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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230706-0162]

RIN 0648-BM37

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 12

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement management measures described in Framework Amendment 12 under the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Gulf Council). This proposed rule and Framework Amendment 12 would modify the Gulf of Mexico

(Gulf) migratory group of king mackerel (Gulf king mackerel) gillnet component commercial fishing season. The purpose of this proposed rule and Framework Amendment 12 is to allow the Gulf king mackerel gillnet component of the CMP fishery to fish without interruption from the season start date until NMFS determines that the gillnet quota has been met.

DATES: Written comments must be received on or before **[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-2023-0075," by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2023-0075", in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Kelli O'Donnell, Southeast Regional Office, NMFS, 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), 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 the required fields if you wish to remain anonymous).

Electronic copies of Framework Amendment 12, which includes a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/framework-12-modifications-commercial-gulf-king-mackerel-gillnet-fishing-season>.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, telephone: 727-824-5305, or email: Kelli.ODonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: Gulf king mackerel is managed under the CMP FMP prepared by the Gulf and South Atlantic Fishery Management Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act).

Background

Under the CMP FMP, the Gulf Council has the authority to develop framework amendments specific to manage fishing for the Gulf migratory group of king mackerel, which is found in Federal waters from Texas to the Florida Monroe/Miami-Dade County boundary. Fishing by the Gulf king mackerel gillnet component is allowed only in the Gulf king mackerel southern zone as described in 50 CFR 622.369(a)(1)(iii).

The current Gulf king mackerel gillnet component fishing season starts annually in January the Tuesday after the Martin Luther King Jr. Federal holiday. The first weekend after the fishing season starts is open to gillnet fishing, but all subsequent weekends and holidays are closed to gillnet fishing while the season remains open. The current fishing season structure was established in a 1999 Framework Amendment to the CMP FMP (64 FR 45457, August 20, 1999). This fishing season structure was based on a need to formalize a private agreement between the small number of gillnet participants, which was to wait until January to fish, so they reduced the chance

of a quota overage for the gillnet component. After the season and first weekend opening, subsequent weekends and holidays were closed to fishing because the gillnet component could rapidly harvest the fish and NMFS did not have the ability to monitor landings and process an inseason closure during weekends and holidays. However, for the last 10 years, gillnet fishers have cooperated with NMFS and voluntarily stopped fishing when landings are close to reaching the gillnet component ACL (component quota). The gillnet fishers then wait for NMFS to determine if there is remaining quota available to harvest or if the season will be closing. Due to the low number of participants within the Gulf king mackerel gillnet component, and their consistent cooperation with NMFS, NMFS expects this practice to continue to be successful. This cooperation also helps ensure that landings do not exceed the commercial gillnet component ACL, which would result in a reduction of the component ACL in the following fishing year (50 CFR 622.388(a)(1)(iii)).

In 2022, the Council received a request from Gulf king mackerel commercial gillnet component fishermen to remove the weekend and holiday seasonal closures

during the fleet's open season. The request stated that the removal of the weekend and holiday closures would allow the gillnet component to be more efficient by allowing participants to harvest the gillnet component quota as quickly as possible and so that they may then return to harvesting other species. The Council agreed that the weekend and holiday closures are no longer necessary.

Management Measure Contained in this Proposed Rule

For the Gulf king mackerel commercial gillnet component, this proposed rule would revise the fishing season. The current fishing season for the Gulf king mackerel gillnet component starts the Tuesday after the Martin Luther King Jr. Federal holiday. The first weekend after the fishing season starts is open, but all subsequent weekends and holidays are closed to fishing while the season remains open. Through this proposed rule the revised the fishing season would still start the Tuesday after the Martin Luther King Jr. Federal holiday but with all subsequent weekends and holidays remaining open to fishing while the season remains open.

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 12, the CMP FMP, other provisions of 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.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has 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 determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this proposed rule. The Magnuson-Stevens Act provides the statutory basis for this proposed 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 proposed rule.

This proposed rule, if implemented, would remove the weekend and holiday closures for the Gulf king mackerel gillnet component fishing season and would apply to all federally-permitted commercial vessels that fish for or harvest Gulf king mackerel using gillnets in the Gulf southern zone. It would not directly apply to federally-permitted dealers. Any change in the supply of king mackerel available for purchase by dealers as a result of this proposed rule, and associated economic effects, would be an indirect effect of this proposed rule and would therefore fall outside the scope of the RFA.

During 2021, there were a total of 1,389 valid or renewable Federal commercial king mackerel permits and 16 king mackerel gillnet endorsements. On average from 2017 through 2021, there were 14 federally-permitted commercial vessels with reported landings of Gulf king mackerel using gillnets in the southern zone. Their average annual vessel-level gross revenue from all species for 2017 through 2021 was \$286,906 (2021 dollars), and Gulf king mackerel harvested with gillnets accounted for approximately 16 percent of

this revenue. For commercial vessels that harvest Gulf king mackerel using gillnets in the southern zone, economic profits are estimated to range from \$12,624 to \$61,972 (4.4 percent to 21.6 percent of annual gross revenue), on average. The maximum annual revenue from all species reported by a single vessel that harvested Gulf king mackerel with gillnets from 2017 through 2021 was approximately \$1 million (2021 dollars). It is important to note that some commercial fishing businesses own and operate more than one vessel. On average from 2017 through 2021, there were 13 commercial fishing businesses identified that had Gulf king mackerel gillnet landings. During this time, these businesses earned an average annual revenue of approximately \$637,000 (2021 dollars), and king mackerel gillnet landings accounted for approximately 8 percent of this revenue. The maximum annual revenue from all species reported by a single one of these commercial fishing businesses from 2017 through 2021 was approximately \$2 million (2021 dollars).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily

engaged in commercial fishing (North American Industry Classification System code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard. No other small entities that would be directly affected by this proposed rule have been identified.

This proposed rule would modify the fishing season for the Gulf king mackerel gillnet component of the CMP fishery by removing the weekend and holiday closures. The removal of this closure provision would be expected to reduce fuel costs as vessels would no longer be required to return to the docks for weekends and holidays. It would also allow these vessels to prosecute the Gulf king mackerel southern zone gillnet quota in a more timely and efficient manner, allowing operators to switch fishing gear sooner and attempt to increase their harvest and revenue in the stone crab and spiny lobster fisheries subsequent to the gillnet

fishing season. NMFS expects that these improvements in efficiency would increase economic profits for the affected small entities; however, these economic effects cannot be quantified with existing data.

In summary, the information provided above supports a determination that this proposed rule would not have a significant 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.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf of Mexico, King mackerel.

Dated: July 6, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 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 § 622.378, revise paragraph (a) to read as follows:

§ 622.378 Seasonal closures of the Gulf migratory group king mackerel gillnet fishery.

(a) *Seasonal closure of the gillnet component for Gulf migratory group king mackerel.* The gillnet component for Gulf migratory group king mackerel in or from the southern zone is closed each fishing year from July 1 until 6 a.m. eastern standard time on the day after the Martin Luther King Jr. Federal holiday. During the closure, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the southern zone may not fish for or possess Gulf migratory group king mackerel. (See § 622.369(a)(1)(iii) for a description of the southern zone.)

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