

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

[Docket No. 040205043-4043-01]

RIN 0648-XU38

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Reopening of the Gulf Group King Mackerel East Coast Subzone

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

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens the commercial fishery for Gulf group king mackerel in the exclusive economic zone (EEZ) of the east coast subzone. NMFS previously determined the quota for this commercial fishery would be reached by February 4, 2010. The latest estimates for landings indicate the quota was not reached by that date. Consequently, NMFS will reopen this fishery for 5 days. The purpose of this action is to allow the fishery to maximize harvest benefits and at the same time protect the king mackerel resource.

DATES: The reopening is effective 12:01 a.m., local time, March 3, 2010, until 12:01 a.m., local time, on March 8, 2010. The fishery will then be closed until the end of the fishing season, 12:01 a.m., local time, April 1, 2010.

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SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and 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 (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001, (66 FR 17368, March 30, 2001) NMFS

implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A)(1)).

From November 1 through March 31 the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4' N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary) to 29°25' N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary). Beginning April 1, the boundary between Atlantic and Gulf groups of king mackerel shifts south and west to the Monroe/Collier County boundary on the west coast of Florida. From April 1 through October 31, king mackerel harvested along the east coast of Florida, including all of Monroe County, are considered to be Atlantic group king mackerel.

Under 50 CFR 622.43(a)(3), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS projected the fishery for king mackerel in the east coast subzone would reach the quota on February 4, 2010, and closed the fishery on that date (75 FR 4705, January 29, 2010). However, based on current statistics, NMFS has determined that only 93 percent of the available commercial quota was landed by that date. Based on daily landings rates and the pounds remaining on the quota (approximately 70,000 lb (31,751 kg)), NMFS has determined the fishery can reopen for 5 days. Accordingly, NMFS is reopening the commercial king mackerel fishery in the east coast subzone from 12:01 a.m., local time, on March 3, 2010, until 12:01 a.m., local time, on March 8, 2010. The fishery will then be closed until 12:01 a.m., local time, April 1, 2010, when the boundary between the Atlantic and Gulf groups shifts. March 1, 2010, was chosen as the reopening day for the fishery based on feedback from the fishing industry and weather concerns, which indicated that this was the best time to reopen.

The operator of a vessel with a valid commercial vessel permit for king mackerel may not fish for or retain king mackerel prior to 12:01 a.m., local time, March 3, 2010, and must have landed and bartered, traded, or sold such king

mackerel prior to 12:01 a.m., local time, March 8, 2010.

During the closed period, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain king mackerel in or from Federal waters of the closed subzone. There is one exception, however, for a person aboard a charter vessel or headboat. A person aboard a vessel that has a valid charter/headboat permit for coastal migratory pelagic fish and a commercial king mackerel permit may continue to retain king mackerel in or from the closed subzone under the 2-fish daily bag limit, provided the vessel is operating as a charter vessel or headboat. Charter vessels or headboats that hold a commercial king mackerel permit are considered to be operating as a charter vessel or headboat when they carry a passenger who pays a fee or when more than three persons are aboard, including operator and crew.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). Allowing prior notice and opportunity for public comment on the reopening is unnecessary because the rule establishing the annual quota has already been subject to notice and comment, and all that remains is to notify the public that additional harvest remains in the established quota and, therefore, the fishery will reopen for a limited time period.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 19, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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