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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 200811-0215]**

**RIN 0648-BJ69**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic 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:** Final rule.

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

**DATES:** This final rule is effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** 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](mailto:karla.gore@noaa.gov)*.

**SUPPLEMENTARY INFORMATION:** The CMP fishery 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 Fishery Conservation and Management Act (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.

On May 19, 2020, NMFS published the proposed rule for Framework Amendment 8 and requested public comment (85 FR 29916). The proposed rule and the Framework Amendment 8 outline the rationale for the actions contained in this

final rule. A summary of the management measures described in the Framework Amendment 8 and implemented by this final rule is described below.

### **Background**

The fishery for 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), the Atlantic king mackerel fishery 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 the Atlantic king mackerel fishery 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.

When the Atlantic commercial trip limit system was restructured and revised through Amendment 26, it had 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 in 2017, 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 Final Rule**

This final rule revises 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 is 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 final rule removes the current trip limit increase of 50 to 75 fish when less than 70 percent of the quota is landed and allows 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 commercial trip limit will be 100 fish.

The 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.

### **Comments and Responses**

NMFS received eight comments during the public comment period on the proposed rule for Framework Amendment 8. Seven of these comments were in support of the management measure in the framework amendment. NMFS acknowledges the comments in favor of all or part of the actions in Framework Amendment 8 and the proposed rule, and agrees with them; they are not further addressed below. NMFS summarizes and responds to one comment opposed to the action and to one of the comments in support of the action but that also recommended a change to how trip limits are described.

*Comment 1:* Increasing the commercial trip limit from 50 to 100 fish from October through January and from 50 and/or 75 to 100 fish in February during Season 2 of the southern zone would cause increased fishing effort such that the market would be flooded and the market price would



be substantially reduced. The current trip limits for Season 2 in the southern zone should be maintained.

*Response:* NMFS disagrees and does not expect that the higher commercial trip limit from October through February will result in market flooding and reduced dockside prices from increased effort. NMFS has reviewed the data from the years before and after the 2017 change in the trip limits and found no evidence to support market flooding or reduced prices with a higher trip limit. The commercial trip limit during October through February was reduced through Amendment 26 (82 FR 17387, April 11, 2017), and this reduction did not result in a substantial decrease in king mackerel landings during those months during the 2017-2018 and 2018-2019 seasons. Average annual landings from the 2017-2018 and 2018-2019 seasons when a lower trip limit was in place are greater than average annual landings from the 2014-2015 and 2015-2016 seasons when a higher trip limit was in place. Moreover, average annual landings per trip during the 2014-2015 through 2015-2016 seasons are less than average annual landings per trip from the 2017-2018 and 2018-2019 seasons. In addition, the average annual dockside price of king mackerel in both 2018 and 2019 (2018 dollars) also falls within the range of the average annual

dockside price of king mackerel from 2014 through 2016 (2018 dollars).

*Comment 2:* Some king mackerel commercial trip limits are described in pounds of allowable fish and others are described in numbers of allowable fish. For consistency, the king mackerel trip limits should be all described by weight instead of numbers of fish.

*Response:* The Council and NMFS do not have a specific policy with respect to how commercial trip limits are set, either in numbers of fish or pounds. However, for the king mackerel trip limits in the Atlantic southern zone, greater trip limits tend to be expressed in pounds (*i.e.*, 3,500 lb (1,588 kg)) and lesser trip limits are expressed in numbers of fish (*i.e.*, 50 fish). Most commercial trip limits are expressed in pounds of fish, but the Council's Cobia Mackerel Advisory Panel recommended that the trip limit in this portion of the Atlantic southern zone be described in numbers of fish. The Council preferred to have this trip limit set in numbers of fish for this area, rather than pounds of fish, because it believed that numbers of fish would help with compliance and enforcement. Numbers of fish will be converted to landings in pounds of fish by multiplying by the average weight of the fish to track landings against the Atlantic southern zone commercial ACL,

which is expressed in pounds of fish. In determining this conversion factor, NMFS uses data from commercial trip intercepts where the length and weight of the fish harvested on a trip are recorded. As described in Framework Amendment 8, and using data from the NMFS Southeast Fisheries Science Center Trip Intercept Program, the average annual weight of Atlantic king mackerel from the southern zone is 7.38 lb (3.35 kg), round weight, 7.10 lb (3.22 kg), gutted weight.

### **Classification**

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with Framework Amendment 8, the CMP FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

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 (SBA) during the proposed rule stage that this rule, if adopted, 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 comments from the public or SBA's Chief Counsel for Advocacy were received regarding the certification, and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

This final rule responds to the best scientific information available. Pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the 30-day delay in the date of effectiveness of this final rule because such a delay would be contrary to the public interest. If this final rule were delayed by 30 days, king mackerel fishermen may not be able to fish under the increased commercial trip limit and realize the full level of economic opportunity this rule provides. In addition, because this measure increases the current Season 2 trip limits, 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. The current commercial trip limits are increased as a result of this final rule, and NMFS wants to allow king mackerel fishermen the earliest opportunity to harvest at the new trip limit, as intended by the Council in Framework Amendment 8, by ensuring the trip limit is effective by the start of Season 2 on October 1, 2020. Waiving the 30-day delay in the date of effectiveness will allow this final rule to more fully benefit the fishery through increased fishing opportunities as described in Framework Amendment 8 and as intended by the Council. Any delay past October 1 would reduce the benefits of this action, and the full economic opportunities that are anticipated would not be realized. A reduction of these expected benefits would also be contrary to the intent of the Council.

Accordingly, the 30-day delay in effectiveness of the measures contained in this final rule is waived.

**List of Subjects in 50 CFR Part 622**

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

Dated: August 11, 2020.

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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, 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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