

## Sec.

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**Authority:** 5 U.S.C. 301, 42 U.S.C. 7412(r)(6)(G).

**§ 1612.1 Purpose and scope.**

(a) This part sets forth procedures to be followed when requesting material for use in legal proceedings (including administrative proceedings) in which the Chemical Safety and Hazard Investigation Board (CSB) is not a party, and procedures to be followed by the employee upon receipt of a subpoena, order, or other demand (collectively referred to here as a demand) for such material by a court or other competent authority or by a private litigant. *Material*, as used in this part, means any type of physical or documentary evidence, including but not limited to paper documents, electronic media, videotapes, audiotapes, etc.

(b) The purposes of this part are to:

- (1) Conserve the time of employees for conducting official business;
- (2) Minimize the possibility of involving the CSB in controversial issues not related to its mission;
- (3) Maintain the impartiality of the CSB among private litigants;
- (4) Avoid spending the time and money of the United States for private purposes; and
- (5) To protect confidential, sensitive information, and the deliberative processes of the CSB.

**§ 1612.2 Applicability.**

This part applies to requests to produce material concerning information acquired in the course of performing official duties or because of the employee's official status. Specifically, this part applies to requests for: material contained in CSB files; and any information or material acquired by an employee of the CSB in the performance of official duties or as a result of the employee's status. Two sets of procedures are here established, dependent on the type of material sought. Rules governing requests for employee testimony, as opposed to material production, can be found at part 1611 of this chapter. Document production shall not accompany employee testimony, absent compliance with this part and General Counsel approval.

**§ 1612.3 Published reports and material contained in the public incident investigation dockets.**

(a) Demands for published investigation reports should be directed to the Office of Congressional and Public Affairs, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037. Demands for material contained in the CSB's official public docket files of its incident investigations shall be submitted, in writing, to CSB Records Officer, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037. For information regarding the types of documents routinely issued by the CSB, see part 1601 of this chapter.

(b) No subpoena shall be issued to obtain materials subject to this section, and any subpoena issued shall be required to be withdrawn prior to release of the requested information. Payment of reproduction fees may be required in advance.

**§ 1612.4 Requests for authentication or certification of records.**

The CSB may authenticate or certify records to facilitate their use as evidence. Requests for certified copies should be made to the General Counsel at least 30 days before the date they will be needed. The CSB may charge a certification fee of \$5.00 per document.

**§ 1612.5 Other material.**

(a) *Production prohibited unless approved.* Except in the case of the material referenced in § 1612.3, no employee or former employee of the CSB shall, in response to a demand of a private litigant, court, or other authority, produce any material contained in the files of the CSB (whether or not agency records under 5 U.S.C. 552) or produce any material acquired as part of the performance of the person's official duties or because of the person's official status, without the prior written approval of the General Counsel.

(b) *Procedures to be followed for the production of material under this section.*

(1) All demands for material shall be submitted to the General Counsel at CSB headquarters, 2175 K Street, NW., Suite 400, Washington, DC 20037. If an employee receives a demand, he shall forward it immediately to the General Counsel.

(2) Each demand must contain an affidavit by the party seeking the material or his attorney setting forth the material sought and its relevance to the proceeding, and containing a certification, with support, that the

information is not available from other sources, including CSB materials described in § 1612.3 and part 1601 of this chapter.

(3) In the absence of General Counsel approval of a demand, the employee is not authorized to comply with the demand.

(4) The General Counsel shall advise the requester of approval or denial of the demand, and may attach whatever conditions to approval considered appropriate or necessary to promote the purposes of this part. The General Counsel may also permit exceptions to any requirement in this part when necessary to prevent a miscarriage of justice, or when the exception is in the best interests of the CSB and/or the United States.

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

[Docket No. 001005281-0369-02; 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:** 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 issues this final rule, applicable to the fishery for Gulf group king mackerel, to reduce the annual 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) to increase its flexibility. The intended effect of this final rule is to protect the Gulf group king mackerel stock from overfishing while still

allowing catches by the commercial and recreational fisheries.

**DATES:** This final rule is effective April 30, 2001.

**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) recommended, and NMFS published, a proposed rule (65 FR 63837, October 25, 2000) for Gulf group king mackerel to reduce the 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) to increase its flexibility. The proposed rule described the need and rationale for these measures.

### Comments and Responses

The following are the comments received on the proposed rule and NMFS' responses.

*Comment 1:* One commenter supported the revision of the trip limit for Gulf group king mackerel in the Florida east coast subzone.

*Response:* NMFS agrees that the more flexible trip limit system will allow fishermen a greater opportunity to meet their quota, while maintaining economic stability in the fishery for the majority of the season.

*Comment 2:* One commenter opposed the proposed TAC of 10.2 million lb (4.6 million kg), stating that a TAC of more than 10 million lb (4.5 million kg) violates the Gulf Council's maximum fishing mortality threshold (MFMT) for Gulf group king mackerel. The commenter additionally urged NMFS to require the Gulf Council to establish appropriate biomass estimates for maximum sustainable yield (MSY) and optimum yield (OY) so that a minimum stock size threshold (MSST) can be established, and that NMFS require the Gulf Council to pick a level of risk, as identified in the Mackerel Stock Assessment Panel (MSAP) report, associated with MFMT and MSST.

*Response:* In setting a TAC of 10.2 million lb (4.6 million kg) for Gulf group king mackerel, the Gulf Council considered the comments of its MSAP, Socioeconomic Panel, Scientific and Statistical Committee, and Mackerel Advisory Panel as well as public testimony, and legal requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act. Currently, the FMP's OY target for stock rebuilding and the MFMT are equivalent parameters—a fishing mortality rate that would produce a 30-percent static spawning potential ratio.

Based on the FMP's currently established OY target, the MSAP calculated a range of annual allowable biological catch (ABC) of 8.2 to 12.8 million lb (3.7 to 5.8 million kg). A TAC of 10.2 million lb (4.6 million kg) represents the median of the ABC range. The median value has a 50-percent chance of not exceeding the fishing mortality that would allow the stock to reach the current OY target, and it has a 50-percent chance of not exceeding MFMT. Therefore, the TAC established by this final rule is consistent with the Sustainable Fisheries Act.

NMFS continues to work cooperatively with the Gulf Council to develop better estimates of biomass-based thresholds and targets that can be used to monitor the status of the stock of Gulf group king mackerel. Nevertheless, development of new or alternative stock threshold and target parameters is beyond the scope of this rule for annual catch specifications as submitted by the Gulf and South Atlantic Councils. Under provisions of the Magnuson-Stevens Act, NMFS can only approve, partially approve, or disapprove proposed actions submitted by the Gulf and South Atlantic Councils for agency review, approval, and implementation. NMFS cannot substitute an alternative action of its own for one of those actions submitted by the Councils.

### Classification

This final 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 when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. Only one comment was received regarding the economic impact of the rule; that comment supported the more flexible trip limit provided by the rule. Because the basis for the certification

has not changed, a regulatory flexibility analysis was not prepared.

### List of Subjects in 50 CFR Part 622

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

Dated: March 27, 2001.

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries, 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 § 622.39, 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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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 010319072-1072-01; I.D. 110600A]

RIN 0648-A076

**Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection; Shark Drift Gillnet Fishery**

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** NMFS issues an interim final rule that requires the possession and use of line clippers and dipnets on board all pelagic longline vessels that have been issued Federal fisheries permits for Atlantic highly migratory species (HMS); requires specific methods for handling, resuscitating, and releasing sea turtles; reduces the level of observer coverage in the Atlantic shark drift gillnet fishery from 100 percent year-round to 100 percent during the right whale calving season and a statistically significant level during the rest of the year; and modifies the definition of pelagic longline gear to remove the high-flyer component.

The gear and sea turtle handling requirements will minimize the mortality of, or injury to, sea turtles that have been hooked or entangled by pelagic longline gear. The reduction in observer coverage requirements in the shark drift gillnet fishery reduces costs to industry while maintaining statistically valid levels of coverage. The change in the definition of pelagic longline gear is necessary for enforcement of gear prohibitions in closed areas.

**DATES:** Effective beginning 12:01 a.m. local time on April 1, 2001, except for amendments to 635.21(c)(5) and 635.71(a)(33) and (a)(34) which are effective beginning 12:01 a.m. local time on April 10, 2001. Comments on this interim final rule will be accepted through April 30, 2001.

**ADDRESSES:** Written comments on this action must be mailed to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via email or the Internet.

Copies of the environmental assessment and regulatory impact review prepared for this action may be obtained from Christopher Rogers.

**FOR FURTHER INFORMATION CONTACT:** Margo Schulze-Haugen or Tyson Kade at 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. The Atlantic shark drift gillnet fishery is managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks is implemented by regulations at 50 CFR part 635.

**Pelagic Longline Fishery**

Pelagic longline gear is one of the major commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., through gear configuration, hook depth, timing of sets) to target preferentially yellowfin tuna, bigeye tuna, or swordfish.

**Sea Turtle Bycatch Reduction**

Observer data and vessel logbook data indicate that pelagic longline fishing for Atlantic swordfish and tunas results in the bycatch of protected species, including threatened and endangered sea turtles. In certain times and areas, the Atlantic pelagic longline fishery has relatively high rates of sea turtle bycatch, with associated mortality. Although a high percentage of hooked sea turtles are released alive, NMFS remains concerned about serious injuries of sea turtles taken by pelagic longline gear.

In its most recent Biological Opinion (BO) on Atlantic HMS fisheries, completed June 30, 2000, NMFS concluded that operation of the pelagic longline fishery jeopardizes the continued existence of threatened loggerhead and endangered leatherback sea turtles. However, NMFS thereafter concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles were needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Consequently, NMFS re-initiated consultation. NMFS anticipates completing the consultation and issuing a new BO in March 2001. In the interim,