

(2) is causing serious economic and social problems in the fishery; and (3) justifies an emergency interim rule that would have immediate benefits outweighing the value of prior notice and an opportunity for public comment and deliberative consideration provided under the normal FMP amendment and rulemaking process. The basis for these conclusions is summarized in the following paragraphs.

Fishermen in the hook-and-line commercial fishery for Gulf group king mackerel fishery off the southwest coast of Florida will suffer undue social and economic hardships unless timely action is taken to allow additional king mackerel catches during the 1994–95 fishing year. A substantial portion of these fishermen's annual income is earned during the winter season (November to March) fishing for king mackerel. Record low catches this fishing year have provided insufficient revenues to meet usual living and business expenses.

Opportunities to offset lost income by prosecuting other fisheries are limited and not readily available to these fishermen. Other fisheries in which presently owned gear could be used or converted for use are mostly overcapitalized, unavailable, or most of the seasonal catch already has been harvested.

Events and circumstances that caused the disproportionately low catches of king mackerel off Florida's southwest coast this winter to date were essentially unforeseen and uncontrollable. The unprecedented large catches of king mackerel taken off northwest Florida this fishing year resulted significantly from an increased fishing effort in that area (i.e., a doubling of the northwest Florida king mackerel fishing fleet) that could not be restrained under current FMP measures and implementing regulations. The fourfold increase in fishery production and the taking of most of the 432,500-lb (196,179-kg) hook-and-line west coast sub-zone quota off northwest Florida also resulted from a prolonged fall fishing season, the absence of vessel trip/possession limits and regional quotas, and delayed migration of king mackerel to traditional overwintering grounds off southwest Florida.

The disproportionately large king mackerel catch this fishing year in Florida's northwest fishery is substantially different from recent years. During previous fishing years, both before and after the institution of quota management under the FMP, the major portion of the annual harvest of the Gulf group king mackerel west coast sub-zone quota was taken off southwest

Florida. This distribution of harvest, evident since the early 1900s, has been dependent on a seasonal abundance of king mackerel on overwintering grounds off southwest Florida. As a result of this historic pattern, the southwest Florida fishing industry has developed a significant seasonal dependence on this resource.

The immediate social and economic benefits of adding to the commercial quota for the hook-and-line fishery in the Florida west coast sub-zone and reopening that fishery during this winter season outweigh the value of providing opportunity for advance public review and comment.

NMFS has concluded that this emergency action will not adversely affect the current status of the Gulf group king mackerel stock nor its rebuilding under the program established by the FMP. The additional 300,000-lb commercial quota for king mackerel for the Florida west coast sub-zone does not significantly increase the level of risk of exceeding the acceptable biological catch (ABC) for the 1994–95 fishing year. In addition, estimates indicate that recreational catches did not exceed, but rather were 20 percent (about 700,000 lb (317,515 kg)) below, the 1994–95 recreational allocation of 5.3 million lb (2.4 million kg). As a result, NMFS believes that the additional quota allocation should not measurably affect the stock rebuilding program, which requires the overfished stock to be rebuilt within about one generation time (i.e., within 12 years or by the end of 1996–97 fishing year).

If future changes in total allowable catch (TAC) for Gulf group king mackerel are necessary, as may be determined based on subsequent NMFS scientific stock assessments, the Council will make the necessary adjustments in TAC for the appropriate fishing year to ensure maintenance of the stock rebuilding schedule. Any future changes in TAC will be based not only on any measurable effects of this emergency action, but on the Council's continuing assessment of the levels of biological risk associated with the TAC of 7.8 million lb (3.5 million kg) implemented for the past 3 fishing years. The Council will also consider the impact of persistent quota overruns, which have occurred since the beginning of quota management. Finally, to avoid future emergency situations of this nature, the Council is initiating action that will ensure an equitable distribution of the catch between the regional fisheries within the Florida west coast sub-zone that share the hook-and-line commercial quota for Gulf group king mackerel.

The Gulf group king mackerel stock has been considered overfished according to the FMP's definition of overfishing. The FMP defines overfishing as harvesting at a rate not consistent with the stock rebuilding schedule and its target level for stock size. The FMP also requires the Council to develop annual ABC ranges based on a fishing mortality rate that will achieve and maintain at least a minimum specified spawning potential ratio (SPR) of 30 percent. Under this management approach, the adult spawning stock biomass and the annual ABCs for Gulf group king mackerel have continued to increase during the last nine years of FMP quota management. In addition, a recent workshop of stock assessment biologists concluded that the SPR of 30 percent may be too high a threshold, and that a SPR of 20 percent is more appropriate. Due to this new scientific finding, and to the overall improved condition of the resource, the Council's mackerel stock assessment panel is expected to consider a reduction in the SPR level in 1995. Under a SPR of 20 percent, the Gulf group king mackerel arguably should no longer be considered overfished.

One Gulf Council member submitted a minority report objecting to the request for emergency action. A copy of this report is available upon request (see **ADDRESSES**).

The Council believes that emergency action is an appropriate means to provide expedient relief from the current social and economic problems in the fishery. NMFS concurs. Accordingly, NMFS publishes this emergency interim rule, effective February 1, 1995, through May 8, 1995, as authorized by section 305(c) of the Magnuson Act. By agreement of NMFS and the Council, this emergency interim rule may be extended for an additional period of 90 days.

Classification

The Assistant Administrator for Fisheries, NOAA, (AA) has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

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

The AA finds for good cause under 5 U.S.C. 553(b)(B) that the need to relieve social and economic hardships in the Gulf of Mexico mackerel fishery makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Because this rule relieves a restriction, under 5 U.S.C. 553(d)(1) it is