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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140722613-4908-02]

RIN 0648-XF765

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; Commercial Closure for Spanish Mackerel

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for commercial Spanish mackerel in the northern zone of the Atlantic exclusive economic zone (EEZ) through this temporary rule. NMFS has determined that the revised commercial quota for Spanish mackerel in the northern zone of the Atlantic EEZ will be reached by November 7, 2017. Therefore, NMFS closes the northern zone of the Atlantic EEZ to commercial harvest of Spanish mackerel on November 7, 2017. This closure is necessary to protect the Spanish mackerel resource in the Atlantic.

DATES: The closure is effective at 12:01 a.m., local time,

November 7, 2017, until 12:01 a.m., local time, March 1, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: mary.vara@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights described for Spanish mackerel in the Atlantic EEZ apply as either round or gutted weight.

On November 20, 2014, NMFS published a final rule in the *Federal Register* to implement Framework Amendment 1 to the FMP (79 FR 69058). That final rule implemented a commercial annual catch limit (equal to the commercial quota) of 3.33 million lb (1.51 million kg) for the Atlantic migratory group of Spanish mackerel (Atlantic Spanish mackerel). Atlantic Spanish mackerel are divided into northern and southern zones for

management purposes. The northern zone commercial quota for Atlantic Spanish mackerel is 662,670 lb (300,582 kg) for the current fishing year, March 1, 2017, through February 28, 2018 (50 CFR 622.384(c)(2)(i)).

Regulations at 50 CFR 622.384(c)(2)(iii) allow for quota transfers between the northern and southern zones with the approval from the Regional Administrator (RA) of the NMFS Southeast Region. North Carolina or Florida, in consultation with the other states in the respective zones, may request approval from the RA to transfer part or all of a respective zone's annual commercial quota to the other zone. For the purposes of quota closures as described in 50 CFR 622.8, the receiving zone's quota will be the original quota plus any transferred amount, for that fishing year only. Landings associated with any transferred quota will be included in the total landings for the Atlantic migratory group, which will be evaluated relative to the total ACL.

In a letter dated October 30, 2017, the State of Florida requested the transfer of 100,000 lb (45,359 kg) of Atlantic Spanish mackerel commercial quota from the southern zone to the northern zone to allow the commercial quota for both zones to be fully harvested. NMFS approved the transfer of commercial

quota, and therefore, the revised northern zone commercial quota for Spanish mackerel is 762,670 lb (345,941 kg) and the revised southern zone commercial quota is 2,567,330 lb (1,164,521 kg) in the current fishing year, March 1, 2017, through February 28, 2018.

The northern zone for Atlantic Spanish mackerel extends in Federal waters off New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. The northern boundary of the northern zone extends from an intersection point off New York, Connecticut, and Rhode Island at $41^{\circ}18'16.249''$ N. lat., $71^{\circ}54'28.477''$ W. long. and proceeds southeast to $37^{\circ}22'32.75''$ N. lat. and the intersection point with the outward boundary of the EEZ. The southern boundary of the northern zone extends from the North Carolina and South Carolina state border, along a line extending in a direction of $135^{\circ}34'55''$ from true north beginning at $33^{\circ}51'07.9''$ N. lat., $78^{\circ}32'32.6''$ W. long. to the intersection point with the outward boundary of the EEZ.

Regulations at 50 CFR 622.388(d)(1)(i) require NMFS to close the commercial sector for Atlantic Spanish mackerel in the northern zone when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined

the revised commercial quota of 762,670 lb (345,941 kg) for Atlantic Spanish mackerel in the northern zone will be reached by November 7, 2017. Accordingly, the commercial sector for Atlantic Spanish mackerel in the northern zone is closed effective at 12:01 a.m., local time, November 7, 2017, through February 28, 2018, the end of the current fishing year.

During the commercial closure, a person on board a vessel that has been issued a valid Federal permit to harvest Atlantic Spanish mackerel may continue to retain this species in the northern zone under the recreational bag and possession limits specified in 50 CFR 622.382(a)(1)(iii) and (a)(2), as long as the recreational sector for Atlantic Spanish mackerel is open (50 CFR 622.384(e)(1)).

Also during the closure, Atlantic Spanish mackerel from the closed zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to Atlantic Spanish mackerel from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

Classification

The RA for the NMFS Southeast Region has determined this

temporary rule is necessary for the conservation and management of Atlantic Spanish mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8, 622.384(e), and 622.388(d)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act, because the temporary rule is issued without opportunity for prior notice and opportunity for comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AM has already been subject to notice and public comment, and all that remains is to notify the public of the closure. Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this

action to protect the Atlantic Spanish mackerel stock, because the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 2, 2017.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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