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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 181218999-9214-01]

RIN 0648-BI68

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Coastal Migratory Pelagics Resources in the Gulf of Mexico and
Atlantic Region; Framework Amendment 6**

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 6 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagics (CMP) of the Gulf of Mexico (Gulf) and Atlantic Region (CMP FMP), as prepared by the South Atlantic Fishery Management Council (Council). This proposed rule would revise the Atlantic migratory group king mackerel commercial trip limit in the Atlantic southern zone during the March through September fishing season. The purpose of this proposed rule is to support increased fishing activity and economic opportunity while continuing to constrain harvest to the annual catch limit and providing for year-round access for the commercial sector.

DATES: Written comments must be received 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-2019-0017," by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal:
<http://www.regulations.gov>. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0017 click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Karla Gore, NMFS Southeast Regional Office, 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 required fields if you wish to remain anonymous).

Electronic copies Framework Amendment 6 may be obtained from the Southeast Regional Office Web site at <https://www.fisheries.noaa.gov/action/framework-amendment-6-atlantic-king-mackerel-commercial-trip-limits>.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727-551-5753, or email: karla.gore@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagics fishery in the Atlantic region is managed under the CMP FMP and includes king mackerel and Spanish mackerel, and also includes 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 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.

Background

The Atlantic migratory group of king mackerel (Atlantic king mackerel) is divided into a northern zone and a southern

zone. The trip limit system for the Atlantic southern zone (the EEZ from the North Carolina/South Carolina boundary to the Miami-Dade/Monroe County, FL, boundary (25°20'24"N)) was implemented on May 11, 2017, through Amendment 26 to the FMP (68 FR 17387, April 11, 2017). The fishing year for the commercial sector for Atlantic king mackerel is March 1 through the end of February. The Atlantic southern zone has two commercial seasons, March 1 through September 30, and October 1 through the end of February. The Atlantic southern zone quota is allocated into two seasonal quotas: 60 percent of the zone quota is allocated to March 1 through September 30 (Season 1) and 40 percent of the zone quota is allocated to October 1 through the end of February (Season 2). 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. When the quota for a season is reached or expected to be reached, commercial harvest of king mackerel in the Atlantic southern zone is prohibited for the remainder of the season.

During Season 1 in March, in the area between the Flagler/Volusia County, FL, boundary (29° 25' N. lat.), and the Miami-Dade/Monroe County, FL, boundary (25° 20.24" N. lat.), the trip limit is 50 fish. During Season 1 from April 1 through September 30, the trip limit is 75 fish, unless NMFS determines that 75 percent or more of the Atlantic southern zone quota for

the first season has been landed, then the trip limit is 50 fish.

Subsequent to the implementation of Amendment 26 to the CMP FMP, commercial fishermen from Florida's east coast expressed concern to the Council about the revised commercial trip limits for king mackerel in some of the areas in the Atlantic southern zone, especially the Season 1 (March through September) trip limits in the EEZ off Volusia County, FL. Comments from stakeholders indicated that commercial fishermen operating out of Volusia County, FL, travel farther offshore than elsewhere off the east coast of Florida to target king mackerel and often complete multi-day commercial trips. The 50-fish commercial trip limit during the month of March makes it challenging for commercial fisherman targeting king mackerel in this area to earn enough money to pay for the cost of a trip, potentially causing undue hardship to fishermen. At their April 2017 meeting, the Council's Mackerel Cobia Advisory Panel recommended that the Council review the commercial trip limits in place for the Atlantic southern zone and consider a different trip limit that would support the concerns of the commercial fishermen operating out of Volusia County, FL, while still allowing year-round access to king mackerel by the commercial sector. The Council then developed, and subsequently approved, Framework Amendment 6 to the CMP FMP. Framework Amendment 6 would revise

some of the commercial trip limits for Season 1 (March 1 through September 30) in the southern zone, but would not revise the commercial trip limits for Season 2 (October 1 through the end of February). Additionally, Framework Amendment 6 would not revise the current 3,500 lb (1,588 kg) year-round trip limit for Atlantic migratory group king mackerel north of the Flagler/Volusia County, FL, boundary in the southern zone.

Management Measure Contained in this Proposed Rule

This proposed rule would revise the Atlantic king mackerel commercial trip limits in the southern zone in the EEZ south of the Flagler/Volusia County, FL, boundary during Season 1. The revised trip limit would be increased from 50 fish to 75 fish for the month of March in the EEZ between the Flagler/Volusia County, FL, boundary and the Volusia/Brevard County, FL, boundary. The trip limit would also be increased from 50 to 75 fish for the month of March in the EEZ between the Volusia/Brevard County, FL, boundary and the Miami-Dade/Monroe County, FL boundary. The proposed rule would also increase the trip limit in the EEZ off Volusia County (between Flagler/Volusia County, FL, boundary and the Volusia/Brevard County, FL, boundary) from April 1 through September 30 from 75 fish to 3,500 lb (1,588 kg).

In summary, if this proposed rule is implemented, the commercial trip limits for Atlantic king mackerel throughout the southern zone would be as described in the following:

North of the Flagler/Volusia County, FL, boundary the limit is 3,500 lb (1,588 kg), year-round.

In the EEZ between the Flagler/Volusia County, FL, boundary and the Volusia/Brevard County, FL, boundary, in the month of March, the trip limit would be 75 fish; from April through September, the trip limit would be 3,500 lb (1,588 kg); from October through January, the limit is 50 fish; and for the month of February the limit is 50 fish, unless NMFS determines that less than 70 percent of the commercial quota for the southern zone's second season has been landed, then the trip limit would be 75 fish.

In the EEZ between the Volusia/Brevard County, FL, boundary and the Miami-Dade/Monroe County, FL boundary, in the month of March, the trip limit would be 75 fish; from April through September the limit is 75 fish, unless NMFS determines that less than 75 percent of the commercial quota for the southern zone's first season has been landed, then the trip limit is 50 fish; from October through January, the limit is 50 fish; and for the month of February, the limit is 50 fish unless NMFS determines that less than 70 percent of the second season quota has been landed, then the trip limit would be 75 fish.

The revision to the trip limit in the southern zone is expected to provide additional fishing and economic opportunity to king mackerel fishermen in the southern zone and is not expected to negatively impact the Atlantic king mackerel stock.

Measure Contained in this Proposed Rule not in Framework

Amendment 6

In addition to the measures described in Framework Amendment 6 to revise the Atlantic southern zone commercial trip limits, this proposed rule would also incorporate a correction to a commercial trip limit boundary position for the Atlantic king mackerel southern zone. In 50 CFR 622.385(a)(1)(ii), the final rule for Amendment 26 incorrectly specified the Miami-Dade/Monroe County, FL, boundary coordinate. That final rule incorrectly used the position for the Flagler/Volusia County, FL, boundary in one instance instead of the Miami-Dade/Monroe County, FL, coordinate. However, since that final rule was promulgated, these boundary descriptions have been updated. These new boundary descriptions are part of the revisions being proposed in this rule to implement Framework Amendment 6, and the previous boundary descriptions and coordinates are no longer relevant. Thus, the previous error would be superseded by the boundary descriptions and coordinates listed in 50 CFR

622.385(a)(1)(ii) of this proposed rule for Framework Amendment 6.

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 6, the FMP, 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.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule and its purpose and need are contained in the **SUMMARY** section of the preamble.

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 adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

This proposed rule would directly affect businesses that operate in the commercial fishing industry (NAICS code 11411) and harvest king mackerel in Federal waters of the South

Atlantic. From 2012 through 2016, an annual average of 702 of vessels landed king mackerel. It is estimated that 605 businesses operate the 702 vessels that on average annually land king mackerel.

Average annual revenue from all species landed by the above 702 vessels vary considerably by state; however, the maximum average revenue is \$86,573 (in 2016 dollars). For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing. A business primarily engaged in commercial fishing 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. The estimates of average annual revenue indicate that the above 605 businesses are small businesses.

The proposed rule would increase the trip limit from 50 to 75 king mackerel from March 1 through March 30 in Federal waters between the Flagler/Volusia, FL, boundary and Volusia/Brevard, FL, boundary and Volusia/Brevard, FL, boundary and Miami-Dade/Monroe County, FL, boundary. Those Federal waters are the same as Federal waters between the Flagler/Volusia County, FL, boundary and the Miami-Dade/Monroe County, FL, boundary (25°20'24" N). It is estimated that 60 trips would benefit, and

there could be an additional 250 lb (113 kg) and \$560 per trip (at the 2016 price of \$2.24 per lb). The 60 trips are expected to be made by 60 vessels, and the average vessel's annual revenue would increase from 1.3 percent to 3.7 percent.

The proposed rule would also increase the trip limit to 3,500 lb (1,588 kg) in Federal waters off Volusia County (between the Flagler/Volusia and Volusia/Brevard lines) from April 1 through September 30. Currently, the limit is 75 king mackerel until 75 percent of the quota is landed, then it reduces to 50 fish. An estimated annual average of 148 trips made by 71 vessels could benefit from the trip-limit increase in Federal waters off Volusia County from April through September; however, if all of these trips were made in areas or during the months when trip limits are unaffected by the proposed rule, there would be no beneficial impacts.

If all of the 148 trips were in Federal waters off Volusia County from April through September, the total benefit for 148 trips could be an additional 56,980 lb (25,846 kg) of king mackerel with a dockside value (in 2016 dollars) of \$127,635, and the average annual increase per vessel would be \$1,798. Hence, the average annual benefit per vessel from the increase in the trip limit from April through September in Federal waters off Volusia County would range from \$0 to \$1,798. These 71 vessels are estimated to be operated by 61 (10 percent) of the

average 605 businesses that annually land king mackerel, and the average benefit would range from \$0 to \$2,092 per business.

An average increase in dockside revenue from \$0 to \$1,798 per vessel would represent an increase in average annual revenue from 0 percent to over 11 percent for the average vessel that lands king mackerel in Volusia County or south of Volusia through Dade County. That same average increase in dockside revenue would represent a 0 percent to 5.6 percent in annual revenue for the average vessel that lands king mackerel in counties north of Volusia and 0 percent to 4 percent for the average vessel that lands king mackerel elsewhere in Florida.

In summary, this rule would not have an adverse economic impact on any small business, and instead would increase annual revenues as described above. Therefore, NMFS expects this proposed rule would not have a significant economic impact 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

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

Dated: March 18, 2019.

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 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, revise paragraph (a)(1)(ii) and add paragraph (a)(1)(iii) to read as follows:

§ 622.385 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(ii) In the area between 29°25' N. lat., which is a line directly east from the Flagler/Volusia County, FL, boundary, and 28°47'48" N. lat., which is a line directly east from the Volusia/Brevard County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts not to exceed:

(A) From March 1 through March 31--75 fish.

(B) From April 1 through September 30--3,500 lb (1,588 kg).

(C) From October 1 through January 31--50 fish.

(D) From February 1 through the end of February--50 fish, unless NMFS determines that less than 70 percent of the quota specified in § 622.384(b)(2)(ii)(B) has been landed, then, 75 fish.

(iii) In the area between 28°47'48" N. lat., which is a line directly east from the Volusia/Brevard County, FL, boundary, and 25°20'24" N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts not to exceed:

(A) From March 1 through March 31--75 fish.

(B) From April 1 through September 30--75 fish, unless NMFS

determines that 75 percent or more of the quota specified in § 622.384(b) (2) (ii) (A) has been landed, then, 50 fish.

(C) From October 1 through January 31--50 fish.

(D) From February 1 through the end of February--50 fish, unless NMFS determines that less than 70 percent of the quota specified in § 622.384(b) (2) (ii) (B) has been landed, then, 75 fish.

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