

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

[Docket No. 070709302-7309-01]

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:** Proposed rule, request for comments.

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

**DATES:** Written comments must be received on or before January 18, 2008.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AV17, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>.

- Fax: 727-824-5308, Attn: Susan Gerhart.

- Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the South Atlantic Fishery Management Council's framework recommendation for adjustment of the start date of the commercial trip limits for Atlantic 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 or 866-SAFMC-10 (toll free); fax: 843-769-4520; e-mail: [safmc@safmc.net](mailto:safmc@safmc.net).

**FOR FURTHER INFORMATION CONTACT:**

Susan Gerhart, telephone: 727-824-5305, fax: 727-824-5308, e-mail: [Susan.Gerhart@noaa.gov](mailto: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) made a recommendation to the Regional Administrator, Southeast Region, NMFS (RA), relating to Atlantic migratory group Spanish mackerel. The recommended 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).

**Background**

Amendment 15 to the FMP revised the fishing year for Atlantic migratory group Spanish mackerel from April through March to March through February. However, the start date for the trip limit in the southern zone was not similarly changed from April 1 to March 1.

The commercial sectors of the king and Spanish mackerel fisheries are managed under both quotas and trip limits. Currently, the commercial trip limits for Atlantic group Spanish mackerel south of the Georgia/Florida boundary are as follows: From April 1 through November 30 - 3,500 lb (1,588 kg); from December 1 until 75 percent of the adjusted quota is taken, Mondays through Fridays--unlimited, and Saturdays and Sundays--1,500 lb (680 kg); after 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, 1,500 lb (680 kg); and after 100 percent of the adjusted quota is taken through the end of the fishing year, 500 lb (227 kg). The

adjusted quota is currently 3.62 million lb (1.64 million kg), which 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.

As proposed by the Council for the commercial fishery off Florida, the trip limit of 3,500 lb (1,588 kg) would apply March 1 in lieu of April 1, without other change. The proposed change would conform to the current fishing year, which starts March 1, and would allow fishermen to fish for Spanish mackerel during March when there are few other fishing opportunities. It would also assure that Spanish mackerel can be harvested during Lent when ex-vessel prices are typically at their highest during the year.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

The proposed rule would change the start date for the 3,500-pound trip limit in the southern zone for Atlantic migratory group Spanish mackerel to March 1. This action would correct an unintended inconsistency created by Amendment 15 to the FMP, effective August 8, 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. The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been

identified. This proposed rule would not alter existing reporting, record-keeping, or permitting requirements.

The proposed rule would 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 the proposed rule, Florida commercial trip limits for Spanish mackerel have to date been adjusted to mirror those of 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, information 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 and participate in other commercial fisheries, king mackerel and snapper-grouper. During the 2005–2006 fishing season, these vessels harvested, on average, 5,391 pounds 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-pound trip limit in April through November, unlimited week-day limits and 1,500-pound weekend limits from December 1 until 75 percent of the adjusted quota is harvested, followed by a 1,500-pound trip limit on all days until 100 percent of the adjusted quota is harvested, and a 500-pound limit thereafter until the end of the fishing year. The trip limit elsewhere (Georgia

through New York) remains at 3,500 pounds all year. Over the past decade, the Florida east coast has accounted for over 70 percent of the fishery's landings.

Under these trip limits, very few logbook-reported trips in the fishery as a whole have reached 3,500 pounds, usually accounting for less than one percent of all trips each year since the 1998–1999 fishing season. The average Atlantic migratory group Spanish mackerel harvest per trip since the 1998–1999 fishing season has been approximately 500–700 pounds, and the median harvest approximately 100–300 pounds. Over this period, Atlantic migratory group Spanish mackerel accounted for on average approximately 60–72 percent of the estimated gross revenue from all species harvested by these fishermen.

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 resulting in cast nets becoming the predominant gear on the Florida east coast. Hand lines have challenged gillnets for second place, and the proportion of logbook reported landings from the Florida east coast has declined from approximately 70–80 percent of total logbook reported Spanish mackerel landings in the early 2000's to 50–60 percent in more recent years.

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 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 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 purpose of this analysis, all entities that would be affected by the proposed 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 proposed 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 that would be adversely impacted by the establishment of a 3,500-pound trip limit. Further, even if the proposed rule were to result in a harvest reduction of and reduced revenues from Spanish mackerel for some entities, the intent of the action is to enable access to and 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. Improving access to Spanish mackerel at the end of the fishing year, as would be accomplished by limiting harvest in March, 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.

One alternative to the proposed 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 the proposed action were considered because no other start date for the trip limit would be reasonable other than the beginning of the fishing

year. Current rules already establish trip limits for April 1–end of February, so this amendment only applies to March.

This proposed rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act.

#### List of Subjects in 50 CFR Part 622

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

Dated: December 27, 2007

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

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

\* \* \* \* \*

[FR Doc. E7–25583 Filed 1–2–08; 8:45 am]

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 071004577–7578–01]

RIN 0648–AW13

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for Eastern Georges Bank Cod, Eastern Georges Bank Haddock, and Georges Bank Yellowtail Flounder in the U.S./Canada Management Area for Fishing Year 2008

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes 2008 fishing year (FY) Total Allowable Catches (TACs) for Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area, as recommended by the New England Fishery Management Council (Council). These TACs may be adjusted during FY 2008, if NMFS determines that the harvest of these stocks in FY 2007 exceeded the TACs specified for FY 2007. NMFS is also considering for the Eastern U.S./Canada Area, postponing the FY 2008 opening until August 1, 2008, allowing longline gear vessels during the May through July period, and setting a cap on the cod caught by such vessels during this period at 5 percent of the cod TAC. The intent of this action is to provide for the conservation and management of those three stocks of fish.

**DATES:** Comments must be received by February 4, 2008.

**ADDRESSES:** You may submit comments, identified by 0648–AW13, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-rulemaking portal: <http://www.regulations.gov>
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the U.S./Canada TACs.”
- Fax: (978) 281–9135.

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

Copies of the Transboundary Management Guidance Committee’s 2007 Guidance Document and copies of the Environmental Assessment (EA) of the 2008 TACs (including the Regulatory Impact Review and Regulatory Flexibility Analysis (IRFA)) may be obtained from NMFS at the mailing address specified above; telephone (978) 281–9315. NMFS prepared a summary of the IRFA, which is contained in the Classification section of this proposed rule.

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

**SUPPLEMENTARY INFORMATION:** The Northeast (NE) Multispecies Fishery Management Plan (FMP) specifies a procedure for setting annual hard TAC levels (i.e., the fishery or area closes when a TAC is reached) for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area. 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 (i.e. non-binding) 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.

Annual TACs are determined through a process involving the Council, the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Transboundary Resources Steering Committee (§ 648.85(a)(2)(i)). In September 2007, the TMGC approved the 2007 Guidance Document for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder, which included recommended U.S. TACs for these stocks. The recommended 2008 TACs were based upon the most recent stock assessments (Transboundary Resource Assessment Committee (TRAC) Status Reports for 2007), and the fishing mortality strategy shared by both the United States and Canada. The strategy is to maintain a low to neutral (less than 50 percent) risk of exceeding the fishing mortality limit reference ( $F_{ref} = 0.18, 0.26, \text{ and } 0.25$ , for cod, haddock, and yellowtail flounder, respectively). When stock conditions are poor, fishing mortality rates ( $F$ ) should be further reduced to promote rebuilding.

For Eastern GB cod, the TMGC concluded that the most appropriate combined Canada/USA TAC for Eastern Georges Bank cod for the 2008 fishing year is 2,300 mt. This corresponds to a low risk (less than 25%) of exceeding the  $F_{ref}$  of 0.18 in 2008 and that stock biomass will not increase from 2008 to 2009, though that increase is estimated to be nominal. The annual allocation shares between countries for 2008 are based on a combination of historical