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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140819687-5314-01]

RIN 0648-BE40

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

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 2 to the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic (CMP) Resources in the Gulf of Mexico and Atlantic Region (Framework Amendment 2), as prepared and submitted by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils). If implemented, this proposed rule would remove the unlimited commercial trip limit for Spanish mackerel in Federal waters off the east coast of Florida on weekdays beginning December 1 of each year. Since

the trip limit system has been in place, fishery conditions and regulations have changed. This proposed rule intends to modify the current trip limit system to better fit the current fishery conditions and catch limits for Atlantic migratory group Spanish mackerel in the southern zone, while increasing social and economic benefits of the CMP fishery.

DATES: NMFS must receive written comments on the proposed rule 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-2014-0136" by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0136, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Karla Gore, 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, 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 the required fields if you wish to remain anonymous).

Framework Amendment 2 to the FMP, which includes an environmental assessment and a regulatory impact review, is available from *www.regulations.gov* or the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727-824-5305, or e-mail: *karla.gore@noaa.gov*.

SUPPLEMENTARY INFORMATION: The CMP fishery of the South Atlantic and Gulf of Mexico (Gulf) includes Spanish mackerel and is managed under the FMP. The FMP was prepared by the 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

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on

a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

Management Measure Contained in this Proposed Rule

This proposed rule would modify the commercial trip limit system for Atlantic migratory group Spanish mackerel. Since the current trip limit regime has been in place, changes in fishery conditions, such as an increase of the commercial annual catch limit (ACL), have necessitated modifications to some elements of the current trip limit system.

Currently, the commercial trip limit for Atlantic migratory group Spanish mackerel in Federal waters off the eastern coast of Florida is 3,500 lb (1,588 kg) from the start of the fishing year on March 1 through November 30. Starting December 1, there is no trip limit on weekdays, and the trip limit is 1,500 lb (680 kg) on weekends. There is no trip limit on weekdays until 75 percent of the adjusted quota (set at 250,000 lb (113,400 kg) below the commercial ACL (adjusted quota)) is landed, after

which the trip limit is 1,500 lb (680 kg) every day. When 100 percent of the adjusted quota is reached, the trip limit is reduced to 500 lb (227 kg) until the end of the fishing year or until the full quota is met or projected to be met. The adjusted quota provides a buffer to help prevent the commercial sector from exceeding the commercial ACL. North of a line extending offshore from the state boundary of Georgia and Florida, the trip limit in Federal waters is 3,500 lb (1,588 kg) year-round.

The lack of a commercial trip limit for Atlantic migratory group Spanish mackerel in Federal waters off the eastern coast of Florida on weekdays beginning December 1 may contribute to early closures. Therefore, this proposed rule would establish a trip limit of 3,500 lb (1,588 kg) for Spanish mackerel in Federal waters offshore of South Carolina, Georgia, and eastern Florida, which is the area recently established by the final rule implementing Amendment 20B to the FMP as the southern zone (80 FR 4216, January 27, 2015). When 75 percent of the adjusted southern zone quota (2,417,330 lb (1,096,482 kg)) is met or projected to be met, the trip limit would be reduced to 1,500 lb (680 kg). When 100 percent of the adjusted southern zone quota is met or projected to be met, the trip limit would be reduced to 500 lb (227 kg) until the end of the fishing year or until the southern zone commercial quota is met or projected to be

met, at which time the commercial sector in the southern zone would be closed to harvest of Spanish mackerel. The modified system of trip limits described above would remove the unlimited weekday trip limit to control harvest more effectively.

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 the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The objective of this proposed rule is to respond to changing fishery characteristics for the Atlantic migratory group Spanish mackerel component of the CMP fishery, reduce the complexity of the commercial trip limit system for this component, and increase social and economic benefits while

ensuring resource protection. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

If implemented, NMFS expects this proposed rule to directly affect all commercial fishing vessels that harvest Atlantic migratory group Spanish mackerel. A Federal commercial permit is required to harvest Spanish mackerel in the Atlantic exclusive economic zone (EEZ) in excess of the bag limit and to sell these species. On May 6, 2014, 1,729 vessels possessed a valid Federal commercial Spanish mackerel permit. A valid permit is a permit that has not expired and may be actively fished. Because the Federal commercial Spanish mackerel permit is an open access permit, expired permits are not renewed; if a permit expires before renewal, a new permit would be issued (if applied for) instead of renewal of the expired permit. The Federal commercial Spanish mackerel permit allows fishermen to harvest commercial quantities of Atlantic and Gulf migratory group Spanish mackerel in the Atlantic and the Gulf EEZ. Over the 2007-2008 through 2011-2012 fishing years (March through February), an average of 387 vessels per year recorded harvests of Atlantic migratory group Spanish mackerel. More recent data on vessel identification and harvest revenues from all fishing activity by these vessels are not available. Therefore, NMFS expects this proposed rule would affect an estimated 387 commercial fishing

vessels per year.

NMFS has not identified any other small entities that this proposed rule would be expected to directly affect.

The SBA has established size criteria for all major industry sectors in the U.S., including commercial fish harvesters. A business involved in commercial fish harvesting 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 \$20.5 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The estimated average annual gross revenue from all fishing activity by a commercial vessel that harvests Atlantic migratory group Spanish mackerel is approximately \$32,100 (2013 dollars). Because the average annual revenue estimate provided above is significantly less than the SBA revenue threshold for this sector, all commercial vessels expected to be directly affected by this proposed rule are believed to be small business entities.

This proposed rule would not require any new reporting, record-keeping, or other compliance requirements associated with reporting or record-keeping that may require professional skills.

If implemented, NMFS expects the effects of this proposed

rule to range from no economic effects to a small increase in revenue to directly affected fishing vessels. Analysis of the economic effects of the proposed rule was conducted with and without 2012-2013 harvest data, which is the most recent final data available. The commercial harvest of Atlantic migratory group Spanish mackerel in 2012-2013 was approximately 3.15 million pounds (mp), compared to harvests in excess of 4 mp in the previous three fishing years. Commercial harvests of Atlantic migratory group Spanish mackerel have shown a cyclical harvest pattern of high, medium, and low harvests on approximately a three-year cycle. As a result, removal of data for the low harvest in 2012-2013 from the analysis may capture the potential effects of the proposed rule under high and low harvest rates.

Based on data from the 2003-2004 through 2012-2013 fishing years, *i.e.*, inclusive of 2012-2013 data, the proposed rule would be expected to result in a gain in revenue to all directly affected vessels combined of approximately \$74,000 (2013 dollars), or approximately \$190 per vessel. If data from the 2012-2013 fishing year are excluded from the analysis, the proposed rule would be expected to result in the same total harvest and revenue as the status quo. Although the actual effects may be between these estimates, neither harvest scenario

would be expected to result in a reduction in revenue, or profit, to any directly affected small entities as a result of the proposed rule. Instead, this proposed rule would be expected to have a small beneficial to no economic effect on the affected small entities. As a result, this proposed rule, if implemented, would not be expected to have a significant economic effect on a substantial number of small entities and an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Annual catch limit, Fisheries, Fishing, Gulf of Mexico, Quotas, South Atlantic, Spanish mackerel.

Dated: April 2, 2015.

Eileen Sobeck,
Assistant Administrator for Fisheries,
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, paragraphs (b) (1) and (2) are revised to read as follows:

§ 622.385 Commercial trip limits.

* * * * *

(b) * * *

(1) *Atlantic migratory group.* The following trip limits apply to vessels for which commercial permits for Spanish mackerel have been issued, as required under § 622.370(a) (3).

(i) Northern zone. Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for Spanish mackerel has been issued, as required under § 622.370(a) (3), in amounts exceeding 3,500 lb (1,588 kg).

(ii) Southern zone. Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for Spanish mackerel has been issued, as required under § 622.370(a) (3) --

(A) From March 1 until 75 percent of the adjusted quota for the southern zone has been reached or is projected to be reached, in amounts exceeding 3,500 lb (1,588 kg).

(B) After 75 percent of the adjusted quota for the southern zone has been reached or is projected to be reached, in amounts exceeding 1,500 lb (680 kg).

(C) After 100 percent of the adjusted quota for the southern zone has been reached or is projected to be reached, and until the end of the fishing year or the southern zone's quota has been reached or projected to be reached, in amounts exceeding 500 lb (227 kg). See § 622.384(e) for limitations regarding Atlantic migratory group Spanish mackerel after the southern zone's quota is reached.

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota for the southern zone is 2,417,330 lb (1,096,482 kg). The adjusted quota for the southern zone is the quota for the Atlantic migratory group Spanish mackerel southern zone reduced by an amount calculated to allow continued harvest of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Total commercial harvest in the southern zone is still subject to the southern zone quota and accountability measures. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota are reached or is projected to be

reached.

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