

conditions, the FIA may require the transfer of administrative responsibilities and the transfer of data and records as provided in Article V, section C.1.a through d. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA. In such event, the Government will assume all obligations and liabilities owed to policyholders under such policies, arising before and after the date of transfer. The FIA, at its option, may alternatively consider proposals and plans for the assumption of responsibilities by another WYO Company as provided in Article V, section C.2.

E. In the event that the Company is unable or otherwise fails to carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities within the scope of the Arrangement owed to policyholders arising before and after the date of transfer, and the Company will immediately transfer to the Government all needed records and data and all funds in its possession with respect to all such policies transferred and the unearned expenses retained by the Company. The FIA, at its option, may alternatively consider proposals for the assumption of responsibilities by another WYO Company as provided by Article V, section C.2.

F. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be canceled for any new or renewal business, but the Arrangement shall continue for policies in force that shall be allowed to run their term under the Arrangement.

11. In Appendix A, part 62, revise Article VII section C. to read as follows:

Article VII—Cash Management and Accounting

* * * * *

C. In the event the Company elects not to participate in the Program in this or any subsequent fiscal year, or is otherwise unable or not permitted to participate, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the expiration or termination of this Arrangement. This settlement shall include net premiums collected,

funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement, subject to audit, of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities that shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

12. In Appendix A to part 62, revise the first paragraph of Article IX to read as follows:

Article IX—Errors and Omissions

In the event of negligence by the Company that has not resulted in litigation but has resulted in a claim against the Company, FEMA will not consider reimbursement of the Company for costs incurred due to that negligence unless the Company takes all reasonable actions to rectify the negligence and to mitigate any such costs as soon as possible after discovery of the negligence. Further, (i) if the claim against the Company is grounded in actions significantly outside the scope of this Arrangement, (ii) if there is negligence by the agent, or (iii) if there is an error that is the type of error for which there has been a determination by the Administrator of a pattern of errors as described in Article III, section D.3.b, FEMA will not reimburse any costs incurred due to that negligence or error. The Company will be notified in writing within thirty (30) days of a decision not to reimburse. In the event the Company wishes to petition for reconsideration of the decision not to reimburse, the procedure in Article III, section D.3.e shall apply.

* * * * *

13. In Appendix A to part 62, revise Article XVI to read as follows:

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, *i.e.*, to assure that any taxpayer funds are accounted for and appropriately expended. The Company is a fiscal agent of the Federal Government, but is not a general agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any policy issued pursuant hereto, such that the Federal Government is not a proper

party to any lawsuit arising out of such policies.

Dated: October 7, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03-25905 Filed 10-10-03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 030917233-3233-01; I.D. 082703A]

RIN 0648-AP50

Fisheries of the Gulf of Mexico; Coastal Migratory Pelagic Resources; Stock Status Determination Criteria

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 to incorporate into the FMP biomass-based stock status determination criteria consistent with the requirements of the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). Criteria to be incorporated include maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST) and maximum fishing mortality threshold (MFMT) for king and Spanish mackerel and cobia stocks under the jurisdiction of the Gulf of Mexico Fishery Management Council (Council).

DATES: Written comments must be received on or before November 13, 2003.

ADDRESSES: Written comments on the proposed rule should be mailed to Dr. Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727-522-5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the regulatory amendment, which includes an

Environmental Assessment, a Regulatory Flexibility Act Analysis (RFAA), and a Regulatory Impact Review (RIR), 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@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, telephone: 727-570-5796, fax: 727-570-5583, e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic (CMP) 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 Council has submitted to the Regional Administrator, Southeast Region, NMFS, a regulatory amendment containing recommendations for changes in designations of stock status criteria for Gulf migratory groups of king and Spanish mackerel and for a Gulf migratory group of cobia (to be

designated via subsequent plan amendment). The most recent scientific evidence indicates that the cobia stock is comprised of separate migratory groups in the Gulf of Mexico and Atlantic. However, the FMP identifies only a single cobia stock. The establishment of separate migratory groups of cobia will require that the FMP be amended. Therefore, implementation of the stock status criteria for a Gulf migratory group of cobia would be deferred pending the development of an amendment to the FMP.

Section 303 of the Magnuson-Stevens Act requires that the regional fishery management councils: (1) assess the condition of managed stocks, (2) specify within their fishery management plans objective and measurable criteria for identifying when the stocks are overfished and when overfishing is occurring (referred to by NMFS as stock status determination criteria), and (3) amend their fishery management plans to include measures to rebuild overfished stocks and maintain them at healthy levels capable of producing MSY. NMFS' national standard guidelines (NSGs) direct the councils to meet these statutory requirements by

incorporating into each FMP estimates of certain biomass-based parameters for each stock, including a designation of the stock biomass that will produce MSY (BMSY).

On November 17, 1999, NMFS notified the Council that it had partially approved the Council's Generic Sustainable Fisheries Act Amendment. In that notification, NMFS approved the designation and definition of an MFMT for CMP fish stocks managed under the jurisdiction of the Council, but disapproved the proposed designations of MSY, OY, and MSST because they were not biomass-based, as recommended by the NSGs. Since that time, NMFS has worked cooperatively with the Council to develop acceptable stock status criteria for the Gulf migratory groups of those CMP stocks.

Accordingly, this proposed rule would establish biomass-based reference points, as identified in the table below, for MSY, OY, and MSST, and would amend the existing designations of MFMT for Gulf migratory group king mackerel, Gulf migratory group Spanish mackerel, and a (to be designated) Gulf migratory group of cobia.

	Gulf group king mackerel	Gulf group Spanish mackerel	Gulf group cobia ¹
MSY ²	yield at $F_{30\%SPR}$ (currently 10.7 million lb or 4.85 million kg).	yield @ $F_{30\%SPR}$ (currently 8.7 million lb or 3.95 million kg).	yield @ F_{MSY} (currently 1.49 million lb or 0.676 million kg)
OY	yield at $F_{OY} = 0.85 \cdot F_{MSY}$ (currently 10.2 million lb or 4.63 million kg).	yield at $F_{OY} = 0.75 \cdot F_{MSY}$ (currently 8.3 million lb or 3.76 million kg).	yield @ $F_{OY} = 0.75 \cdot F_{MSY}$ (currently 1.45 million lb or 0.658 million kg)
MFMT	$F_{30\%SPR} = F_{MSY}$	$F_{30\%SPR} = F_{MSY}$	F_{MSY}
MSST ³	$(1-M) \cdot B_{MSY}$ or 80% of B_{MSY}	$(1-M) \cdot B_{MSY}$ or 70% of B_{MSY}	$(1-M) \cdot B_{MSY}$ or 70% of B_{MSY}
overfished	50% probability $F_{current} > F_{MSY}$	50% probability $F_{current} > F_{MSY}$	50% probability $F_{current} > F_{MSY}$
overfishing	50% probability $B_{current} < MSST$	50% probability $B_{current} < MSST$	50% probability $B_{current} < MSST$

¹ Implementation deferred pending formal designation of a Gulf migratory group of cobia through an amendment to the FMP.

² F = fishing mortality rate; SPR refers to spawning potential ratio

³ M, or natural mortality, is estimated at 0.20 for king mackerel, and 0.30 for both Spanish mackerel and cobia. $B_{current}$ represents the current estimates of stock biomass; B_{MSY} represents the estimated stock biomass required to produce MSY

NMFS invites public comment on these proposed parameters. Comments received by November 13, 2003 will be considered by NMFS in its decision to approve or disapprove the action identified in this proposed rule. Comments received after that date will not be considered by NMFS in this decision. NMFS decision will be based on determinations regarding the consistency of the proposed provisions with the FMP, the Magnuson-Stevens Act, and other applicable law, as well as the consideration of comments received during the comment period on this proposed rule. Approved population parameters would be considered legitimate measures of the FMP, but would not appear in codified text.

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. The basis for this determination is summarized as follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would establish benchmarks and status criteria for Gulf migratory groups of king and Spanish mackerel, and a pending designation of a Gulf migratory group of cobia. The establishment of these stock status criteria would allow more accurate

assessments regarding the health of these fish stocks, prevent overfishing, and provide optimum benefits to the fisheries and the public. No projected reporting, record keeping or other compliance requirements are proposed. No duplicative, overlapping or conflicting Federal rules have been identified.

In the Gulf area, 1,440 commercial vessels have permits to fish for king mackerel. These vessel owners have a median net (taxable) income of \$3,670. These vessels operate in multiple fisheries and are not, therefore, totally dependent upon sales of coastal migratory pelagic species. There are 113 for-hire vessels that only have a permit for coastal migratory pelagic species, and 1,403 for-hire vessels that possess both reef fish and coastal migratory pelagic permits. Most of the for-hire craft are traditional charter boats, and fishing for coastal migratory pelagic species comprises only a portion of their total effort and revenues. The median

gross fishing revenue was approximately \$20,000, with a median value for net income of \$4,000. Thus, all the commercial and for-hire harvesting units are classified as small entities. Since the proposed rule would apply to all entities participating in the coastal migratory pelagic fishery and all entities are classified as small entities, the proposed rule would apply to a substantial number of small entities.

The criteria used to determine significant impact include disproportionality and profitability. As described earlier, all the affected entities are classified as small entities so the issue of disproportionate impacts does not arise. Further, since there are no implementing regulations associated with the proposed rule, there would be no direct effects on current fishery participation, effort, harvests, or other use of the resource. All current entities can continue to participate in the fishery in the manner in which they currently operate. Therefore, all

current harvests, costs, and profits would remain unchanged. Any adverse effects on small entities that participate in the fishery would only occur in the future, should stock conditions change, requiring a need to adjust fishery regulations to achieve the benchmarks established by this proposed rule. The likelihood of this occurring in either the near or distant future is unknown and cannot be determined. Further, the resultant impact of these future regulations cannot be predicted since the magnitude of required change is unknown, as is the method that would be selected to achieve the required change. These impacts, however, would be determined should such change be required.

In summary, while the proposed rule would apply to a substantial number of small entities, these entities would not be affected in a significant way since status quo fishing practices are allowed to continue. The proposed rule would establish targets/goals

that current and future management actions would attempt to achieve/attain. However, at this time, no changes in existing harvest restrictions are proposed. Future changes to harvesting restrictions would be evaluated for their impacts when they are proposed. Therefore, the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities and, thus, an initial regulatory flexibility analysis was not required.

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

Dated: October 8, 2003.

Rebecca Lent,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

[FR Doc. 03-25924 Filed 10-10-03; 8:45 am]

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