

Dated: September 24, 2013.

**Eric A. Washburn,**

*Bridge Administrator, Western Rivers.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 001005281-0369-02]

RIN 0648-XC928

#### Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reopening of the Commercial Harvest of Gulf King Mackerel in Western Zone

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

**ACTION:** Temporary rule; reopening.

**SUMMARY:** NMFS reopens the 2013-2014 commercial sector for king mackerel in the western zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ). NMFS previously projected that the commercial annual catch limit (ACL) (equal to the commercial quota) for king mackerel in the western zone of the Gulf EEZ would be reached by September 20, 2013, and closed the western zone of the Gulf to commercial king mackerel fishing in the EEZ at noon, local time, September 20, 2013, until 12:01 a.m., local time, on July 1, 2014. However, updated landings estimates indicate the commercial ACL (commercial quota) for king mackerel in the western zone of the Gulf EEZ has not been reached at this time. Therefore, NMFS is reopening the western zone of the Gulf to commercial king mackerel fishing in the EEZ at 12:01 a.m., local time, on November 1, 2013, until 12:01 a.m., local time, on November 3, 2013. The intended effect of this temporary rule is to maximize harvest benefits for the commercial sector for Gulf king mackerel in the western zone.

**DATES:** The reopening is effective 12:01 a.m., local time, November 1, 2013, until 12:01 a.m., local time, on November 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, 727-824-5305, email: [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery

Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS projected that the commercial annual catch limit (ACL) (equal to the commercial quota) for king mackerel in the western zone of the Gulf EEZ would be reached on September 20, 2013, and published a temporary rule to close the western zone of the Gulf to commercial king mackerel fishing in the EEZ (78 FR 58248). However, since that closure, the Science and Research Director has received additional landings data and has determined that the commercial ACL (commercial quota) was not harvested prior to September 20, 2013. Therefore, in accordance with 50 CFR 622.8(c), NMFS is reopening the western zone of the Gulf to commercial king mackerel fishing in the EEZ at 12:01 a.m., local time, on November 1, 2013, until 12:01 a.m., local time, on November 3, 2013.

The Gulf group king mackerel western zone begins at the United States/Mexico border (near Brownsville, Texas) and continues to the boundary between the eastern and western zones at 87°31.1' W. long., which is a line directly south from the Alabama/Florida boundary.

After the commercial sector closes, no person aboard a vessel for which a commercial permit for king mackerel has been issued, except for a person aboard a charter vessel or headboat, may fish for or retain Gulf group king mackerel in the EEZ in the closed zone (50 CFR 622.384(e)(1)). During the closure, a person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2), provided the vessel is operating as a charter vessel or headboat (50 CFR 622.384(e)(2)). A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king 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 trade

in king 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)(3)).

#### Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(c) 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 comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (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 prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because NMFS previously determined the commercial ACL (commercial quota) for king mackerel in the western zone of the Gulf EEZ would be reached by September 20, 2013, and therefore, closed the commercial sector for king mackerel in the western zone of the Gulf EEZ at noon, local time, on September 20, 2013. However, updated landings estimates indicate the commercial ACL (commercial quota) for king mackerel in the western zone of the Gulf EEZ has not been reached at this time, and therefore additional harvest is available in order to achieve optimum yield. All that remains is to notify the public that additional harvest is available under the established commercial ACL (commercial quota) and, therefore, the commercial sector for king mackerel in the western zone of the Gulf EEZ will reopen.

Prior notice and an opportunity to comment is contrary to the public interest because king mackerel is a migratory species, making the harvest of the commercial ACL (commercial quota) for the western zone of the Gulf EEZ time-sensitive. Reopening quickly will likely make additional king mackerel available to consumers and result in revenue increases to commercial vessels.

For the aforementioned reasons, the AA also finds good cause to waive the

30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: October 24, 2013.

**Kelly Denit,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 130219149-3397-02]

RIN 0648-BC97

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Rule Extension, Georges Bank Yellowtail Flounder and White Hake Catch Limits and GOM Cod Carryover Revisions

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

**ACTION:** Temporary final rule; emergency action extended.

**SUMMARY:** This rule extends, pursuant to NMFS's emergency authority in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Georges Bank (GB) yellowtail flounder and white hake specifications for fishing year (FY) 2013 and the GOM cod sector carryover reduction that were published on May 3, 2013, which were implemented as emergency actions concurrently with the Framework Adjustment (FW) 50 final rule under the Northeast (NE) Multispecies Fishery Management Plan (FMP). These measures were scheduled to expire on October 30, 2013. Specifically, this temporary rule maintains the current Acceptable Biological Catch (ABC) and Annual Catch Limit (ACL) for GB yellowtail flounder and white hake, and the 1.85-percent allowable carryover of unused FY 2012 GOM cod Annual Catch Entitlement (ACE) for sectors for an additional 183 days, i.e., through the end of FY 2013 (May 1, 2013, through April 30, 2014). The need for the emergency measures is unchanged, which is to establish FY 2013 catch limits for GB yellowtail flounder and white hake based upon the best available scientific information, and to reduce available carryover of unused FY 2012 GOM cod ACE for sectors. The

intended effect of the emergency measures is to prevent overfishing on GB yellowtail flounder and GOM cod, and to incorporate the best available science into the management of white hake.

**DATES:** This rule is effective October 30, 2013, through April 30, 2014.

The expiration date of the emergency measures for GB yellowtail flounder and white hake specifications, and GOM cod carryover in the preamble of the final rule published May 3, 2013, (78 FR 26172) is extended through April 30, 2014.

**ADDRESSES:** Copies of Framework 50, associated emergency rules, and other measures, the environmental assessment (EA), its Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Act (FRFA) analysis prepared by the New England Fishery Management Council (Council) and NMFS are available from John K. Bullard, Regional Administrator, NMFS Northeast Regional Office (NERO), 55 Great Republic Drive, Gloucester, MA 01930. The FRFA analysis consists of the FRFA, public comments and responses, and the summary of impacts and alternatives contained in the final rule for Framework 50, Associated Emergency Rules, and Other Measures. The EA/RIR/FRFA is also accessible via the Internet at: <http://www.nero.noaa.gov/sfd/sfdmulti.html>.

**FOR FURTHER INFORMATION CONTACT:** Melissa Hooper, Fishery Policy Analyst, (978) 281-9166, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

This temporary final rule extends the revised GB yellowtail flounder and white hake catch limits and GOM cod carryover implemented through emergency authority in the Magnuson-Stevens Act, as published in the Framework 50 final rule on May 3, 2013, to maintain those measures through the end of FY 2013 (April 30, 2014). The May 3, 2013, final rule (78 FR 26172) included detailed information on the background, reasons, and justification to revise through emergency action, the GB yellowtail flounder and white hake catch limits from those originally proposed in the Framework 50 proposed rule (78 FR 19368; March 29, 2013) and from the standard 10-percent allowable carryover for GOM cod. That information is not repeated here.

Section 305(c) of the Magnuson-Stevens Act allows for the extension of an emergency action, which is otherwise effective for up to 180 days, for up to another 186 days, provided

that certain criteria are met: (1) The public has had an opportunity to comment on the emergency regulation, and (2) in the case of a Council recommendation for emergency action, the Council is actively developing an FMP amendment or regulations to address the emergency or overfishing on a permanent basis. NMFS accepted public comment on the emergency measures in the final rule through June 17, 2013, but no comments were submitted. Because these extensions do not change the measures already in place, we are not accepting additional public comment on their extension. NMFS has determined that all the necessary criteria have been met and, therefore, is extending these emergency measures.

#### 1. FY 2013 GB Yellowtail Flounder ABC

The emergency specifications extended through this final rule are the revised GB yellowtail flounder catch limits for FY 2013, as follows: A U.S. Overfishing Limit (OFL) of 882 mt; a U.S. ABC of 215 mt; a total ACL of 208.5 mt; a groundfish sub-ACL of 116.8 mt; a scallop fishery sub-ACL of 83.4 mt; a small-mesh fisheries sub-ACL of 4.0 mt; and an Other ACL sub-component of 4.3 mt. The initial emergency action modified GB yellowtail flounder catch limits from those originally proposed based on a determination that the Framework 50 proposed catch limits were not based upon the Council's Scientific and Statistical Committee (SSC) recommendation, were not consistent with the best available scientific information, and had a high likelihood of resulting in overfishing.

Although the Framework 50 final rule contained preliminary information regarding the more specific components of the groundfish sub-ACL (the division of the groundfish sub-ACL between sectors and the common pool and the Incidental Catch Total Allowable Catches for common pool vessels), it did not implement the final specification of these components (and this rule does not need to address those aspects of the FMP). The components of the GB yellowtail flounder groundfish sub-ACL are specified in the final rule that adjusted the FY 2013 groundfish sub-ACL components for all stocks (78 FR 34928; June 11, 2013).

#### 2. FY 2013 White Hake ABC

The emergency specifications extended through this final rule are the revised white hake catch limits for FY 2013, as follows: A U.S. OFL of 5,462 mt; a U.S. ABC of 4,177 mt; a total ACL of 3,974 mt; a groundfish sub-ACL of 3,849 mt; a state waters sub-component