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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604-1758-02]

RIN 0648-XF414

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2016-2017 Commercial Accountability Measure and Closure for King Mackerel in Western Zone of the Gulf of Mexico

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for commercial king mackerel in the western zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) through this temporary rule. NMFS has determined that the commercial quota for king mackerel in the western zone of the Gulf EEZ will be reached by May 21, 2017. Therefore, NMFS closes the western zone of the Gulf EEZ to commercial king mackerel fishing on May 21, 2017. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective at 12:01 p.m., local time, May 21, 2017, until 12:01 a.m., local time, on July 1, 2017.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727-824-5305, e-mail: *kelli.odonnell@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for Gulf king mackerel below apply as either round or gutted weight.

On October 14, 2016, NMFS closed the commercial sector for king mackerel in the western zone, because the commercial harvest of king mackerel in the July 1, 2016, through June 30, 2017, fishing year reached the commercial quota that was in place at that time (81 FR 71410, October 17, 2016). The western zone of Gulf migratory group king mackerel is located in the EEZ between a line extending east from the border of the United

States and Mexico, and 87°31.1' W. long., which is a line extending south from the state boundary of Alabama and Florida.

On April 11, 2017, NMFS published a final rule to implement Amendment 26 to the FMP in the **Federal Register** (82 FR 17387). That final rule adjusted the management boundaries, zones, and annual catch limits for Gulf migratory group king mackerel (Gulf king mackerel) that resulted in increased commercial quotas for each zone of the Gulf EEZ. Consequently, NMFS reopened the western zone to commercial harvest of king mackerel on May 11, 2017, to allow harvest up to the new commercial quota for that zone of 1,180,000 lb (535,239 kg) (82 FR 21314, May 8, 2017).

Regulations at 50 CFR 622.388(a)(1)(i) require NMFS to close the commercial sector for Gulf king mackerel in the western zone when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the commercial quota of 1,180,000 lb (535,239 kg) for Gulf king mackerel in the western zone will be reached by May 21, 2017. Accordingly, the western zone is closed to commercial fishing for Gulf king mackerel effective at 12:01 p.m., local time, May 21, 2017, through June 30, 2017, the end of the current fishing year.

Except for a person aboard a charter vessel or headboat, during the closure no person aboard a vessel that has been issued a Federal commercial permit for king mackerel may fish for or retain Gulf king mackerel in the EEZ in the closed zone (50 CFR 622.384(e)(1)). A person aboard a vessel that has a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zone under the recreational bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2), provided the vessel is operating as a charter vessel or headboat (50 CFR 622.384(e)(2)). 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 zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to king mackerel from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(3)).

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf migratory group king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.384(e) and 622.388(a)(1)(i), and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AM has already been subject to notice and public comment, and all that remains is to notify the public of the closure. Additionally, allowing prior notice and opportunity for public comment is contrary to the public

interest because of the need to immediately implement this action to protect the king mackerel stock, because the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: May 16, 2017

Margo B. Schulze-Haugen,
Acting Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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