

contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State permits, when required; nor the killing of any migratory bird species other than double-crested cormorants when committing or about to commit depredations to aquaculture stocks.

(g) The authority granted in this section will automatically expire on April 30, 2005, unless revoked or specifically extended prior to that date.

Dated: January 30, 1998.

**Donald J. Barry,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 970606131-8033-02; I.D. 041497C]

RIN 0648-AG25

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 8

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the approved measures in Amendment 8 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). These measures revise the earned income requirement for a commercial vessel permit for king or Spanish mackerel, establish a moratorium on the issuance of commercial vessel permits for king mackerel, extend the management area for cobia to include the exclusive economic zone (EEZ) off the states of Virginia through New York, specify allowable gear in the fisheries for coastal migratory pelagic resources, allow the retention of up to five cut-off king mackerel in excess of an applicable commercial trip limit, and add to the management measures that may be established or modified by the FMP's framework procedure. In addition, NMFS clarifies that a Federal vessel permit is not required for the use of a

sea bass pot north of Cape Hatteras, NC; clarifies what constitutes commercial fishing for the purpose of obtaining a commercial vessel permit; revises the definition of "charter vessel" to conform to a new definition of charter fishing in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act); and makes explicit the authority of NMFS to reopen a fishery that has been closed prematurely, i.e., prior to a quota having been reached. The intended effects of this rule are to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by important commercial and recreational fisheries and to clarify and correct the regulations.

**DATES:** This rule is effective April 3, 1998, except that changes to § 622.4 are effective March 4, 1998.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Mark Godcharles, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The fisheries for coastal migratory pelagic resources are managed under the FMP. The FMP was prepared jointly by the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council (Councils) and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

On June 23, 1997, NMFS published a proposed rule to implement the measures in Amendment 8 and additional measures proposed by NMFS (62 FR 33800). The background and rationale for those measures are contained in the preamble to the proposed rule and are not repeated here. On July 23, 1997, NMFS partially approved Amendment 8. Two measures were not approved, namely, the removal of the current prohibition on the use of a drift gillnet in a directed fishery for coastal migratory pelagic fish north of Cape Lookout, NC, and revisions of the FMP's definitions of overfishing and overfished.

#### Drift Gillnets in Directed Fisheries North of Cape Lookout

NMFS disapproved the proposal to authorize the use of drift gillnets in directed fisheries for coastal migratory pelagic species north of Cape Lookout, NC, because Amendment 8 does not contain any rationale for such use. Specifically, Amendment 8 describes neither impacts on existing harvesters under the current prohibition on the use of this gear nor any benefits that would result from approving its use. Under section 303(a)(1) of the Magnuson-Stevens Act, an FMP must contain, among other things, the conservation and management measures that are necessary and appropriate for the conservation and management of the fishery. In addition, E.O. 12866 specifies that NMFS should promulgate only such regulations that are required by law, necessary to interpret the law, or are made necessary by compelling public need and must base its decisions regarding appropriate regulations on the best reasonably obtainable information concerning the need for, and consequences of, the intended regulations. Finally, the Administrative Procedure Act requires NMFS to incorporate in a final rulemaking a concise statement of its basis and purpose. Lacking information on the need for and consequences of the proposal to authorize the use of drift gillnets in directed fisheries for coastal migratory pelagic species north of Cape Lookout, NC, NMFS disapproved this measure.

#### Definitions of Overfishing and Overfished

NMFS disapproved the revised FMP definitions of overfishing/overfished for all coastal migratory pelagic species because they were found to be inconsistent with the Magnuson-Stevens Act definitions of overfishing and overfished, and with national standards 1 and 2. Specifically, reducing the overfished threshold from 30 percent to the 20 percent level of the spawning potential ratio (SPR) would allow the Councils to recommend a higher level of fishing mortality, which could jeopardize the capacity of the fisheries to produce maximum sustainable yield (MSY) on a continuing basis. Retention of the overfished threshold at the 30 percent SPR level, in combination with the Magnuson-Stevens Act mandate to rebuild an overfished stock within a definite time period if it falls below that threshold, will provide a more risk-averse management strategy for attaining MSY on a continuing basis than would be the case with the 20-

percent SPR overfished threshold. Currently, the Mackerel Stock Assessment Panel's best estimate of MSY is 30 percent SPR, the FMP defines long-term optimum yield (OY) as MSY, and stock assessment scientists advise that the best estimate of OY for mackerels ranges between 30-percent and 40-percent SPR. With disapproval of the proposed overfishing/overfished definitions, Gulf group king mackerel is still considered to be overfished; therefore, the rebuilding requirements of section 304(e) of the Magnuson-Stevens Act still apply to this stock.

#### Unauthorized Gear and Directed Fishery

As used in this rule, unauthorized gear is any gear not specifically authorized in a directed fishery for a species, migratory group, and/or geographical area. "Directed fishery" is not defined. Nevertheless, the specification of authorized gear in a "directed fishery" is included in this rule as a statement of the Councils' intent. Conformance with that intent will be accomplished by enforcement of the limitations on possession of species, by migratory group and/or geographical area, when specific unauthorized gear is on board a vessel. For example, as specified at § 622.41(c)(2)(i), a vessel with a long gillnet on board in the Gulf, Mid-Atlantic, or South Atlantic EEZ may not have on board any coastal migratory pelagic fish. Specific possession limitations at § 622.41(c)(2)(ii) and (iii) apply to vessels with other unauthorized gear on board in specified areas and/or for species of migratory pelagic fish.

#### Comments and Responses

Ninety-nine individuals and two government agencies provided written comments on Amendment 8 and the proposed rule. Comments in opposition focused on the moratorium for issuing new commercial permits for king mackerel, the exclusion of gillnets as an authorized gear for Atlantic group king mackerel south of Cape Lookout, NC, the restriction of the incidental catch by unauthorized gear to the bag limit, the revision of the earned income qualifications to obtain vessel permits for commercial king and Spanish mackerel fishing, and the exclusion of spearfishing gear as authorized gear in the directed fishery for cobia.

About 75 percent of the responses expressed support for Amendment 8. Seventy-three individuals submitted comments, mainly on form letters, that supported the exclusion of gillnets as an authorized gear for directed fishing for Atlantic group king mackerel off the

Florida east coast. Implementation of that measure, they believe, would eliminate illegal drift gillnet fishing for king mackerel occurring in that area. Six commenters, including the Florida Marine Fisheries Commission and the U.S. Fish and Wildlife Service, supported all proposals in Amendment 8. Two commenters each supported the revised earned income requirements to obtain commercial mackerel permits and the allowance for five cut-off (damaged) king mackerel above established commercial trip limits. Single responses were received from individuals supporting provisions to transfer king mackerel permits during the moratorium, to restrict the incidental catch of Atlantic group king mackerel by unauthorized gear to the bag limit, and to allow possession above the commercial trip limits of five cut-off (damaged) king mackerel. Specific comments and NMFS responses are discussed below.

#### Revised Earned Income Requirements

*Comment:* Three individuals opposed revising the earned income requirement for a commercial king or Spanish mackerel permit because they would be unable to qualify for a permit if the revisions were approved.

*Response:* NMFS finds that increasing the earned income requirement from 10 to 25 percent of earned income, or at least \$10,000, derived from sale of fish or from charter fishing is necessary to differentiate clearly between fishermen subject to the bag limits and those subject to the commercial quotas. Such clarification is necessary to limit harvest of commercial mackerel quotas to fishermen who are primarily dependent on commercial or charter fishing for their livelihoods. Under the revised earned income or gross sales requirement, some fishermen who currently qualify for permits based on sales of small amounts of fish will be unable to qualify for a commercial permit and will be restricted to the bag limits.

A recent analysis of commercial mackerel permit files by NMFS indicates that approximately 57 vessel owners, or about 2 percent of the commercial mackerel permit holders, do not currently meet the revised earned income requirement. However, if a fisherman in the future meets the revised earned income requirement, he or she may apply for and obtain a commercial Spanish mackerel permit and may obtain a commercial king mackerel permit if the moratorium criteria are met.

*Comment:* One person commented that the income requirement should be 50 percent of earned income.

*Response:* The Councils rejected, as too restrictive, an alternative that would have required at least 50 percent of earned income, or \$20,000, be derived from sale of fish or from charter fishing in 1 of the 3 calendar years preceding the application to qualify for a commercial vessel permit for king or Spanish mackerel. Some long-time commercial fishermen, faced with increasingly restrictive state and Federal fishing regulations, would have been ineligible under that alternative.

*Comment:* One individual commented that an exception to the income requirements should be available to fishermen over age 62 or to retirees.

*Response:* In Amendment 8, the Councils considered an alternative that would have grandfathered into the fishery fishermen age 62 or older who had held a mackerel permit for longer than 10 years. However, that option also had a minimum threshold income from the sale of fish of \$5,000. The Councils rejected this alternative because some part-time and recreational fishermen would still be able to meet the minimum threshold income level and, thus, the desired reduction in the number of current permit holders would not have been realized. Under the current regulations, no qualifying income exceptions exist for fishermen over age 62 or for retirees. Such actions may be considered in future amendments.

#### Moratorium on Commercial Permits for King Mackerel

*Comment:* Eighteen commenters opposed the use of the control date, i.e., October 16, 1995, to determine eligibility for retaining a permit to commercially fish for king mackerel under the quotas. Most stated that current permit holders should continue to maintain their king mackerel permit even if it was initially issued after the control date. Some opposed the provision that will allow individuals to renew expired permits while those currently holding permits that were issued after October 16, 1995, will be denied renewal opportunities. Several stated that they did not apply for a permit prior to the control date because they fished only in Florida's waters and were unaware of the state regulations specifying requirements for vessel owners to hold a Federal mackerel permit.

*Response:* NMFS approved the permit moratorium as a necessary measure to stabilize participation in the king

mackerel fishery, to prevent speculative entry and further increases in effort on stocks that currently are undergoing rebuilding, and to possibly reduce the number of permitted vessels, while the Councils consider a limited access program. Further increases in participation would be expected if fishermen displaced from inshore commercial fisheries by state restrictions were not prevented from entering offshore king mackerel fisheries in the EEZ. Currently, Gulf group king mackerel quotas are taken quickly in areas where there are no trip limits, and Gulf and Atlantic group king mackerel quotas are taken by the end of the season in areas where harvests are controlled by trip limits. Any increase in the number of harvesters would hasten closures and negatively impact traditional participants. Those losing king mackerel permits under this measure may still participate in king mackerel fisheries up to 14 months after the final rule is published. They may also acquire a king mackerel permit through the transfer provisions, and most of them will likely retain their commercial permits to fish under the commercial Spanish mackerel quotas.

Permits to harvest king mackerel commercially in the EEZ have been required for the Gulf group king mackerel since the implementation of Amendment 1 in 1985 (50 FR 34840, August 28, 1985) and for the Atlantic group since the implementation of seasonal framework adjustments in 1986 (51 FR 9659, March 20, 1986). To possess more than the king mackerel bag limit in state waters, Florida has required a vessel to hold a Federal mackerel permit since December 1985 for the Gulf migratory group and since March 1987 for the Atlantic migratory group.

#### Authorized Gear and Incidental Catch Allowance for Unauthorized Gear

##### *King Mackerel, Atlantic Migratory Group*

*Comment:* Four Florida gillnetters opposed prohibiting directed gillnet fishing for Atlantic group king mackerel and restricting possession of that group to the bag limit aboard a vessel using a gillnet, particularly a shark drift gillnet off the Florida east coast. They stated that, as mackerel permit holders and current fishery participants, they are entitled to the commercial trip limit for Atlantic group king mackerel, even if using a gillnet.

*Response:* NMFS found the approved measures for authorized gear and incidental catch allowance for unauthorized gear to be consistent with

the Magnuson-Stevens Act and other applicable laws. The approved authorized gear measures and incidental catch allowances for gillnets should clarify the Council's intent and enhance enforceability of the current regulations, end harvest of coastal migratory pelagic species with illegal driftnet gear, and prevent gear conflicts. Nonetheless, under the newly implemented and existing regulations, no commercial mackerel permit holders will be excluded from harvesting king or Spanish mackerel under the daily trip limits as long as they use authorized gear.

Fisheries information indicates that directed fishing for Atlantic group king mackerel with drift gillnets has continued in the EEZ off the Florida east coast after the gear was prohibited in that fishery and in the fisheries for all coastal migratory pelagic species on April 13, 1990 (55 FR 14834, April 19, 1990). That regulatory action also prohibited possession of coastal migratory pelagic species on vessels with a drift gillnet on board or a gillnet with a float line longer than 1,000 yd (914 m) that has fished in the Gulf, Mid-Atlantic, or South Atlantic EEZ. Those prohibitions, previously contained in the regulations at 50 CFR 622.31(d), remain in force and unaltered by this action. To simplify references to a gillnet with a float line length greater than 1,000 yd (914 m), the term is now defined in the regulations as "long gillnet."

##### Cobia

*Comment:* One commenter expressed concern that cobia could not be taken in a directed fishery by spearfishing gear, including powerheads, unless that gear was added to the authorized gears for cobia.

*Response:* Fishermen may continue to use spearfishing gear, including powerheads, in the EEZ to harvest cobia under the provisions for incidental take, i.e., the 2-fish per day possession limit, except in the special management zones in the South Atlantic where spearfishing or use of a powerhead is not allowed. The 2-fish per day harvest/possession limit applies to both commercial and recreational fishermen and does not represent a change from current regulations.

##### Miscellaneous

*Comment 7:* One fisherman commented that the use of live bait and chum to capture king mackerel should be prohibited to save stocks.

*Response:* Restrictions on the type and use of bait were not considered in

Amendment 8 but may be considered in future amendments.

*Comment 8:* One commenter expressed support for the authorized gear proposals, provided that nets be unauthorized gear for king mackerel, Spanish mackerel, cero, and bluefish, and that nets and longlines be unauthorized gear for cobia, dolphin, and little tunny.

*Response:* Approved authorized gear measures in Amendment 8 will allow the continued use of nets and surface longlines in some coastal pelagic fisheries. The Councils proposed the gear changes to clarify their intent, to prevent gear conflicts, and to enhance enforceability by specifying possession limits for incidental catch when gear not authorized in directed fishing is on board. The approved measures evidence the Councils' intent to allow continued use of traditional gear. NMFS found the measures to be consistent with the Magnuson-Stevens Act, other applicable law, and the FMP, and approved them.

NMFS also approved a number of Amendment 8's revisions to the annual FMP framework procedures for adjusting management measures. One authorizes the adjustment of gear limitations that range from restrictions to complete prohibition. The Councils may use this modified framework procedure in the future to revise authorized gears for coastal migratory pelagic species.

##### Changes from the Proposed Rule

To clarify that the definition of a long gillnet includes all gillnets, either attached or unattached to the bottom, that have float lines that are more than 1,000 yd (914 m) in length, this final rule revises the current definition of drift gillnet by excluding a long gillnet. Such exclusion is consistent with the proposed and final rule's definitions of run-around gillnet and stab net.

As discussed above, this final rule does not allow the use of a drift gillnet north of Cape Lookout, NC, in a directed fishery for coastal migratory pelagic fish. Appropriate changes from the proposed rule are made at § 622.41(c)(1)(i)(A), (c)(1)(iii), and (c)(1)(vi).

The proposed rule inadvertently did not include the current prohibition on the use of a drift gillnet in the Gulf EEZ in a directed fishery for bluefish, cero, dolphin, and little tunny. Amendment 8 does not change this prohibition. Appropriate changes from the proposed rule are made at § 622.41(c)(1)(vii) and (c)(2)(ii).

In § 622.41(c)(2)(iii) and (iv), the language is changed to clarify that bag limits apply to persons aboard vessels,

rather than to vessels. In addition, § 622.41(c)(2)(iv), the exception for the possession of king mackerel in excess of the bag limits, is restructured for ease of understanding and revised to clarify that (1) the exception applies to king mackerel in the Gulf EEZ and to king mackerel taken in the Gulf EEZ and possessed in the Gulf—it does not apply to king mackerel taken in the Gulf and possessed in the South Atlantic EEZ, and (2) the possession of king mackerel remains subject to the king mackerel closures and trip limits.

This final rule does not include the revisions to § 622.34 that were in the proposed rule. Those revisions, which remove references to figures that are not contained in the regulations in part 622, have been made by another rulemaking.

#### Classification

The Regional Administrator, Southeast Region, NMFS, with concurrence by the Assistant Administrator for Fisheries, NOAA, determined that the approved measures of Amendment 8 are necessary for the conservation and management of the fishery for coastal migratory pelagic resources of the Gulf of Mexico and South Atlantic, and that, with the exception of those measures that were disapproved, Amendment 8 is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Councils prepared an initial regulatory flexibility analysis (IRFA) that described the impact the proposed rule, if adopted, would have on small entities. Based on the IRFA, NMFS concluded that Amendment 8, if approved and implemented through final regulations, would have significant economic impacts on a substantial number of small entities. NMFS considered the comments received on Amendment 8 and the proposed rule that relate to the IRFA, and the effects of disapproval of two measures in Amendment 8, discussed above, and prepared an FRFA. Based on the FRFA, NMFS concludes that the economic impacts on small entities previously identified in the IRFA remain unchanged.

The few commenters who directly addressed the conclusions of the IRFA did not disagree with the findings but stressed that they would be unfairly treated by portions of the rule. In particular, they opposed the use of the October 16, 1995, control date and the increased income requirement for obtaining commercial vessel permits because they would be excluded from

the commercial fishery by those measures. (See Comments and Responses, above.) These effects were identified in the IRFA as bases for the conclusion of significant economic impacts on a substantial number of small entities. Because no public comments were received that disagreed with the analysis or conclusions of the IRFA and no additional information was received that would change the analysis or conclusions of the IRFA regarding the impacts on small entities, the FRFA is based on the IRFA without substantive change. Copies of the FRFA are available (see ADDRESSES). A summary of the FRFA follows.

The approved management measures contained in Amendment 8 are necessary to assist in stock recovery, address gear problems, provide a more flexible and responsive regulatory system, address increasing numbers of participants in the fishery, and better utilize information on stock identification of migratory groups of king mackerel when the information becomes available.

Amendment 8 will affect most of the approximately 3,906 vessels from Atlantic and Gulf states (1,714 and 2,192 vessels, respectively) that have permits to operate in the commercial and/or charter mackerel fisheries in the EEZ. No data are available that describe the precise average or range of vessel operating costs or annual gross revenues. However, all are considered to be small entities as defined by the Small Business Administration. Regarding changed or increased compliance costs related to reporting and recordkeeping, the proposed moratorium on commercial permits will allow transfer of permits with the vessel and these transfers will be subject to a fee of \$40 to cover administrative costs. Further, increased costs may result from the need to obtain a special permit for conducting exempted fishing and to submit special reports pursuant to regulations contained in 50 CFR 600.745(b) and from the need to convene a special assessment group, however, these costs have not been quantitatively estimated. The requirement for special buoys on certain gillnet gear will create a small level of compliance costs. The requirements that limit the types of commercial gear in the fishery to the specified gear types will have a compliance cost to the extent that some fishermen currently may be using non-conforming gear. Also, a small additional burden will be associated with providing fishery information for obtaining a new permit.

Significant alternatives were identified for most of the actions

proposed in Amendment 8. Maintaining the status quo in certain allowable gear would have resulted in no associated compliance cost increases. However, the status quo was rejected on the basis that the alternatives would provide more effective law enforcement. To counter potential negative effects of reducing innovation in gear types, a procedure is available to allow the use of approved experimental gear under special permit and reporting requirements. Alternatives were proposed for the increased income requirements to obtain a permit. The status quo would have less of an effect on small entities than the approved measure. The number of owners whose vessels would no longer be qualified for commercial mackerel permits is estimated at 57. This level of impact was deemed to be acceptable because it is perceived that most of the people potentially impacted are not dependent on the commercial mackerel fishery for their livelihood. The more restrictive alternatives were rejected because they would have demanded a larger dependence on fishing as a source of income and would have eliminated an unacceptably large number of historical commercial fishermen.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB Control Number.

This rule contains a new collection-of-information requirement subject to the PRA—namely, the requirement that the float line of a gillnet used or possessed in the EEZ off Florida north of 25°20.4' N. lat. be marked with distinctive floats bearing the official number of the vessel using or possessing the floats. This collection of information has been approved by OMB under OMB Control Number 0648-0305. The public reporting burden for this new collection of information is estimated at 20 minutes per float. This rule involves the collection of information on applications for commercial vessel permits. That collection is currently approved under OMB Control No. 0648-0205 and its public reporting burden is estimated at 20 minutes per response. This rule also involves the collection of information on fishing records of vessels permitted in the commercial king or Spanish mackerel fisheries. That collection is currently approved under OMB Control No. 0648-0016 and its public reporting burden is estimated at 10 minutes per response. Finally, this

rule restates without significant change the collection of information for the marking of traps, pots, and associated buoys in the Caribbean, Gulf of Mexico, and South Atlantic EEZ. That collection is currently approved under OMB Control No. 0648-0305 and its public reporting burden is estimated at 7 minutes per trap, pot, or buoy. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).

As explained in the preamble to the proposed rule, the revised earned income requirement for a king or Spanish mackerel permit and the moratorium on commercial permits for king mackerel will be fully implemented on May 1, 1999. After that date, only those king or Spanish mackerel vessel permits that were issued under the revised earned income requirement and only those king mackerel permits that were issued under the moratorium criteria will be valid. This delayed implementation was specified so that the new criteria could be applied as existing annual permits expired, rather than requiring special applications, and so that currently valid permits would remain effective at least through the dates specified on the permits. As explained in the preamble to the proposed rule, a permit that is renewed after the date of publication of this final rule will be valid for the normal period, generally 1 year, if the revised criteria are met, and will be valid until the implementation date if the revised criteria are not met. The Assistant Administrator for Fisheries, NOAA, finds that the need to comply with this implementation schedule constitutes good cause under 5 U.S.C. 553(d) to waive the normal 30-day delay in effectiveness of the revisions to § 622.4(a)(2)(iii) and (iv) and (q). To not waive the 30-day delay would be contrary to the public interest. The revisions in this final rule to other paragraphs of § 622.4 are nonsubstantive clarifications for which delayed effectiveness is not required by 5 U.S.C. 553(d). Accordingly, all of the revisions to § 622.4 are effective March 4, 1998.

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

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

Dated: February 25, 1998.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, 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.*

2. In § 622.1, footnote 2 to Table 1 is revised to read as follows:

##### § 622.1 Purpose and scope.

\* \* \* \* \*

Table 1.—FMPs Implemented Under Part 622

\* \* \* \* \*

<sup>2</sup> Only king and Spanish mackerel and cobia are managed under the FMP in the Mid-Atlantic.

\* \* \* \* \*

3. In § 622.2, in the definition of “Dealer”, the reference “§ 600.15” is revised to read “§ 600.10”; definitions of “Automatic reel”, “Bandit gear”, “Handline”, “Hook-and-line gear”, “Long gillnet”, “Longline”, “Rod and reel”, “Stab net”, and “Trammel net” are added in alphabetical order; and the definitions of “Charter vessel”, “Drift gillnet”, and “Run-around gillnet” are revised to read as follows:

##### § 622.2 Definitions.

\* \* \* \* \*

*Automatic reel* means a reel that remains attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel electrically or hydraulically.

*Bandit gear* means a rod and reel that remain attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

\* \* \* \* \*

*Charter vessel* means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

\* \* \* \* \*

*Drift gillnet*, for the purposes of this part, means a gillnet, other than a long gillnet or a run-around gillnet, that is unattached to the ocean bottom, regardless of whether attached to a vessel.

\* \* \* \* \*

*Handline* means a line with attached hook(s) that is tended directly by hand.

\* \* \* \* \*

*Hook-and-line gear* means automatic reel, bandit gear, buoy gear, handline, longline, and rod and reel.

\* \* \* \* \*

*Long gillnet* means a gillnet that has a float line that is more than 1,000 yd (914 m) in length.

*Longline* means a line that is deployed horizontally to which gangions and hooks are attached. A longline may be a bottom longline, i.e., designed for use on the bottom, or a pelagic longline, i.e., designed for use off the bottom. The longline hauler may be manually, electrically, or hydraulically operated.

\* \* \* \* \*

*Rod and reel* means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

*Run-around gillnet* means a gillnet, other than a long gillnet, that, when used, encloses an area of water.

\* \* \* \* \*

*Stab net* means a gillnet, other than a long gillnet, or trammel net whose weight line sinks to the bottom and submerges the float line.

\* \* \* \* \*

*Trammel net* means two or more panels of netting, suspended vertically in the water by a common float line and a common weight line, with one panel having a larger mesh size than the other(s), to entrap fish in a pocket of netting.

\* \* \* \* \*

4. Effective March 4, 1998, in § 622.4, in paragraph (d), the reference “§ 622.6(b)(1)(i)” is revised to read “§ 622.6(b)(1)(i)(B)”; paragraphs (a)(2)(iv) through (vi) and (g) are revised; and paragraphs (a)(2)(iii) and (q) are added to read as follows:

##### § 622.4 Permits and fees.

(a) \* \* \*

(2) \* \* \*

(iii) *King mackerel*. For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel

permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel valid through April 30, 1999, at least 10 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) during one of the 3 calendar years preceding the application. To obtain or renew a commercial vessel permit for king mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least \$10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application. See paragraph (q) of this section regarding a moratorium on commercial vessel permits for king mackerel, initial permits under the moratorium, transfers of permits during the moratorium, and limited exceptions to the earned income or gross sales requirement for a permit.

(iv) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Spanish mackerel valid through April 30, 1999, at least 10 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) during one of the 3 calendar years preceding the application. To obtain or renew a commercial vessel permit for Spanish mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least \$10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding

a moratorium on commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

(vi) *South Atlantic snapper-grouper.* For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ between 35°15.3' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), a commercial vessel permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A vessel with longline gear and more than 200 lb (90.7 kg) of tilefish on board is considered to be in the directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 lb (90.7 kg) of tilefish on board harvested such tilefish in the EEZ. To obtain or renew a commercial vessel permit for South Atlantic snapper-grouper, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing, or gross sales of fish harvested from the owner's, operator's, corporation's, or partnership's vessels must have been greater than \$20,000, during one of the 3 calendar years preceding the application.

\* \* \* \* \*

(g) *Transfer.* A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, paragraph (n) of this section for a fish trap endorsement, paragraph (p) of this section for a red snapper endorsement, or paragraph (q) of this section for a king mackerel permit. A person who acquires a vessel or dealership who desires to conduct activities for which a permit or endorsement is required must apply for a permit or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

\* \* \* \* \*

(q) *Moratorium on commercial vessel permits for king mackerel.* This

paragraph (q) is effective through October 15, 2000.

(1) Effective March 4, 1998, an initial commercial vessel permit for king mackerel will be issued only if the vessel owner was the owner of a vessel with a commercial vessel permit for king mackerel on or before October 16, 1995. A king mackerel permit for a vessel whose owner does not meet this moratorium criterion may be renewed only through April 30, 1999.

(2) To obtain a commercial vessel permit for king mackerel under the moratorium, an owner or operator of a vessel that does not have a valid king mackerel permit on March 4, 1998, must submit an application to the RD postmarked or hand delivered not later than June 2, 1998. Other than applications for renewals of commercial vessel permits for king mackerel, no applications for commercial vessel permits for king mackerel will be accepted after June 2, 1998. Application forms are available from the RD.

(3) An owner will not be issued initial commercial vessel permits for king mackerel under the moratorium in numbers exceeding the number of vessels permitted in the king mackerel fishery that he/she owned simultaneously on or before October 16, 1995. If a vessel with a commercial vessel permit for king mackerel on or before October 16, 1995, has been sold since that date, the owner on or before that date retains the right to the commercial vessel permit for king mackerel unless there is a written agreement that such right transfers to the new owner.

(4) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this moratorium to another vessel owned by the same entity.

(5) An owner whose percentage of earned income or gross sales qualified him/her for the commercial vessel permit for king mackerel issued under the moratorium may request that NMFS transfer that permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for king mackerel for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the percentage of earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income or gross sales requirement not later than the first full

calendar year after the permit transfer takes place.

(6) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may request that NMFS transfer the permit to the income-qualifying operator when such operator becomes an owner of a vessel.

(7) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income or gross sales requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RD with an application for the changed permit.

(8) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RD does not receive an application for renewal within 1 year of the permit's expiration date.

5. In § 622.5, paragraph (a)(1)(i) is revised to read as follows:

**§ 622.5 Recordkeeping and reporting.**

\* \* \* \* \*

- (a) \* \* \*
- (1) \* \* \*

(i) *Coastal migratory pelagic fish.* The owner or operator of a vessel that fishes for or lands coastal migratory pelagic fish for sale in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ or adjoining state waters, or whose vessel is issued a commercial permit for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv), who is selected to report by the SRD, must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

\* \* \* \* \*

6. In § 622.6, paragraphs (c) and (d) are removed and paragraph (b) is revised to read as follows:

**622.6 Vessel and gear identification.**

\* \* \* \* \*

(b) *Gear identification*—(1) *Traps/pots and associated buoys*—(i) *Traps or pots*—(A) *Caribbean EEZ.* A fish trap or

spiny lobster trap used or possessed in the Caribbean EEZ must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands so as to be easily identified.

(B) *Gulf and South Atlantic EEZ.* A fish trap used or possessed in the Gulf EEZ and a sea bass pot used or possessed in the South Atlantic EEZ between 35°15.3' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), or a fish trap or sea bass pot on board a vessel with a commercial permit for Gulf reef fish or South Atlantic snapper-grouper, must have a valid identification tag issued by the RD attached. A golden crab trap used or possessed in the South Atlantic EEZ or on board a vessel with a commercial permit for golden crab must have the commercial vessel permit number permanently affixed so as to be easily distinguished, located, and identified; an identification tag issued by the RD may be used for this purpose but is not required.

(ii) *Associated buoys.* A buoy that is attached to a trap or pot must display the official number and assigned color code so as to be easily distinguished, located, and identified as follows:

(A) *Caribbean EEZ.* Each buoy must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(B) *Gulf and South Atlantic EEZ.* Each buoy must display the official number and color code assigned by the RD. In the Gulf EEZ, a buoy must be attached to each trap, or each end trap if traps are connected by a line. In the South Atlantic EEZ, buoys are not required to be used, but, if used, each buoy must display the official number and color code. However, no color code is required on a buoy attached to a golden crab trap.

(iii) *Presumption of ownership.* A Caribbean spiny lobster trap, a fish trap, a golden crab trap, or a sea bass pot in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps and pots that are lost or sold if the owner reports the loss or sale within 15 days to the RD.

(iv) *Unmarked traps, pots, or buoys.* An unmarked Caribbean spiny lobster trap, a fish trap, a golden crab trap, a sea bass pot, or a buoy deployed in the EEZ where such trap, pot, or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(2) *Gillnet buoys.* On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, the float line of each gillnet possessed, including any net in use, must have a maximum of nine distinctive floats, i.e., different from the usual net buoys, spaced uniformly at a distance of 100 yd (91.4 m) or less. Each such distinctive float must display the official number of the vessel.

**§ 622.31 [Amended]**

7. In § 622.31, paragraph (d) is removed and paragraphs (e) through (k) are redesignated as paragraphs (d) through (j) respectively.

8. In § 622.32, paragraph (c)(1) is revised to read as follows:

**§ 622.32 Prohibited and limited-harvest species.**

\* \* \* \* \*

(c) \* \* \*

(1) *Cobia.* No person may possess more than two cobia per day in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, regardless of the number of trips or duration of a trip.

\* \* \* \* \*

9. In § 622.35, paragraph (e)(2)(i) is revised to read as follows:

**§ 622.35 South Atlantic EEZ seasonal and/or area closures.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) In SMZs specified in paragraphs (e)(1)(i) through (xviii) and (e)(1)(xxii) through (xxix) of this section, the use of a gillnet or a trawl is prohibited, and fishing may be conducted only with handline, rod and reel, and spearfishing gear.

\* \* \* \* \*

10. In § 622.37, paragraph (c)(1) is revised to read as follows:

**§ 622.37 Minimum sizes.**

\* \* \* \* \*

(c) \* \* \*

(1) *Cobia* in the Gulf, Mid-Atlantic, or South Atlantic—33 inches (83.8 cm), fork length.

\* \* \* \* \*

11. In § 622.38, paragraph (a) is revised and paragraph (h) is added to read as follows:

**§ 622.38 Landing fish intact.**

\* \* \* \* \*

(a) The following must be maintained with head and fins intact: *Cobia*, king

mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (h) of this section; South Atlantic snapper-grouper in or from the South Atlantic EEZ; yellowtail snapper in or from the Caribbean EEZ; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c), (d), and (e) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

\* \* \* \* \*

(h) A maximum of five cut-off (damaged) king mackerel may be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under a trip limit for king mackerel specified in § 622.44(a). Such cut-off (damaged) king mackerel are not counted against the trip limit and may not be sold or purchased.

12. In § 622.40, the first sentence of paragraph (b)(3)(i) introductory text is revised to read as follows:

**§ 622.40 Limitation on traps and pots.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) A sea bass pot that is used or possessed in the South Atlantic EEZ between 35°15.3' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). \* \* \*

\* \* \* \* \*

13. In § 622.41, paragraphs (c), (d)(1), and (d)(3) are revised to read as follows:

**§ 622.41 Species-specific limitations.**

\* \* \* \* \*

(c) *Coastal migratory pelagic fish*—(1) *Authorized gear*. Subject to the prohibitions on gear/methods specified in § 622.31, the following are the only fishing gears that may be used in the Gulf, Mid-Atlantic, and South Atlantic EEZ in directed fisheries for coastal migratory pelagic fish:

(i) King mackerel, Atlantic migratory group—

(A) North of 34°37.3' N. lat., the latitude of Cape Lookout Light, NC—all gear except drift gillnet and long gillnet.

(B) South of 34°37.3' N. lat.—automatic reel, bandit gear, handline, and rod and reel.

(ii) King mackerel, Gulf migratory group—hook-and-line gear and run-around gillnet.

(iii) Spanish mackerel, Atlantic migratory group—automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, and stab net.

(iv) Spanish mackerel, Gulf migratory group—all gear except drift gillnet, long gillnet, and purse seine.

(v) Cobia in the Mid-Atlantic and South Atlantic EEZ, dolphin in the South Atlantic EEZ, and little tunny in the South Atlantic EEZ south of 34°37.3' N. lat.—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

(vi) Cero in the South Atlantic EEZ and little tunny in the South Atlantic EEZ north of 34°37.3' N. lat.—all gear except drift gillnet and long gillnet.

(vii) Bluefish, cero, cobia, dolphin, and little tunny in the Gulf EEZ—all gear except drift gillnet and long gillnet.

(2) *Unauthorized gear*. Gear types other than those specified in paragraph (c)(1) of this section are unauthorized gear and the following possession limitations apply:

(i) *Long gillnets*. A vessel with a long gillnet on board in, or that has fished on a trip in, the Gulf, Mid-Atlantic, or South Atlantic EEZ may not have on board on that trip a coastal migratory pelagic fish.

(ii) *Drift gillnets*. A vessel with a drift gillnet on board in, or that has fished on a trip in, the Gulf EEZ may not have on board on that trip a coastal migratory pelagic fish.

(iii) *Other unauthorized gear*. Except as specified in paragraph (c)(2)(iv) of this section, a person aboard a vessel with unauthorized gear other than a drift gillnet in the Gulf EEZ or a long gillnet on board in, or that has fished in, the EEZ where such gear is not authorized in paragraph (c)(1) of this section, is subject to the bag limit for king and Spanish mackerel specified in § 622.39(c)(1)(ii) and to the limit on cobia specified in § 622.32(c)(1).

(iv) *Exception for king mackerel in the Gulf EEZ*. The provisions of this paragraph (c)(2)(iv) apply to king mackerel taken in the Gulf EEZ and to such king mackerel possessed in the Gulf. Paragraph (c)(2)(iii) of this section notwithstanding, a person aboard a vessel that has a valid commercial permit for king mackerel is not subject to the bag limit for king mackerel when the vessel has on board on a trip unauthorized gear other than a drift gillnet in the Gulf EEZ or a long gillnet. Thus, the following applies to a vessel that has a commercial permit for king mackerel:

(A) Such vessel may use in the Gulf EEZ no unauthorized gear in a directed fishery for king mackerel.

(B) If such a vessel has a drift gillnet or a long gillnet on board, no king mackerel may be possessed.

(C) If such a vessel has unauthorized gear on board other than a drift gillnet in the Gulf EEZ or a long gillnet, the possession of king mackerel taken incidentally is restricted only by the closure provisions of § 622.43(a)(3) and the trip limits specified in § 622.44(a). See also paragraph (c)(4) of this section regarding the purse seine incidental catch allowance of king mackerel.

(3) *Gillnets*—(i) *King mackerel*. The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for king mackerel is 4.75 inches (12.1 cm), stretched mesh. A vessel in such EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 4.75 (12.1 cm) inches, stretched mesh, may not possess on that trip an incidental catch of king mackerel that exceeds 10 percent, by number, of the total lawfully possessed Spanish mackerel on board.

(ii) *Spanish mackerel*. (A) The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for Spanish mackerel is 3.5 inches (8.9 cm), stretched mesh. A vessel in such EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(B) On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary—

(1) No person may fish with, set, place in the water, or have on board a gillnet with a float line longer than 800 yd (732 m).

(2) No person may fish with, set, or place in the water more than one gillnet at any one time.

(3) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm).

(4) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing

that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water.

(5) The float line of each gillnet possessed, including any net in use, must have the distinctive floats specified in § 622.6(b)(2).

(4) *Purse seine incidental catch allowance.* A vessel in the EEZ, or having fished in the EEZ, with a purse seine on board will not be considered as fishing, or having fished, for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (c)(2) of this section, in violation of the possession limits under paragraph (c)(2)(iii) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 622.43(a), provided the king mackerel on board does not exceed 1 percent, or the Spanish mackerel on board does not exceed 10 percent, of all fish on board the vessel. Incidental catch will be calculated by number and/or weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the quotas provided for under § 622.42(c) and are subject to the prohibition of sale under § 622.43(a)(3)(iii).

(d) \* \* \*

(1) *Authorized gear.* Subject to the gear restrictions specified in § 622.31, the following are the only gear types authorized in a directed fishery for snapper-grouper in the South Atlantic EEZ: Bandit gear, bottom longline, buoy gear, handline, rod and reel, sea bass pot, and spearfishing gear.

\* \* \* \* \*

(3) *Use of sink nets off North Carolina.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina on a trip with a sink net on board, may retain otherwise legal South Atlantic snapper-grouper taken on that trip with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(3), a sink net is a gillnet with stretched mesh measurements of 3 to 4.75 inches (7.6 to 12.1 cm) that is attached to the vessel when deployed.

\* \* \* \* \*

14. In § 622.42, the first sentence of paragraph (c) introductory text is revised to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

(c) \* \* \* 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). \* \* \*

\* \* \* \* \*

15. In § 622.43, paragraph (a)(3)(i) and (ii) are revised and paragraph (c) is added to read as follows:

**§ 622.43 Closures.**

(a) \* \* \*

(3) \* \* \*

(i) A person aboard a vessel for which a commercial permit for king or Spanish mackerel has been issued, as required under § 622.4(a)(2)(iii) or (iv), may not fish for king or Spanish mackerel in the EEZ or retain king or Spanish mackerel in or from the EEZ under a bag or possession limit specified in § 622.39(c) for the closed species, migratory group, zone, subzone, or gear, except as provided for under paragraph (a)(3)(ii) of this section.

(ii) A person aboard a vessel for which the permit indicates both charter vessel/headboat for coastal migratory pelagic fish and commercial king or Spanish mackerel may continue to retain fish under a bag and possession limit specified in § 622.39(c), provided the vessel is operating as a charter vessel or headboat.

\* \* \* \* \*

(c) *Reopening.* When a fishery has been closed based on a projection of the quota specified in § 622.42 being reached and subsequent data indicate that the quota 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 fishery to provide an opportunity for the quota to be reached.

16. In § 622.44, paragraph (a)(2)(ii)(B) introductory text is revised to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) *Hook-and-line gear.* In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.4(a)(2)(iii), and operating under the hook-and-line gear quota in § 622.42(c)(1)(i)(A)(2)(i):

\* \* \* \* \*

17. In § 622.45, in paragraph (d)(2), the reference “§ 622.4(a)(2)(iv)” is revised to read “§ 622.4(a)(2)(vi)” and paragraph (h) is added to read as follows:

**§ 622.45 Restrictions on sale/purchase.**

\* \* \* \* \*

(h) *Cut-off (damaged) king mackerel.* A cut-off (damaged) king mackerel lawfully possessed or offloaded ashore, as specified in § 622.38(h), may not be sold or purchased.

18. In § 622.48, in paragraph (d)(1), the phrase “reopening of a fishery prematurely closed” is removed, and paragraph (c) is revised to read as follows:

**§ 622.48 Adjustment of management measures.**

\* \* \* \* \*

(c) *Coastal migratory pelagic fish.* For cobia or for a migratory group of king or Spanish mackerel: MSY, overfishing level, TAC, quota (including a quota of zero), bag limit (including a bag limit of zero), minimum size limit, vessel trip limits, closed seasons or areas, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic group Spanish mackerel, and permit requirements.

\* \* \* \* \*

**§§ 622.4 and 622.44 [Amended]**

19. The words “and Spanish” are removed in the following places:

a. In § 622.4, in the first sentence of paragraph (a)(2)(ii), in the heading of paragraph (o), in the first sentence of paragraph (o)(1), and in the second and third sentences of paragraph (o)(2).

b. In § 622.44, in paragraph (a)(2)(ii)(A)(2)(i).

**§ 622.44 [Amended]**

20. The words “king and” are removed in § 622.44(b)(1)(i) and (b)(1)(ii) introductory text.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 971208296-7296-01; I.D. 022598C]

**Fisheries of the Exclusive Economic Zone Off Alaska; Inshore Component Pollock in the Bering Sea Subarea**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock by vessels catching