

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

[Docket No. 001005281–0369–02]

RIN 0648–XS51

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the northern Florida west coast subzone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12:01 a.m., local time, October 24, 2009, through June 30, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–551–5796, fax: 727–824–5308, e-mail: Steve.Branstetter@noaa.gov.

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.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the

eastern zone into northern and southern subzones, and established their separate quotas. The quota for the northern Florida west coast subzone is 168,750 lb (76,544 kg) (50 CFR 622.42(c)(1)(i)(A)(2)(ii)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. NMFS has determined the commercial quota of 168,750 lb (76,544 kg) for Gulf group king mackerel in the northern Florida west coast subzone will be reached by October 24, 2009. Accordingly, the commercial fishery for Gulf group king mackerel in the northern Florida west coast subzone is closed effective 12:01 a.m., local time, October 24, 2009, through June 30, 2010, the end of the fishing year.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. (a line directly east from the Miami-Dade County, FL boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is between 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31.06' W. long. (a line directly south from the Alabama/Florida boundary).

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed subzone. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three

persons aboard, including operator and crew.

During the closure, king mackerel from the closed subzone taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed subzone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

NMFS also finds good cause that the implementation of this action cannot be delayed for 30 days. There is a need to implement this measure in a timely fashion to prevent an overrun of the commercial quota of Gulf king mackerel in the northern Florida west coast subzone, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be contrary to the Magnuson-Stevens Act and the FMP. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is waived.

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: October 16, 2009.

Emily H. Menashes,

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

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