

2001. Under the Executive Order, a “significant energy action” is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this action in accordance with Executive Order 13211. FRA has determined that this action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a “significant energy action” within the meaning of Executive Order 13211.

#### H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT’s dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit <http://DocketsInfo.dot.gov>.

#### List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

■ Accordingly, 49 CFR part 213 is amended by making the following correcting amendments:

#### PART 213—TRACK SAFETY STANDARDS

■ 1. The authority citation for part 213 continues to read as follows:

**Authority:** 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. In § 213.119(l), revise the definitions for “adjusting/de-stressing” and “buckling-prone condition” to read as follows:

#### § 213.119 Continuous welded rail (CWR); plan contents.

\* \* \* \* \*

(l) \* \* \*

*Adjusting/de-stressing* means a procedure by which a rail’s neutral temperature is re-adjusted to the desired

value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

\* \* \* \* \*

*Buckling-prone condition* means a track condition that can result in the track being laterally displaced due to high compression forces caused by critical rail temperature combined with insufficient track strength and/or train dynamics.

\* \* \* \* \*

Issued in Washington, DC, on January 25, 2010.

**Joseph C. Szabo,**  
*Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XU12

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

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the commercial fishery for king mackerel in the Florida east coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** The closure is effective 12:01 a.m., local time, February 4, 2010, through 12:01 a.m., local time, April 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, telephone: 727–824–5305, fax: 727–824–5308, e-mail: [Susan.Gerhart@noaa.gov](mailto:Susan.Gerhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of

Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils’ recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A)(1)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 1,040,625 lb (472,000 kg) for Gulf group king mackerel in the Florida east coast subzone will be reached on February 4, 2010. Accordingly, the commercial fishery for king mackerel in the Florida east coast subzone is closed at 12:01 a.m., local time, February 4, 2010, through 12:01 a.m., local time, April 1, 2010.

From November 1 through March 31 the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4’ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary) to 29°25’ N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary). Beginning April 1, the boundary between Atlantic and Gulf groups of king mackerel shifts south and west to the Monroe/Collier County boundary on the west coast of Florida. From April 1 through October 31, king mackerel harvested along the east coast of Florida, including all of Monroe County, are considered to be Atlantic group king mackerel.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures

would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement

this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: January 26, 2010.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010-1879 Filed 1-26-10; 4:15 pm]

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