



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 190924-0037]

RIN 0648-BJ19

**Temporary Rule to Increase the Commercial Trip Limit for
Atlantic King Mackerel**

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

ACTION: Final temporary rule; emergency action.

SUMMARY: NMFS issues this emergency action, a final temporary rule to revise the Atlantic migratory group king mackerel (Atlantic king mackerel) commercial trip limit within the Atlantic southern zone from October 1, 2019, through February 29, 2020, as requested by the South Atlantic Fishery Management Council (Council). The purpose of this final temporary rule is to increase the commercial trip limit to allow for a significant economic opportunity that otherwise would be forgone and relieve an economic burden within the Atlantic king mackerel commercial sector without increasing the risk to the stock.

DATES: This temporary rule is effective October 1, 2019, through February 29, 2020.

ADDRESSES: Electronic copies of the documents in support of this emergency rule, which includes the Council's letter to NMFS that contains the Council's rationale for the emergency action request may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/emergency-rule-king-mackerel-trip-limits>.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727-551-5753, or email: karla.gore@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagics fishery is managed under the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP) and includes king mackerel and Spanish mackerel and, in the Gulf of Mexico, cobia. The FMP was prepared by the Gulf of Mexico Fishery Management Council and the Council and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

The fishery for Atlantic king mackerel is divided into a northern zone and a southern zone in the exclusive economic zone

(EEZ), with the quota for this migratory group divided between the two zones. The northern zone extends from the North Carolina/South Carolina boundary through New York, and the southern zone extends from the North Carolina/South Carolina boundary to the Miami-Dade/Monroe County, Florida, boundary. The fishing year for the commercial sector for Atlantic king mackerel is March 1 through the end of February. The quota for the southern zone is allocated between two commercial seasons. Season 1 allocates 60 percent of the quota from March 1 through September 30, and Season 2 allocates 40 percent of the quota from October 1 through the end of February. Any unused quota from Season 1 transfers during the current fishing year to Season 2, with no provision allowing the carryover of any unused quota at the end of Season 2. When the quota for a season is reached or expected to be reached, commercial harvest of king mackerel in the Atlantic southern zone is prohibited for the remainder of that season.

The trip limit system for the southern zone includes a 3,500 lb (1,588 kg) year-round trip limit north of the Flagler/Volusia County, FL, boundary. For the area between the Flagler/Volusia County, FL, boundary, and the Miami-Dade/Monroe County, FL, boundary, the trip limit is 50 fish during Season 2 from October 1 through January 31. The trip limit remains at 50

fish during the month of February, unless NMFS determines that less than 70 percent of the commercial quota for the southern zone's second season has been landed. In that case, NMFS announces the trip limit increase to 75 fish in the **Federal Register**.

The Southeast Data, Assessment, and Review (SEDAR) 38 stock assessment (SEDAR 38; September 2014) indicated that neither the Atlantic nor Gulf king mackerel migratory groups were overfished or undergoing overfishing. With the implementation of Amendment 26 to the FMP (68 FR 17387; April 11, 2017), the southern zone quota increased from the initial 2,587,960 lb (1,173,879 kg) to 5,002,400 lb (2,269,050 kg) in 2016-2017, and was set at 4,450,640 lb (2,059,600 kg) in 2017-2018, 4,001,920 lb (1,815,240 kg) in 2018-2019, and 3,617,120 lb (1,640,698 kg) in 2019-2020.

In March 2019, the Council voted to begin developing Framework Amendment 8 to the FMP to address stakeholder concerns about the 50-fish Season 2 trip limit. Stakeholders and members of the Council's Mackerel Cobia Advisory Panel (AP) indicated that the current 50-fish Season 2 trip limit is a factor in preventing commercial king mackerel fishermen from catching the Season 2 quota or achieving optimum yield (OY). While commercial landings have increased slightly in recent years, during Season

2 the vessels that are capable of landing more than the trip limit are unnecessarily limited because of the lower trip limit. The AP discussed these problems at its April 2019 meeting and reviewed new information showing how much of the quota is not being harvested since the implementation of the 50-fish Season 2 trip limit in May 2017. After discussion, the AP voted to recommend that the Council consider emergency action for 2019 to raise the trip limit south of the Flagler/Volusia County, FL, boundary from 50 to 75 fish beginning in October, the start of Season 2. The Council discussed the AP's recommendation at their June 2019 meeting and heard public testimony supporting the emergency action. They reviewed new information showing how much of the Season 2 quota has not been harvested the last several years by the commercial sector. For example, Season 2 preliminary landings are 710,729 lb (322,381 kg) for the 2017-2018 fishing year and 929,000 lb (421,387 kg) for the 2018-2019 fishing year, and the unadjusted quota was 1,600,768 lb (726,096 kg). The Council was also presented with new preliminary information that showed the estimated average value of the unharvested southern zone quota was over 5 million dollars for the 2017-2018 fishing year and over 3 million dollars for the 2018-2019 fishing year. After reviewing all of the information, the Council voted 12-1 in favor of an emergency rule under the

Magnuson-Stevens Act to increase the trip limit for Season 2 to 75 fish. On June 21, 2019, the Council sent NMFS a letter requesting an emergency rule to increase the 2019-2020 fishing year's Season 2 commercial trip limit for king mackerel.

Justification for Emergency Action

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421; August 21, 1997) list three criteria for determining whether an emergency exists, and this temporary rule is promulgated under these guidelines and meets each of these three criteria. Specifically, NMFS' policy guidelines require that an emergency: (1) results from recent, unforeseen events or recently discovered circumstances; (2) presents serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

At their June 2019 meeting, the Council reviewed recent preliminary landings estimates showing that a large percentage of the southern zone quota was not being harvested. The trip limit system and split season structure for the southern zone were implemented on May 11, 2017, through Amendment 26 to the

FMP. One purpose of Amendment 26 was to increase the social and economic benefits of the fishery. The primary function of the split season structure and trip limit system was to ensure the longest commercial fishing season possible for Atlantic king mackerel and to provide continued access throughout the fishing year to commercial king mackerel fishermen. However, during public comment at the June 2019 Council meeting, commercial king mackerel fishermen told the Council that when they fish south of the Flagler/Volusia County, FL, boundary, because of the low trip limit they are unable to carry their usual amount of crew, they operate less efficiently, and they are unable to fully utilize the available resource. The Council discussed the fishermen's concerns and these unforeseen negative consequences of the Season 2 trip limit, including the estimated value of the unharvested quota. The Council determined that an emergency rule to increase the trip limit was necessary to prevent further unnecessary economic losses and would substantially increase the likelihood of achieving OY in the fishery for the 2019-2020 fishing year. Framework Amendment 8 is in the early stages of development by the Council and cannot be implemented in time for the October 1, 2019, beginning of Season 2 for the 2019-2020 fishing year. Waiting for implementation of Framework Amendment 8 would preclude a significant economic opportunity that could

otherwise be realized in the 2019-2020 fishing year under an emergency rule.

An emergency rule could provide for a temporary increase in the trip limit that would allow fishermen to increase their trip efficiency and avoid further unnecessary economic harm and related social problems, while the Council works on providing a permanent solution through the development of Framework Amendment 8. The emergency rule would not increase the overall Season 2 commercial quota or ACL for king mackerel, but it would allow fishermen more opportunity to harvest the quota and to achieve OY. The Council and NMFS expect that, since commercial king mackerel landings have not reached the southern zone quota in recent years, increasing the trip limit from 50 to 75 fish in the southern zone south of Flagler/Volusia County, FL, for Season 2 would be unlikely to result in an early commercial closure, given the expected level of commercial effort during Season 2, including the anticipated increased effort resulting from this emergency rule. In addition, the current ACL and accountability measures would continue to constrain harvest and prevent overfishing.

NMFS has determined that modifying the 2019-2020 Season 2 commercial trip limit as described above meets the three criteria required for an emergency rule. The Council requested

this emergency rule, a final temporary rule, in response to recently discovered and unforeseen negative consequences of the commercial trip limit system for Atlantic king mackerel put in place through Amendment 26 that present a serious management problem in this fishery. In recent years, the king mackerel commercial quota for the Atlantic southern zone has not been harvested. In the 2018-2019 fishing year, only approximately 59 percent of the quota was harvested. The value of unharvested commercial quota for the Atlantic southern zone over the last four fishing seasons averages \$3,880,961 per season. The unharvested quota of king mackerel in the Atlantic southern zone represents a significant value of catch unavailable to fishing communities from trip limits that are unnecessarily restricting harvest well below the allowable quota. The current trip limit of 50 fish in Season 2 for the southern zone south of Flagler/Volusia County, FL, results in a loss of significant economic opportunity, because vessels that are capable of landing more than 50 fish are unnecessarily limited by the lower trip limit.

NMFS expects 102 vessels that make 593 (28.7 percent) of the affected trips to benefit from the increased trip limit, with an average increase of dockside revenue of \$203.81 (2017 dollars) per trip, and an increase in the total dockside revenue

for those trips, combined, of approximately \$120,859.

Additionally, this rule changes the February 2020 commercial trip limit, currently at 75 fish if less than 70 percent of the quota is reached, and 50 fish after 70 percent of the quota is reached, to 75 fish in February regardless of the percentage of the quota reached. Not revising the trip limit system for the Atlantic southern zone during Season 2 of the 2019-2020 fishing year would result in unnecessary limits on landings and associated dockside revenues because of unharvested quota, and most likely would preclude achievement of OY.

Unnecessarily low trip limits are affecting these vessels' ability to operate efficiently, and reduced dockside revenues per trip have negative indirect economic effects, such as significantly reduced incomes for vessel owners and crew. The current trip limit system is causing undue hardship on fishing communities reliant upon the king mackerel resource along the east coast of Florida, specifically, south of Flagler/Volusia County, FL, to the Miami-Dade/Monroe County, FL, boundary. NMFS expects an increase in the Season 2 trip limit for the 2019-2020 fishing year to provide immediate direct economic and social benefits to commercial king mackerel fishermen operating in this area by allowing for increased landings and thereby increasing trip revenues. Additionally, larger trip limits that

result in increased revenues to vessels have positive economic impacts, such as increased incomes to owners and crew, more job opportunities for vessel crew, and more king mackerel available to processors, dealers and consumers.

The benefits to the king mackerel fishermen of using an emergency action to increase the trip limit for Season 2 in the 2019-2020 fishing year outweigh the value of taking the time necessary to complete normal, notice-and-comment rulemaking. Season 2 begins on October 1, 2019, and Framework Amendment 8 to the FMP, which the Council is developing to make more permanent modifications to the Season 2 trip limit measures, will not be completed and implemented during 2019. As a result, neither the upcoming Framework Amendment 8 and its required notice-and -comment rulemaking process would allow for an increase in the trip limit in time to apply to Season 2 of the 2019-2020 fishing year. Thus, using the notice-and-comment rulemaking process instead of an emergency action would unnecessarily prevent the economic gains to fishing industry participants and communities for the upcoming season. During the June 2019 Council meeting held in Stuart, FL, nearly 40 individuals commented during the public comment session, and most of them spoke in support of increasing the trip limit. In addition, this emergency action is temporary. In developing any

future, more permanent trip limit measures through Framework Amendment 8, the Council process will provide ample opportunity for notice and comment and full public participation.

Management Measure Contained in this Temporary Rule

This final temporary rule revises the Atlantic king mackerel commercial trip limit in the southern zone south of Flagler/Volusia County, FL, to the Miami-Dade/Monroe County, FL, boundary during Season 2 for the commercial sector. The current 50-fish commercial trip limit will be increased to 75 fish from October 1, 2019, through February 29, 2020, between the Flagler/Volusia County, FL, boundary, and the Miami-Dade/Monroe County, FL, boundary. For the month of February, this temporary rule will remove the trip limit reduction measures of 75 to 50 fish when 70 percent of the quota is reached to maintaining 75 fish for the entire month of February, or until the total quota is reached. Implementing this measure through emergency action will allow for increased economic and harvest opportunities that would otherwise not be realized by fishing industry participants and communities in the upcoming season, while the Council continues development of long-term measures to address commercial trip limits in Framework Amendment 8. The Council is currently planning to finalize Framework Amendment 8 in December

2019, and will subsequently submit it for Secretarial review and rulemaking.

NMFS issues this final temporary rule without opportunity for prior notice and public comment. While an emergency action through the Magnuson-Stevens Act may be implemented for an initial period of 180 days and then subsequently extended for up to another 186 days, NMFS does not expect that to occur for this action. Given the limited scope of this action to only be effective from October 2019 through February 2020, no extension of these emergency measures is necessary or expected.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA, has determined that this emergency action is consistent with the Magnuson-Stevens Act, the FMP, and other applicable law. This action is being taken pursuant to the emergency provisions of the Magnuson-Stevens Act and is exempt from Office of Management and Budget (OMB) review.

The Assistant Administrator for Fisheries, NOAA, finds good cause, pursuant to 5 U.S.C. 553(b)(B), to waive prior notice and the opportunity for public comment as impracticable and contrary to the public interest. Providing prior notice and opportunity for public comment would preclude implementing the higher trip

limit in time for the start of Season 2 on October 1, 2019. Notice-and-comment rulemaking is contrary to the public interest in these circumstances. This final temporary rule allows for a significant economic opportunity that otherwise would be forgone, and relieves an economic burden within the Atlantic king mackerel commercial sector without increasing the risk to the stock. This emergency action increases the commercial trip limit for Atlantic king mackerel from 50 fish to 75 fish from October 2019 through January 2020, in Federal waters from the Flagler/Volusia County, FL, boundary to the Miami-Dade/Monroe County, FL, boundary. One hundred and two vessels that make 28.7 percent of the trips are expected to benefit, with an average increase of dockside revenue of \$203.81 per trip (2017 dollars) for 593 trips, and an increase in total dockside revenue for those trips combined approximately by \$120,859. This rule also changes the February 2020 commercial trip limit from the Flagler/Volusia County, FL, boundary to the Miami-Dade/Monroe County, FL, boundary, which is presently at 75 fish if less than 70 percent of the Season 2 quota is reached and 50 fish after 70 percent of the quota is reached, to 75 fish regardless of the percentage of the quota reached. Because 70 percent of the quota has not been reached since implementation of the current trip limit, the limit in February has essentially been at 75 fish.

Consequently, no changes in February landings are expected. The current ACL and accountability measures will continue to constrain commercial harvest and prevent overfishing, and no adverse effects to the king mackerel resource are expected to occur as a result of the increased trip limit.

For these same reasons, the AA also finds good cause under 5 U.S.C. 553(d) (3) to waive the 30-day delay in the date of effectiveness of the action. Also, because this measure increases the current Season 2 trip limit, it relieves a restriction, and therefore it also falls within the 5 U.S.C. 553(d) (1) exception to the 30-day delay in the date of effectiveness requirement. Additionally, if the increased trip limit is not in effect by the start of Season 2, October, 1, 2019, then the benefits of this action would be reduced and the full economic opportunities that are anticipated would not be realized. A reduction of expected benefits would also be contrary to the intent of the Council.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Atlantic, Commercial, Fisheries, Fishing, King mackerel,
Trip limits.

Dated: September 24, 2019.

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 § 622.385, suspend paragraphs (a)(1)(ii)(C) and (D),
and (a)(1)(iii)(C) and (D), and add paragraphs (a)(1)(ii)(E),
and (a)(1)(iii)(E) to read as follows:

§ 622.385 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(ii) * * *

(E) From October 1 through the end of February--75 fish.

(iii) * * *

(E) From October 1 through the end of February--75 fish.

* * * * *

[FR Doc. 2019-21127 Filed: 9/27/2019 8:45 am; Publication Date: 9/30/2019]