

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 260 and 261**

[Docket No. 191001–0050]

RIN 0648–BH37

Inspection and Certification of Establishments and Fishery Products for Human Consumption

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The NMFS Office of International Affairs and Seafood Inspection intends to revise regulations at 50 CFR parts 260 and 261 to improve the uniformity and reliability of voluntary seafood inspection services by adopting recognized best practices for inspection. The existing regulations have not been significantly revised or updated since NMFS first issued them in 1971. It is anticipated that the revisions will benefit the seafood industry by reducing the costs of obtaining seafood inspection services and providing improved, more accurate inspection results. Prior to drafting a proposed rule, NMFS is issuing this advance notice of proposed rulemaking requesting input from stakeholders and interested parties on focused areas of the Seafood Inspection Program regulations. Based on comments received and NMFS' overall assessment, NMFS expects to comprehensively overhaul the regulations.

DATES: Written comments must be received on or before December 16, 2019.

ADDRESSES: You may submit comments on this document, identified by docket NOAA–NMFS–2018–0098, by either of the following methods:

(1) *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2018-0098. Click the “Comment Now!” icon, and complete the required fields. Enter or attach your comments.

(2) *Mail:* Submit written comments to Karla Ruzicka, Education and Program Development, NOAA Seafood Inspection Program, 55 Great Republic Drive, Gloucester, MA 01930.

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 in developing a proposed rule. All comments received are a part of the public record and will 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).

FOR FURTHER INFORMATION CONTACT: Karla Ruzicka, NOAA Seafood Inspection Program Development, at Karla.Ruzicka@noaa.gov or 978–281–9269.

SUPPLEMENTARY INFORMATION:**Background**

Under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*), and in accordance with the Reorganization Plan Number 4 of 1970 (84 Stat. 2090), NOAA administers a voluntary Seafood Inspection Program (SIP) which offers inspection and grading services for seafood products, similar to the United States Department of Agriculture's inspection and grading program for meat and poultry. The SIP regulations pertaining to voluntary Inspection and Certification of Establishments and Fishery Products for Human Consumption and Grading Standards are codified at 50 CFR parts 260 and 261. Upon request and if appropriate, SIP inspectors certify that seafood products meet quality specifications established by wholesale seafood purchasers, e.g., grocery store chains, and, for U.S. seafood exports, the food safety requirements of the importing country or widely agreed-upon international food safety standards. NOAA SIP also offers voluntary inspection, audit, and consultative services to domestic and international processors, importers, and international competent food safety authorities (i.e., governmental food safety agencies) to ensure that imported fish and fishery products meet U.S. Food and Drug Administration (FDA) food safety regulatory requirements and, where applicable, specified quality levels. Processors meeting specific NOAA SIP safety, quality, and other program requirements are permitted to mark their products with widely recognized marks and shields, including the U.S. Grade A shield, Processed Under Federal Inspection mark, Accepted Per Specifications shield, and the Officially Sampled shield. See 50 CFR 260.86.

The current regulations contained in 50 CFR part 260 have not been substantively updated since 1971 when NOAA first published SIP implementing regulations (36 FR 21037; November 3, 1971) and do not reflect the changes in industry and the role of NOAA SIP since that time. The regulations in 50 CFR part 261 pertaining to grade standards for fish and fish products were last updated in 1996 (61 FR 9368; March 8, 1996) and are also in need of modernization. As part of an overarching assessment of the continued efficacy, reliability and relevance of the 50 CFR parts 260 and 261 regulations, NOAA SIP concluded that substantial improvements could be made that would simplify its administrative, inspection, and certification procedures, resulting in increased uniformity of inspection results and efficiencies associated with inspection effort while retaining the reliability and validity of inspection results.

Therefore, as described more fully below, NOAA SIP intends to:

- (1) Modernize its administrative procedures for obtaining inspection services to reflect current practices and remove those which may be obsolete;
- (2) Update the sampling plan and lot compliance determination procedures;
- (3) Modernize use of inspection and certification marks;
- (4) Extend inspection services to product forms beyond those for human consumption; and
- (5) Modernize U.S. grade standards.

To facilitate public input, NOAA SIP has identified all of 50 CFR parts 260 and 261 for review and requests comment on all aspects of its regulations as well as the specific focus areas identified below. In developing a proposed rule, consideration will be given to revising these sections and to other suggestions for process modernization that are received through public comments on this ANPRM. In general, NOAA SIP is looking for comments and suggestions from stakeholders regarding how it can modernize its regulations to better reflect current industry practices, and to ensure they are as adaptable as possible to potential changes in technologies and product requirements.

1. Modernize Definitions and Administrative Procedures

NOAA SIP intends to modernize the definitions section of its regulations (50 CFR 260.6) and update its

administrative procedures for obtaining inspection services (50 CFR 260.12–30). There are a number of definitions in the regulations that vary significantly from the definitions used by other food inspection agencies, or are simply out of date. For example, the regulations define “deviant,” but use of that term has been supplanted over time by the term “non-conformity” which is not defined in the regulations. Other common modern food safety terms that are not defined in the regulations include “adulteration” and “extraneous material.”

Administrative procedures under consideration for revision include, but are not limited to: The process for requesting inspection service; the procedures for inspecting and grading products, issuing certificates, as well as appealing inspection results; and methods for determining fees and charges. The existing regulations are out of date with current practices because they do not reflect the use of the internet for requesting and appealing inspection results, the use of electronic documents, and similar technological advances since the 1970’s. Comments are requested to gain information on the following:

- How can NOAA SIP improve and update its regulatory definitions to ensure alignment with internationally recognized terminology;
- Identification of out-of-date and unnecessary administrative procedures;
- Other suggestions to improve access to inspections services.

2. Modernize Sampling Plan and Lot Compliance Determination Procedures

The sampling plan and lot compliance procedures described in 50 CFR 260.61 have been in place since 1966 and were based on the best information at the time. There have been significant advances in sampling methods since then and NOAA SIP has determined that a review of sampling plans and procedures is necessary. As part of this review, NOAA SIP desires comments on the sampling of seafood products for the purposes of certification domestically and for export. NOAA SIP is also interested in suggestions for improvements to the sampling plan, including but not limited to, acceptance and reject numbers, levels of subsampling, reference to other published sampling plans, etc. In working with other Federal and State partners, questions sometimes arise regarding how to define or determine compliance when inspecting product because the existing regulations reflect older sampling procedures not commonly used today.

Uniform standards for determining lot compliance, commonly understood by NOAA SIP, federal and state partners, and industry are essential for trade facilitation. NOAA welcomes comments on this important issue.

NOAA SIP will consider modernizing the Sampling Plan and Lot Compliance Determination Procedures to:

- Update and harmonize inspection practices and procedures to improve uniformity of inspection results by Federal, State, industry, and other inspectors;
- Adopt internationally recognized standards and specifications to determine sample size and acceptable compliance rates for inspected products;
- Address other suggestions provided by stakeholders.

In addition to revising the sampling plan and lot compliance procedures for product inspection and grading purposes, NOAA SIP desires comments on the sampling of seafood products for the purposes of domestic and international export certification. Consideration will be given to:

- Whether sampling plans should vary by product form, *e.g.*, should live lobster, fishmeal and fish oil have product-specific sampling plans;
- Costs associated with destructive sampling performed under current sampling plans;
- Improvements needed for the sampling plan, including but not limited to acceptance and reject numbers and/or references to other recognized and statistically valid sampling plans.

3. Modernize Use of Inspection and Certification Marks

NOAA SIP currently has inspection and grade marks that can be placed on the packages of complying products signifying to the buyer (industry or consumer) the level of quality or status of the product itself. The inspection marks currently in place only attest to the inspection of the specific seafood product, not the conditions under which it was produced. NOAA SIP has received many requests from seafood retailers, wholesalers and food safety authorities in foreign countries to have one or more marks that attest to the conditions under which the product was produced, *i.e.*, a facility that has been inspected and approved by NOAA SIP. NOAA SIP will consider modernizing use of inspection and certification marks to:

- Evaluate the effectiveness of marks and their use;
- Improve understanding and recognition of what the marks signify;

- Evaluate the basis upon which each of the marks is conferred;
- Consider whether an additional mark signifying production in an approved establishment should be developed, and if so, determine the criteria that the mark would confirm and the feasibility of ensuring the integrity of such a mark.

4. Extension of Services to Product Forms Beyond Those for Human Consumption

NOAA SIP services have evolved with the ability of the seafood industry to more fully utilize raw materials to include byproducts such as fish meal, fish oils, and other inedible product forms. To that end, NOAA SIP invites comments regarding:

- Whether NOAA SIP should continue to support the trade and certification of inedible fishery products;
- What additional products should be considered for SIP services;
- What supplier-to-buyer needs would be supported by such services;
- Whether there are any marks or attestations relevant to the industry that should be considered in association with these products and services;
- Any additional comments or suggestions with regard to these products and services.

In addition to amending its regulations, NOAA SIP is considering significant revisions to the existing grade standards, which are found in the SIP Inspection Manual, not in the regulations.

5. Modernize U.S. Grade Standards

In 1996, NOAA SIP removed product-specific grading standards from its regulations and has since issued them as program policies maintained in the SIP Inspection Manual (<https://www.fisheries.noaa.gov/national/seafood-commerce-certification/seafood-inspection-manual>). See 61 FR 9368 (March 8, 1996). NOAA does not intend to bring the grade standards back into its regulations, but as the U.S. Government is the primary source for the development and direction of these standards, they should be managed with a similar level of transparency and open discussion. NOAA SIP is soliciting guidance on the U.S. Grade standards as part of its comprehensive review of operations, regulations and guidance to industry. U.S. Grade Standards are publicly available in the SIP Inspection Manual found online and are revised as necessary. Currently there are 23 grade standards for various seafood products with some being specific to species (*e.g.*, halibut steaks). The standards could be

collapsed down to a smaller number of standards, perhaps fewer than 10, by focusing on product form in general (e.g., general steak standard). Doing so would be an improvement over the current offering of grade standards in that it standardizes methods across all species and opens up more seafood products within the United States to be able to apply a U.S. Grade A mark. NOAA SIP will consider modernizing U.S. Grade Standards to:

- Focus on finished product form specificity rather than species;
- Harmonize Grade Standards design across regions, stakeholders, and products to increase results accuracy and ease of use by all stakeholders;
- Develop easy-to-use product grading documentation
- Improve scientific and statistical methodologies applied to the evaluation of seafood products such as moisture determination, texture analysis, etc.;
- Address other suggestions provided by stakeholders.

NOAA SIP is also interested in any additional comments or suggestions for improving the implementation of the regulations under 50 CFR parts 260 and 261 and the Program generally.

Authority: 7 U.S.C. 1621 *et seq.*

Dated: October 9, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 191008-0058]

RIN 0648-BJ17

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Control Date

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

ACTION: Advanced notice of proposed rulemaking; consideration of a control date.

SUMMARY: This document announces the establishment of a control date of March 7, 2019, for the commercial sector of Spanish mackerel. The South Atlantic

Fishery Management Council (South Atlantic Council) may use the control date if it decides to create restrictions limiting participation in the commercial sector for Spanish mackerel. The Gulf of Mexico Fishery Management Council (Gulf Council) would also need to approve any restrictions to the Federal commercial Spanish mackerel permit. Anyone entering the sector after the control date would not be assured of future access should a management program that limits participation in the sector be prepared and implemented. This announcement is intended, in part, to promote awareness of the potential eligibility criteria for future access to discourage speculative entry into the Spanish mackerel commercial sector while the South Atlantic Council and NMFS consider whether and how access to the sector should be further controlled.

DATES: Written comments must be received by November 14, 2019.

ADDRESSES: You may submit comments identified by “NOAA-NMFS-2019-0083” by either 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-2019-0083, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Nikhil Mehta, 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 the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic (CMP) fishery in the Gulf of Mexico and Atlantic regions is managed jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). The

Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP) includes king mackerel and Spanish mackerel, and cobia in the Gulf of Mexico. The FMP was prepared by the Councils and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act.

Spanish mackerel is not currently overfished or undergoing overfishing. However, as a result of increased commercial effort and exceedance of the commercial annual catch limit in recent years, the South Atlantic Council requested at their June 2019 meeting that NMFS publish a control date of March 7, 2019, for the Spanish mackerel commercial permit. The final rule for Amendment 2 to the FMP (52 FR 23836; June 25, 1987), established an open access Federal commercial permit for both Atlantic and Gulf of Mexico migratory groups of Spanish mackerel. The control date enables the South Atlantic Council to inform current and potential participants that it is considering creating restrictions that may limit participation in the Spanish mackerel commercial sector. The South Atlantic Council may consider creating a limited access permit system for the Spanish mackerel commercial sector where the number of participants could be restricted through permit limitations to control the amount of effort. Other options may include, but are not limited to, a limited access gillnet endorsement in the Atlantic southern zone (North Carolina/South Carolina boundary to the Miami-Dade/Monroe County, Florida, boundary), and collaboration with state agencies.

This document informs participants who enter the commercial sector for Spanish mackerel after March 7, 2019, that they may not be ensured participation under future management of this portion of the CMP fishery. If the South Atlantic Council decides to restrict participation in the Spanish mackerel commercial sector in relation to this control date, an amendment to the FMP with analysis of specific biological, economic, and social effects will be prepared at that time. Any future amendment addressing modifications to the Spanish mackerel commercial permit in relation to this control date would require approval by both Councils.

In addition to an amendment to the FMP, implementation of any such changes would require publication of a notice of availability and proposed rule in the **Federal Register** with public comment periods, and, if approved by