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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 161222999-7618-02]

RIN 0648-BG56

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Coastal Migratory Pelagic Resources in the Gulf of Mexico and
Atlantic Region; Framework Amendment 5**

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in Framework Amendment 5 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP), as prepared and submitted jointly by the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council (Councils). This final rule removes the restriction on fishing for, or retaining the recreational bag and possession limits of, king and Spanish mackerel on a vessel with a Federal commercial permit for king or Spanish mackerel when commercial harvest of king or Spanish mackerel in a zone or region is closed. With implementation of this rule, persons aboard commercial vessels

may fish for and retain the recreational bag and possession limits of king or Spanish mackerel during the open recreational season, even if commercial fishing for those species is closed. The purpose of this final rule is to remove Federal permit restrictions unique to commercially permitted king and Spanish mackerel vessels and to standardize vessel permit restrictions applicable after a commercial quota closure of king or Spanish mackerel in accordance with restrictions in other fisheries.

DATES: This final rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Framework Amendment 5 may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/2017/framework_am5/index.html. Framework Amendment 5 includes an environmental assessment, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone: 727-824-5305, or email: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic fishery of the Gulf of Mexico (Gulf) and Atlantic regions is managed under the FMP and includes the management of the Gulf and Atlantic migratory groups of king mackerel, Spanish mackerel, and cobia. The FMP was prepared jointly by the Councils and is

implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*). Framework Amendment 5 and this final rule apply to the harvest of king and Spanish mackerel in the exclusive economic zone (EEZ) of the Gulf and Atlantic regions.

On March 1, 2017, NMFS published a proposed rule to implement Framework Amendment 5 and requested public comment (82 FR 12187). The proposed rule and Framework Amendment 5 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Framework Amendment 5 and implemented by this final rule is provided below.

Management Measure Contained in This Final Rule

As a result of this final rule, persons aboard vessels with a Federal commercial permit for king or Spanish mackerel may fish for and retain the recreational bag and possession limits of these species during the open recreational season when the commercial season for those species is closed. This final rule removes Federal permit restrictions unique to commercially permitted king and Spanish mackerel vessels and standardizes vessel permit restrictions applicable after a commercial quota closure of king or Spanish mackerel in accordance with the restrictions in other fisheries. In addition, to improve

clarity, this final rule makes non-substantive changes to the language in § 622.384(e) (3), renumbered as § 622.384(e) (2), and to § 622.386. Finally, the language aligns with changes to the regulations set forth in the final rule for Amendment 26 to the FMP (82 FR 17387, April 11, 2017), which included revisions to terminology and to the management boundaries for the Gulf of Mexico and Atlantic migratory groups of king mackerel.

Comments and Responses

NMFS received a total of eighteen comments on the proposed rule for Framework Amendment 5 from commercial and recreational fishers. Nine of the comments were in favor of the amendment and the proposed rule, while six were opposed. Three additional comments were submitted that were not related to the proposed action; because those comments were outside of the scope of the actions considered for Framework Amendment 5 and the proposed rule, NMFS is not providing specific responses to those comments in this final rule. The six comments opposed to the amendment expressed concern about relative fishing opportunities for the commercial versus the recreational sectors and about how the final rule might affect future recreational harvest.

Additionally, several commenters (both in support of and not in support of the proposed action) expressed views that reflect a misunderstanding of both current king and Spanish mackerel Federal management and the effect of the rule. In

particular, the comments reflected a misunderstanding of whether and when those aboard commercially permitted vessels that also hold a charter or headboat permit will be allowed to retain the recreational bag and possession limits of king or Spanish mackerel. In fact, the final rule does not alter the current ability of persons aboard dual-permitted vessels to fish for and retain the recreational bag and possession limits of the species when the commercial season is closed. Instead, this final rule changes the regulations to allow those aboard commercially permitted vessels for king and Spanish mackerel to fish for and retain the recreational bag and possession limits of the species when the commercial season for those species is closed, regardless of the capacity in which the vessel is operating (*i.e.*, the vessels no longer need to be dual-permitted and operating in a for-hire capacity). With implementation of this rule, persons aboard commercial vessels fishing for king and Spanish mackerel and persons aboard dual-permitted vessels on for-hire trips for king and Spanish mackerel may retain the recreational bag and possession limits of king and Spanish mackerel, as long as the recreational season for those species is open, even if commercial fishing for those species is closed. In addition, nothing in this rule prevents persons aboard commercial vessels that hold multiple commercial permits from fishing for and retaining the recreational bag and possession

limits of king and Spanish mackerel during the closed commercial season for king and Spanish mackerel while on a commercial trip for other species, such as snapper-grouper, as long as such fishing is consistent with the Federal commercial permit for each of those other species.

Specific comments related to the action and proposed rule, as well as NMFS' respective responses, are summarized below.

Comment 1: Allowing persons aboard commercial vessels to fish for king and Spanish mackerel recreationally could result in more fish being caught, which could result in additional regulation of the recreational sector.

Response: As described in Framework Amendment 5, the recreational and/or stock ACLs for these species have rarely been exceeded in recent years, and thus the accountability measures have not been triggered frequently. We do not expect a significant increase in recreational landings in light of the additional means of access to recreational harvest allowed in this rule. Any effect from this final rule on recreational landings would likely be minimal, and therefore unlikely to require new recreational management measures.

Comment 2: This final rule will allow recreationally caught fish to be sold by commercially permitted vessels when the commercial season is closed.

Response: The final rule allows commercial fishers with a Federal commercial permit for king or Spanish mackerel to use their permitted vessels to fish for these species and retain the recreational bag and possession limits outside of the commercial seasons for those species. However, under the regulations already in place, the sale or purchase of king or Spanish mackerel taken under the recreational bag and possession limits is prohibited when the commercial season is closed. Thus any fish taken in the circumstances allowed under the rule cannot be sold or purchased.

Comment 3: Additional king mackerel population information is needed to avoid ecological or economic problems in the Gulf and Atlantic before approving these changes to management.

Response: As part of the development of Framework Amendment 5, NMFS and the Councils carried out an analysis of the expected physical, biological, economic, social, and administrative effects of this action. This analysis incorporated data from the September 2014 Southeast Data, Assessment, and Review (SEDAR) 38 stock assessment, which determined that both the Gulf and Atlantic migratory groups of king mackerel are not overfished and are not undergoing overfishing. As explained in Framework Amendment 5, the additional amount of king mackerel that would be harvested as a result of this final rule is not quantifiable because the number of persons aboard commercially permitted

vessels who would fish for and retain the recreational bag and possession limits of king and Spanish mackerel once the harvest restriction is removed and the number of days during which they could fish under the recreational bag and possession limits are not known. However, NMFS' analysis demonstrates, and the Councils agree, that minimal impacts to the ecology or economy would be expected as a result of this final rule. The next SEDAR assessment will be completed in the summer of 2018.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Framework Amendment 5, the FMP, the Magnuson-Stevens Act, and other applicable law.

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

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this final rule would not have a significant economic

impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No public comments were received on the proposed rule regarding the certification, and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis was not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Commercial, Recreational, Fisheries, Fishing, Gulf of Mexico, South Atlantic, King Mackerel, Spanish Mackerel.

Dated: July 26, 2017.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.379, revise the last sentence in paragraph (a) to read as follows:

§ 622.379 Incidental catch allowances.

(a) * * * Incidentally caught king or Spanish mackerel are counted toward the quotas provided for under § 622.384 and are subject to the prohibition of sale under § 622.384(e)(2).

* * * * *

3. In § 622.384, revise paragraph (e) to read as follows:

§ 622.384 Quotas.

* * * * *

(e) *Restrictions applicable after a quota closure.* (1) If the recreational sector for the applicable species, migratory group, zone, or gear is open, the bag and possession limits for king and Spanish mackerel specified in § 622.382(a) apply to all harvest or possession for the closed species, migratory group, zone, or gear in or from the EEZ. If the recreational sector for the applicable species, migratory group, zone, or gear is closed, all applicable harvest or possession in or from the EEZ is prohibited.

(2) The sale or purchase of king mackerel, Spanish mackerel, or cobia of the closed species, migratory group, zone, or gear type is prohibited, including any king or Spanish mackerel taken under the bag and possession limits specified in § 622.382(a), or cobia taken under the limited-harvest species

possession limit specified in § 622.383(b). The prohibition on the sale or purchase during a closure for coastal migratory pelagic fish does not apply to coastal migratory pelagic fish that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

4. In § 622.386, revise the introductory text to read as follows:

§ 622.386 Restrictions on sale/purchase.

The restrictions in this section are in addition to the restrictions on the sale or purchase related to commercial quota closures as specified in § 622.384(e) (2).

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