

**DEPARTMENT OF DEFENSE****48 CFR Part 225****[DFARS Case 99-D005]****Defense Federal Acquisition Regulation Supplement; Foreign Military Sales Customer Observation of Negotiations****AGENCY:** Department of Defense (DoD).**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** DoD is withdrawing the proposed rule published at 64 FR 22825 on April 28, 1999. The rule proposed to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to allow Foreign Military Sales (FMS) customers to observe contract price negotiations. This change was proposed as a part of a DoD initiative to improve the FMS process. DoD has reconsidered this rule based on public comments. DoD is considering alternative methods of satisfying the pricing information needs of countries that acquire supplies and services through the FMS program. Therefore, DoD is withdrawing the proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0288; telefax (703) 602-0350. Please cite DFARS Case 99-D005.

**Michele P. Peterson,***Executive Editor, Defense Acquisition Regulations Council.*

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**BILLING CODE 5000-04-M****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622****[Docket No. 001005281-0281-01; I.D. 082900C]****RIN 0648-AN85****Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2000-2001 Catch Specifications for Gulf Group King Mackerel**

**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, for Gulf group king mackerel, to reduce the total allowable catch (TAC), reinstate a 2-fish per person daily bag limit for captain and crew of for-hire vessels (charter vessels and headboats), and revise the commercial trip limit applicable within the Florida east coast subzone (Miami-Dade County, FL through Volusia County, FL). The intended effect of this proposed rule is to protect the Gulf group king mackerel stock from overfishing while still allowing catches by the commercial and recreational fisheries. In addition, NMFS proposes a minor change to correct a cross-reference.

**DATES:** Written comments must be received no later than 4:30 p.m., eastern standard time, on November 24, 2000.

**ADDRESSES:** Written comments on the proposed rule must be sent to Dr. Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Comments on any ambiguity or unnecessary complexity arising from the language used in this proposed rule should be directed to Rod Dalton, Southeast Regional Office, at the above address.

Requests for copies of the environmental assessment and regulatory impact review supporting this action should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway North, Suite 1000, Tampa, FL, 33619-2266, telephone: 813-228-2815, fax: 813-225-7015, e-mail: gulfcouncil@gulfcouncil.org.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Steve.Branstetter@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 was approved by NMFS and implemented by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure, the Gulf of Mexico Fishery Management Council (Gulf Council) and South Atlantic

Fishery Management Council (South Atlantic Council) submitted to the Regional Administrator, Southeast Region, NMFS, a regulatory amendment that contained recommendations for changes in the catch specifications for Gulf migratory group king mackerel. The recommended changes are within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48.

**Background***Total Allowable Catch (TAC) for Gulf Group King Mackerel*

In setting TAC, the Gulf Council considered the comments of its Mackerel Stock Assessment Panel (MSAP), Socioeconomic Panel, Scientific and Statistical Committee, Mackerel Advisory Panel, public testimony, and legal requirements of the Sustainable Fisheries Act. The MSAP concluded that there is only a 33-percent chance that the stock is undergoing overfishing, and only a 35-percent chance the stock is overfished. Currently, the FMP's target for optimum yield (OY) for this stock is a fishing mortality rate that would produce a 30-percent static spawning potential ratio (F30% static SPR). Based on an F30% static SPR, the MSAP calculated a range of allowable biological catch (ABC) of 8.2 to 12.8 million lb (3.7 to 5.8 million kg). The Gulf Council chose the mid-point of the ABC range (10.2 million lb (4.6 million kg)), which has a 50-percent chance of not exceeding the fishing mortality that would allow the stock to reach the OY target (an F > F30% static SPR). This TAC represents a slight reduction from the existing TAC of 10.6 million lb (4.8 million kg).

The Gulf Council considers the TAC reduction from 10.6 million lb (4.8 million kg) to 10.2 million lb (4.6 million kg) sufficient to allow continued rebuilding of the Gulf group king mackerel stock while minimizing the social and economic impacts of the TAC reduction. Additionally, the Gulf Council recognized that benefits of reduced fishing mortality on the stock are accruing from the use of bycatch reduction devices in the shrimp fishery and the recent increase in the minimum size limit to 24 inches (61.0 cm) fork length.

*Bag Limit for Captains and Crews of For-Hire Vessels*

The recreational sector annually exceeded its allocation between the 1986-1987 and 1996-1997 fishing years. In early 1998, preliminary information for the 1997-1998 fishing year indicated

that the recreational sector had again exceeded its allocation, even though the TAC had been increased to 10.6 million lb (4.8 million kg). In an effort to bring the recreational catch within the allocation, the Gulf Council proposed in 1998, and NMFS implemented in 1999, a zero-fish bag limit of Gulf group king mackerel for captains and crews of for-hire vessels. Updated and final information on the 1997-1998 fishing year indicated that the recreational sector did not exceed its 7.21 million lb (3.27 million kg) allocation during the 1997-1998 fishing year, as had been previously reported. Subsequently, the recreational sector did not exceed its allocation during the 1998-1999 fishing year, and although the 2000 stock assessment was conducted prior to the end of the 1999-2000 fishing year, projections indicated that the recreational sector again would not exceed its allocation.

Based on the results of the NMFS 2000 stock assessment, which indicated that the health of the stock of Gulf group king mackerel is continuing to improve, and that the recreational sector is maintaining harvest within its allocation of TAC, the Gulf Council concluded that it was unnecessary to continue efforts to constrain the recreational harvest through the use of a zero-fish bag limit of Gulf group king mackerel for captains and crews of for-hire vessels.

#### *Flexible Trip Limit Schedule for the Atlantic Sub-zone*

The commercial fishery participants in the Florida east coast subzone of the Eastern Zone have asked for conservative measures regarding their trip limits, so that they are assured a steady harvest of fish for the entire season. However, the fishery has fallen short of meeting its quota for Gulf group king mackerel in all but 2 of the last 10 years. The trip limit appears to be one factor restricting the opportunity to harvest the quota. The South Atlantic Council has proposed a more flexible trip limit system whereby the commercial trip limit would increase from 50 to 75 fish on February 1, if less than 75 percent of the annual quota has been taken. This action is intended to allow fishermen a greater opportunity to meet their quota, while maintaining stability in the fishery for the majority of the season.

#### **Change Proposed by NMFS**

In § 622.44, paragraph (d)(4)(i) would be revised to correct an incorrect cross reference "paragraph (e)(1)" should read "paragraph (d)(1)".

#### **Classification**

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as follows:

The proposed rule would change the catch specifications for Gulf group king mackerel by setting total allowable catch, establish a 2-fish per person per day bag limit for the captain and crew of for-hire vessels, and establish a flexible trip limit for the East Coast subzone of the Eastern Zone (Miami-Dade through Volusia Counties, Florida) to 75 fish if the quota is not 75 percent filled as of February 1.

The Magnuson-Stevens Fishery Conservation and Management Act provides the statutory basis for the rule. The rule would contribute to the attainment of three of the eight basic objectives of the FMP, namely to stabilize yield at MSY, to provide a flexible management system, and to optimize the economic and social benefits of the coastal migratory pelagic fisheries.

One action would reduce the TAC for Gulf group king mackerel from 10.6 million lb (4.63 million kg) to 10.2 million lb (4.61 million kg). Another action would increase the bag limit for the captain and crew of for-hire vessels harvesting Gulf group king mackerel from zero to two fish per person per day. The final action would revise the trip limit for Gulf group king mackerel in the Florida east coast subzone of the Eastern Zone (Miami-Dade through Volusia Counties, Florida). The revision would replace the current fixed trip limit of 50 fish that applies for the entire season with a system whereby the trip limit will increase to 75 fish on February 1 if 75 percent of the area quota has not been harvested as of February 1 of any given year.

In the Gulf area, 1,440 commercial vessels have permits to fish for king mackerel. The size of these vessels ranges from an average of 29 ft (8.8 m) in Alabama to 41 ft (12.5 m) in Texas. They report an average of about \$15,000 in gross sales of all species of fish, but the gross revenues are extremely variable with sales as low as \$300 and ranging above \$200,000. Profits are similarly variable, and the range is from a loss of about \$25,000 to profits approaching \$200,000. The vessels at the low and high end of profits can be considered as "outliers", and there are only a small, but unknown number of vessels operating at the extremes of the profit range. It should also be noted that these vessels are not totally dependent upon king mackerel sales, and king mackerel sales account for about 33 percent of total sales. There are 1,113 for-hire vessels that have permits allowing the customers to harvest king mackerel. Most of the craft are traditional charter boats. They have an average length of 39 ft (11.9 m), generate average sales of about \$69,000, and have returns over variable costs

of about \$15,000. All the commercial and for-hire harvesting units are classified as representing small business entities. The total number of small entities is somewhat less than the implied total of 2,553 because some firms own more than one commercial or for-hire vessel.

The action to reduce the TAC will result in a maximum reduction in commercial catches of 128,000 lb (58,060 kg) valued at \$149,000 or about \$103 for the average vessel. Since the average vessel generates about \$15,000 in sales from all species of fish, the loss translates into an overall loss of less than one percent of sales and profits. It is noted that the revenues of the vessels show considerable variability, so some vessels are undoubtedly impacted to a larger degree than shown by the averages. However, as was noted earlier, king mackerel sales account for 33 percent of total sales, indicating that these vessels participate in other fisheries, especially because the king mackerel fishery is seasonal and fishing ceases due to the commercial quota being reached in one or more sub-zones. The effect of the lower commercial quota would be evidenced by a slightly earlier closure of the commercial mackerel fishery in those years when the quota is reached. At that point, the affected vessels would switch to their alternate fisheries. In the western Gulf of Mexico, where the quota is most often met, one of the main alternate fisheries is yellowfin tuna, a species not under quota. Because of this historical fishing behavior, the short term effect of the slightly reduced quota will be mitigated. In addition, the commercial quota is not always taken, but is taken in some years, including the most recent fishing year. Nonetheless, for the reasons outlined, even if the maximum loss of \$103 per vessel in terms of king mackerel sales occur, it is unlikely that vessels will be negatively impacted to the extent that they have to cease fishing.

The action to allow a 2-fish bag limit for the captain and crew of for-hire vessels will provide benefits to the for-hire operations. Particularly in the area of the Florida Keys, the sale of king mackerel by the for-hire vessels adds to overall vessel and/or crew income. It is estimated that the positive impact will amount to a 2.6 to 4.3 percent increase in gross revenues for the for-hire vessels. The recreational sector is not under a strict quota such that the fishery is closed when the recreational allocation is taken. In addition, the recreational allocation, even under a slightly reduced TAC circumstance, will not likely be taken. Therefore, the expectation of an overall increase in catches by the for-hire sector will have no offsetting negative impacts.

The action to allow for an increase in the trip limit for those commercial fishermen operating in the Florida east coast subzone, if 75 percent of their quota is not taken by February 1, could increase their catches by a small but unknown amount. Since this particular group of commercial fishermen does not generally take their quota, they stand to benefit from the more generous trip limit. However, overall mackerel catches by all fishermen combined will not increase. This result would be expected because although there are a number of different

quotas for king mackerel, the instances where any particular group exceeds its allocation are becoming rare. The monitoring system has been improved, and fishing under various quotas will cease because of the enhanced ability of fishery managers to monitor and close the relevant areas. Hence, this accounts for the most likely outcome whereby the somewhat enhanced trip limits for the east coast sub-zone fishermen slightly enhances their incomes but with no change in overall revenues from king mackerel for all king mackerel fishermen combined.

The criteria used to determine the possibility of a significant impact included disproportionality and profitability. As described earlier, although it is recognized that the small entities have varying revenues and profits, all the impacted entities are deemed to be small so there are no differential small versus large impacts. Since the analysis shows that revenues, and profits, for the commercial small entities will decline by less than 1 percent, the economic impacts on small entities are deemed to be not significant. Some small entities, including the for-hire firms and those commercial fishermen who harvest king mackerel in the east coast of Florida, will be positively impacted to a small degree. Also, per the earlier discussion, all the entities to be impacted are classified as small, so a significant number will be negatively impacted by the reduction in TAC, albeit by an amount that is not significant.

Accordingly, an initial regulatory flexibility analysis was not prepared. NMFS prepared an RIR and copies are available (see **ADDRESSES**).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to the Southeast Regional Office (see **ADDRESSES**).

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

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

Dated: October 16, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries,  
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 § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

##### § 622.39 Bag and possession limits.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Gulf migratory group king mackerel--2.

\* \* \* \* \*

3. In § 622.42, paragraph (c)(1)(i) is revised to read as follows:

##### § 622.42 Quotas.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) *Gulf migratory group.* The quota for the Gulf migratory group of king mackerel is 3.26 million lb (1.48 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) Eastern zone—2.25 million lb (1.02 million kg), which is further divided into quotas as follows:

(1) Florida east coast subzone—1,040,625 lb (472,020 kg).

(2) Florida west coast subzone. (i) Southern—1,040,625 lb (472,020 kg), which is further divided into a quota of 520,312 lb (236,010 kg) for vessels fishing with hook-and-line and a quota of 520,312 lb (236,010 kg) for vessels fishing with run-around gillnets.

(ii) Northern—168,750 lb (76,544 kg).

(3) Description of Florida subzones. The Florida east coast subzone is that part of the eastern zone north of 25°20.4' N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone

that extends south and west from 25°20.4' N. lat. to 26°19.8' N. lat., a line directly west from the Lee/Collier County, FL, boundary (i.e., the area off Collier and Monroe Counties). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary (i.e., off Collier County). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary.

(B) Western zone—1.01 million lb (0.46 million kg).

\* \* \* \* \*

4. In § 622.44, paragraphs (a)(2)(i) and (d)(4)(i) are revised to read as follows:

##### § 622.44 Commercial trip limits.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(i) *Eastern zone—Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board at any time or landed in a day from a vessel with a commercial permit for king mackerel as required under § 622.4(a)(2)(iii) as follows:

(A) From November 1 through January 31--not to exceed 50 fish.

(B) Beginning on February 1 and continuing through March 31—

(1) If 75 percent or more of the Florida east coast subzone quota as specified in § 622.42(c)(1)(i)(A)(1) has been taken—not to exceed 50 fish.

(2) If less than 75 percent of the Florida east coast subzone quota as specified in § 622.42(c)(1)(i)(A)(1) has been taken—not to exceed 75 fish.

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) May not possess red snapper in or from the Gulf in excess of the appropriate vessel trip limit, as specified in paragraphs (d)(1) through (d)(3) of this section.

\* \* \* \* \*

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