessels operating in the Spanish mackerel fishery ranged from approximately \$182,000 to \$342,000 (2006 dollars) for the fishing years 2001–2002 through 2005–2006.

The Atlantic migratory group Spanish mackerel fishery has been managed via staged trip limits since November 1992 for Florida's east coast, starting with a 3,500-lb (1,588-kg) trip limit from April through November. There is an unlimited weekday limit and a 1,500-lb (680-kg) weekend limit from December 1 until 75 percent of the adjusted quota is harvested. This is followed by a 1,500-lb (680-kg) trip limit on all days until 100 percent of the adjusted quota is harvested, and a 500-lb (227-kg) trip limit thereafter until the end of the

fishing year. The trip limit elsewhere (Georgia through New York) remains at 3,500 lb (1,588 kg) all year. During the past decade, the Florida east coast has accounted for more than 70 percent of the fishery's landings.

Very few logbook-reported trips in the fishery as a whole have reached 3,500 lb (1,588 kg), usually less than 1 percent of all trips each year since the 1998–1999 fishing season. The average harvest of Atlantic migratory group Spanish mackerel per trip has been approximately 500–700 lb (227–318 kg), and the median harvest, approximately 100–300 lb (45–136 kg). Over this period, Atlantic migratory group Spanish mackerel accounted for on average approximately 60–72 percent of the estimated trip gross revenue from all species harvested.

Gear use in the fishery has changed since the mid-1990s. Prior to the mid-1990s, gillnets were the leading gear in the fishery. Since the implementation of Federal regulations that limit the use of gillnets in Federal waters in 1994 and the prohibition of the use of gillnets in Florida state waters in 1995, fishermen have adjusted their fishing practices, and cast nets have become the predominant gear on the Florida east coast. Hand lines have challenged gillnets for second place.

Little data are available since the start of the fishing year was changed to March 1. While the inconsistency between the fishing year and trip limits created the opportunity for unlimited harvests in March, to date, the fishery has not responded with increased harvests relative to previous years, with March harvests in 2006 and 2007 being less than those of either 2004 or 2005.

Some fleet activity may exist in the commercial fishery for Atlantic migratory group Spanish mackerel, but the extent of such activity is unknown. Additional permits, both state and Federal, and associated revenues may be linked to an entity through affiliation rules, but such affiliation links cannot be made using existing data. Therefore, all vessels operating in the Atlantic migratory group Spanish mackerel fishery are assumed to represent independent entities for the purpose of this analysis.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters, for-hire operations, fish processors, and fish dealers. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined average

annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. Based on the annual averages and maximums for estimated gross revenue per vessel provided above, it is determined that, for purposes of this analysis, all entities that would be affected by this rule are small business entities.

No direct or indirect adverse economic effects on any affected entities have been identified or are expected to occur as a result of this rule. Although the current inconsistency between the start of the Atlantic migratory group Spanish mackerel fishing year and the specification of the commercial trip limit created the opportunity for increased harvests in March, available data do not indicate this has altered fishing behavior such that it would be adversely impacted by the establishment of a 3,500-lb (1,588-kg) trip limit. Further, even if this rule were to result in reduction in harvest and revenues from Spanish mackerel for some entities, the intent of the action is to enable larger harvests of Spanish mackerel in the months prior to March, when harvests of other species, notably snapper-grouper species, are constrained due to recent regulatory change. Allowing unlimited trip limits for Spanish mackerel at the start of the season increases the likelihood of quota-triggered lower limits at the end of the fishing year, leading to reduced alternative fishing opportunities and lower profits for fishermen subject to reduced harvest opportunities in the snapper-grouper fishery. To the extent that access to Spanish mackerel at the end of the fishing year is improved by limiting harvest in March, this rule would, therefore, be expected to result in increased total harvest opportunities and net benefits (profits) to the participants in these fisheries. These increased benefits, however, cannot be quantified with available data.

This rule will not alter existing reporting, record-keeping, or permitting requirements.

One alternative to this action, the status quo, was considered. The status quo would not establish a trip limit for the Florida east coast in March and would not, therefore, achieve the Council's objective. No other alternatives to this action were considered because no other start date for the trip limit would be reasonable other than the beginning of the fishing year, March 1. To start the trip limit on any other day in March would continue to allow unlimited harvest of the species on those days and continue to increase the possibility of an early closure with

associated economic disruptions. Current rules already establish trip limits for April 1 to the end of February, so this amendment only applies to March.

List of Subjects in 50 CFR Part 622

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

Dated: February 6, 2008.
Samuel D. Rauch III,
*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 § 622.44, paragraph (b)(1)(ii)(A) is revised to read as follows:

§ 622.44 Commercial trip limits.

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- (b) * * *
- (1) * * *
- (ii) * * *

(A) From March 1 through November 30, in amounts exceeding 3,500 lb (1,588 kg).

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