

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-53-200019(a); FRL-6605-8]

Approval and Promulgation of Implementation Plans—Alabama: Approval of Revisions to the Alabama State Implementation Plan: Transportation Conformity Interagency Memorandum of Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Alabama State Implementation Plan (SIP) that contains the transportation conformity rule pursuant to sections 110(k) and 176 of the Clean Air Act as amended in 1990 (Act). The transportation conformity rule assures that projected emissions from transportation plans and projects in air quality nonattainment or maintenance areas stay within the motor vehicle emissions ceiling contained in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements at the State level per regulations on Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws. This EPA approval action streamlines the conformity process and allows direct consultation among agencies at the local level. This final approval action is limited to certain regulations on Transportation Conformity. Rationale for approving this SIP revision is provided in the **SUPPLEMENTARY INFORMATION** Section of this action.

DATES: This direct final rule is effective on July 10, 2000, without further notice, unless EPA receives adverse comment by June 12, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to Kelly Sheckler at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection

Agency, Ariel Rios Building, N.W., Washington, DC 20460.

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303-3104. Attn: Kelly Sheckler, (404) 562-9042. Alabama Department of Environmental Management, Post Office Box 301463, 1400 Coliseum Boulevard, Montgomery, Alabama 36130-1463.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, at 404/562-9042, E-mail: Sheckler.Kelly@epa.gov.

SUPPLEMENTARY INFORMATION: Outlined below are the contents of this document:

- I. Background
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I. Background

A. What Is a SIP?

The states, under section 110 of the Act, must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The Act, under section 109, established these NAAQS which currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP, which protects air quality and contains emission control plans for NAAQS nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring

networks, and modeling demonstrations.

B. What Is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public comment period, public hearing, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to EPA for inclusion in the Federally enforceable SIP. EPA must then determine the appropriate Federal action, provide public notice, and request additional public comment on the action. The possible Federal actions include: approval, disapproval, conditional approval and limited approval/disapproval. If adverse comments are received, EPA must consider and address the comments before taking final action.

EPA incorporates state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP through the approval action. EPA maintains records of all such SIP actions in the CFR at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The EPA does not reproduce the text of the Federally approved state regulations in the CFR. They are "incorporated by reference," which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What Is Transportation Conformity?

Conformity first appeared as a requirement in the Act's 1977 amendments (Pub. L. 95-95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The 1990 Amendments to the Act expanded the scope and content of the conformity concept by defining conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of

such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The requirements of section 176(c) of the Clean Air Act apply to all departments, agencies and instrumentalities of the Federal government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved under title 23 U.S.C. of the Federal Transit Act.

D. Why Must the State Submit a Transportation Conformity SIP?

A transportation conformity SIP is a plan which contains criteria and procedures for the Department of Transportation (DOT), Metropolitan Planning Organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and projects to ensure that they do not cause or contribute to new violations of a NAAQS in the area substantially affected by the project, increase the frequency or severity of existing violations of a standard in such area or delay timely attainment. 40 CFR Part 51.390, subpart T requires states to submit a SIP that establishes criteria for conformity to EPA. 40 CFR Part 93, subpart A, provides the criteria the SIP must meet to satisfy 40 CFR Part 51.390.

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each state submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR Part 51, subpart T and 40 CFR Part 93, subpart A. EPA required the states to adopt and submit a transportation conformity SIP revision to the appropriate EPA Regional Office by November 25, 1994. The State of Alabama submitted a transportation conformity SIP to the EPA Region 4 on November 15, 1994. EPA did not take action on this SIP because the Agency was in the process of revising the transportation conformity requirements. EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR

43780), and codified the revisions under 40 CFR Part 51, subpart T and 40 CFR Part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the states to change their rules and submit a SIP revision to EPA by August 15, 1998. States may choose to develop in place of regulations, a memorandum of agreement (MOA) which establishes the roles and procedures for transportation conformity. The MOA includes the detailed consultation procedures developed for that particular area. The MOA's are enforceable through the signature of all the transportation and air quality agencies, including the Federal Highway Administration, Federal Transit Administration and the Environmental Protection Agency.

E. How Does Transportation Conformity Work?

The Federal or state transportation conformity rule applies to all NAAQS nonattainment and maintenance areas in the state. The Metropolitan Planning Organizations (MPO), the State Department of Transportation (DOT) (in absence of a MPO), and U.S. Department of Transportation (USDOT) make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the Federally approved motor vehicle emissions ceiling in order for USDOT to make a positive conformity determination with respect to the SIP.

II. Approval of the State Transportation Conformity Rule

A. What Did the State Submit?

The State of Alabama chose to address the transportation conformity SIP requirement through the development of an MOA. On April 3, 2000, the State of Alabama, through the Department of Environmental Management (ADEM), submitted the State's transportation conformity and consultation interagency MOA to EPA as a revision to the SIP. The Alabama Administrative Code Chapter 335–3–17 Conformity of

Federal Actions to State Implementation Plans and Code of Alabama 1975, sections 22–28–14, 22–22A–5, 22–22A–6, 22–22A–8, and 41–22–9 effective April 27, 1995 and amended November 21, 1996 and March 27, 1998 adopted by the Alabama General Assembly in 1992, contains the necessary authority for the revision to the SIP. ADEM held a public hearing on December 21, 1999 and no comments from the general public were received. The MOA was developed with appropriate interagency consultation.

B. What Is EPA Approving Today and Why?

EPA is approving the Alabama transportation conformity MOA that establishes procedures for interagency consultation and adoption of Chapter 335–3–17 as amended by the state on March 27, 1998, that incorporates by reference the Environmental Protection Agency regulations in 40 CFR 93 Subpart A (July 1, 1997), and 62 FR 43780 [08/15/97; amendments] Transportation Conformity and Subpart B General Conformity, that the Director of the ADEM submitted to the Region 4 office of the EPA on April 3, 2000, except for the following sections for incorporation by reference: 40 CFR Parts 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b). The rationale for exclusion of these sections is discussed in Section II.E of this action. The ADEM Transportation Conformity MOA only contains the detailed interagency consultation procedure as required by 93.105.

EPA has evaluated this SIP revision and has determined that the State has met the requirements of Federal transportation conformity rule as described in 40 CFR Part 51, subpart T and 40 CFR Part 93, subpart A. The ADEM has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the MOA at the local level. Therefore, EPA is approving the MOA as a revision to the Alabama SIP and Chapter 335–3–17–.01 and .02 Conformity of Federal Actions to State Implementation Plans.

C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?

EPA's rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and USDOT in

consulting with the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and USDOT.

The State of Alabama developed its consultation rule based on the elements contained in 40 CFR 93.105, and included it in the MOA, Exhibit 1. As a first step, the State worked with the existing transportation planning organization's interagency committee that included representatives from the State air quality agency, State Department of Transportation, the Birmingham Regional Planning Commission (BRPC), Birmingham Metropolitan Planning Organization (MPO), Federal Highway Administration—Alabama Division, Federal Transit Administration, Jefferson County Department of Health (JCDH), Jefferson County Transit Authority (B-JCTA), and EPA. The interagency committee met regularly and drafted the consultation rules considering elements in 40 CFR Part 93.105 and 23 CFR Part 450, and integrated the local procedures and processes into the consultation MOA. The consultation process developed in this MOA is unique to the State of Alabama. The MOA is enforceable against the parties by their consent in the MOA to allow the Attorney General for the State of Alabama to sue any or all of the agencies for specific performance or other relief on behalf of the citizens of Alabama in *paren. patrial*. We have determined that the State adequately included all elements of 40 CFR Part 93.105 and that the MOA meets the EPA SIP requirements.

D. How the State's Submittal Addresses the United States Court of Appeals for the District of Columbia Circuit Ruling Overturning the Grace Period for New Nonattainment Areas (40 CFR 93.102(d)) in Sierra Club v. Environmental Protection Agency Lawsuit?

The Sierra Club challenged this section of the second set of amendments to the transportation conformity rule arguing that allowing a 120 day grace period was unlawful under the Act. On November 4, 1997, the United States Court of Appeals for the District of Columbia Circuit held in *Sierra Club v. Environmental Protection Agency*, No. 96–1007, determined that EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the State has

excluded this section from its rule. EPA agrees with the State's action as it is consistent with the United States Court of Appeals for the District of Columbia Circuit ruling. Further, the exclusion of 40 CFR 93.102(d) will not prevent EPA from approving the State transportation conformity SIP.

E. What Other Parts of the Rule Are Excluded?

EPA promulgated the third set amendments to the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund v. Environmental Protection Agency*, No. 97–1637. The Court granted the environmental group's petition for review and ruled that sections 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination that Federal actions will not cause or increase violations or delay attainment. The sections of the rule that were impacted by this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity "lapse". A lapse is a situation in which the conformity determination for the transportation plan or TIP has expired, and there is no currently conforming transportation plan and TIP. As such, there are restrictions on proceeding with federally funded and regionally significant projects.

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (budgets) in the submitted SIPs after 45 days if EPA had not declared them inadequate;

(c) 40 CFR 93.120(a)(2) which allowed use of the budgets in a disapproved SIP for 120 days after disapproval;

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded, regionally significant projects to proceed if included in the first three years of the most recent conforming transportation plan and transportation improvement program, even if conformity status is currently lapsed; and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

States were required to submit transportation conformity SIPs to satisfy the requirements for the third set of amendments to the transportation conformity rule by August 15, 1998. Many of these SIP submittals, developed prior to the March 2, 1999 Court ruling, included provisions from the transportation conformity rule verbatim. As such, the State of Alabama's SIP revision included sections which the Court ruled unlawful or remanded for consistency with the Act. Therefore, in accordance with the Court's ruling, EPA can not approve the request to incorporate by reference those portions of the Transportation conformity rule affected by the March 2, 1999 Court ruling. All other portions of the rule are incorporated by reference are approved by this.

The State of Alabama submitted additional information which has complied with the EPA requirements for a transportation conformity SIP and has adopted the Federal rules in an MOA which were in effect at the time that the transportation conformity SIP was due to the EPA. If the Court had issued its ruling before adoption and SIP submittal by the ADEM, EPA believes the ADEM would have removed these sections from its rule which incorporates 40 CFR Part 93, subparts A and B. The ADEM has expended its resources and time to prepare this SIP and meet the statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP in a timely manner.

The ADEM will be required to submit a SIP revision in the future when EPA revises its rule to comply with the Court decision. Because the Court decision has invalidated the aforementioned affected provisions, EPA believes that it is reasonable to exclude the corresponding sections of the State rules from this SIP approval action. As a result, EPA is not taking any SIP action on the following Sections of the Alabama Chapter 335–3–17 to incorporate by reference 40 CFR 93, Subpart A and B: sections 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b). The conformity determinations affected by these sections should comply with the relevant requirements of the statutory provisions of the Act underlying the Court's decision on these issues. EPA will be issuing guidance on how to implement these provisions in the interim prior to EPA's amendment of the Federal transportation conformity rule. Once this Federal rule has been revised, conformity determinations in Alabama should comply with the

requirements of the revised Federal rule until corresponding provisions of the Alabama conformity SIP have been approved by EPA.

III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on July 10, 2000, without further notice unless EPA receives adverse comment by June 12, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of

the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 28, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart—Alabama

2. Section 52.50 is amended by adding a new entry at the end of the table in paragraph (c) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) EPA approved Alabama regulatory provisions.

EPA APPROVED ALABAMA REGULATIONS FOR ALABAMA

State citation	Title subject	Adoption date	EPA approval date	Federal Register notice
* Chapter No. 335-3-17, Section 335-3-1-.01.	* Transportation Conformity	* March 27, 1998	* May 11, 2000	* 65 FR 30361

EPA APPROVED ALABAMA REGULATIONS FOR ALABAMA—Continued

State citation	Title subject	Adoption date	EPA approval date	Federal Register notice
Chapter No. 335–3–17, Section 335–3–1–.02.	General Conformity	March 27, 1998	May 11, 2000	65 FR 30362
*	*	*	*	*

3. Section 52.50 is amended by adding a new entry at the end of the table in paragraph (e) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) EPA-approved Alabama non-regulatory provisions.

EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	FEDERAL REGISTER notice	Explanation
*	*	*	*	*
Alabama Interagency Transportation Con- formity Memorandum of Agreement.	January 20, 2000	May 11, 2000	65 FR 30362.	

[FR Doc. 00–11813 Filed 5–10–00; 8:45 am]
BILLING CODE 6560–50–P

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

[Docket No. 991112303–0069–02; I.D.
100499A]

RIN 0648–AM01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications for Gulf Group King and Spanish 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 implements increases in the total allowable catch (TAC) and the bag limit for Gulf group Spanish mackerel and establishes a new fishing season for the Gulf group king mackerel gillnet fishery. The intended effects of this rule are to enhance the economic and social benefits from the Gulf group king and Spanish mackerel fisheries while maintaining healthy stocks.

DATES: This final rule is effective June 12, 2000.

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 framework procedures of the FMP, the Gulf of Mexico Fishery Management Council (Council) recommended, and NMFS published, a proposed rule (64 FR 71388, December 21, 1999) to implement increases in the total allowable catch (TAC) and the bag limit for Gulf group Spanish mackerel and a new fishing season for the Gulf group king mackerel gillnet fishery. The proposed rule described the need and rationale for these measures, which are not repeated here.

Comments and Responses

Three individuals submitted comments; several of the points raised by the commenters were the same. The relevant points and NMFS' responses are presented here:

Comment 1: Two commenters opposed the delay in the opening date of the gillnet season from November 1 to the Tuesday after the Martin Luther King, Jr., holiday in January. One commenter believed that this action would shorten the season substantially and create an economic hardship on the

fishery. The commenter suggested that a viable alternative would be to retain the November 1 opening date and close all weekends and holidays. The second commenter believed that altering the opening date for the gillnet fishery was discriminatory against the hook-and-line fishery and that the action was being taken without any evaluations of the sociological impacts on other commercial and charter king mackerel fishermen.

Response: NMFS can only approve, partially approve, or disapprove actions submitted by the Councils and cannot substitute alternative actions for those submitted by the Councils. Therefore, NMFS did not consider retaining the opening date of November 1 for the gillnet fishery, with all weekends and holidays closed. Nevertheless, the intent of the change in the fishing season is to avoid quota overruns due to the 3-day holiday. The change in the opening date of the gillnet season should have little overall impact on the fishery regarding its ability to meet the gillnet quota. The fishery normally does not begin to harvest fish until after January 1 and has the capacity to meet its quota in a week's time. Since 1995, all landings occurred in January or early February, except in 1998 when some landings were recorded in November and December. During this timeframe, the fishery has met its quota in 7 to 31 days.

Delaying the opening date for the gillnet sector of the fishery should not impact the other fishing sectors. The gillnet fishery has a dedicated quota that historically has been harvested during the month of January and February, with as much as 50 to 100 percent of