



FEDERAL REGISTER

Vol. 76

Thursday,

No. 250

December 29, 2011

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 622

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal
Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region;
Amendment 18; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604–1758–02]

RIN 0648–BB33

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 18

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 18 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP), as prepared and submitted by the Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils). This rule removes species from the FMP; modifies the framework procedures; establishes two migratory groups for cobia; and establishes annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs) for king mackerel, Spanish mackerel, and cobia. In addition, Amendment 18 sets allocations for Atlantic migratory group cobia and establishes control rules for king mackerel, Spanish mackerel, and cobia. The intent of this rule is to specify ACLs for species not undergoing overfishing while maintaining sustainable catch levels.

DATES: This rule is effective January 30, 2012. Written comments specific to the revisions to § 622.44(b)(2) must be received on or before January 30, 2012.

ADDRESSES: You may submit comments on the specific revisions contained in this final rule to § 622.44(b)(2), identified by “NOAA–NMFS–2011–0202” by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.)

voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on “submit a comment,” then enter “NOAA–NMFS–2011–0202” in the keyword search and click on “search.” To view posted comments during the comment period, enter “NOAA–NMFS–2011–0202” in the keyword search and click on “search.” NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of Amendment 18, which includes an environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/MackerelHomepage.htm>.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: (727) 824–5305, or email: Susan.Gerhart@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic (CMP) fishery in the Gulf and the Atlantic is managed under the FMP. The 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).

On September 29, 2011, NMFS published a notice of availability for Amendment 18 and requested public comment (76 FR 60444). On October 24, 2011, NMFS published a proposed rule for Amendment 18 and requested public comment (76 FR 65662). The proposed rule and Amendment 18 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

Removal of Species from the FMP

The Councils have determined that cero, little tunny, dolphin (in the Gulf), and bluefish (in the Gulf) are not in need of Federal management and will therefore be removed from the FMP with this final rule. The species were originally included in the FMP “for data collection purposes,” but data collection

on any species is required of fishermen and dealers that hold Federal permits, regardless of the presence of that species in an FMP. If landings or effort change for any of these species and the Councils determine management at the Federal level is needed, these species could be added back into the FMP at a later date.

Cobia Migratory Groups

This final rule establishes two migratory groups for cobia, a Gulf migratory group and an Atlantic migratory group. The boundary is the line of demarcation between the Gulf exclusive economic zone (EEZ) and the South Atlantic EEZ. ACLs and AMs are established separately for each migratory group. The stock ACL for Gulf migratory group cobia is 1.46 million lb (0.66 million kg) and for Atlantic migratory group cobia, the stock ACL is 1,571,399 lb (712,775 kg). However, this rule does not change the current possession limit of two cobia per person per day for either commercial or recreational fishermen.

Gulf Migratory Group King Mackerel

For Gulf migratory group king mackerel, this final rule establishes separate ACLs and AMs for the commercial and recreational sectors based on sector allocations. The commercial sector AMs will close by zone, subzone, or gear type when the commercial quota for the applicable zone, subzone, or gear type is reached or is projected to be reached. The commercial sector ACL is equivalent to the commercial sector quota which is set for the 2012 to 2013 fishing year at 3.808 million lb (1.728 million kg) and for the 2013 to 2014 fishing year and subsequent fishing years, at 3.456 million lb (1.568 million kg). For Gulf migratory group king mackerel, the recreational sector ACL is set at 8.092 million lb (3.670 million kg). In addition, current trip limit adjustments will remain in place as specified at § 622.44(a)(2).

For the recreational sector AMs, the Regional Administrator will have the authority to revert the bag and possession limit to zero if the recreational allocation (recreational ACL) is reached or projected to be reached. This bag and possession limit would also apply on board a vessel for which a valid charter vessel/headboat permit has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

Atlantic Migratory Group King Mackerel

For Atlantic migratory group king mackerel, this final rule establishes separate ACLs for the commercial and recreational sectors based on sector allocations. The commercial sector ACL is equivalent to the commercial quota of 3.88 million lb (1.76 million kg). This rule also sets a stock ACL and an ACT for the recreational sector. The recreational ACT for the commercial sector is set at 6.11 million lb (2.77 million kg) and the stock ACL for Atlantic migratory group king mackerel is 10.46 million lb (4.75 million kg).

The AM for the commercial sector is that the sector will close when the commercial ACL is reached or projected to be reached. When the commercial sector closes, harvest and possession of king mackerel would be prohibited for persons aboard a vessel for which a commercial permit for king mackerel has been issued. If that vessel also has a valid charter vessel/headboat permit on board for CMP species and is operating as a charter vessel or headboat, harvest and possession of king mackerel would be limited to the applicable bag limit. Also, sale and purchase of king mackerel would be prohibited, including king mackerel taken under the bag or possession limits, without regard to where such species were harvested, *i.e.* in state or Federal waters.

For the recreational sector AM, if the stock ACL is exceeded in any year, the bag limit will be reduced the next fishing year by the amount necessary to ensure recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL. A payback will be assessed if Atlantic migratory group king mackerel are determined to be overfished and the stock ACL is exceeded, and will include a reduction in the sector ACL for the following year by the amount of the overage by that sector in the prior fishing year.

Gulf Migratory Group Spanish Mackerel

This final rule establishes stock ACLs and AMs for Gulf migratory group Spanish mackerel. For AMs for Gulf migratory group Spanish mackerel, both the commercial and recreational sectors will close when the stock ACL is reached or projected to be reached. Harvest, possession, sale, and purchase of Spanish mackerel would be prohibited, without regard to where such species were harvested, *i.e.* in state or Federal waters. The stock ACL for Gulf migratory group Spanish mackerel is 5.15 million lb (4.75 million kg).

Atlantic Migratory Group Spanish Mackerel

For Atlantic migratory group Spanish mackerel, this final rule establishes separate ACLs for the commercial and recreational sectors based on sector allocations. This rule also sets an ACT for the recreational sector. The commercial sector ACL is equivalent to the commercial sector quota of 3.13 million lb (1.42 million kg). The recreational sector ACT is 2.32 million lb (1.05 million kg) and the recreational sector ACL is 2.56 million lb (1.16 million kg).

The AM for the commercial sector is that the commercial sector will close when the commercial quota is reached or projected to be reached. In addition, current trip limit adjustments will remain in place as specified at § 622.44(b). When the commercial sector closes, harvest and possession of Spanish mackerel would be prohibited for persons aboard a vessel for which a commercial permit for Spanish mackerel has been issued. If that vessel also has a valid charter vessel/headboat permit on board for CMP species and is operating as a charter vessel or headboat, harvest and possession of Spanish mackerel would be limited to the applicable bag limit. Also, sale and purchase of Spanish mackerel would be prohibited, including Spanish mackerel taken under the bag or possession limits, without regard to where such species were harvested, *i.e.* in state or Federal waters.

For the recreational sector AM, if the stock ACL is exceeded in any year, the bag limit will be reduced the next fishing year 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. A payback will be assessed if the Atlantic migratory group Spanish mackerel are determined to be overfished and the stock ACL is exceeded. The payback will include a reduction in the sector ACL for the following year by the amount of the overage by that sector in the prior fishing year.

Gulf Migratory Group Cobia

This final rule establishes stock ACLs and AMs for Gulf migratory group cobia. A stock ACT will be set that is 90 percent of the ACL. The AMs to be implemented are that both the commercial and recreational sectors will close when the stock ACT is reached or projected to be reached. For Gulf migratory group cobia, the stock ACT is 1.31 million lb (0.59 million kg) and the

stock ACL is 1.46 million lb (0.66 million kg).

Atlantic Migratory Group Cobia

This final rule also establishes separate ACLs for Atlantic migratory group cobia for the commercial and recreational sectors based on sector allocations and establishes sector AMs. Amendment 18 sets an allocation of 8 percent of the ACL for the commercial sector and 92 percent of the ACL for the recreational sector. This rule also sets an ACT for the recreational sector. The commercial sector ACL is equivalent to the commercial sector quota of 125,712 lb (57,022 kg). The AM is that the commercial sector would close when the commercial ACL is reached or projected to be reached. Sale and purchase of cobia would be prohibited, including cobia taken under the possession limit, without regard to where such species were harvested, *i.e.* in state or Federal waters.

The recreational sector ACT is set at 1,184,688 lb (537,365 kg) and the recreational sector ACL is set at 1,445,687 (655,753 kg). The AM to be implemented for the recreational sector is that if the stock ACL is exceeded in any year, the fishing season will be reduced the following year by the amount necessary to ensure that recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL in the following fishing year. A payback will be assessed if Atlantic migratory group cobia are determined to be overfished and the stock ACL is exceeded. The payback will include a reduction in the sector ACL for the following year by the amount of the overage by that sector in the prior fishing year.

Modification of Generic Framework Procedures

To facilitate timely adjustments to harvest parameters and other management measures, this final rule revises the current framework procedures. This revision gives the Councils and NMFS greater flexibility to more promptly alter harvest parameters and other management measures as new scientific information becomes available.

Comments and Responses

NMFS received public comment submissions from 11 individuals and one non-governmental organization on Amendment 18 and the proposed rule. Two Federal agencies also submitted letters stating they had no comment on the rule. Four comments were generally in favor of the amendment and three were generally in opposition. Five

comments suggested additional management measures for coastal migratory species including changing the fishing year for cobia in the Atlantic, increasing the minimum size limit for cobia, buying back king mackerel Federal permits, increasing the commercial quota for the Gulf's Florida west coast subzone, and requiring fishermen to declare in which zone they will fish for mackerel. These management measures are not included in Amendment 18 but may be considered in future amendments and framework actions. Comments that pertain to specific actions addressed in Amendment 18 or the proposed rule are summarized and responded to below.

Comment 1: Spanish mackerel (Atlantic migratory group) show signs of rebuilding and last year's large year-class will increase the chance of a commercial closure in 2012. The 2008 stock assessment used poor data and was rejected; the ABC shouldn't be reduced because of that mistake. The ABC and ACL should stay at the current 7.04 million lb (3.19 million kg) until the 2012 assessment is complete.

Response: Because the most recent assessment was rejected, the South Atlantic Council's Science and Statistical Committee (SSC) determined the ABC for Spanish mackerel would be calculated using the ABC control rule for unassessed species. Originally, they had used the median of landings, which is appropriate for stocks where an increase in catch would lead to a decline in stock or stock concerns, according to the control rule. After reconsidering the ABC for Spanish mackerel, they determined an increase in catch would not lead to a decline in stock or stock concerns, so the 80th percentile, or in this case the third highest landings over a 10 year period, was set as the ABC. The ABC and ACL for Spanish mackerel will likely change after the 2012 stock assessment; however, the Councils and their SSCs chose to be relatively precautionary in their establishment of an ABC and ACL at this time.

Comment 2: Do not specify a recreational sector ACT for Atlantic migratory group Spanish mackerel.

Response: ACTs provide a buffer from the ACL to account for management uncertainty. Because recreational landings are survey based, there is greater uncertainty associated with those data than for commercial landings information that are reported by dealers. Establishment of an ACT will help keep landings from exceeding the ACL and triggering AMs. A recreational ACT for Atlantic migratory group Spanish mackerel is also consistent with the

recreational ACTs set for Atlantic migratory group king mackerel and cobia.

Comment 3: The entire timeframe should be used for allocation of cobia (Atlantic migratory group) between the commercial and recreational sectors.

Response: The allocation chosen by the Councils was based on landings from the years 2000–2008, with greater weight given to landings during 2006–2008. The Councils determined this method best reflected how the fishery is currently prosecuted.

Comment 4: NMFS should disapprove the action to remove species. The rule does not provide a scientifically sound justification for removing species from Federal management and may put those populations unknowingly at risk of overfishing. It is not clear how removing these species from any conservation and management without strong justification and much more thorough analysis accomplishes any of the following: prevents overfishing and protects, restores and promotes the long-term health of the fishery; rebuilds, restores or maintains fishery resources and the marine environment; or avoids irreversible or long-term adverse effects on fishery resources and the marine environment.

Response: According to National Standard 7 guidelines, the Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. The guidelines further state that the principle implicit in National Standard 7 of the Magnuson-Stevens Act is that not every fishery needs regulation. As thoroughly discussed in Amendment 18, an analysis of the factors contained in the National Standard 7 guidelines does not support the retention in the FMP of the species currently sought to be removed.

The species in question were originally placed in the FMP to assure that they would be included in any monitoring programs, rather than because they were considered to be in need of management. These species have been in the management unit since 1983 without any Federal regulations, and there is no reason to believe additional fisheries will develop now to target and harvest these and other species not included in the management unit for the FMP. The overfishing status of these stocks is unknown, except that little tunny in the Gulf are not undergoing overfishing. During the development of both Councils' respective ACL amendments, the SSCs

met multiple times to set ABCs and OFLs for federally managed species, including many unassessed stocks. However, the SSCs never included cero, little tunny, bluefish, or dolphin (in the Gulf) in their deliberations. The indication is they had no concern that these stocks are in need of additional management.

Future overfishing or risks to these species would not be expected to occur without NMFS knowledge. Species that are removed by this final rule will continue to have their commercial and recreational landings monitored through standard record-keeping requirements of the Marine Recreational Information Program and commercial trip ticket records. Should a substantial change in landings or effort be noted, or should some other concern indicating a need for conservation arise, the Councils could develop a plan amendment to add the species back into the management unit. If the species were retained in the FMP, the Councils would have to follow the same plan amendment process or implement new measures via the framework process established in the FMP. Therefore, retention of species in the FMP would not significantly improve the timeliness of implementing the action.

Comment 5: Four species are removed from the FMP even though they have a high level of landings compared to the criteria used by these Councils to justify the removal of species from Federal management in other amendments. Three of the four species (*i.e.*, bluefish, little tunny, and dolphin) have substantial fisheries, primarily in the recreational sector and in waters off Florida's coast. In addition, one species (cero) may have identification or reporting issues with similar species.

Response: Decisions whether to retain species in the FMP are necessarily made on a case by case basis consistent with the principles established in the MSA and the National Standard guidelines. Landings criteria were not as explicitly evaluated in Amendment 18 as they were in other FMPs and by other councils. The landings criteria developed for other ACL amendments to each FMP in the Gulf, South Atlantic, and the Caribbean considered specific characteristics of the fishery and the species. For example, for the Gulf reef fish fishery, average landings needed to be 15,000 lb (6,804 kg) or less (among other criteria) for a species to be considered for removal; for the South Atlantic snapper-grouper fishery, less than 5 percent of landings (among other criteria) must come from Federal waters for a species to be considered for removal.

Criteria based on landings level or harvest location were not used in Amendment 18 because the species included are so vastly different from one another that a single criterion would not be practical. Landings that are “high” for one stock may be “low” for another stock. Instead, guidelines for National Standard 7 were used to determine if a stock is in need of Federal management. This guidance gives seven factors, each of which was considered for the four species in question.

NMFS recognizes that zero are often mistaken for king mackerel; however, best available data indicate that zero are caught infrequently and in low numbers. ACLs for species with very low landings do not provide meaningful management benchmarks. Further, the difficulty in tracking landings and monitoring could prove costly to implement. Therefore, the benefits of imposing an ACL on a species with such low landings would not justify the costs. In addition, since 1983, the Councils have not found a need to impose regulations on zero, and no benefit of doing so now is apparent. Councils should prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs.

Comment 6: Amendment 18 ignores available data with which to set catch limits for these species proposed for removal. Peer-reviewed, scientifically valid methods have been developed that provide a means to develop catch levels for species for which catch or landings statistics are the primary data available. The amendment does not analyze state regulations for the four species to determine whether they are sufficient or whether the state managing agencies will extend their management into Federal waters. The rule relies on criteria of National Standard 7 to provide the rationale for this action without sufficient analysis.

Response: Landings data for all four species proposed for removal are provided in Section 1 of Amendment 18. The decision to remove species was not based on availability of data, but on the need for Federal management. If the species were retained in the FMP, landings data could be used to set ACLs for some species, although ACLs for species with very low landings (e.g., zero) would not provide meaningful management benchmarks. However, despite addressing other unassessed species, neither Council’s SSC chose to develop ABC or overfishing limit recommendations upon which an ACL could be based.

No Federal regulations currently exist for these species, but some states have regulations for CMP species that apply to fishing in state waters. For example, Florida has a size and recreational bag limit for dolphin in state waters. If Federal management does not exist, states have always had the option to extend their regulations into Federal waters, but chose not to. Because the fishery for these species has proceeded under this scenario for many years, removal of these species from the FMP retains the same level of regulation as the status quo.

As set forth fully in Amendment 18, landings data for all four species proposed for removal are provided in Section 1 of Amendment 18. National Standard 7 has seven factors to be considered when determining if a stock is in need of Federal management. Each was considered for the species proposed for removal and has been adequately analyzed in Amendment 18. National Standard 7 implicitly states that every fishery does not need regulation. If it is subsequently determined a removed species is in need of Federal management, the species could be added back into the FMU through the FMP amendment process.

Changes From the Proposed Rule

The adjusted commercial quota for Atlantic migratory group Spanish mackerel was revised. When finalizing the commercial ACL, which equals the commercial quota specified at § 622.42(c)(2)(ii), NMFS realized that the adjusted commercial quota for Atlantic migratory group Spanish mackerel needed to be revised as well. The adjusted commercial quota is relevant to trip limits for the commercial sector and is specified at § 622.44(b)(2), but it was inadvertently not changed in the proposed rule. In this final rule, NMFS revises the adjusted quota from 3.63 million lb (1.64 million kg) to 2.88 million lb (1.31 million kg) as a result of the ACL designated through this rulemaking. In addition, language was added to § 622.44(b)(2) to clarify that while the intent of the adjusted quota is to allow continued harvest after the adjusted quota is reached, total harvest for the fishing year is still necessarily constrained by the ACL and AM contained in § 622.49(h)(4). This means that if the ACL is reached, commercial harvest will not be able to occur for the remainder of the fishing year, even with the implementation of the 500 lb (227 kg) trip limit. Public comment is solicited regarding the adjusted commercial quota for Atlantic migratory group Spanish mackerel as this adjusted

quota had not been provided in the proposed rule for Amendment 18. Following the comment period ending January 30, 2012, NMFS will publish in the **Federal Register** rulemaking that discusses any relevant comments and that this action is in effect.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Amendment 18 and is consistent with the Magnuson-Stevens Act, and other applicable law.

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

NMFS prepared a final regulatory flexibility analysis (FRFA), as required by section 604 of the Regulatory Flexibility Act, for this final rule. The FRFA describes the economic impact this final rule is expected to have on small entities. A description of the rule, why it is being considered, the objectives of, and legal basis for this rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

No significant issues were raised by public comments in response to the IRFA. Therefore, no changes were made in the final rule as a result of such comments.

This final rule affects all fishing in the EEZ that is managed under the FMP. This includes the EEZ in the Gulf and South Atlantic, as well as the EEZ in the Mid-Atlantic for king mackerel, Spanish mackerel, and cobia. For purposes of fishery management, Atlantic and Gulf migratory groups have been designated for each of the mackerels, and, under this rule, cobia.

This final rule is expected to apply to 1,000 to 2,000 commercial fishing vessels and as many as 2,500 vessels that have Federal permits to engage in for-hire fishing for CMP species. The commercial fishing vessels expected to be affected by this final rule are estimated to average \$28,000 to \$46,000 (2008 dollars) in gross revenue per vessel for vessels fishing for king and Spanish mackerel, and \$16,000 to \$277,000 for vessels harvesting other CMP species (the lower value is for vessels harvesting zero while the upper value is for vessels harvesting dolphin;

this range encompasses the vessels harvesting all the remaining CMP species). The for-hire vessels expected to be affected by this rule are mostly charter boats, which charge by the trip, often with six or fewer anglers (paying passengers), and a smaller number of head boats, which charge for each individual angler (only 15 percent of all of the vessels possessing a for-hire permit for CMP species can carry more than six anglers). Including revenue from all activities, charter boats are estimated to average approximately \$88,000 (2008 dollars) in gross revenue per year, while headboats average approximately \$461,000 (2008 dollars).

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in commercial finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. A for-hire business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all commercial and for-hire fishing vessels expected to be directly affected by this final rule are determined for the purpose of this analysis to be small business entities.

The actions in this final rule can be classified into three categories: (1) Actions that are jointly applicable to the Gulf and Atlantic migratory groups; (2) actions that are applicable to only the Gulf migratory groups; and (3) actions that are applicable to only the South Atlantic migratory groups. All of the actions in this final rule that are jointly applicable to the Gulf and Atlantic migratory groups are either administrative or allow status quo harvest behavior. As a result, none of these actions are expected to result in any direct economic impacts on small entities.

With the exception of the AMs for the Gulf migratory groups of king mackerel, Spanish mackerel, and cobia, the actions in this final rule applicable to the Gulf migratory groups are either administrative or allow status quo harvests and fishing behavior. As a result, these actions are not expected to result in any direct economic impacts

on small entities. The AMs for king mackerel, Spanish mackerel, and cobia, if triggered, will result in unquantifiable short-term reductions in economic benefits as a result of the harvest restrictions implemented to correct for harvest overages, should such overages be forecast or occur. These impacts cannot be quantified at this time because the overages, and necessary corrections, cannot be forecast. However, any harvest correction, and associated reduction in short-term economic benefits, will aid the preservation of the long-term biological goals and economic benefits associated with the harvest of these stocks.

Because the majority of the actions in this final rule applicable to the Atlantic migratory groups are either administrative or allow status quo harvests and fishing behavior, few economic effects are expected to occur. Only the Spanish mackerel ACL and AMs for king mackerel, Spanish mackerel, and cobia, if triggered, are expected to result in direct adverse economic impacts. The specification of the Spanish mackerel ACL is expected to result in a reduction in ex-vessel revenue to commercial fishermen of approximately \$680,000 because of the reduction in the allowable commercial harvest and the AM requirement that harvest, possession, and sale of Spanish mackerel be prohibited when the commercial quota is met. The economic activity associated with this reduced revenue is an estimated 17 harvester and 10 dealer/processor full-time equivalent jobs. The relative effect of this estimated reduction per small entity is unknown. For the 2004/2005 through 2008/2009 fishing years, an average of 349 vessels recorded Atlantic migratory group Spanish mackerel harvests in the Southeast Federal logbook program. These vessels averaged approximately \$28,000 in ex-vessel revenue per vessel per year from all species recorded in the logbook. If divided among these vessels, the estimated reduction in Spanish mackerel revenue equates to a reduction in average vessel gross revenue of approximately 7 percent. These results do not include any reduction in gross revenue for other species if trips are cancelled as a result of a prohibition on Spanish mackerel commercial harvest. Total Federal logbook-recorded landings of Atlantic migratory group Spanish mackerel accounted for approximately 57 percent (approximately 2.03 million lb (0.9 million kg)) of the total Atlantic migratory group Spanish mackerel harvest (approximately 3.57 million lb (1.62 million kg)) during this period. A significant portion of the difference

between these harvest totals may be attributed to harvest in Florida state waters where Federal permits and logbooks are not required for the harvest or possession of Spanish mackerel. The average annual revenue profile of the vessels that harvested the remaining portion (43 percent) of Spanish mackerel is unknown. As a result, the total relative effect of the projected reduction in ex-vessel revenue on the profit of all affected commercial vessels is not known.

Similar to the discussion of the effects of the Gulf migratory group AMs, the AMs for Atlantic migratory group king mackerel, Spanish mackerel, and cobia, if triggered, will result in unquantifiable short-term reductions in economic benefits as a result of the harvest restrictions implemented to correct for harvest overages, should such overages be forecast or occur. These impacts cannot be quantified at this time because the overages, and necessary corrections, cannot be forecast. However, any harvest correction, and associated reduction in short-term economic benefits, will aid the preservation of the long-term biological goals and economic benefits associated with the harvest of these stocks.

Three alternatives, including 13 options or sub-options, were considered for the action to modify the FMU. This final rule incorporates 7 of the 13 options and sub-options and removes cero, little tunny, and dolphin from the FMP for both the Gulf and South Atlantic regions, and removes bluefish from the FMP for the Gulf region. The no-action alternative, which would retain the four subject species in the FMP for data-collection purposes only, was not adopted because it would not satisfy the Magnuson-Stevens Act guidelines, which do not allow species to be retained in an FMU for data collection purposes only. The third alternative would add the four species to the FMU and set ACLs and AMs for each, following the stated geographic designations. This alternative was not adopted because the Councils determined that these species no longer require Federal management in the respective regions. This action is not expected to result in any direct economic impact on small entities.

Five alternatives, including three options, were considered for the action to modify the framework procedures. The no-action alternative would not change the framework procedures and was not adopted because it is not consistent with current assessment and management methods. The remaining alternatives were not adopted either because they would either allow fewer

or more management aspects to be changed through framework procedures, or would give the Councils and NMFS either too much or too little authority to change management outside of the plan amendment process. This action is administrative in nature and is not expected to result in any direct economic impact on small entities.

Three alternatives were considered for the action to establish separate Atlantic and Gulf migratory groups of cobia. This rule separates cobia into two groups at the Gulf and South Atlantic jurisdictional boundary. The no-action alternative would not split cobia into two migratory groups and was not adopted because the Councils determined that sufficient information exists to demonstrate there are at least two cobia migratory groups and regional management is appropriate. The third alternative would establish two migratory groups and split the migratory group jurisdiction at the Miami-Dade/Monroe County line. This alternative was not adopted because the Councils determined that it would not best meet the goals and objectives established for the FMP. This action is administrative in nature and is not expected to result in any direct economic impact on small entities.

Four alternatives were considered for the action to set the ACL for Gulf migratory group cobia. This rule establishes a single stock ACL and sets the ACL equal to the ABC. The no-action alternative was not adopted because it would not establish an ACL, as required by the Magnuson-Stevens Act. Another alternative would also set the total ACL equal to the ABC, but would specify recreational and commercial sector ACLs. This alternative was not adopted because both sectors are currently managed with the same harvest restrictions and sector separation would not be expected to be beneficial at this time. The remaining alternatives and associated options would establish a buffer between the ACL and ABC and result in lower stock or sector ACLs. These alternatives and options were not adopted because the Councils elected to establish a buffer to the ABC for this species through the ACT rather than the ACL.

Three alternatives, including four options, were considered for the action to set the ACT for Gulf migratory group cobia. This final rule specifies a single stock ACT and sets the ACT equal to 90 percent of the ACL. The no-action alternative would not establish an ACT, but would be an acceptable action because an ACT is not required. This alternative was not adopted because the Councils determined that a buffer

between the ABC and allowable harvest was appropriate for this stock and the adoption of the no-action alternative would be inconsistent with the Councils' decision to establish this buffer through the ACT instead of the ACL. The other options were not adopted because they would establish sector ACTs, which would be inconsistent with the decision to establish a single stock ACL, and/or they would specify a lower stock ACT than this rule and, thereby, establish a larger buffer than is expected to be necessary for this stock.

Three alternatives, including seven options (options listed under the no-action alternative were not included in this tabulation), were considered for the action to set AMs for Gulf migratory group cobia. This rule sets an in-season AM and prohibits harvest for the remainder of the fishing year from the date the ACT is reached or is projected to be reached. AMs for the commercial harvest of this stock do not exist under the status quo. As a result, the no-action alternative was not adopted because it would not establish AMs that account for the harvest from all sectors, as required by the Magnuson-Stevens Act. Two options to the rule would also establish in-season AMs but would trigger the AMs when 90 percent of the ACT is reached or is projected to be reached. Both options would reduce the possession limit to one fish per person per day, but only one option would prohibit possession of cobia and only if the ACL is reached. These options were not adopted because just reducing the possession limit would provide insufficient assurance that the ACL would not be exceeded and data monitoring issues in tandem with the minimal buffer between the AM trigger and the ACT would likely render adjustment at the 90-percent threshold ineffective. The remaining alternative and associated four options would establish post-season AMs, each varying in method (overage payback, reduction in possession limit, reduced season) or period of assessment (the overage assessment would be based on multi-year averages). These options were not adopted because the Councils determined that in-season assessment would be more effective in ensuring the ACL is not exceeded. This action is not expected to result in any direct economic impact on small entities because the ACT (1.31 million lb (0.59 million kg)) exceeds the estimated status-quo harvest (1.07 million lb (0.49 million kg)) for Gulf migratory group cobia.

Five alternatives, including 12 options, were considered for the action

to set the ACL for Gulf migratory group king mackerel. This final rule sets the aggregate (stock) ACL equal to the ABC, and sets sector ACLs using current allocation percentages. The no-action alternative would set the stock ACL equal to the current total allowable catch (TAC), and was not adopted because the TAC is less than the ABC and, as a result, would have resulted in less economic benefits than the stock ACL set by this final rule. The remaining three alternatives would set the stock ACL at 80–90 percent of ABC, and were not adopted because each would have allowed lower harvest, and associated economic benefits, than this final rule, and the Councils have determined that the condition of this stock and level of management uncertainty does not require a buffer between the ACL and ABC. The stock ACL set by this final rule is expected to allow continued average annual harvest. As a result, this action is not expected to result in any direct economic impacts on small entities.

Three alternatives, including 7 options or sub-options (options and sub-options listed under the no-action alternative were not included in this tabulation), were considered for the action to set AMs for Gulf migratory group king mackerel. This rule adopts the no-action alternative and does not set new AMs for this stock. The alternatives, and associated options or sub-options, to this final rule can be divided into two general categories: alternatives that would change the current in-season AMs (two options), and alternatives that would set post-season AMs (two options encompassing five sub-options). None of these options or sub-options were adopted because the Councils determined that current Federal regulations provide sufficient AMs for the recreational and commercial sectors. This action is not expected to have any direct economic impact on small entities.

Four alternatives, including nine options, were considered for the action to set the ACL for Gulf migratory group Spanish mackerel. This final rule sets the aggregate ACL equal to the ABC and establishes a single stock ACL encompassing harvest by both the recreational and commercial sectors. The no-action alternative would maintain an ACL equal to the current TAC. This alternative was not adopted because the ACL cannot exceed the ABC and the status quo TAC is greater than the proposed ABC. Some options to the rule would establish sector ACLs. These options were not adopted because the Councils determined the establishment of sector ACLs would unnecessarily

restrict catch. The remaining two alternatives, encompassing six options, would specify a single stock ACL as a portion of ABC (80 percent or 90 percent of ABC). These alternatives and options would result in less economic benefits than this final rule and were not adopted because the Councils determined that a buffer between the ACL and ABC was not needed for this stock.

Three alternatives, including six options or sub-options (options and sub-options listed under the no-action alternative were not included in this tabulation), were considered for the action to set AMs for Gulf migratory group Spanish mackerel. This rule establishes in-season AMs that allow harvest of Gulf migratory group Spanish mackerel to be prohibited if the stock ACL is reached or is projected to be reached. The no-action alternative would maintain current Gulf migratory group Spanish mackerel AMs and was not adopted because the current AMs are implemented by sector and are inconsistent with the decision to establish a single stock ACL. One option within Amendment 18 would establish in-season AMs that implement a commercial trip limit and reduced recreational bag limits if the stock ACL is reached or is projected to be reached. This option was not adopted because it would require multiple in-season actions and may result in a lower certainty that the ACL not be exceeded compared to this final rule as it would not be prohibited to harvest Gulf migratory group Spanish mackerel. The remaining alternative and associated options would establish post-season AMs. These options were not adopted because they would be expected to impose an increased and unnecessary burden on fishermen and the administration. This action is not expected to have any short-term economic impact on small entities because the stock ACL (5.15 million lb (2.34 million kg)) is greater than the 5-year average (3.63 million lb (1.65 million kg)) or 10-year average (3.95 million lb (1.79 million kg)) landings.

Five alternatives, including five options, were considered for the action to set the ACL and OY for Atlantic migratory group king mackerel. This final rule sets the ACL and OY equal to the ABC, with the ABC set equal to the average of the current South Atlantic Council's SSC's ABC recommendations for the 2011–2013 seasons. This results in an ACL of 10.46 million lb (4.75 million kg). The no-action alternative was not adopted because it would not have resulted in as concise of a methodology for setting the ACL and

OY and would have resulted in a lower ACL, 10.0 million lb (4.54 million kg). Two alternatives to this final rule would also set the ACL and OY equal to the ABC but would set the ABC equal to the lowest and highest SSC recommended ABCs for 2011–2013, respectively. These alternatives were not adopted because they were determined to be excessively or insufficiently conservative, respectively. The final alternative for this action, which included five options, would set the ACL and OY equal to a percentage of the ABC, varying from 65–90 percent. These options were not adopted because the Councils determined that the status and management certainty of the king mackerel stock did not require a buffer between the ACL or OY and the ABC.

Four alternatives were considered for the action to set the recreational sector ACT for Atlantic migratory group king mackerel. This final rule sets the ACT based on the uncertainty associated with the estimate of the ACL and results in a recreational sector ACT of 6.11 million lb (2.77 million kg), which is less than the recreational sector ACL, but greater than current average annual harvests. As a result, this action is not expected to result in any reduction in current recreational harvest or associated economic benefits to small entities. The no-action alternative would not set a recreational sector ACT and was not adopted because the Councils determined that the management uncertainty associated with the recreational harvest of this stock is sufficient to require a buffer between allowable harvest and the ACL. The two remaining alternatives for this action would set the recreational sector ACT based on alternative fixed percentages of the ACL. Neither of these alternatives was adopted because each would result in an ACT that was less reflective of the uncertainty associated with the estimation of the ACL and each of these alternatives would result in a lower recreational harvest, and reduced economic benefits, than this final rule.

Four alternatives, including ten options, were considered for the action to set AMs for Atlantic migratory group king mackerel. This final rule includes seven of the options spread over three alternatives. This final rule continues in-season quota monitoring and closure if the commercial sector ACL is met or projected to be met, as occurs under the status quo, and adopts post-season adjustments. These adjustments include reduction in the recreational bag limit, based on moving multi-year average harvests, to assure that the recreational sector ACL is not exceeded. Post-season bag limit reduction will only occur,

however, if the stock ACL (both sectors) is exceeded. Post-season overage payback will be required for both sectors, where appropriate, if the stock is overfished and the stock ACL is exceeded. The no-action alternative would continue the current quota monitoring for the commercial sector, and closure when appropriate; it also includes authority under the framework procedures for the Regional Administrator to implement several actions, including reduction of the recreational bag limit to zero, if the recreational allocation has been met or is projected to be met. This alternative was not adopted because it would not have been as flexible as the procedures established by this final rule in factoring in the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. One option within Amendment 18 would reduce the length of the subsequent recreational fishing season instead of a reduction in the bag limit in the event of a recreational overage. This alternative was not adopted because allowing the sector to continue harvest all year under a reduced bag limit, as will be allowed under this rule, is expected to result in more economic benefits than a closed season. The remaining options for this action would impose sector paybacks regardless of stock status. These options were not adopted because each would be expected to result in unnecessary reductions in economic benefits.

Three alternatives, including five options, were considered for the action to set the ACL and OY for Atlantic migratory group Spanish mackerel. This final rule sets the ACL and OY equal to the ABC. The no-action alternative was not adopted because it would not result in as concise a procedure as the preferred alternative to determine the ACL based on the ABC, and the resultant ACL would exceed the proposed ABC, which would be inconsistent with the Magnuson-Stevens Act National Standard 1 guidelines (January 16, 2009, 74 FR 3178). The third alternative for this action, which included five options, would set the ACL equal to a percentage of the ABC, varying from 75–95 percent. These options were not adopted because they would be inconsistent with the determination by the Councils that specification of a buffer for this stock could be adequately accomplished through the ACT.

Four alternatives were considered for the action to set a recreational sector ACT for Atlantic migratory group Spanish mackerel. In this final rule, the recreational sector Atlantic migratory

group Spanish mackerel ACT will be based on the uncertainty associated with the estimate of the sector ACL, and will equal 2.32 million lb (1.05 million kg), which is less than the recreational sector ACL, but greater than current average annual harvests. As a result, no reduction in current harvest or associated economic benefits or impacts on small entities in the recreational sector is expected to occur. The no-action alternative would not set a recreational sector ACT and was not adopted because the Councils determined that the management uncertainty associated with the recreational harvest of this stock requires a buffer between allowable harvest and the ACL. The two remaining alternatives would set the recreational sector ACT based on alternative fixed percentages of the ACL. Neither of these alternatives was adopted because they would result in an ACT that was less reflective of the uncertainty associated with the estimation of the ACL. Each of these alternatives would also result in a lower recreational harvest and reduced economic benefits than the ACT established by this rule.

Four alternatives, including nine options, were considered to set AMs for Atlantic migratory group Spanish mackerel. This rule includes six of the options spread over three alternatives. This rule will result in enhanced quota monitoring for the commercial sector and impose post-season adjustments for the recreational sector based on moving multi-year average harvests, including a reduction in the bag limit to assure that the sector ACL is not exceeded, if the stock ACL is exceeded. This final rule will also result in sector payback, where appropriate, if the stock is overfished and the stock ACL is exceeded. The no-action alternative would continue the current quota monitoring and staged trip limits for the commercial sector in place of sector closure. The no-action alternative also includes authority under the framework procedures for the RA to implement several actions, including reduction of the recreational bag limit to zero, if the recreational allocation has been met or is projected to be met. This alternative was not adopted because it would not be as flexible in factoring in the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. This alternative was also not adopted because it would not provide for an in-season closure for the commercial sector. In the event of a sector overage, one option within Amendment 18 would have reduced the length of the

subsequent recreational fishing season (no reduction in the bag limit) to assure that the sector ACL is not exceeded. This option was not adopted because it would result in lower economic benefits than this final rule. The remaining two options would have imposed sector paybacks regardless of stock status. These options were not adopted because each would be expected to result in unnecessary reductions in economic benefits.

Three alternatives, including five options, were considered for the action to set the ACL and OY for Atlantic migratory group cobia. This rule sets the ACL and OY equal to the ABC. The no-action alternative was not adopted because it would not set the ACL or OY, as required by the Magnuson-Stevens Act guidelines. The third alternative, which included five options, would set the ACL and OY equal to a percentage of the ABC, varying from 75–95 percent. These options were not adopted because the Councils determined that specification of a buffer for this stock could be adequately accomplished through the ACT.

Four alternatives were considered for the action to set a recreational sector ACT for Atlantic migratory group cobia. This final rule sets the ACT based on the uncertainty associated with the estimate of the ACL and results in a recreational sector ACT of 1,184,688 lb (537,365 kg), which is less than the sector ACL but equal to current average annual harvests. As a result, no reduction in current recreational harvest or associated economic benefits or impacts on small entities is expected to occur. The no-action alternative would not set a recreational sector ACT and was not adopted because the Councils determined that the management uncertainty associated with the recreational harvest of this stock requires a buffer between allowable harvest and the sector ACL. The two remaining alternatives would set the recreational sector ACT based on alternative fixed percentages of the ACL. Neither of these alternatives was adopted because each would result in an ACT that was less reflective of the uncertainty associated with the estimation of the ACL than the methodology established by this final rule.

Five alternatives, including seven options, were considered for the action to set AMs for Atlantic migratory group cobia. This rule includes five of these options spread over three alternatives and implements in-season quota monitoring for the commercial sector; adopts post-season adjustments for the recreational sector based on moving

multi-year average harvests, including a reduction in the season length to assure that the sector ACL is not exceeded if the stock ACL is exceeded; and requires sector overage payback, where appropriate, if the stock is overfished and the stock ACL is exceeded. The no-action alternative would continue the current authority to reduce the recreational and commercial possession limit to zero if the sectors have met or are projected to meet their allocation. This alternative was not adopted because it would not be as flexible as the AMs established by this final rule in factoring the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. One alternative to this final rule would explicitly prohibit the purchase and sale of cobia if the commercial quota is met or projected to be met. This restriction would be functionally equivalent to the status quo because a zero possession limit would preclude purchase or sale. This alternative would not establish additional AMs for the recreational sector, resulting in current recreational AMs remaining in effect. Thus, this alternative would be functionally equivalent to the status quo. Nevertheless, this alternative was not adopted because it would not be as flexible as the AMs established by this rule, similar to the no-action alternative, in factoring the status of the stock, the total harvest, and annual harvest variability by the recreational sector into the AM decision. The remaining options would impose sector paybacks regardless of stock status. These options were not adopted because each would be expected to result in unnecessary reductions in economic benefits.

Additional actions and alternatives were considered in Amendment 18 but are not included in this rule because they either simply establish management reference points or do not result in regulatory change. Discussion of these actions and alternatives was published in the proposed rule and is not repeated here.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 20, 2011.

Samuel D. Rauch III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

§ 622.1 [Amended]

■ 2. In § 622.1, in Table 1, remove footnotes 2 and 3 and redesignate footnotes 4 through 6 as footnotes 2 through 4.

■ 3. In § 622.2, the definitions for “Coastal migratory pelagic fish”, “Dolphin”, and “Migratory group” are revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Coastal migratory pelagic fish means a whole fish, or a part thereof, of one or more of the following species:

(1) Cobia, *Rachycentron canadum*.

(2) King mackerel, *Scomberomorus cavalla*.

(3) Spanish mackerel, *Scomberomorus maculatus*.

* * * * *

Dolphin means a whole fish, or a part thereof, of the species *Coryphaena equiselis* or *C. hippurus*.

* * * * *

Migratory group, for king mackerel, Spanish mackerel, and cobia, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King mackerel, Spanish mackerel, and cobia are divided into migratory groups—the boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation*. From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

(ii) *Winter separation*. From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 29°25' N. lat., which is a line directly east from the Volusia/Flagler County, FL, boundary to the outer limit of the EEZ.

(2) *Spanish mackerel*. The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is 25°20.4' N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

(3) *Cobia*. The boundary separating the Gulf and Atlantic migratory groups of cobia is the line of demarcation

between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

* * * * *

■ 4. In § 622.4, revise the first sentence of paragraph (a)(2)(iv) to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(iv) *Spanish mackerel*. For a person aboard a vessel to be eligible for exemption from the bag limits, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. * * *

* * * * *

■ 5. In § 622.41, remove paragraph (c)(1)(vi), redesignate paragraph (c)(1)(vii) as paragraph (c)(1)(vi), and revise paragraph (c)(1)(v) and newly redesignated paragraph (c)(1)(vi) to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(c) * * *

(1) * * *

(v) Cobia in the Mid-Atlantic and South Atlantic EEZ—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

(vi) Cobia in the Gulf EEZ—all gear except drift gillnet and long gillnet.

* * * * *

■ 6. In § 622.42, revise paragraph (c) to read as follows:

§ 622.42 Quotas.

* * * * *

(c) *Coastal migratory pelagic fish*. King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv). Cobia quotas apply to persons who fish for cobia and sell their catch. A fish is counted against the quota for the area where it is caught.

(1) *Migratory groups of king mackerel*—(i) *Gulf migratory group*. For the 2012 to 2013 fishing year, the quota for the Gulf migratory group of king mackerel is 3.808 million lb (1.728 million kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota for the Gulf migratory group of king mackerel is 3.456 million lb (1.568 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31.1' W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone*. The eastern zone is divided into subzones with quotas as follows:

(1) *Florida east coast subzone*. For the 2012 to 2013 fishing year, the quota is

1,215,228 lb (551,218 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,102,896 lb (500,265 kg).

(2) *Florida west coast subzone*. (i) *Southern*. For the 2012 to 2013 fishing year, the quota is 1,215,228, (515,218 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 1,102,896 lb (500,265 kg), which is further divided into a quota for vessels fishing with hook-and-line and a quota for vessels fishing with run-around gillnets. For the 2012 to 2013 fishing year, the hook-and-line quota is 607,614 lb (275,609 kg) and the run-around gillnet quota is 607,614 lb (275,609 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the hook-and-line quota is 551,448 lb (250,133 kg) and the run-around gillnet quota is 551,448 lb (250,133 kg).

(ii) *Northern*. For the 2012 to 2013 fishing year, the quota is 197,064 lb (89,387 kg). For the 2013 to 2014 fishing year and subsequent fishing years, the quota is 178,848 lb (81,124 kg).

(3) *Description of Florida subzones*. From November 1 through March 31, the Florida east coast subzone is that part of the eastern zone south of 29°25' N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary) and north of 25°20.4' N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary). From April 1 through October 31, the Florida east coast subzone is no longer part of the Gulf migratory group king mackerel area; it is part of the Atlantic migratory group king mackerel area. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone that extends south and west from 25°20.4' N. lat., north to 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL, boundary). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 25°48' N. lat. (a line directly west from the Monroe/Collier County, FL, boundary). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. north and west to 87°31.1' W. long. (a line directly south from the Alabama/Florida boundary) year round.

(B) *Western zone*. For the 2012 to 2013 fishing year, the quota is 1,180,480 lb (535,457 kg). For the 2013 to 2014 fishing year and subsequent fishing

years, the quota is 1,071,360 lb (485,961 kg).

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of king mackerel is 3.88 million lb (1.76 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group*. [Reserved]

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of Spanish mackerel is 3.13 million lb (1.42 million kg).

(3) *Migratory groups of cobia*—(i) *Gulf migratory group*. [Reserved]

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of cobia is 125,712 lb (57,022 kg).

* * * * *

■ 7. In § 622.43, revise the heading of paragraph (a), add a sentence at the end of the introductory text in paragraph (a), revise the heading of paragraph (a)(3), remove the introductory text in paragraph (a)(3), and revise paragraphs (a)(3)(iii), (b)(1), and (c) to read as follows:

§ 622.43 Closures.

(a) *Quota closures*. * * * (See § 622.49 for closure provisions when an ACL is reached or projected to be reached).

(3) *Coastal migratory pelagic fish*.

* * * * *

(iii) The sale or purchase of king mackerel, Spanish mackerel, or cobia of the closed species, migratory group, subzone, or gear type, is prohibited, including any king or Spanish mackerel taken under the bag limits, or cobia taken under the limited-harvest species possession limit specified in § 622.32(c)(1).

* * * * *

(b) * * *

(1) The prohibition on sale/purchase during a closure for Gulf reef fish, coastal migratory pelagic fish, royal red shrimp, or specified snapper-grouper species in paragraphs (a)(1), (a)(3)(iii), (a)(4), or (a)(5) and (a)(6), respectively, of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

* * * * *

(c) *Reopening*. When a sector has been closed based on a projection of the quota specified in § 622.42, or the ACL specified in 622.49, being reached and subsequent data indicate that the quota or ACL was not reached, the Assistant Administrator may file a notification to

that effect with the Office of the Federal Register. Such notification may reopen the sector to provide an opportunity for the quota or ACL to be harvested.

■ 8. In § 622.44, paragraph (b)(2) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 2.88 million (1.31 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Total commercial harvest is still subject to the annual catch limit and accountability measures. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or projected to be reached.

* * * * *

■ 9. In § 622.48, revise paragraph (c) to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(c) *Coastal migratory pelagic fish*. For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

* * * * *

■ 10. In § 622.49, add paragraph (h) to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

* * * * *

(h) *Coastal migratory pelagic fish*—(1) *Gulf migratory group king mackerel*—(i) *Commercial sector*. If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(c)(1)(i) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone, subzone, or gear type for the remainder of the fishing year.

(ii) *Recreational sector*. If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 8.092 million lb (3.670 million kg), the AA will file a notification with the Office of the Federal Register to implement a bag and possession limit for Gulf migratory group king mackerel of zero, unless the best scientific information available determines that a bag limit reduction is unnecessary. This bag and possession limit would also apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(iii) For purposes of tracking the ACL, recreational landings will be monitored based on the commercial fishing year, July 1 through June 1.

(2) *Atlantic migratory group king mackerel*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(1)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (h)(2)(i)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(2)(iii) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, 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 commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector*. (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(2)(iii) 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 annual catch target (ACT), but do not exceed the recreational ACL, in the following fishing year. The recreational ACT is 6.11 million lb (2.77 million kg). The recreational ACL is 6.58 million lb (2.99 million lb).

(B) In addition to the measures specified in paragraph (h)(2)(ii)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(2)(iii) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, 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 recreational ACL and ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) For purposes of tracking the ACL, recreational landings will be evaluated based on the commercial fishing year, March through February. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group king mackerel is 10.46 million lb (4.75 million kg).

(3) *Gulf migratory group Spanish mackerel*—(i) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, as specified in paragraph (h)(3)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group Spanish mackerel is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero. This possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) For purposes of tracking the ACL, recreational landings will be evaluated based on the commercial fishing year, April through March.

(iii) The stock ACL for Gulf migratory group Spanish mackerel is 5.15 million lb (4.75 million kg).

(4) *Atlantic migratory group Spanish mackerel*—(i) *Commercial sector*—(A) If

commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(2)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (h)(4)(i)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(4)(iii), and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, 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 commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector*. (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(4)(iii) 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 ACT is 2.32 million lb (1.05 million kg). The recreational ACL is 2.56 million lb (1.16 million kg).

(B) In addition to the measures specified in paragraph (h)(4)(ii)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(4)(iii) of this section, and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, 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 recreational ACT for that following year by the amount of any recreational sector overage in the prior fishing year.

(C) For purposes of tracking the ACL and ACT, recreational landings will be evaluated based on the commercial fishing year, March through February. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group Spanish mackerel is 5.69 million lb (2.58 million kg).

(5) *Gulf migratory group cobia*—(i) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACT, as specified in paragraph (h)(5)(ii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group cobia is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero. This bag and possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal water.

(ii) The stock ACT for Gulf migratory group cobia is 1.31 million lb (0.59 million kg). The stock ACL for Gulf migratory group cobia is 1.46 million lb (0.66 million kg).

(6) *Atlantic migratory group cobia*—(i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.42(c)(3)(ii) (commercial ACL), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (h)(6)(i)(A) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(6)(iii) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, 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 commercial quota (commercial ACL) for that following year by the amount of any commercial sector overage in the prior fishing year.

(ii) *Recreational sector*. (A) If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(6)(iii) 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 length of the following recreational fishing season 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. Further, during that

following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure recreational harvest achieves but does not exceed the intended harvest level. The recreational ACT is 1,184,688 lb (537,365 kg). The recreational ACL is 1,445,687 (655,753 kg).

(B) In addition to the measures specified in paragraph (h)(6)(ii)(A) of this section, if the sum of the

commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (h)(6)(iii) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, 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 recreational ACL and ACT for that following year by the amount of

any recreational sector overage in the prior fishing year.

(C) Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACL for Atlantic migratory group cobia is 1,571,399 lb (712,775 kg).

[FR Doc. 2011-33187 Filed 12-28-11; 8:45 am]

BILLING CODE 3510-22-P