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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200911-0240]

RIN 0648-BJ96

Temporarily Increasing the Commercial Trip Limit for South Atlantic Vermilion Snapper and Recreational Bag Limit for Atlantic King Mackerel

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

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this temporary rule to revise the commercial trip limit for vermilion snapper in the South Atlantic Region and the recreational bag limit for the Atlantic migratory group of king mackerel (Atlantic king mackerel) in the Atlantic, as requested by the South Atlantic Fishery Management Council (South Atlantic Council). The purpose of this temporary rule is to increase the vermilion snapper commercial trip limit and Atlantic king mackerel recreational bag limits to help address significant economic losses and opportunities for the commercial and recreational fishing sectors that have resulted from recent unforeseen events, including, but not limited to,

closures of harbors and boat ramps and other disruptions to, and declines in, market demand for seafood and for-hire trips.

DATES: This temporary rule is effective [*insert date of publication in the Federal Register*], through March 16, 2021.

ADDRESSES: Electronic copies of the documents in support of this emergency rule, which includes the South Atlantic Council's letters to NMFS that contain the rationale for the emergency action requests may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/emergency-rule-vermilion-snapper-commercial-trip-limit-atlantic-king-mackerel-recreational>.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, NMFS Southeast Regional Office, telephone: 727-551-5098, or email: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP) and includes vermilion snapper and other snapper-grouper species. The coastal migratory pelagics fishery is managed under the FMP for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (CMP FMP) and includes king mackerel and Spanish mackerel and, in the Gulf of Mexico, cobia. The Snapper-Grouper FMP was prepared by the

South Atlantic Council and the CMP FMP was prepared by the South Atlantic Council and the Gulf of Mexico Fishery Management Council (Gulf Council). Both the Snapper-Grouper FMP and the CMP FMP are 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). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Unless otherwise noted, all weights for vermilion snapper are described in gutted weight and all weights for king mackerel are described in both gutted and round weight.

Background

Vermilion Snapper

The South Atlantic Council manages vermilion snapper in Federal waters from the Virginia/North Carolina boundary, south through the Florida Keys in the Atlantic Ocean (as described in 50 CFR 600.105). As revised through Abbreviated Framework 2 to the Snapper-Grouper FMP, the commercial annual catch limit (ACL) for vermilion snapper is 905,442 lb (410,702 kg) for 2020, and 862,558 lb (391,250 kg) for 2021 (84 FR 14021; April 9, 2019). The commercial ACL is annually split equally into a separate commercial quota for two commercial fishing seasons; Season 1 is January-June, and Season 2 is July-December (50 CFR

622.190(a)(4)). The two seasonal quotas combined equal the commercial ACL. Any unused quota from Season 1 transfers during the fishing year to Season 2. There is no provision to allow the carryover of any unused quota at the end of Season 2 to the following fishing year. The current vermilion snapper commercial trip limit was established through Regulatory Amendment 27 to the Snapper-Grouper FMP at 1,000 lb (454 kg) during Seasons 1 and 2, until the respective seasonal quota is reached (85 FR 488, January 27, 2020) (50 CFR 622.191(a)(6)). The latest Southeast Data, Assessment, and Review (SEDAR) stock assessment (SEDAR 55) in 2018 indicated that South Atlantic vermilion snapper is neither overfished nor undergoing overfishing.

King Mackerel

The South Atlantic Council and the Gulf Council jointly manage the CMP FMP, which includes an Atlantic migratory group of king mackerel and a Gulf of Mexico migratory group of king mackerel. Under the CMP FMP, each Council has the authority to develop and approve certain measures for its respective migratory group that are specific to each region. Atlantic king mackerel are managed by the South Atlantic Council in Federal waters from the Connecticut/Rhode Island/New York boundary south to the Miami-Dade/Monroe County, Florida, boundary (as described in 50 CFR 622.369(a)). The recreational ACL for Atlantic king mackerel is 8 million lb (3,628,739 kg) (50 CFR

622.388(b)(2)(i)). As described at 50 CFR 622.382(a)(1)(i)(A) and (B), in Federal waters the recreational bag limit for Atlantic king mackerel is 3-fish per person from the Connecticut/Rhode Island/New York boundary south to the Georgia/Florida boundary and 2-fish per person off Florida. The most recent update to the latest stock assessment (SEDAR 38 Update) in 2020 indicated that Atlantic king mackerel is neither overfished nor undergoing overfishing.

Council Emergency Action Requests

In June 2020, the South Atlantic Council voted to approve and request two emergency actions. The first request is to increase the commercial trip limit for vermilion snapper from 1,000 lb (454 kg), to 1,500 lb (680 kg), in Federal waters of the South Atlantic Region. The second request is to increase the recreational bag limit for Atlantic king mackerel in Federal waters from 3-fish per person to 4-fish per person from the Connecticut/Rhode Island/New York boundary to the Georgia/Florida boundary, and from 2-fish per person to 4-fish per person from the Georgia/Florida boundary to the Miami-Dade/Monroe County, Florida, boundary.

The commercial landings of vermilion snapper in 2020 are much lower than those observed in 2018 and 2019. Preliminary commercial landings for 2020 show that only 64.5 percent of the vermilion snapper commercial quota for Season 1 has been caught,

compared with 88.42 percent of the quota in 2018 and 95.6 percent of the quota in 2019. The unused portion of this year's commercial quota from Season 1 has been added to the commercial quota for Season 2 (50 CFR 622.190(a)(4)(iii)). Consequently, NMFS expects that short-term management changes such as this trip limit increase from 1,000 lb (454 kg), to 1,500 lb (680 kg), should help the commercial sector to harvest a greater amount of the ACL in 2020 and increase the likelihood of achieving optimum yield. NMFS does not expect that an increase of the commercial trip limit to 1,500 lb (680 kg), would result in a commercial closure in 2020 because of reaching the adjusted Season 2 quota. It is possible that continuing the increased commercial trip limit through this emergency rule into Season 1 of the 2021 fishing year may result in an early closure of the commercial sector in Season 1 in 2021, due to the quota being reached more quickly. However, that prediction is very uncertain and depends on whether the current recent unforeseen events will improve or worsen in 2021.

Since 2011, recreational landings of Atlantic king mackerel have averaged less than 40 percent of the recreational ACL. The recreational Atlantic king mackerel landings for the 2020 fishing year are also not expected to reach the recreational ACL of 8 million lb (3,628,739 kg). Because of this, NMFS has determined it is very unlikely that a temporary increase of the

recreational bag limit will result in the recreational ACL being exceeded.

Beginning in approximately March 2020, South Atlantic stakeholders have experienced closures of harbors and boat ramps with restricted access to marinas and piers, and other disruptions to, and declines in, the restaurant and seafood retail industry, for-hire trips, and losses to market access. Since both South Atlantic vermilion snapper and Atlantic king mackerel are neither overfished, nor undergoing overfishing, the South Atlantic Council requested NMFS to implement emergency rules to increase both the commercial trip limit for vermilion snapper and the recreational bag limit for Atlantic king mackerel to provide temporary economic relief for the fishers and businesses associated with these fisheries. NMFS has combined these two emergency action requests into a single rulemaking in an effort to reduce the administrative burden and to provide a timelier response to the South Atlantic Council's request.

Criteria and 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. Specifically, NMFS' policy guidelines require that an emergency: "(1) Result from recent, unforeseen events or recently discovered circumstances; and (2)

Present 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." NMFS is issuing this emergency rule in compliance with these guidelines to prevent significant direct economic loss and preserve significant economic opportunities that otherwise might be foregone.

At their June 2020 meeting, the South Atlantic Council reviewed information about these fisheries and discussed options to provide relief to commercial and recreational fishermen from economic losses to each sector and associated fishing industries as a result of the recent unforeseen events associated with COVID-19 discussed above that began in approximately March 2020. These unforeseen events have adversely affected commercial and recreational fishermen throughout the South Atlantic Council's jurisdiction for an extended period of time. Commercial and recreational stakeholders informed the South Atlantic Council that the recent events have caused many individuals, businesses and communities to suffer significant economic hardships from lost or reduced income and fishing opportunities.

Commercial fishing activity has been adversely impacted by the loss of markets and the recent events have not allowed the

commercial sector to operate normally this year. These events have also caused serious management problems by making it more difficult to achieve optimum yield (OY) for vermilion snapper.

As previously discussed, NMFS has determined that preliminary commercial landings for vermilion snapper as of July 20, 2020, show only 64.5 percent (291,823 lb (132,369 kg)) of the commercial quota of 452,721 lb (205,351 kg) was caught for Season 1 that ended on June 30, 2020, leaving 160,898 lb (72,982 kg) of the Season 1 quota not caught. This unused portion of the quota from Season 1 was added to the quota for Season 2 of 452,721 lb (205,351 kg) resulting in an adjusted Season 2 quota for 2020 of 613,619 lb (278,333 kg) (50 CFR 622.190(a)(4)(iii)). A trip limit, which necessarily restrains harvest under normal conditions, may be overly restrictive when non-fishery related circumstances reduce effort, and may prevent the fishery from achieving OY and result in the loss of economic and social benefits derived from the commercial harvest for vermilion snapper. NMFS estimates that the increase in the commercial trip limit for vermilion snapper would allow fishermen to increase landings in 2020 by approximately 29,300 lb (13,290 kg), which is still well under the adjusted 2020 commercial quota for Season 2, and should not result in an early commercial closure in 2020. The increased trip limit would also increase the likelihood of achieving OY in the fishery.

NMFS estimates that the increased trip limit would result in an aggregate annual increase in ex-vessel revenue of approximately \$120,000, applying an average price per pound of \$4.10 (2019 dollars) for vermilion snapper. This increase in revenue would accrue to those commercial vessels with Federal snapper-grouper permits that harvest vermilion snapper in excess of the existing commercial trip limit. On average, from 2014 through 2019, there were 215 vessels per year with reported landings of vermilion snapper from the South Atlantic and they earned approximately \$63,000 (2019 dollars) per vessel in annual ex-vessel revenue from all species landings combined. The revenue from the increased trip limit would provide a significant economic benefit to some fishing businesses that have suffered economic hardships from lost or reduced income and fishing opportunities in 2020, by helping them to remain solvent and to recoup some of their lost income. Increased harvest opportunities and greater earning potential per trip may also provide more employment opportunities for crew.

In addition, the increase in revenue assumes prices in 2020 are consistent with recent years and that short-term fluctuations in the daily supply of vermilion snapper would not affect those prices substantially. This assumption is supported by a recent economic assessment of fishery performance conducted by the NMFS Southeast Fisheries Science Center Social Science

Research Group that indicated commercial landings of vermilion snapper and associated ex-vessel revenue both declined by 37 percent in the first 6 months of 2020 relative to the same time in 2019, while prices stayed constant. Continuing the commercial trip limit increase through this emergency rule into Season 1 of the 2021 fishing year could result in an early closure of the commercial sector in Season 1 in 2021, but that prediction is very uncertain and depends on whether the current recent unforeseen events will improve or worsen in 2021. NMFS determines that implementing this measure through emergency action would provide more timely and significant economic relief and expanded harvest opportunities to fishers who have been negatively impacted for much of the 2020 fishing year, and that implementing these benefits through emergency action outweighs the value of pursuing this action through the notice and comment rulemaking process.

Recreational fishers have also been adversely affected by recent and unforeseen circumstances. Beginning in approximately March 2020 and continuing in many ways to date, South Atlantic recreational fishers and associated businesses have had restricted access to, and closures of, marinas and piers, along with the drastically decreased ability for recreational fishers to utilize charter vessels and headboats. The charter vessel and headboat (for-hire) industry within the recreational sector has

been particularly adversely impacted by these recent events because of the sector's reliance on the tourism trade. Reports from stakeholders, preliminary information on headboat effort reviewed by the South Atlantic Council at their June 2020 meeting, and preliminary effort estimates from the NMFS Southeast Fisheries Science Center all indicate that effort in the for-hire component, in particular, has been severely reduced to date in 2020. For 2020, NMFS estimates that the January through April recreational landings for Atlantic king mackerel are at 70,236 lb (31,859 kg), round weight. In comparison, the recreational landings for March and April combined in 2018 and 2019 were 196,970 lb (89,344 kg), round weight, and 420,713 lb (190,832 kg), round weight, respectively. In addition, headboat landings for Atlantic king mackerel during January through March of 2020 were 9,534 lb (4,325 kg), round weight, when for the same months in 2018 and 2019, headboat landings were 19,664 lb (8,919 kg), round weight, and 42,449 lb (19,255 kg), round weight, respectively.

While the recent unforeseen events discussed above caused for-hire fishing businesses to forego, or have significantly reduced, economic opportunities, the events also caused private recreational fishermen to forego, or have reduced, social opportunities that occur through private fishing trips. NMFS expects that a temporary increase of the recreational bag limit

should allow for-hire businesses and recreational fishermen to recover some of these missed and reduced opportunities. Because these recent events also caused serious management problems by making it more difficult to achieve OY for Atlantic king mackerel, the increased bag limit would also increase the likelihood of achieving OY in this fishery.

In addition, NMFS has determined that increasing the recreational bag limit to 4-fish per person throughout the management area for Atlantic king mackerel should not result in an overage of the recreational ACL in 2020 or 2021. NMFS projects the 2020 recreational landings to be 2,322,448 lb (1,053,445 kg), without an increased bag limit, and estimates that increasing the bag limit to 4-fish per person would increase landings by an additional 638,034 lb (289,407 kg) over the course of the 180 days of the emergency rule. With respect to the 2020 fishing year, this results in an additional 432,700 lb (196,269 kg) landed, for an estimation of 2,755,148 lb (1,249,714 kg) for 2020 landings. For the 2021 fishing year, this action would result in an additional 205,334 lb (93,138 kg) landed, resulting in estimated landings of 2,527,782 lb (1,146,582 kg) for 2021. The recreational landings increase of 638,034 lb (289,407 kg) equates to approximately 71,956 additional fish. By increasing the bag limits and applying available willingness to pay estimates for a 3rd and 4th

Atlantic king mackerel kept on an angler trip of \$70.38 and \$51.87 (2019 dollars), respectively, NMFS estimates a total increase in consumer surplus to recreational anglers of approximately \$3.7 million to \$5 million (2019 dollars). The estimate of increased recreational landings for 2020 would still be less than the recreational ACL of 8.0 million lb (3,628,739 kg). In addition, the increased bag limit would allow more fish on a for-hire trip, which may improve charter vessel and headboat trip productivity and overall efficiency as there would be more fish caught per trip. The bag limit increase could make trips more desirable to private recreational fishermen as well, leading to an increase in demand for trips, and in turn, an increase in net operating revenue for charter vessel and headboat businesses that have undergone recent business losses as a result of the unforeseen circumstances discussed above. Increased recreational bag limits that result in an increased number of private and for-hire trips could also have positive indirect effects on recreational coastal communities by providing more job opportunities for crew and more recreational purchases of bait, tackle, ice, and fuel. As with the vermilion snapper trip limit increase, the South Atlantic Council determined that increasing the Atlantic king mackerel bag limit through emergency action would provide more timely significant economic relief and expanded harvest opportunities and social

benefits to fishers, including for-hire businesses and communities, who have been negatively impacted by recent events for much of the 2020 fishing year. NMFS determines that implementing these benefits through emergency action outweighs the value of pursuing this action through the notice and comment rulemaking process.

NMFS has determined that increasing the vermilion snapper commercial trip limit and Atlantic king mackerel recreational bag limit as described meets the requirements of the Magnuson-Stevens Act and NMFS's Policy Guidelines for the Use of Emergency Rules.

Management Measures Contained in this Temporary Rule

This temporary rule would increase the commercial trip limit for vermilion snapper from 1,000 lb (454 kg) to 1,500 lb (680 kg) in Atlantic Federal waters from the Virginia/North Carolina boundary through Florida. This temporary rule would also increase the Atlantic king mackerel recreational bag limit from 3-fish per person to 4-fish per person in Federal waters from the Connecticut/Rhode Island/New York boundary to the Georgia/Florida boundary, and from 2-fish per person to 4-fish per person in Federal waters from the Georgia/Florida boundary to the Miami-Dade/Monroe County, Florida, boundary. Implementing these measures through emergency action would allow for increased significant economic relief as well as expanded

harvest opportunities and social benefits that would otherwise not be realized in time to be of benefit in 2020 to South Atlantic commercial vermilion fishermen and Atlantic recreational king mackerel fishermen.

This temporary rule is issued without the opportunity for prior notice and public comment. The Magnuson-Stevens Act authorizes emergency action to be implemented for an initial period of 180 days and then subsequently extended for up to another 186 days under certain conditions. NMFS does not expect an extension for these measures and this temporary rule does not contain the needed measures to allow for an extension of this emergency action.

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 Snapper-Grouper and CMP FMPs, 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 review.

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.

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 it is impracticable and contrary to the public interest. Commercial and for-hire fishing businesses and recreational anglers are in immediate need of significant economic relief as a result of recent unforeseen events and circumstances. Beginning in approximately March 2020, South Atlantic stakeholders have experienced closures of harbors and boat ramps and other disruptions to, and declines in, market demand for seafood and for-hire trips. Providing prior notice and opportunity for public comment would preclude implementing the measures contained in this temporary rule in time to be of benefit as soon as possible in 2020. Notice-and-comment rulemaking is contrary to the public interest under these circumstances as these entities have already been experiencing negative impacts for the majority of 2020 and delays in implementation would only add to the adverse impacts if not implemented as soon as possible. This temporary rule increases the commercial trip limit for vermilion snapper from 1,000 lb (454 kg) to 1,500 lb (680 kg) in the South Atlantic. This temporary rule also increases the Atlantic king mackerel

recreational bag limit from 3-fish per person to 4-fish per person from the Connecticut/Rhode Island/New York boundary to the Georgia/Florida boundary, and from 2-fish per person to 4-fish per person from the Georgia/Florida boundary to the Miami-Dade/Monroe County, Florida, boundary. These changes are expected to provide some immediate and significant economic relief, as well as increased harvest opportunities for the South Atlantic vermilion snapper commercial sector and the Atlantic king mackerel recreational sector without increasing the risk of overfishing to either stock. NMFS estimates that the increased commercial trip limit for vermilion snapper would result in an aggregate annual increase in ex-vessel revenue of approximately \$120,000 (2019 dollars) in 2020. NMFS also estimates that the increase in the Atlantic king mackerel bag limit would result in a total increase in consumer surplus to recreational anglers of approximately \$3.7 million to \$5 million (2019 dollars). The bag limit increase could make trips more desirable to anglers as well, leading to an increase in demand for for-hire trips, and in turn, an increase in net operating revenue for charter vessel and headboat businesses that have undergone recent business losses from unforeseen circumstances. Immediate implementation of this action also provides a greater opportunity to achieve optimum yield for each stock.

For the same reasons stated above, the Assistant Administrator for Fisheries, NOAA 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. In addition, because this rule relieves a restriction by increasing the current South Atlantic vermilion snapper commercial trip limit and Atlantic king mackerel recreational bag limit, it is also appropriate to waive the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1).

List of Subjects in 50 CFR Part 622

Atlantic, Bag limits, Commercial, Fisheries, Fishing, King mackerel, Recreational, Trip limits, Vermilion snapper.

Dated: September 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 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 § 622.191, suspend paragraph (a) (6) and add paragraph (a) (16) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(16) *Vermilion snapper*. Until the applicable commercial quota specified in § 622.190(a) (4) is reached - 1,500 lb (680 kg), gutted weight. See § 622.190(c) (1) for the limitations regarding vermilion snapper after the applicable commercial quota is reached.

* * * * *

3. In § 622.382, suspend paragraphs (a) (1) (i) (A) and (B) and add paragraph (a) (1) (i) (C) to read as follows:

§ 622.382 Bag and possession limits.

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(a) * * *

(1) * * *

(i) * * *

(C) Mid-Atlantic, South Atlantic, and off Florida--4.

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