

effects, this action is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final action will be effective July 10, 2023.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: March 30, 2023.

**Daniel Blackman,**

*Regional Administrator, Region 4.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 230502-0116]

RIN 0648-BL71

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 34

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 34 to the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP) (Amendment 34), as prepared and submitted by the South Atlantic Fishery Management Council (South Atlantic Council) and the Gulf of Mexico Fishery Management Council (Gulf Council). For Atlantic migratory group king mackerel (Atlantic king mackerel), this final rule revises the stock and sector annual catch limits (ACL), and the recreational bag and possession limits off the east coast of Florida. For both Atlantic king mackerel and Atlantic migratory group Spanish mackerel (Atlantic Spanish mackerel), this final rule revises the landing fish intact provisions for the recreational sector. In addition, for Atlantic king mackerel, Amendment 34 revises the acceptable biological catch (ABC) and annual optimum yield (OY). The purpose of this final rule and Amendment 34 is to revise the catch limits based on a recent stock assessment and the best scientific information available, and to revise management measures for Atlantic king and Spanish mackerel.

**DATES:** This final rule is effective June 8, 2023.

**ADDRESSES:** Electronic copies of Amendment 34, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-34-catch-level-and-allocation-adjustments-and-management-measures-atlantic-king>.

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** Under the CMP FMP, the South Atlantic and Gulf Councils (Councils) jointly manage fishing for king mackerel and Spanish mackerel in Federal waters from Texas through New York (to the intersection point of Connecticut, Rhode Island, and New York). Atlantic king mackerel and Atlantic Spanish mackerel are managed under the CMP FMP in Federal waters of the Atlantic from New York to the Miami-Dade/Monroe County, Florida, boundary. The Atlantic migratory groups of king mackerel and Spanish mackerel are divided into the northern and southern zones separated by a line extending from the North Carolina/South Carolina border. The CMP 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).

All weights in this final rule are in round and eviscerated weight combined, unless otherwise specified.

#### Background

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the OY 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.

On January 30, 2023, NMFS published a notice of availability for Amendment 34 and requested public comment (88 FR 5845). On February 10, 2023, NMFS published a proposed rule for Amendment 34 and requested public comment (88 FR 8785). NMFS approved Amendment 34 on April 25, 2023. The proposed rule and Amendment 34 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 34 and implemented by this final rule is described below.

The Atlantic king mackerel ABC is apportioned between the northern and southern zones. Under the current framework procedures in the CMP FMP, the South Atlantic Council is responsible for specifying management measures for Atlantic king mackerel and Atlantic Spanish mackerel. The fishing year for Atlantic king mackerel is from March through February.

The most recent Southeast Data, Assessment and Review (SEDAR) stock assessment for Atlantic king mackerel was completed in April 2020 (SEDAR 38 Update 2020). The assessment update incorporated data through the 2017-2018 fishing year (March 2017 through February 2018). The assessment indicated that Atlantic king mackerel was not overfished or undergoing overfishing. The South Atlantic Council's Scientific and Statistical Committee (SSC) reviewed the SEDAR 38 Update (2020) at their April 2020 meeting and determined that the assessment was conducted using the best scientific information available and was adequate for determining stock status and supporting fishing level recommendations.

The SEDAR 38 Update (2020) incorporated the revised estimates for recreational catch from the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES). In 2018, MRIP replaced the fishing effort estimates from the MRIP Coastal Household Telephone Survey (CHTS) with those from the FES. MRIP-FES is considered by the Councils, their SSCs, and NMFS to be a more robust and reliable estimate of recreational effort than MRIP-CHTS. Total recreational fishing effort estimates generated from MRIP-FES are generally greater than MRIP-CHTS estimates, and those higher effort estimates necessarily increase the recreational landings estimates. This difference in the estimates is because MRIP-FES is designed to more accurately measure fishing activity than MRIP-CHTS, not because there was an increase in fishing effort.

Based on the results of the SEDAR 38 Update (2020), the South Atlantic Council's SSC updated their Atlantic king mackerel catch level recommendations to increase harvest. The South Atlantic Council developed Amendment 34 in response to the results of the SEDAR 38 Update (2020) and their SSC's recommendations. However, the current and revised overfishing limits (OFL), ABC, and ACLs are not directly comparable because they are based on different assessments, and the updated assessment includes changes in the recreational catch estimates based on new MRIP-FES methodology described above.

In addition to the revisions to the stock (total) ACL, sector ACLs, and recreational annual catch target (ACT), the South Atlantic Council is modifying Atlantic king mackerel management measures to allow for harvest at the revised fishing levels. This final rule increases the recreational bag and possession limits for Atlantic king mackerel in the Exclusive Economic Zone (EEZ) off the east coast of Florida. This final rule also modifies the recreational requirement for Atlantic king mackerel and Spanish mackerel to be landed with heads and fins intact to allow for damaged Atlantic king mackerel and Atlantic Spanish mackerel caught under the recreational bag limit and that comply with the minimum size limits, to be possessed and offloaded ashore.

The South Atlantic Council determined that the actions in Amendment 34 would achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

### Management Measures Contained in This Final Rule

This final rule revises the Atlantic king mackerel stock (total) ACLs, sector ACLs, commercial zone ACLs, commercial southern zone seasonal ACLs, and the recreational ACT based on the results of SEDAR 38 Update (2020) and the revised MRIP-FES estimates. Additionally, this final rule revises the recreational bag and possession limits off the east coast of Florida for Atlantic king mackerel, and modifies the recreational requirement for Atlantic king mackerel and Atlantic Spanish mackerel to be landed with heads and fins intact.

#### *Atlantic King Mackerel Stock ACLs*

As implemented through Amendment 26 to the CMP FMP (82 FR 17387, May 11, 2017), the current OY and stock ACL (total ACL) for Atlantic king mackerel are equal to the ABC of 12,700,000 lb (5,760,623 kg). In Amendment 34, these values are revised based on the results of the SEDAR 38 Update (2020) and the revised MRIP-FES estimates, and the stock ACL and annual OY are equal to 95 percent of the ABC. The revised stock ACL is 31,160,000 lb (14,133,938 kg) for the 2022–2023 fishing year; 26,980,000 lb (12,237,922 kg) for the 2023–2024 fishing year; 24,130,000 lb (10,945,184 kg) for the 2024–2025 fishing year; 22,135,000 lb (10,040,267 kg) for the 2025–2026 fishing year; and 20,710,000 lb (9,393,898 kg) for the 2026–2027 fishing year and subsequent fishing years.

#### *Atlantic King Mackerel Sector Allocations and ACLs*

Amendment 34 and this final rule revise the Atlantic king mackerel stock ACL. The Atlantic king mackerel stock ACL is allocated at 62.9 percent to the recreational sector and 37.1 percent to the commercial sector. This allocation was established in 1985 through Amendment 1 to the CMP FMP, using the average proportion of landings for the longest time series where both recreational and commercial landings data were available (50 FR 34840, August 28, 1985). Applying this allocation to the current stock ACL for Atlantic king mackerel of 12,700,000 lb (5,760,623 kg) results in 8,000,000 lb (3,628,739 kg) to the recreational sector (recreational ACL) and 4,700,000 lb (2,131,884 kg) to the commercial sector (commercial ACL). In Amendment 34, the South Atlantic Council decided to retain the current sector allocation percentages of 62.9 percent for the recreational sector and 37.1 percent for the commercial sector, and apply this

allocation to the new stock ACL, which incorporates the revised MRIP-FES estimates for recreational catch. The Council determined that this allocation would be fair and equitable to both the recreational and commercial sectors because it would allow both sectors to increase their harvest without either sector meeting or exceeding their sector ACL.

Under this final rule, the revised recreational ACLs are 19,599,640 lb (8,890,247 kg) for the 2022–2023 fishing year; 16,970,420 lb (7,697,653 kg) for the 2023–2024 fishing year; 15,177,770 lb (6,884,521 kg) for the 2024–2025 fishing year; 13,922,915 lb (6,315,328 kg) for the 2025–2026 fishing year; and 13,026,590 lb (5,908,762 kg) for the 2026–2027 fishing year and subsequent fishing years. The South Atlantic Council acknowledged that the recreational sector has not met their ACL in recent years but determined that the increase in the ACL for the recreational sector may result in positive social benefits associated with the potential for increased harvest. The recreational sector does not have an in-season accountability measure (AM) in place but does have post-season AMs to address any overages of the recreational ACL. However, based on the new MRIP-FES recreational landings, none of the revised recreational ACLs are expected to be reached.

Under this final rule, the commercial ACLs are 11,560,360 lb (5,243,691 kg) for the 2022–2023 fishing year; 10,009,580 lb (4,540,269 kg) for the 2023–2024 fishing year; 8,952,230 lb (4,060,663 kg) for the 2024–2025 fishing year; 8,212,085 lb (3,724,939 kg) for the 2025–2026 fishing year; and 7,683,410 lb (3,485,136 kg) for the 2026–2027 fishing year and subsequent fishing years. Similar to the recreational sector, the commercial sector has not met their ACL in recent years. The South Atlantic Council determined that the increase in the ACL for the commercial sector may also result in positive social benefits associated with the potential for increased harvest. The commercial sector for Atlantic king mackerel has an in-season AM in place to prevent the commercial ACL from being exceeded and a post-season AM, based on stock status, to address any overages of the commercial ACL. However, based on commercial landings for the fishing years of 2015–2016 through 2019–2020, none of the revised commercial ACLs are expected to be reached.

#### *Atlantic King Mackerel Commercial Zone ACLs*

In addition to sector allocations, the commercial sector is divided into a

northern and southern zone, with the commercial ACL further allocated between the two zones. The South Atlantic Council decided not to modify those zone allocations in Amendment 34 based on recommendations from their Mackerel Cobia Advisory Panel (AP) indicating that the current zone allocations are functioning well. The northern zone (from the New York/Connecticut/Rhode Island line to the North Carolina/South Carolina line) is allocated 23.04 percent of the commercial ACL and the southern zone (North Carolina/South Carolina line to the Miami-Dade/Monroe County, Florida, line) is allocated 76.96 percent of the commercial ACL. The northern and southern zone commercial ACLs (quotas) are revised based on the revised stock and commercial ACLs. In addition, there is an allowed incidental commercial harvest of Atlantic king mackerel by purse seine gear that is limited to 0.40 million lb (0.18 million kg) per fishing year. The current commercial sector ACL zone allocations and the purse seine allocation will not change in Amendment 34.

The current northern zone commercial ACL (quota) is 1,082,880 lb (491,186 kg). Under this final rule the commercial northern zone ACL (quota) is 2,663,507 lb (1,208,146 kg) for the 2022–2023 fishing year; 2,306,207 lb (1,046,078 kg) for the 2023–2024 fishing year; 2,062,594 lb (935,577 kg) for the 2024–2025 fishing year; 1,892,064 lb (858,226 kg) for the 2025–2026 fishing year; and 1,770,258 lb (802,976 kg) for the 2026–2027 and subsequent fishing years.

The current southern zone commercial ACL (quota) is 3,617,120 lb (1,640,698 kg). Under this final rule, the southern zone commercial ACL (quota) is 8,896,853 lb (4,035,545 kg) for the 2022–2023 fishing year; 7,703,373 lb (3,494,191 kg) for the 2023–2024 fishing year; 6,889,636 lb (3,125,086 kg) for the 2024–2025 fishing year; 6,320,021 lb (2,866,713 kg) for the 2025–2026 fishing year; and 5,913,152 lb (2,682,161 kg) for the 2026–2027 and subsequent fishing years. The revised commercial northern and southern zone ACLs for Atlantic king mackerel are all greater than the observed landings in recent years. Based on the average commercial landings from 2015–2016 through 2019–2020, future landings would be expected to continue to be less than the revised commercial zone ACLs. Thus, the revised commercial zone ACLs are not expected to constrain harvest or alter fishing activity.

#### *Atlantic King Mackerel Commercial Southern Zone Seasonal Quotas*

The commercial fishing year for Atlantic king mackerel is March through February, and the commercial ACL (quota) for the southern zone is divided between two seasons. Season 1 is March 1 through September 30, and Season 2 is October 1 through the end of February. Season 1 is allocated 60 percent of the Atlantic king mackerel commercial ACL for the southern zone and Season 2 is allocated 40 percent. The current quota for Season 1 is 2,170,272 lb (984,419 kg) and the quota for Season 2 is 1,446,848 lb (656,279 kg).

Based on the revised commercial southern zone ACLs in Amendment 34, the commercial southern zone quota for Season 1 is 5,338,112 lb (2,421,327 kg) for the 2022–2023 fishing year, 4,622,024 lb (2,096,515 kg) for the 2023–2024 fishing year; 4,133,782 lb (1,875,052 kg) for the 2024–2025 fishing year; 3,792,012 lb (1,720,028 kg) for the 2025–2026 fishing year; and 3,547,891 lb (1,609,296 kg) for the 2026–2027 fishing year and subsequent fishing years. The commercial southern zone quota for Season 2 is 3,558,741 lb (1,614,218 kg) for the 2022–2023 fishing year; 3,081,349 lb (1,397,676 kg) for the 2023–2024 fishing year; 2,755,854 lb (1,250,034 kg) for the 2024–2025 fishing year; 2,528,008 lb (1,146,685 kg) for the 2025–2026 fishing year; and 2,365,261 lb (1,072,864 kg) for the 2026–2027 fishing year and subsequent fishing years. The revised commercial southern zone seasonal quotas for Atlantic king mackerel are all greater than the observed landings in recent years. Based on the average commercial landings from 2015–2016 through 2019–2020, landings are expected to continue to be less than the revised commercial southern zone seasonal quotas. Thus, the revised southern zone seasonal quotas are not expected to constrain harvest or alter fishing activity.

#### *Atlantic King Mackerel Recreational ACTs*

The Atlantic king mackerel recreational ACT was first established in Amendment 18 to the CMP FMP (76 FR 82057, December 29, 2011) using the equation  $\text{recreational ACT} * ((1 - \text{Proportional Standard Error (PSE)}) \text{ or } 0.5, \text{ whichever is greater})$ . Recreational ACTs for Atlantic king mackerel are utilized in triggering the post-season recreational AMs. For the Atlantic king mackerel post-season AM, if recreational landings exceed the ACL, and the sum of the commercial and recreational landings exceed the stock

ACL, a reduced bag limit would be implemented the following fishing year by the amount necessary to ensure the recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL. Additionally, if the sum of the commercial and recreational landings exceeds the stock ACL and Atlantic king mackerel are overfished, the recreational ACL and ACT may be reduced for the following year by the amount of any recreational sector overage in the prior fishing year. Because the post-season recreational AMs have not been triggered in the past, and the SEDAR 38 Update (2020) indicates that the Atlantic king mackerel is not overfished, sector ACLs and the recreational ACT can be increased without having negative effects on the sustainability of the stock and are not expected to trigger post-season recreational AMs. In Amendment 18 and past CMP amendments, the South Atlantic Council has chosen to use the 5-year average PSE because it better represents the precision of recent catch estimates than the 3-year average. The current recreational ACT of 7,400,000 lb (3,356,584 kg) is derived from the current ABC and recreational ACL. Amendment 34 and this final rule maintain the formula for determining the recreational ACTs, but the PSE values used in the formula have been updated to reflect the revised recreational landings that are based on the MRIP's newer FES method, and the revised stock ACL and recreational ACL. The 5-year average PSE for the recreational data was 0.137. Using the current formula to calculate the recreational ACT, the resulting recreational ACT will be equal to the recreational ACL multiplied by  $(1 - 0.137)$ , or 0.863, setting the recreational ACT at 86.3 percent of the recreational ACL.

Based on the revised stock and recreational ACLs in Amendment 34, the recreational ACT is 16,914,489 lb (7,672,283 kg) for the 2022–2023 fishing year; 14,645,472 lb (6,643,074 kg) for the 2023–2024 fishing year; 13,098,416 lb (5,941,342 kg) for the 2024–2025 fishing year; 12,015,476 lb (5,450,128 kg) for the 2025–2026 fishing year; and 11,241,947 lb (5,099,261 kg) for the 2026–2027 fishing year and subsequent fishing years.

#### *Atlantic King Mackerel Recreational Bag and Possession Limits*

This final rule revises the recreational bag and possession limits in the EEZ off the east coast of Florida. The current recreational daily bag limit for Atlantic king mackerel in both Federal and state waters off the east coast of Florida is

two fish per person. However, the recreational daily bag limit is three fish per person in the rest of the Gulf of Mexico (Gulf), South Atlantic, and Mid-Atlantic Federal waters. Fishermen and Mackerel Cobia AP members requested that the Councils increase the bag limit for Federal waters off of the Florida east coast to three fish per person, to match the bag limit within the rest of the management area in Federal waters. Increasing the bag limit in Federal waters off the east coast of Florida will allow recreational fishermen throughout the South Atlantic Council's management jurisdiction the opportunity to harvest the same amount of Atlantic king mackerel. Additionally, the recreational sector has not been reaching their ACL, and the South Atlantic Council anticipates that an increased recreational ACL combined with an increased bag limit will help increase harvest.

*Recreational Atlantic King Mackerel and Atlantic Spanish Mackerel Landing Fish Intact*

Currently, Atlantic king mackerel and Atlantic Spanish mackerel recreational fishermen must land recreationally harvested fish with the head and fins intact. As described at 50 CFR 622.381(b), commercial fisherman are allowed to possess and land Atlantic king mackerel and Atlantic Spanish mackerel without the head and fins intact (cut-off or damaged), provided the remaining portion of the fish complies with the minimum size limit. The commercial provision for cut-off fish was implemented through Amendment 9 to the CMP FMP (65 FR 16336, March 28, 2000) because of increasing interactions with sharks or barracudas resulting in Atlantic king mackerel and Atlantic Spanish mackerel having their tails bitten off before they could be landed. In response to similar concerns from the recreational sector about interactions with sharks or barracudas resulting in Atlantic king mackerel and Atlantic Spanish mackerel having their tails bitten off before they could be landed, the Councils decided to revise the landing fish intact requirements in Amendment 34. The Councils determined that allowing possession of damaged Atlantic king mackerel or Atlantic Spanish mackerel could be expected to minimally increase recreational harvest, while reducing the number of discarded fish.

This final rule allows cut-off (damaged) Atlantic king mackerel and Atlantic Spanish mackerel caught under the recreational bag limit and that comply with the minimum size limits, to be possessed, and offloaded ashore.

Additionally, this final rule revises the definition of "damaged fish" to refer to king or Spanish mackerel that are damaged only through natural predation.

*Management Measures in Amendment 34 Not Codified Through This Final Rule*

**OFL and ABC**

The current OFL and ABC for Atlantic king mackerel are 15,200,000 lb (6,894,604 kg) and 12,700,000 lb (5,760,623 kg), respectively, implemented through Amendment 26 to the CMP FMP (82 FR 17387, May 11, 2017). These catch limits are based on the SEDAR 38 (2014) stock assessment that used recreational landings estimates generated using the Marine Recreational Fishery Statistics Survey (MRFS) estimation methods and the MRIP-CHTS. As previously discussed, Amendment 34 adopts the new OFL and ABC based on the results of the SEDAR 38 Update (2020), which used MRIP-FES recreational landings estimates. Thus, the current and revised OFL and ABC are not directly comparable because they are based on different assessments and the updated assessment includes changes in the recreational catch estimates based on new MRIP-FES methodology.

In Amendment 34, the OFL is 33,900,000 lb (15,376,781 kg) for 2022–2023; 29,400,000 lb (13,335,616 kg) for 2023–2024; 26,300,000 lb (11,929,479 kg) for 2024–2025; 24,200,000 lb (10,976,935 kg) for 2025–2026; and 22,800,000 lb (10,341,906 kg) for 2026–2027 and subsequent years. The ABC is 32,800,000 lb (14,877,830 kg) for 2022–2023; 28,400,000 lb (12,882,023 kg) for 2023–2024; 25,400,000 lb (11,521,246 kg) for 2024–2025; 23,300,000 lb (10,568,702 kg) for 2025–2026; and 21,800,000 lb (9,888,314 kg) for 2026–2027 and subsequent years.

**Comments and Responses**

NMFS received six comments from the general public and a commercial fishing organization during the public comment period on the notice of availability and proposed rule for Amendment 34. NMFS agrees with the three comments in favor of the actions in Amendment 34 and the proposed rule. One comment was outside the scope of Amendment 34 and the proposed rule. Comments that opposed the actions contained in Amendment 34 and the proposed rule are summarized below, along with NMFS' responses.

*Comment 1:* The recreational bag limit should not be increased to three fish per person, and should remain at two fish

per person. The current recreational bag limit provides plenty of food, as king mackerel are a large fish with a high yield so it would be a waste of the resource to allow more fish to be caught by the recreational sector.

*Response:* NMFS disagrees that the recreational bag limit should not be increased to three fish per person in Federal waters off the east coast of Florida. The recreational bag limit off the east coast of Florida is two fish per person, while the rest of the Gulf of Mexico, South Atlantic, and Mid-Atlantic region has a bag limit of three fish per person. Raising the bag limit in Federal waters off the east coast of Florida would create consistency in the recreational bag limit in Federal waters and provide the same opportunity for harvest throughout the entirety of the Atlantic king mackerel management area. The recreational sector has not been reaching its ACL and a higher bag limit is anticipated to help increase harvest.

In addition, increasing the recreational bag limit is expected to provide positive economic and social effects without substantial effects on the stock. The most recent stock assessment, SEDAR 38 Update (2020), indicates that Atlantic king mackerel is not overfished or undergoing overfishing, and that recreational and commercial landings and catch per unit effort all showed an increasing trend in biomass. The increased bag limit off the east coast of Florida is expected to have minor effects on overall harvest since the majority of anglers are currently only retaining one fish per person. As described in Amendment 34, recreational landings are not expected to reach the revised recreational ACL as a result of the increased bag limit. Because ACLs and AMs are in place to prevent overfishing, NMFS has determined that a bag limit increase will maintain the sustainability of the stock, reduce discards, and promote a more consistent regulatory environment for stakeholders and enforcement agencies.

*Comment 2:* When compared to the current commercial allocation and trip limits, the change to the recreational allocation and bag limits is unfair. Additionally, there are more regulatory restrictions on the recreational sector than there are on the commercial sector.

*Response:* NMFS disagrees that the recreational sector has an unfair sector allocation and retention limits when compared to the commercial sector. The current allocation percentages of 62.9 percent to the recreational sector and 37.1 percent to the commercial sector were initially set in Amendment 1 to the CMP FMP, using the average proportion

of landings for the longest time series where both commercial and recreational landings data were available, and were calculated by the MRFSS estimation methods available at the time for recreational landings estimates (50 FR 34840, August 28, 1985). The most recent stock assessment, SEDAR 38 Update (2020), includes revised recreational landings estimates that are based on the MRIP's newer FES method, which is considered more reliable and robust compared to the MRIP-CHTS or MRFSS methods. The Councils consider management of Atlantic king mackerel to be successful and determined that it would be beneficial to preserve the historic, and existing, makeup of the king mackerel portion of the CMP fishery by retaining the current allocation percentages. In accordance with National Standard 4 of the Magnuson-Stevens Act, the Councils determined that their decision to maintain the current allocations would be fair and equitable to fishermen in both the recreational and commercial sectors, would be reasonably calculated to promote conservation, and is carried out in such manner that no particular entity acquires an excessive share of such privileges. The sector ACLs in Amendment 34 were derived from applying the current sector allocations to the revised total ACL. Therefore, although the sector allocation percentages are not changing, the total ACL and sector ACLs (quotas) are increasing compared to the current values. Landings by the recreational sector have been below the recreational ACL, and the South Atlantic Council anticipates that an increased recreational ACL, combined with an increased bag limit, will increase harvest. In recent years commercial sector landings have come close to reaching the commercial ACL. However, even with maintaining current sector allocation percentages, neither sector is anticipated to have AMs triggered due to their respective ACL being met.

NMFS also disagrees that there are more regulatory restrictions on the recreational sector than the commercial sector within the Atlantic king mackerel portion of the CMP fishery. NMFS notes that the regulations for the commercial sector include, among other regulations, limited access permitting requirements, reporting requirements, a complex area and seasonal trip limit system, a minimum size limit, ACLs, and AMs. The recreational sector also has many measures in place including permitting requirements for the charter vessels and headboats, bag limits, a minimum size limit, ACLs, and AMs. NMFS and the

Councils have determined that the measures for the commercial and recreational sectors are fair and equitable.

#### Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 34, the CMP FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

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

The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or record-keeping requirements are introduced by this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995. A description of this final rule, why it is being considered, and the purposes of this final rule are contained in the preamble and in the **SUMMARY** section of this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

#### List of Subjects in 50 CFR Part 622

Annual catch limits, Atlantic, Bag and possession limits, Fisheries, Fishing, King mackerel, Spanish mackerel.

Dated: May 2, 2023.

**Samuel D. Rauch, III,**

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 622 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.*

#### **§ 622.19 [Amended]**

■ 2. In § 622.19, remove and reserve paragraph (b)(1).

■ 3. Revise § 622.381 to read as follows:

#### **§ 622.381 Landing fish intact.**

(a) *Intact fish requirement.* Cobia in or from the Gulf and in the South Atlantic EEZ south of a line extending due east from the Florida/Georgia border, and king mackerel and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel and Spanish mackerel in paragraph (b) of this section, must be maintained with head and fins intact. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(b) *Damaged king or Spanish mackerel.* (1) *Commercial.* Damaged king or Spanish mackerel in the Gulf, Mid-Atlantic, and South Atlantic EEZ that comply with the minimum size limits in § 622.380(b) and (c), respectively, and the trip limits in § 622.385(a) and (b), respectively, may be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under the respective trip limits. Such damaged fish also may be sold. A maximum of five additional damaged king mackerel, not subject to the size limits or trip limits, may be possessed or offloaded ashore but may not be sold or purchased and are not counted against the trip limit. For the purposes of this paragraph (b)(1), damaged fish, refers to king or Spanish mackerel that are damaged only through natural predation.

(2) *Recreational.* Damaged king or Spanish mackerel in the Mid-Atlantic and South Atlantic EEZ that comply with the minimum size limits § 622.380(b) and (c), respectively, and the recreational bag and possession limits in § 622.382(a), may be possessed in the Mid-Atlantic or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under the respective bag and possession limits. For the purposes of this paragraph (b)(2), damaged fish, refers to king or Spanish mackerel that are damaged only through natural predation.

■ 4. In § 622.382, revise paragraph (a)(1)(i) to read as follows:

#### **§ 622.382 Bag and possession limits.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) Atlantic migratory group king mackerel—3.

\* \* \* \* \*

■ 5. In § 622.384, revise paragraph (b)(2) introductory text, paragraphs (b)(2)(i) and (ii) to read as follows:

**§ 622.384 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(2) *Atlantic migratory group.* The Atlantic migratory group is divided into northern and southern zones. The descriptions of the zones are specified in § 622.369(a). Quotas for the northern and southern zones are as follows:

(i) *Northern zone.* The quota is 2,663,507 lb (1,208,146 kg) for the 2022–2023 fishing year, 2,306,207 lb (1,046,078 kg) for the 2023–2024 fishing year, 2,062,594 lb (935,577 kg) for the 2024–2025 fishing year, 1,892,064 lb (858,226 kg) for the 2025–2026 fishing year, and 1,770,258 lb (802,976 kg) for the 2026–2027 and subsequent fishing years. No more than 0.40 million lb (0.18 million kg) may be harvested by purse seine gear.

(ii) *Southern zone.* The quota is 8,896,853 lb (4,035,545 kg) for the 2022–2023 fishing year, 7,703,373 lb (3,494,191 kg) for the 2023–2024 fishing year, 6,889,636 lb (3,125,086 kg) for the 2024–2025 fishing year, 6,320,021 lb (2,866,713 kg) for the 2025–2026 fishing year, and 5,913,152 lb (2,682,161 kg) for the 2026–2027 and subsequent fishing years.

(A) For the period March 1 through September 30, each year, the seasonal quota is 5,338,112 lb (2,421,327 kg) for the 2022–2023 fishing year, 4,622,024 lb (2,096,515 kg) for the 2023–2024 fishing year, 4,133,782 lb (1,875,052 kg) for the 2024–2025 fishing year, 3,792,012 lb (1,720,028 kg) for the 2025–2026 fishing year, and 3,547,891 lb (1,609,296 kg) for the 2026–2027 fishing year and subsequent fishing years.

(B) For the period October 1 through the end of February each year, the seasonal quota is 3,558,741 lb (1,614,218 kg) for the 2022–2023 fishing year, 3,081,349 lb (1,397,676 kg) for the 2023–2024 fishing year, 2,755,854 lb (1,250,034 kg) for the 2024–2025 fishing year, 2,528,008 lb (1,146,685 kg) for the 2025–2026 fishing year, and 2,365,261 lb (1,072,864 kg) for the 2026–2027 fishing year and subsequent fishing years.

(C) Any unused portion of the quota specified in paragraph (b)(2)(ii)(A) of this section will be added to the quota specified in paragraph (b)(2)(ii)(B) of this section. Any unused portion of the quota specified in paragraph (b)(2)(ii)(B) of this section, including any addition of quota specified in paragraph (b)(2)(ii)(A) of this section that was unused, will become void at the end of the fishing year and will not be added to any subsequent quota.

\* \* \* \* \*

■ 6. In § 622.388, revise paragraphs (b)(1)(iii), (b)(2)(i), and (b)(3) to read as follows:

**§ 622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) The commercial ACL for the Atlantic migratory group of king mackerel is 11,560,360 lb (5,243,691 kg) for the 2022–2023 fishing year, 10,009,580 lb (4,540,269 kg) for the 2023–2024 fishing year, 8,952,230 lb (4,060,663 kg) for the 2024–2025 fishing year, 8,212,085 lb (3,724,939 kg) for the 2025–2026 fishing year, and 7,683,410 lb (3,485,136 kg) for the 2026–2027 fishing year and subsequent fishing years.

(2) \* \* \*

(i) If the recreational landings exceed the recreational ACL as specified in this

paragraph and the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (b)(3) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the bag limit by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL, in the following fishing year. The recreational ACL is 19,599,640 lb (8,890,247 kg) for the 2022–2023 fishing year, 16,970,420 lb (7,697,653 kg) for the 2023–2024 fishing year, 15,177,770 lb (6,884,521 kg) for the 2024–2025 fishing year, 13,922,915 lb (6,315,328 kg) for the 2025–2026 fishing year, and 13,026,590 lb (5,908,762 kg) for the 2026–2027 fishing year and subsequent fishing years. The recreational ACT is 16,914,489 lb (7,672,283 kg) for the 2022–2023 fishing year, 14,645,472 lb (6,643,074 kg) for the 2023–2024 fishing year, 13,098,416 lb (5,941,342 kg) for the 2024–2025 fishing year, 12,015,476 lb (5,450,128 kg) for the 2025–2026 fishing year, and 11,241,947 lb (5,099,261 kg) for the 2026–2027 fishing year and subsequent fishing years.

\* \* \* \* \*

(3) The stock ACL for Atlantic migratory group king mackerel is 31,160,000 lb (14,133,938 kg) for the 2022–2023 fishing year, 26,980,000 lb (12,237,922 kg) for the 2023–2024 fishing year, 24,130,000 lb (10,945,184 kg) for the 2024–2025 fishing year, 22,135,000 lb (10,040,267 kg) for the 2025–2026 fishing year, and 20,710,000 lb (9,393,898 kg) for the 2026–2027 fishing year and subsequent fishing years.

\* \* \* \* \*

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