

Dated: February 6, 2023.

**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. 230202-0035]

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:** Proposed rule; request for  
comments.

**SUMMARY:** NMFS proposes 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 proposed rule would revise 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 proposed rule would revise the landing fish intact provisions for the recreational sector. In addition, for Atlantic king mackerel, Amendment 34 would revise the acceptable biological catch (ABC), annual optimum yield (OY), and sector allocations. The purpose of this proposed rule and Amendment 34 is to revise the catch limits based on a recent stock assessment and revise sector allocations for Atlantic king mackerel based on the best scientific information available and to revise management measures for Atlantic king and Spanish mackerel.

**DATES:** Written comments must be received on or before March 13, 2023.

**ADDRESSES:** You may submit comments on the proposed rule, identified by “NOAA-NMFS-2022-0108,” by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA-NMFS-2022-0108”, in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Mary Vara, Southeast Regional Office, NMFS, 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](https://www.regulations.gov) without change. All personal identifying information (e.g., name, address), 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).

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:**

Mary Vara, telephone: 727-824-5305, or email: [Mary.Vara@noaa.gov](mailto:Mary.Vara@noaa.gov).

**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 further 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 proposed 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.

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 most recent Southeast Data, Assessment and Review (SEDAR) stock assessment for Atlantic king mackerel was completed in April 2020 (SEDAR 38 Update 2020). The fishing year for Atlantic king mackerel is from March through February. The assessment update incorporated 5 years of additional 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.

Additionally, the findings of SEDAR 38 Update (2020) showed that recreational and commercial landings, and catch per unit effort, all showed an increasing trend in biomass. 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

to be a more reliable estimate of recreational effort by the Councils and their SSCs and NMFS, and more robust compared to the MRIP-CHTS method. 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, not because there was a sudden 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 proposed 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.

In addition to the revisions to the stock (total) ACL, sector ACLs, and recreational annual catch target (ACT), the South Atlantic Council is proposing modifications to Atlantic king mackerel management measures to allow for recreational and commercial harvest at the proposed fishing levels. The proposed rule would increase the recreational bag and possession limits for Atlantic king mackerel in the Exclusive Economic Zone (EEZ) off the east coast of Florida. The proposed rule would also modify the recreational requirement for Atlantic king mackerel and Spanish mackerel to be landed with heads and fins intact. This would 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 Proposed Rule**

This proposed rule would revise the Atlantic king mackerel stock (total) ACLs, sector ACLs, recreational ACT, commercial zone ACLs, and commercial southern zone seasonal ACLs based on the results of SEDAR 38 Update (2020)

and the revised MRIP-FES estimates. Additionally, the proposed rule would revise the recreational bag and possession limits off the east coast of Florida for Atlantic king mackerel, and modify 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, the ABC would be revised based on the results of the SEDAR 38 Update (2020) and the revised MRIP-FES estimates, and set the stock ACL and annual OY equal to each other.

Amendment 34 and this proposed rule would revise the stock ACL and annual OY for Atlantic king mackerel and set these values equal to 95 percent of the ABC. The revised stock ACL would be 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 proposed rule would revise the Atlantic king mackerel stock ACL as it is allocated between the recreational and commercial sectors. 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 same 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 room to expand their harvest without risking either sector meeting or exceeding their sector annual catch limit.

Under this proposed rule, the revised recreational ACLs would be 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 quota in recent years but determined that the increase in poundage for the recreational sector may result in positive social benefits associated with the potential for increased harvest. The recreational sector does not have in-season accountability measures (AMs) 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 proposed recreational ACLs are expected to be reached.

Under this proposed rule, the commercial ACLs would be 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 quota in recent years. The South Atlantic Council determined that the increase in poundage 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 in-season AMs in place to prevent the commercial ACL from being exceeded and post-season AMs, 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 proposed 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) 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. 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 would not change in Amendment 34.

The current northern zone commercial quota is 1,082,880 lb (491,186 kg). Based on the revised stock and commercial ACLs, under this proposed rule the commercial northern zone ACL (quota) would be 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 proposed rule the southern zone commercial ACL (quota) would be 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 proposed 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 proposed commercial zone ACLs, and are not expected to be constraining on 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 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 stock, commercial, and commercial southern zone ACLs in Amendment 34, the commercial southern zone quota for Season 1 would be 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 would be 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 proposed 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 would be expected to continue to be less than the proposed commercial southern zone seasonal quotas, and are not expected to be constraining on 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 AM has 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 proposed rule would 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 would 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 would be 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 proposed rule would revise 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, South Atlantic, and Mid-Atlantic Federal waters. Fishermen and Mackerel Cobia AP members have 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. Increasing the bag limit in Federal waters off the east coast of Florida would 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 Atlantic king mackerel and Atlantic Spanish mackerel fisherman are allowed to land these fish without the head and fins intact (cut-off/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 considered revising the landing fish intact requirements in Amendment 34. The Councils decided 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 proposed rule would allow 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 proposed 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 Proposed 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 estimation methods and the MRIP-CHTS. Amendment 34 would adopt 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 proposed 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 would be 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 would be 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.

**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 the CMP FMP, the Magnuson-Stevens Act, and other applicable laws, 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 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.

The rule concerns commercial and recreational fishing for Atlantic migratory king mackerel in Federal waters of the Mid-Atlantic and South Atlantic. Anglers (recreational fishers) would be directly affected by this rule; however, anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6). The rule would also directly apply to businesses that operate in the commercial fishing industry, and particularly those that operate commercial fishing vessels that harvest king mackerel in the Mid-Atlantic and South Atlantic EEZ. Charter vessels and headboats (for-hire) fishing businesses would be indirectly affected, and because the effects on for-hire fishing businesses are indirect, they fall outside the scope of the Regulatory Flexibility Act (RFA).

From 2015 through 2019, an average of 99.9 percent of commercial landings of king mackerel were harvested from and landed in the South Atlantic region (Atlantic Coastal Cooperative Statistics Program data). Because commercial harvest from and landings in the South Atlantic are so predominant, the following analysis focuses on king mackerel harvested from the South Atlantic region and landed in a South Atlantic state. All monetary figures are in 2019 dollars.

Any commercial fishing vessel that harvests king mackerel in the South Atlantic EEZ (or Mid-Atlantic EEZ) must have a valid Federal king mackerel permit specifically assigned to that vessel. A condition of the permit is that all landings of king mackerel harvested from either the EEZ or state waters must be reported. An annual average of 858 vessels had valid Federal king mackerel permits from 2015 through 2019, and approximately 839 of those Federally permitted vessels had homeports in the South Atlantic. Approximately 81 percent (681) of the 839 South Atlantic Federally permitted vessels had annual reported landings of king mackerel on average.

An estimated 532 unique businesses operate the average 681 Federally permitted vessels that harvest Atlantic king mackerel annually. These 532 businesses represent approximately 74 percent of the 722 unique businesses

located in the South Atlantic that hold the 858 Federal king mackerel permits.

The average of federally permitted king mackerel vessels that annually land king mackerel in the South Atlantic have a total annual revenue of \$29,232 from all landings and king mackerel accounts for approximately 29 percent of that average annual revenue. However, that average annual revenue varies by state. Annual total dockside revenue for the average federally permitted vessel that lands king mackerel in Florida and Georgia is approximately \$26,446, and king mackerel accounts for approximately 35 percent of total dockside revenue. The average permitted vessel with landings of king mackerel in North Carolina and South Carolina has annual total dockside revenue of \$28,651 and \$83,633, respectively. King mackerel accounts for approximately 21 percent of average annual total revenue of the average permitted vessel that lands king mackerel in North Carolina and approximately 3 percent for the average permitted vessel that lands king mackerel in South Carolina.

NMFS expects all of the estimated 532 businesses that operate the average annual 681 king mackerel permitted vessels that harvest Atlantic king mackerel operate primarily in, but not necessarily exclusively in, the commercial fishing industry. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 Code of Federal Regulations (CFR) 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates) and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. As stated above, the average annual total revenue for the average permitted vessel that reports landings of Atlantic king mackerel is substantially less than \$11 million. Moreover, additional analysis indicates none of the estimated 532 businesses have combined revenues that reach that figure. Therefore, all of the 532 businesses that operate commercial vessels that annually harvest king mackerel in the South Atlantic EEZ are small.

This proposed rule is composed of five actions. Three of the actions concern recreational fishing only and for reasons stated above their impacts are not relevant to this analysis. Action

1 in Amendment 34 would revise the ABC and total ACL (commercial and recreational) for Atlantic king mackerel. Action 1 would increase the total ACL. The increase would be 18,460,000 lb (8,373,315 kg) in the 2022/2023 fishing year, then lessen each year following until the increase is 8,010,000 lb (3,633,275 kg) in the 2026–2027 and subsequent fishing years. The impact of this action on small commercial fishing businesses is dependent on Action 2 (sector allocation).

Action 2 would retain the current allocation of 37.1 percent of the total ACL to the commercial sector and the remaining 62.9 percent to the recreational sector. Action 2 combined with Action 1 would increase the commercial ACL by 6,860,360 lb (3,111,807 kg) in the 2022–2023 fishing year, then lessen each year thereafter until the increase in the commercial ACL is 2,983,401 lb (1,353,248 kg) in 2026–2027 and beyond fishing years.

The increased commercial ACL would allow for increased Atlantic king mackerel landings, which could benefit the average annual 681 permitted vessels that harvest Atlantic king mackerel and the 532 small businesses that operate these vessels. With an average dockside price of \$2.30 per lb, the maximum annual potential benefit to the combined small businesses, assuming they account for all king mackerel ACL landings, would be annual increases in dockside revenue from Atlantic king mackerel landings that would range from approximately \$6.86 million to \$15.78 million. That, however, is a potential benefit only because status quo commercial landings have been less than the status quo commercial ACL. Commercial landings would have to increase in the future beyond the status quo ACL to benefit from the proposed increases in the commercial ACL.

The commercial ACL for Atlantic king mackerel is divided into two zones, each with its own quota. The northern zone is allocated 23.04 percent of the commercial ACL while the southern zone is allocated the remaining 76.96 percent of the commercial ACL. Under combined Actions 1 and 2, the zone allocations would not change, but the quotas for both zones would increase with the increase in the commercial ACL. Although both zones' status quo landings have been less than their respective status quo quotas, there is the potential benefit of increased landings in either or both zones in the future because the quotas would increase.

Since 2020–2021, the fishing year for the southern zone has been divided into two seasons: Season 1 (March 1–

September 30) and Season 2 (October 1–end of February), with 60 percent of the southern zone quota allocated to Season 1 and the remaining 40 percent being allocated to Season 2. During the 2020–2021 and 2021–2022 fishing years, landings of Atlantic king mackerel in Season 1 and Season 2 were less than the seasonal quotas. Hence, the increases in the southern zone seasonal quotas under combined Actions 1 and 2 are not expected to have any beneficial impact on small businesses that harvest Atlantic king mackerel in the southern zone during either Season 1 or Season 2. Nonetheless, there is the potential future benefit that comes from increases in the seasonal quotas.

In summary, the proposed rule is expected to have no adverse or beneficial impact on small businesses. However, the increases in the commercial ACL and the corresponding increases in the zone quotas and southern zone seasonal quotas, would generate potential future beneficial impacts.

Action 5 would change the definition of a damaged Atlantic king or Atlantic Spanish mackerel. Currently, it is equated with a cut-off fish, and that has created confusion, particularly in the recreational sector. The proposed action would remove “cut-off,” while adding that a damaged fish refers to a Atlantic king mackerel or Atlantic Spanish mackerel that is damaged only through natural predation. Current commercial requirements concerning landing fish intact and damaged fish would be retained. As such, Action 5 is an administrative action concerning the commercial sector and any impact would be indirect.

From the above it is concluded that the 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.

Because no new reporting or record-keeping requirements are introduced by this proposed rule, the Paperwork Reduction Act does not apply to this proposed rule.

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

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

Dated: February 2, 2023.

**Samuel D. Rauch, III,**

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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.*

**§ 622.19 [Amended]**

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

■ 3. In § 622.381, revise paragraphs (a) and (b) 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 introductory paragraph (b)(2), and paragraphs (b)(2)(i) and (b)(2)(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) Recreational sector.**

(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 million 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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