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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200508-0132]

RIN 0648-BJ69

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 8

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Framework Amendment 8 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagics (CMP) of the Gulf of Mexico (Gulf) and Atlantic Region (CMP FMP), as prepared by the South Atlantic Fishery Management Council (Council). This proposed rule would revise the Atlantic migratory group king mackerel commercial trip limit in the Atlantic southern zone during the October through February fishing season. The purpose of this proposed rule is to support increased fishing activity and economic opportunity while continuing to constrain harvest to the annual catch limit (ACL).

DATES: Written comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2020-0037," by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0037 click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Karla Gore, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the

sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies Framework Amendment 8 may be obtained from the Southeast Regional Office website at: <https://www.fisheries.noaa.gov/action/framework-amendment-8-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 CMP fishery in the Atlantic region is managed under the CMP FMP which includes king mackerel and Spanish mackerel, and cobia in the Gulf of Mexico. The Council and the Gulf of Mexico Fishery Management Council jointly manage the CMP FMP. The CMP FMP was prepared by both Councils and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Act. Under the CMP FMP, each Council has the ability to develop individual framework amendments to the FMP for certain actions that are specific to each region.

Background

The Atlantic migratory group of king mackerel (Atlantic king mackerel) has fishing zones, a split season,

and a commercial trip limit system implemented through Amendment 26 to the CMP FMP (82 FR 17387, April 11, 2017). In the exclusive economic zone (EEZ), Atlantic king mackerel is divided into a northern zone and a southern zone 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. Annually, the Atlantic southern zone has two commercial seasons, March 1 through September 30 (Season 1), and October 1 through the end of February (Season 2). The Atlantic southern zone quota is further allocated into two seasonal quotas: 60 percent of the zone quota is allocated to Season 1 and 40 percent of the zone quota is allocated to Season 2. During the fishing year, any unused quota from Season 1 transfers to Season 2. There is no carryover of any unused quota at the end of Season 2. When the quota for a season is reached or projected to be reached, commercial harvest of king mackerel in the Atlantic southern zone is prohibited for the remainder of the respective season.

The Atlantic commercial trip limit system was restructured and revised through Amendment 26 to the CMP FMP (82 FR 17387, April 11, 2017), with the goal of ensuring the longest commercial fishing season possible for Atlantic king mackerel and providing commercial fishermen continued access to king mackerel. 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, Florida, boundary. For the area between the Flagler/Volusia County, Florida, boundary (29°25' N lat.), and the Miami-Dade/Monroe County, Florida, boundary (25°20'24" N lat.), 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 for February in the **Federal Register**.

Since the implementation of Amendment 26, fishermen have expressed concern about some of the trip limits contained in the amendment. Specifically, commercial king mackerel fishermen targeting king mackerel south of the Flagler/Volusia County, Florida, boundary indicate that the current Season 2 commercial trip limit of 50 fish in the

Atlantic southern zone has prevented them from fully utilizing the available resource, and that this lower trip limit during Season 2 also has prevented fishermen from being able to carry crew or make profitable trips. The quota for Season 2 has not been met for several years. 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). The AP discussed these problems at its April 2019 meeting, 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, and voted to recommend that the Council consider emergency action for the 2019-2020 fishing year to raise the trip limit south of the Flagler/Volusia County, Florida, boundary from 50 to 75 fish beginning in October 2019. The Council discussed the AP's recommendation at their June 2019 meeting, reviewed new information showing how much of the Season 2 quota has not been harvested the last several years by the commercial sector, heard public testimony supporting the emergency

action, and voted to request that the Secretary of Commerce issue an emergency rule under the Magnuson-Stevens Act to increase the trip limit for Season 2 to 75 fish. The emergency rule was published in the **Federal Register** on September 30, 2019 (84 FR 51435) and it increased the trip limit to 75-fish from October 1, 2019, through February 29, 2020.

In Framework Amendment 8, the Council considered several different commercial trip limits during Season 2 in the Atlantic southern zone from the Flagler/Volusia County, Florida, boundary to the Miami-Dade/Monroe County, Florida, boundary. The Council determined that increasing the trip limit to 100 fish during Season 2 would be expected to reduce inefficiencies associated with a fishing trip, increase economic opportunities, and enhance social benefits, but would not increase the overall Season 2 commercial quota or the commercial ACL for king mackerel. Since commercial king mackerel landings have not reached the Season 2 quota in recent years, the Council and NMFS determined that it was unlikely the commercial trip limit increase would result in an early seasonal closure. The commercial ACL and accountability measures would continue to be in place to constrain commercial harvest and reduce the risk of overfishing.

Management Measure Contained in this Proposed Rule

This proposed rule would revise the Atlantic king mackerel commercial trip limit in the southern zone from the Flagler/Volusia County, Florida, boundary to the Miami-Dade/Monroe County, Florida, boundary during Season 2. The current 50-fish commercial trip limit would be increased to 100 fish from October 1 through the month of January, between the Flagler/Volusia County, Florida, boundary, and the Miami-Dade/Monroe County, Florida, boundary. Also, for the month of February, in the southern zone from the Flagler/Volusia County, Florida, boundary to the Miami-Dade/Monroe County, Florida, boundary, this proposed rule would remove the current trip limit increase of 50 to 75 fish when less than 70 percent of the quota is landed and would allow a trip limit of 100 fish for the entire month of February, or until the total quota is reached. Therefore, for the period of October through February, in the southern zone from the Flagler/Volusia County, Florida, boundary to the Miami-Dade/Monroe County, Florida, boundary, the proposed commercial trip limit would be 100 fish.

The proposed revision to the commercial trip limit in the Atlantic southern zone during Season 2 is expected to provide additional fishing and economic opportunities to

king mackerel fishers and is not expected to negatively impact the Atlantic king mackerel stock.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Framework Amendment 8, the FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is expected to be an Executive Order 13771 deregulatory action.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule and its purpose and need are contained in the **SUMMARY** section of the preamble.

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 factual basis for this certification is as follows.

This proposed rule would apply directly to businesses that operate in the commercial fishing industry (NAICS code 11411) and harvest king mackerel in Federal waters of the South Atlantic off Florida from the Flagler/Volusia County boundary to the Miami-Dade/Monroe County boundary. From 2013 through 2017, an annual average of 408 (28 percent) fishing vessels with a permit to harvest king mackerel landed king mackerel from those waters. It is estimated that 344 businesses operate those 408 vessels. The average annual revenue of one of those 408 fishing vessels is estimated to be \$18,378 (2018 dollars), and king mackerel landings account for approximately 55 percent of that average vessel's annual revenue. From that, it is expected that the 344 businesses are small and that king mackerel landings are critical to these businesses.

This action would increase the commercial trip limit for Atlantic king mackerel from the current limit of 50 fish to 100 fish from October through January in Federal waters from the Flagler/Volusia County, Florida, boundary to the Miami-Dade/Monroe County, Florida, boundary. Also, this action would increase the trip limit in February, which currently is 50 fish unless less than 70 percent of the quota has been landed, then it increases to 75 fish. The proposed rule would allow a trip limit of 100 fish for

the entire month of February, or until the total quota is reached.

NMFS estimates the increase of the trip limit from October through January would increase the number of trips by 494 and landings of king mackerel by 128,582 pounds gutted weight. At an average dockside price of \$2.33 (2018 dollars) per pound gutted weight, the increase in landings would have an associated increase in total dockside revenue of \$299,596 (2018 dollars), which is approximately \$734 per vessel for 408 vessels and approximately \$871 per business for 344 small businesses.

During the month of February from 2014 through 2017, there was no trip limit in the Florida 8-county area. In 2018, despite the current February trip limit, landings fell within the range of landings from the 4 previous years. From that, NMFS estimates the increase in the February trip limit would have little to no impact on landings. Therefore, NMFS estimates the proposed rule would have an average beneficial impact of \$734 per vessel and \$871 per small business. The average increase to the average vessel represents approximately four percent of its annual dockside revenue from all landings (\$18,378 in 2018 dollars).

Therefore, NMFS concludes this rule would not have a significant adverse economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

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

Dated: May 11, 2020.

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 proposed to be 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, revise paragraphs (a)(1)(ii)(C) and (a)(1)(iii)(C) and remove paragraphs (a)(1)(ii)(D) and (a)(1)(iii)(D) to read as follows:

§ 622.385 Commercial trip limits.

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(a) * * *

(1) * * *

(ii) * * *

(C) From October 1 through the end of February--100 fish.

(iii) * * *

(C) From October 1 through the end of February--100 fish.

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[FR Doc. 2020-10327 Filed: 5/18/2020 8:45 am; Publication Date: 5/19/2020]