**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 970606131–7131–01; 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:** Proposed rule, request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 8 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Amendment 8 would 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 proposes to clarify that a Federal vessel permit is not required for the use of a sea bass pot north of Cape Hatteras, NC; clarify what constitutes commercial fishing for the purpose of obtaining a commercial vessel permit; revise 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); make explicit the authority of NMFS to reopen a fishery that has been closed prematurely, i.e., prior to a quota having been reached; and correct references in the codified text. 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:** Written comments must be received on or before August 7, 1997.

**ADDRESSES:** Comments on the proposed rule must be sent to Mark Godcharles, 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).

Copies of Amendment 8, which includes an environmental assessment, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA), may be obtained from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 803–571–4366; Fax: 803–769–4520 or from the Gulf of Mexico Fishery Management Council, Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL 33619; Phone: 813–228–2815; Fax: 813-225-7015.

**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.

In Amendment 8, the Councils propose to add two fishery problem statements to the FMP, increase the minimum earned income requirement to qualify for a commercial mackerel permit, implement a 5-year moratorium on issuing new permits for commercial king mackerel fishing in the EEZ and establish criteria for transferring permits during the moratorium, specify authorized gears and requirements for testing experimental gears used to harvest species managed under the FMP, extend the cobia management area to include the Mid-Atlantic EEZ, and make major revisions to the FMP's framework procedure for changing catch specifications.

### Earned Income Requirement for Mackerel Permits

Currently, to obtain a commercial king or Spanish mackerel permit, a vessel owner or operator must document that at least 10 percent of his/her earned income was derived from the sale of fish during one of the 3 calendar years preceding the application. The Councils propose to require that at least 25 percent of earned income, or at least $10,000, must have been derived from the sale of fish or from charter fishing during one of the 3 calendar years preceding the application. As recently defined in the Magnuson-Stevens Act, ''charter fishing'' includes operations of either a charter vessel or a headboat. The Councils chose this alternative as the least restrictive option to differentiate more equitably between fishermen subject to bag limits and fishermen subject to the quotas—the latter being fishermen who are primarily dependent on king and Spanish mackerel for their livelihoods. The Councils expect the revised earned income or gross sales requirement would eliminate from participation under the quotas some fishermen who currently qualify for commercial permits based on sales of small amounts of fish. Under the revised requirement, such fishermen would be restricted to the bag limits.

Effective on the first of the month following the date that is 13 months after the date of publication of the final rule to implement Amendment 8, the ''revised earned income implementation date,'' only those vessel permits for king or Spanish mackerel that were issued under the revised earned income or gross sales requirement would be valid for king or Spanish mackerel. Under this implementation schedule, a king or Spanish mackerel permit that is valid on the date of publication of the final rule would remain valid through the date of expiration stated on the permit. King and Spanish mackerel permits issued after the date of publication of the final rule would be valid for the normal period, generally 1 year, if the revised earned income or gross sales requirement is met, and would be valid until the revised earned income implementation date, if the revised earned income or gross sales requirement is not met.

### Moratorium on Commercial Permits for King Mackerel

The Councils propose a moratorium on commercial permits for king mackerel effective through October 15, 2000. To obtain a king mackerel permit under the moratorium, a vessel owner must have owned a vessel with a commercial vessel permit for king mackerel on or before October 16, 1995, the control date for the king mackerel fishery (60 FR 53576, October 16, 1995).

Under the proposed permit moratorium, separate Federal

commercial permits for king and Spanish mackerel would be issued instead of the existing combined Federal commercial permit for king and Spanish mackerel.

Under the moratorium, a commercial vessel permit for king mackerel that is not renewed or that is revoked would not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the Regional Administrator, Southeast Region, NMFS, within 1 year of the permit expiration date. (The designation ''Regional Administrator'' appears in the regulatory text as ''Regional Director'' or ''RD''.)

An owner or operator of a vessel that does not have a king mackerel permit on the date of publication of the final rule to implement Amendment 8 would have to submit an application for a permit to the Regional Administrator, postmarked or hand delivered not later than 90 days after the date of publication of the final rule.

Under the moratorium, an owner would not be issued initial commercial vessel permits in numbers exceeding the number of vessels permitted in the king mackerel fishery that he/she owned simultaneously on or before October 16, 1995. For example, an owner who owned two permitted vessels at one time on or before October 16, 1995, and currently owns one permitted vessel, would qualify for an additional permit for a vessel he/she owns. On the other hand, an owner who owned only one permitted vessel on or before October 16, 1995, but who currently owns a second permitted vessel, would not qualify for an additional permit. This would not preclude an owner from acquiring additional permits through transfers of permits under the moratorium.

An owner would be allowed to transfer a permit to another vessel owned by the same entity. In addition, an owner whose earned income or gross sales qualified for a commercial vessel permit would be able to transfer the permit to the buyer of the permitted vessel or to the owner of another vessel. Such new owner could receive an initial king mackerel permit without meeting the earned income or gross sales requirement and would have 1 full calendar year to meet that requirement, plus an additional 3 ½ months to document his/her earned income or gross sales and apply for renewal and for NMFS to process the application and issue a renewed permit. The new owner, rather than the vessel operator, would be required to meet the earned income or gross sales requirement for such renewal. The grace period, i.e., 1 full calendar year plus 3 ½ months, would also be available to an owner who loses an earned-income or gross-sales qualifying operator. Finally, an owner of a vessel whose permit was qualified for by an operator could transfer the permit to the operator if the operator buys the vessel.

The Councils propose the moratorium to stabilize participation in the king mackerel fishery and prevent further increases in effort on stocks that are currently undergoing rebuilding. For commercial king mackerel fisheries, the Councils want to prevent speculative entry, and possibly reduce the number of permitted vessels, while they consider a limited access program. NMFS's permit records indicate an increase of 102 percent in the number of commercial king mackerel permits issued from the 1987/88 to the 1993/94 fishing year (1,280 to 2,588). The Councils believe that continuation of the moratorium through October 15, 2000, would allow ample time to develop a long-range limited access program that would provide a more equitable distribution of catch among current participants who have had a historical dependence on the fishery.

The 90-day period for applications for king mackerel permits under the moratorium for vessels not currently permitted would allow a basis for planning further management measures. After that 90-day period, the maximum number of vessels permitted for king mackerel under the moratorium would be known, rather than being subject to additional applications/permits. In addition, the 90-day period would limit the duration of the administrative functions of ascertaining eligibility for and issuing permits under the moratorium criterion.

Effective on the first of the month following the date that is 13 months after the date of publication of the final rule to implement Amendment 8, the ''moratorium implementation date,'' only those vessel permits for king mackerel that were issued under the moratorium criterion would be valid for king mackerel. (The moratorium implementation date would be the same date as the revised earned income implementation date.) Under this implementation schedule, a king mackerel permit that is valid on the date of publication of the final rule would remain valid through the date of expiration stated on the permit. King mackerel permits renewed after the date of publication of the final rule would be valid for the normal period, generally 1 year, if the moratorium criterion is met, and would be valid until the moratorium implementation date, if the moratorium criterion is not met.

**Extend the Cobia Management Area**

The Councils propose to extend the cobia management area northward to include the area of authority of the Mid-Atlantic Fishery Management Council. By repositioning the northern boundary at the New York/Connecticut boundary, the cobia management area would be expanded to include the EEZ off the states of Virginia through New York. With this proposal, the Councils are trying to provide more consistency with National Standard 3 of the Magnuson-Stevens Act, which requires that, to the extent practicable, an individual stock of fish be managed as a unit throughout its range.

The proposal would extend into the Mid-Atlantic EEZ two management measures for cobia—the recreational/commercial bag limit of 2 fish per person per day, regardless of the number of trips or duration of a trip; and the minimum size limit of 33 inches (83.8 cm), fork length.

**Authorized Gear**

The Councils propose to specify, revise, and clarify the gear allowed to be used in directed fishing in the EEZ of the Gulf, South Atlantic, and Mid-Atlantic for all coastal pelagic species. Accordingly, the proposed rule contains new and revised definitions of fishing gears. Hook-and-line gear would be defined to include automatic reel, bandit gear, buoy gear, handline, longline, and rod and reel. Each of the hook-and-line gears would be defined. (The current definition of buoy gear would not be changed.) Three types of gillnets, i.e., long gillnet, stab net, and trammel net, would be defined and the definition of run-around gillnet would be revised. ''Long gillnet'' would be defined as a gillnet that has a float line that is more than 1,000 yd (914 m) in length. The current regulations at 50 CFR 622.31(d) contain restrictions on the use of such a gillnet for coastal migratory pelagic fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ. The term ''long gillnet'' would simplify references to such a gillnet. The Councils propose the changes to clarify intent, prevent gear conflicts, and, by specifying possession limits for incidental catch when gear not authorized in directed fishing is on board, enhance enforceability.

*King Mackerel, Atlantic Migratory Group*

For the Atlantic migratory group of king mackerel in the area north of Cape Lookout Light, NC (i.e., north of 34°37.3'

N. lat.), all gear would be allowed in the directed fishery for this group except a long gillnet. In that area, the proposal would allow the use of drift gillnets, which currently is prohibited throughout the management area for all coastal pelagic species. South of Cape Lookout Light, NC, proposed authorized gear would be automatic reel, bandit gear, handline, and rod and reel.

*King Mackerel, Gulf Migratory Group*

For the Gulf migratory group of king mackerel, the Councils re-specified that the only authorized gears for directed fishing for this group would remain hook-and-line gear and run-around gillnet. The use of unauthorized gears in directed fishing for Gulf migratory group king mackerel would continue to be prohibited as would the possession of king mackerel on vessels with a drift gillnet or a long gillnet on board. Also, the purse seine incidental catch allowance for king mackerel would remain unaffected. However, fishermen would be allowed to make multi-species trips with unauthorized gear on board (e.g., shrimp trawls, crab and lobster traps) and commercially harvest king mackerel using authorized gear. Such commercial harvest would be subject to the existing trip limits. Currently, the regulations do not allow multi-species trips or the possession of Gulf group king mackerel on board vessels carrying unauthorized gear. In specifying authorized gears in Amendment 5 (55 FR 29370, July 19, 1990), the Councils did not intend to disallow traditional multi-species fishing practices in the Gulf of Mexico.

*Spanish Mackerel, Atlantic Migratory Group*

For vessels fishing in the EEZ north of Cape Lookout, NC, the Councils propose the following authorized gears for the Atlantic migratory group of Spanish mackerel: Automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, stab net, and drift gillnet. South of Cape Lookout, their proposals would allow automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, and stab net.

For vessels gillnetting Spanish mackerel in the EEZ off the Florida east coast north of the Dade/Monroe County, FL, boundary, the Councils propose additional regulations regarding gillnet construction and deployment. The float line for a gillnet used for directed Spanish mackerel fishing could not be longer than 800 yd (732 m). Additionally, the float line would have to contain a maximum of nine distinctive floats that would be different from the usual net buoys, spaced uniformly at a distance of 100 yd (91.44 m) or less, and bear the official number of the vessel from which the gillnet is deployed.

Under the proposals, a vessel targeting Spanish mackerel could have two gillnets on board, but only one could be deployed at any one time. The stretched-mesh sizes of the two gillnets would have to differ by at least 0.25 inch (0.64 cm); the gillnet used to capture Spanish mackerel still would have to comply with the current minimum mesh size, i.e., 3.5 inches (8.9 cm), stretched mesh. The gillnet could not be soaked for more than 1 hour. The soak period would begin with placement of the first mesh in the water and end with its retrieval back on board the vessel in a continuous effort to completely remove the gillnet from the water. Limiting soak time to no more than 1 hour prevents indiscriminate use of nets, reduces incidental take of non-targeted species, and improves the quality of harvested fish.

*Spanish Mackerel, Gulf Migratory Group*

For the Gulf migratory group of Spanish mackerel, the Councils proposed no revisions. Consequently, authorized gears would remain all gears except long gillnets, drift gillnets, and purse seines.

*Cero*

For cero in the South Atlantic and Gulf EEZ, the Council proposes to authorize all gears except long gillnets.

*Cobia*

For cobia in the Mid-Atlantic and South Atlantic EEZ, the proposed authorized gears are automatic reel, bandit gear, handline, rod and reel, and pelagic longline. Authorized gears in the Gulf EEZ would be all gears except long gillnets.

*Dolphin*

For dolphin in the South Atlantic EEZ, proposed authorized gears are automatic reel, bandit gear, handline, pelagic longline, and rod and reel. Authorized gears in the Gulf EEZ would be all gears except long gillnets.

*Little Tunny*

For little tunny in the South Atlantic EEZ south of Cape Lookout, NC, proposed authorized gears are automatic reel, bandit gear, handline, pelagic longline, and rod and reel. In the South Atlantic EEZ north of Cape Lookout, the Councils propose to allow all gears except long gillnets. In the Gulf EEZ, authorized gears would be all gears except long gillnets.

*Bluefish*

For bluefish in the Gulf EEZ, authorized gears would be all gears except long gillnets.

**Unauthorized Gear**

Under Amendment 8, unauthorized gear could not be used in directed fishing for any coastal migratory pelagic species. Possession of coastal migratory pelagic fish would be prohibited for a vessel which fished in the Gulf, Mid-Atlantic, or South Atlantic EEZ with a long gillnet on board. The existing prohibition for possessing king or Spanish mackerel on a vessel that fished in the Gulf EEZ with a drift gillnet on board would remain in effect. Otherwise, as proposed, for a vessel with unauthorized gear on board that has fished in the EEZ, the incidental catch of king and Spanish mackerel and cobia would be limited to the bag limit and would be unlimited for coastal migratory pelagic species without bag limits. No changes are proposed for incidental catch allowances for king and Spanish mackerel taken by purse seines and for king mackerel taken in a gillnet with a mesh size less than 4.75 inches (12.1 cm), stretched mesh.

**Experimental Gears**

The Councils also propose certain specifications and criteria for the use of experimental gear to harvest coastal migratory pelagic fish in the South Atlantic and Mid-Atlantic. Use of experimental gear, i.e., gear not authorized by the regulations, would constitute exempted fishing when conducted under a permit issued pursuant to regulations on exempted fishing, contained in 50 CFR 600.745(b). Those regulations adequately address the Councils' concerns related to the development and testing of experimental gear in directed coastal migratory pelagic fisheries. Consequently, no additional regulations are proposed.

**Exemption to King Mackerel Trip Limits**

To minimize waste, the Councils propose to allow the retention on a vessel holding a commercial king mackerel permit of five cut-off king mackerel per trip (i.e., king mackerel that have been damaged/severed by predators, such as barracuda or sharks, during capture). Such damaged king mackerel would not be counted against commercial vessel trip limits, could not be sold or purchased, and would be exempt from the requirement that fish be landed with heads and fins intact.

**Atlantic Group King Mackerel Trip Limits**

Under another regulatory action, NMFS implemented the trip limits proposed in Amendment 8 for commercial vessels fishing for Atlantic group king mackerel. They became effective September 23, 1996 (61 FR 48848; September 17, 1996). Accordingly, this proposed rule does not include those trip limits.

**Additional Measures in Amendment 8**

Amendment 8 contains several measures that do not require changes in 50 CFR part 622.

*Problems in the Fishery*

To the ten fishery problems already identified in the FMP, the Councils propose to add two more, namely:

11. Localized reduction in abundance of fish due to high fishing pressure; and
12. Disruption of markets.

The proposals identify the Councils' concerns that increased fishing effort for some species (e.g., dolphin) could reduce availability in some areas, negatively impact markets, and cause user conflicts.

*Revise the FMP Annual Framework Adjustment Process*

Annual Stock Assessment Procedure

The Councils propose the following revisions regarding the development of the annual report by the Mackerel Stock Assessment Panel (Panel). They would clarify that stock condition would be assessed in alternate, even-numbered years. For fish groups that can be managed separately, the Councils also would require estimates of the spawning potential ratio (SPR) and fishing mortality rates (F) relative to 20, 30, and 40 percent SPRs ($F_{20\%SPR}$, $F_{30\%SPR}$, $F_{40\%SPR}$). The additional information would help determine and avoid overfished conditions and overfishing and provide information necessary for rebuilding stocks to maximum sustainable yield (MSY). The Councils also propose to remove the requirement that the Panel calculate allowable biological catch (ABC) separately for eastern and western groups of Gulf group king mackerel when stock identification data support division.

The Councils also would require the Panel to estimate the current mixing rate of Atlantic and Gulf migratory groups of king mackerel in the south Florida mixing zone. That estimate would help in tracking quotas, determining the impacts of changing seasonal boundary lines now separating these groups, and evaluating the impacts of establishing a permanent boundary to separate the two groups. The information also could aid the Councils in their considerations regarding development of separate FMPs for coastal migratory pelagic species. That possibility would be explored in a Council staff report to be prepared after next year's stock assessment.

Optimum Yield, Overfishing Definitions, and Rebuilding Programs

The Councils propose to revise the definitions of overfished and overfishing, and to restructure rebuilding programs. The proposals, initially recommended by the SPR Management Strategy Committee, have been endorsed by the Panel. The proposed definitions would specify that a mackerel group would be considered overfished if its transitional SPR is below 20 percent; the current FMP definition specifies a higher SPR of 30 percent. Based on these definitions and SPR estimates generated for the 1997 stock assessment, no mackerel groups would currently be considered to be overfished. Consequently, if the proposals are approved, no rebuilding programs would be immediately necessary. However, the Councils' proposals would, for overfished stocks, require recovery above overfished levels within a specified time frame, as well as continued rebuilding to the new optimum yield (OY) targets. The Councils propose to specify long-term OY at 30 and 40 percent SPRs, respectively, for the Gulf and Atlantic migratory groups of king and Spanish mackerel.

For stocks that are not overfished, that is, stocks whose transitional SPR is equal to or greater than 20 percent, the act of overfishing would be defined as harvesting at a level which exceeds the fishing mortality rate associated with the threshold static SPR of 20 percent ($F_{20\%SPR}$). When such overfishing occurs, the stock may become overfished and, therefore, a program to reduce fishing mortality rates toward management target levels, i.e., OY, would be implemented, even if the stock or migratory group is not in an overfished condition.

The Councils also propose a definition of overfishing for a stock or migratory group for which insufficient information is available to determine if it is overfished, based on its transitional SPR. For those species or groups, overfishing would be defined as a fishing mortality rate in excess of the fishing mortality rate corresponding to a default threshold static SPR of 30 percent. Again, if such overfishing occurs, a program to reduce fishing mortality rates to at least the level corresponding to management target levels would be implemented.

Councils' Review of Annual Assessment Report

In addition to proposing changes to the procedure for the annual review of the stock assessment report, the Councils propose an alternative for considering information received separately from the annual assessment report. In either instance, the Councils would consult with their Advisory Panels and Scientific and Statistical Committees to review the Panel's annual report or other information, respectively, and provide advice before taking final action. Currently, the FMP states that the Councils may convene such advisory groups for these purposes. The requirement to hold a public hearing at the time and place where the Councils consider the Panel's report, or information received separately, would apply in either instance.

FMP Framework Management Options Available to the Councils

The Councils would revise five of the nine management measures in the FMP that may be adjusted under the annual framework process and add two more. They propose to add the ability to change overfishing levels and reallocate total allowable catch (TAC) between the commercial and recreational sectors of the Atlantic group Spanish mackerel fishery. The proposed revisions would allow the Councils to recommend zero quotas and bag limits, gear prohibitions, reopenings of closed seasons or areas, and closures or reopenings of spawning seasons or areas.

The Councils recommend the proposals to clarify the range of options available and to allow for more timely implementation of management measures than is possible through the FMP amendment process. For example, the Councils would be able to respond more quickly to new information and rapid changes in the stocks indicating a need to adjust overfishing levels or establish zero bag limits and quotas to avoid rapid stock depletion. The Councils also want the option of prohibiting certain gears under the framework process in order to respond quickly to loopholes in the regulations that frustrate their intent, such as have occurred in the construction and use of drift gillnets for king mackerel off the east coast of Florida. The modification to the option regarding seasons or area closures and reopenings would clarify that measures to protect spawning fishes could be included as part of the framework adjustment process.

Timely reallocation of TAC for Atlantic group Spanish mackerel would allow for adjustment of quotas in response to recent harvest information and changes in the fishery. Yearly adjustment would help mitigate the negative social and economic impacts that either the commercial or recreational sector might experience given periodic shifts in effort.

The Councils would further modify the FMP in that the South Atlantic Fishery Management Council (South Atlantic Council) would propose regulations for the commercial fishery for Gulf group king mackerel in the Florida east coast subzone (Dade through Volusia Counties from November 1 through March 31, yearly). In that area, the South Atlantic Council would be responsible for setting vessel trip limits, closing seasons or areas, or adjusting gear restrictions. Otherwise, no other changes are proposed to revise the FMP provision, which now requires that the South Atlantic Council and the Gulf of Mexico Fishery Management Council (Gulf Council) be responsible, respectively, for the Atlantic and Gulf migratory groups of king and Spanish mackerel. This proposal would increase administrative efficiency and reduce costs and burdens to fishermen in this area who desire to participate in the management process, but now have to interact with both Councils.

## Regulatory Changes That May Be Implemented by NMFS

The Councils' proposed modification of the FMP mirrors those previously discussed above under the heading FMP Framework Management Options Available to Councils. The changes would allow NMFS to implement any of the options that could be adjusted annually by the Councils. However, under the new authority that would be granted to NMFS, any reallocation of TAC for Atlantic group Spanish mackerel could not exceed 10 percent of the recreational allocation or the commercial quota in any given year. The Councils chose the 10–percent limitation to ensure that allocations/quotas would be changed gradually and, thus, minimize social and economic impacts on recreational and commercial fisheries. Also, any proposed adjustment could be implemented over several years to reach a desired goal, but would have to be assessed each year relative to changes in TAC and the potential social and economic impacts to either sector of the fishery.

The proposed modifications would explicitly authorize NMFS to reopen a commercial mackerel fishery that was closed prematurely, i.e., before the quota was taken. Excessive harvesting capacities in commercial mackerel fisheries and smaller sub-quotas for gears/geographical areas have increased the likelihood that premature closures may occur, especially when adverse weather conditions reduce harvest rates immediately preceding a projected closure date. The ability to reopen a commercial fishery would ensure the full economic benefit of commercial quotas without adversely affecting the resource. NMFS's existing authority to effect quota closures and the added authority to reopen would also apply to recreational fisheries if, in the future, the Councils take action to control recreational harvest by quotas in addition to, or as a substitute for, bag limits. As is the case with closures, reopenings would be accomplished through notification in the **Federal Register**.

### *Optimum Yield*

The Councils propose to revise the definition of OY to conform with the proposed overfishing definitions and SPR targets. The South Atlantic Council's and Gulf Council's targets would be set at OYs of 40 and 30 percent static SPR, respectively. ABCs would be calculated based on each Council's chosen OY target.

Currently, the OY definition in the FMP states that the long-term OY goal for mackerels and cobia is MSY. The Councils believe that this definition may drive spawning stock levels toward the overfished level. They consider the newly proposed definition to be more risk-averse, i.e., revising and resetting OY targets at SPRs of 30 and 40 percent would decrease the risks of overfishing more than setting them at MSY.

## Availability of and Comments on Amendment 8

Additional background and rationale for the measures discussed above are contained in Amendment 8, the availability of which was announced in the **Federal Register** on April 23, 1997 (62 FR 19733). Written comments on Amendment 8 are solicited and must be received by June 23, 1997. Comments that are received by June 23, 1997, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 8. Comments received after that date will not be considered in the approval/disapproval decision. All comments received on Amendment 8 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

## Additional Changes Proposed by NMFS

In accordance with the northern limit of the regulations on sea bass in the South Atlantic EEZ, NMFS proposes to clarify, at §§ 622.4(a)(2)(vi), 622.6(b)(1), and 622.40(b)(3)(i), that the permitting, marking, and construction requirements for the use of a sea bass pot apply in the EEZ between the latitudes of Cape Hatteras, NC, and Cape Canaveral, FL.

To clarify what constitutes commercial fishing for the purpose of obtaining a commercial vessel permit, NMFS proposes to replace the phrase ''sale of fish from the applicant's vessels,'' where it appears in § 622.4(a)(2), with the phrase ''harvest and first sale of fish.'' Literal application of the replaced language would preclude a crew member of a fishing vessel from using salary or shares from fishing to meet an earned income from fishing requirement for a permit if such crew member became a vessel owner or operator. Such application was not intended by the Councils. The revised language would, however, preclude a person from using the income from fish purchased and resold to meet an earned income from fishing or gross sales requirement for a permit.

A recent amendment to the Magnuson-Stevens Act defines the term ''charter fishing'' as ''fishing from a vessel carrying a passenger for hire * * * who is engaged in recreational fishing.'' To ensure compatibility with this newly defined term, NMFS proposes to revise the definition of ''charter vessel'' in § 622.4 and to substitute the words ''charter fishing'' for the words ''charter or headboat operations'' where they appear in § 622.4(a)(2)(v) and (vi). As newly defined, ''charter fishing'' encompasses operations of both charter vessels and headboats.

As noted above, the Councils propose to make explicit the authority of NMFS to reopen a commercial mackerel fishery that has been closed prematurely. NMFS recently approved similar action proposed by the Gulf Council in Amendment 14 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico. The rationale for these actions generally applies to all fisheries in which there are quota closures. Accordingly, for standardization among fisheries, NMFS proposes to add the explicit authority to reopen the following fisheries in which there are provisions for quota closures, if they are prematurely closed: Gulf and South Atlantic allowable octocoral (50 CFR 622.42(b)(1)); and royal red shrimp in the Gulf (50 CFR 622.42(d)).

To conform with the proposed new definition of ''hook-and-line gear,''

NMFS proposes clarifying language where that phrase is used in connection with authorized or prohibited gears in the snapper-grouper fishery off the southern Atlantic states (50 CFR 622.35(e)(2)(i) and 622.41(d)(1) and (3)).

NMFS also proposes to make technical corrections to references in the codified text as follows: In the definition of ''Dealer'' at § 622.2, the reference would be revised to read ''§ 622.10''; in the description of the reef fish longline and buoy gear restricted area at § 622.34(c), the reference to figures 1 and 2 would be removed; in the description of the reef fish stressed area at § 622.34(g), the reference to figures 3 and 4 would be removed; and in the restrictions regarding purchase of South Atlantic snapper-grouper at § 622.45(d)(2), the reference would be revised to read ''§ 622.4(a)(2)(vi)''.

As discussed above, Amendment 8 proposes additional marking requirements for gillnets used for Atlantic group Spanish mackerel. Inclusion of that new requirement would necessitate restructuring the existing regulations at 50 CFR 622.6(b), (c), and (d). For ease of understanding and for clarity, this proposed rule restates the existing gear identification requirements for traps, pots, and their associated buoys without substantive change.

**Classification**

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 8.

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

The Councils prepared an IRFA, based on the RIR, that describes the impact this proposed rule, if adopted, would have on small entities. Based on the IRFA, NMFS has concluded that Amendment 8, if approved and implemented through final regulations, would have significant economic impacts on a substantial number of small entities. A summary of the IRFA's assessment of the significant impacts on small entities, as supplemented by NMFS where necessary, follows.

The Councils intend that the proposed management measures continue the recovery of the stocks, limit the introduction of new gear, and provide a more flexible and responsive regulatory system. Increasing entry of participants in the fishery has resulted in shorter seasons to fill quotas. Uncertainty of stock identification of migratory groups of king mackerel continues to complicate management of this species. While the proposed management measures relate to all eight major objectives of the FMP, the objectives to recover and stabilize the stocks, to provide for flexible management, to provide for management of the specific migratory groups, and to optimize the social and economic benefits of the coastal migratory pelagic fisheries are the most germane. The Magnuson-Stevens Act provides the legal basis for the rule.

Amendment 8 will affect most of the 3,819 vessels from Atlantic and Gulf states (1,722 and 2,097 vessels, respectively) that have permits to operate in mackerel fisheries in the EEZ. For Atlantic states, 1,093 vessels possess commercial permits, 393 possess charter/headboat permits, and 236 vessels possess both permits. For Gulf states, 1,266 vessels possess commercial permits, 613 possess charter/headboat permits, and 218 vessels possess both permits. All of the commercial fishing and charter/headboat businesses that would be affected by Amendment 8 are considered small entities for the purposes of the Regulatory Flexibility Act. There are no data that describe the precise average or range of operating costs or annual gross revenues. A substantial number of small entities are expected to be affected for purposes of the Regulatory Flexibility Act.

The Councils concluded that no single proposed measure in Amendment 8 would significantly affect revenues of the small entities expected to be impacted by the proposed rule. However, the Councils also concluded that the cumulative effect of the amendment's 21 proposed management measures (not including a number of proposed ''no action'' measures) could change annual revenues in excess of 5 percent. The RIR and associated IRFA contain an analysis, largely qualitative, of the economic impacts of the 21 proposed management measures and their rejected alternatives. Management measures that should result in the greatest revenue changes for small entities include the moratorium on new entrants, changes in income qualifications for commercial fishing permits, and changed commercial trip limits for Atlantic group king mackerel. Further, the proposed increase in the income requirement for obtaining a king or Spanish mackerel commercial permit may eliminate as many as 5 percent of the currently permitted vessels from participation in the mackerel fisheries. Whether these vessels would cease business operations entirely is not known, but switching to a higher reliance on alternative fisheries may significantly reduce their overall incomes and/or increase their costs of fishing.

The proposed management measures will not create any changed or increased compliance costs related to reporting and record keeping other than those resulting from the gear marking requirements. Refer to the discussion below concerning this rule's collection-of-information requirements that are subject to approval under the Paperwork Reduction Act (PRA). However, there will be increased compliance costs associated with the restrictions on the use of gillnets and the additional marking requirement for gillnets, each applicable to the harvest of Atlantic group Spanish mackerel in a portion of the EEZ off the east coast of Florida. These costs were not formally addressed in the RIR. The proposal to limit lengths of gillnets used for Spanish mackerel and to require special buoys marked with the owner's permit number on such gillnets used in the prescribed area will require small compliance costs to modify the gear so that it will be legal under the preferred alternative. Additionally, the management measures to limit the types of commercial gear in the fishery to a specified number of gear types will have a compliance cost to the extent that some fishermen may be currently using non-conforming gear and would have to undergo costs of switching to an alternative gear. There are no estimates available of the amount of the compliance costs related to the preferred gear measures. The operators will not have to acquire new skills to meet the additional requirements.

There are no existing Federal rules which may duplicate, overlap, or conflict with the proposed rule.

The Councils considered significant alternatives for most of the proposed management measures. The rejected alternative for the moratorium on new entrants was the status quo. It was rejected on the basis that new entrants would tend to contribute to an increase in overall effort. The result would be increased costs that would offset revenue increases expected from stock improvements and subsequent increases in the commercial quota. The proposed moratorium will result, based on the October 16, 1995, control date, in some 141 vessel owners becoming ineligible for renewal of their king mackerel permits. These individuals will, however, be eligible for new king mackerel permits through the permit

transfer measures of Amendment 8 and for Spanish mackerel permits.

Alternatives to the newly proposed permit requirement of a minimum of 25 percent of gross annual income or at least $10,000 in sales derived from commercial or for-hire business included the status quo of a single requirement of 10 percent of income from fishing and other, more restrictive requirements. The status quo has less of an effect on small businesses than the proposed alternative because an estimated 145 fishermen will lose their permits with the proposed change. This level of impact was deemed to be acceptable, because most of the 145 permit holders who will be disqualified are fishermen who are more correctly identified as recreational fishermen who sell their catch. The more restrictive alternatives would have mandated a larger dependence on fishing as a source of income and would have eliminated an unacceptably large number of historical commercial fishermen.

No alternatives were considered for the more restrictive trip limits for Atlantic migratory group king mackerel, with the exception of an alternative to have more restrictive trip limits in the Florida Keys. Even though the status quo was not considered, the proposed regulation would reduce overall revenues by restricting overall catches relative to the status quo, particularly in the area where a 500 pound daily limit is proposed. In this area, an estimated 24 percent of commercial king mackerel revenues will be foregone, with an unknown effect on the ability of certain fishermen to remain in the fishery. The Councils considered the negative effect on small business acceptable because the restriction could potentially lengthen the season while slowing catch rates and increasing seasonal prices.

Although not mentioned among the proposed measures that would significantly affect revenues of small entities, the proposal to limit gear to specified gear types was contrasted with the rejected alternative of maintaining the status quo. While the status quo would not entail additional compliance costs (in meeting new allowable gear specifications) and new gear innovation and development would not be possible, the Councils rejected the status quo as not offering resolution of the current enforcement problems in differentiating between legal and non-legal gear and not providing the opportunity to develop new, beneficial gears for the Mid-Atlantic and South Atlantic fisheries.

Other proposed measures include the identification of an additional problem of localized fishing, a continuation of regulations governing the at-sea transfer of Spanish mackerel, a rejection of dealer permits and a moratorium on new charter vessel permits, decisions to make no major changes in the management for cobia and dolphin, and other measures largely of a technical nature. Rejected alternatives were considered for all of these, but since most of the decisions involved maintaining the status quo, there are only minor effects on small entities from all these other proposals considered jointly.

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 PRA unless that collection of information displays a currently valid OMB Control Number.

The proposed 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 it. This requirement has been submitted to OMB for approval. 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 15 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. These reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or any other aspects of the collection of information, to NMFS and OMB (see **ADDRESSES**).

### List of Subjects in 50 CFR Part 622

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

Dated: June 17, 1997.

**Rolland A. Schmitten,**

*Assistant Administrator for Fisheries, National Marine Fisheries Services.*

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

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, 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

* * * * * * *

[2] 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'' 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.

* * * * *

*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. 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 the end of the month that is 13 months after the date of publication of the final rule that contains this paragraph (a)(2)(iii), 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 the end of the month that is 13 months after the date of publication of the final rule that contains this paragraph (a)(2)(iii), 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 the end of the month that is 13 months after the date of publication of the final rule that contains this paragraph (a)(2)(iv), 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 the end of the month that is 13 months after the date of publication of the final rule that contains this paragraph (a)(2)(iv), 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 kilograms) 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 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, transferred permit or endorsement, 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 on the date of publication of the final rule that contains this paragraph (q)(1), 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 the end of the month that is 13 months after the date of publication of the final rule that contains this paragraph (q)(1).

(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 king mackerel permit on the date of publication of the final rule that contains this paragraph (q)(2) must submit an application to the RD postmarked or hand delivered not later than 90 days after the date of publication of the final rule that contains this paragraph (q)(2). 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 the date that is 90 days after the date of publication of the final rule that contains this paragraph (q)(2). 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 for the commercial vessel permit for king mackerel issued under the moratorium may 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 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) A commercial vessel permit for king mackerel that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

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 assigned number and 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 specified for 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 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 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 (91.44 m) or less. Each such distinctive float must bear 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.

* * * * *

**§ 622.34 [Amended]**

9. In § 622.34, in the last sentence of paragraph (c), the phrase ''and shown in Figures 1 and 2'' is removed and in paragraph (g) introductory text, the phrase ''and shown in Figures 3 and 4'' is removed.

10. 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.

* * * * *

11. 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.

* * * * *

12. 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 (g) 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.

13. 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). * * *

* * * * *

14. 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 a 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—

(A) North of 34°37.3' N. lat., the latitude of Cape Lookout Light, NC—automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, stab net, and drift gillnet.

(B) South of 34°37.3' N. lat.—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 long gillnet, drift 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 a long gillnet.

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

(2) *Unauthorized gear.* The following possession limitations apply when fishing gears other than those specified in paragraph (c)(1) of this section are on board:

(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 king or Spanish mackerel.

(iii) *Other unauthorized gear.* Except as specified in paragraphs (c)(2)(iv) of this section, a vessel with other unauthorized gear on board in, or that has fished in, the EEZ where such gear is not authorized in paragraph (c)(1) of this section is limited 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.* Paragraph (c)(2)(iii) of this section notwithstanding, a vessel in or from the Gulf EEZ that has a valid commercial permit for king mackerel is not limited on a trip to the bag limit for king mackerel when it has on board on that trip other unauthorized gear. Thus, with respect to king mackerel in or from the Gulf EEZ, a vessel that has a commercial permit for king mackerel may use no unauthorized gear in a directed fishery for king mackerel. If such a vessel has a long gillnet or a drift gillnet on board, no king mackerel may be possessed. If such a vessel has other unauthorized gear on board, the possession of king mackerel taken incidentally is not restricted. 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 inches (12.1 cm), 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 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 directed fishing 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.

* * * * *

15. 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). * * *

* * * * *

16. 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 fish 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.

17. In § 622.44, paragraphs (a)(2)(i) introductory text and (a)(2)(ii)(B) introductory text are revised to read as follows:

**§ 622.44 Commercial trip limits.**

* * * * *

(a) * * *

(2) * * *

(i) *Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(iii)—

* * * * *

(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*):

* * * * *

18. 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(g), may not be sold or purchased.

19. 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]**

20. 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]**

21. The words ''king and'' are removed in § 622.44(b)(1)(i) and (b)(1)(ii) introductory text.

[FR Doc. 97–16360 Filed 6–20–97; 8:45 am]

BILLING CODE 3510–22–F