

50 CFR Part 642

[Docket No. 70481-7081]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement conservation and management measures as prescribed in Amendment 2 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP), which was resubmitted with revisions following disapproval by the Secretary. This proposed rule provides for (1) revision of the framework measure for seasonal stock assessment, (2) changes in maximum sustainable yield (MSY) and total allowable catch (TAC), and establishment of geographical groups, allocations, and quotas for Spanish mackerel, (3) closure of the Spanish mackerel commercial fishery and reduction of the recreational bag limit to zero when quotas are reached and overfishing is occurring, (4) permits for commercial vessels and charter boats and bag limits for recreational fishermen fishing Spanish mackerel, (5) restrictions for gill nets and prohibition of the use of purse seines for incidental catch, and (6) prohibition of the transfer at sea of king or Spanish mackerel taken under a bag limit from the exclusive economic zone (EEZ). The intended effect of this rule is to arrest overfishing of the Spanish mackerel stock and to rebuild and maintain all stocks at a MSY level through flexible management procedures which allow annual adjustments to the management measures.

DATE: Written comments must be received on or before May 5, 1987.**ADDRESSES:** Comments and requests for copies of Amendment 2, the environmental assessment, and the supplemental regulatory impact review/initial regulatory flexibility analysis should be sent to: William N. Lindall, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: William L. Lindall, 813-893-3722.

SUPPLEMENTARY INFORMATION: The mackerel fishery is regulated under the FMP and its implementing regulations at 50 CFR Part 642. Amendment 1 to the FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and implemented September 22, 1985 (50 FR 34843, August 28, 1985). These proposed regulations would implement Amendment 2 to the FMP which also was prepared jointly by the Councils.

The FMP amendment was previously disapproved by the Secretary of Commerce because it was not consistent with the national standards of the Magnuson Act. The Gulf of Mexico Fishery Management Council (Council) considered the Secretary's comments and resubmitted the FMP amendment for further review and implementation. The Council made changes in the previously disapproved proposed management measures, and provided additional justification for the measures.

The FMP manages the coastal migratory pelagic fishery throughout the EEZ off the South Atlantic coastal States from the Virginia-North Carolina border south and through the Gulf of Mexico. The proposed regulations, except for § 642.5, apply only to this area. The management unit for the FMP consists of Spanish mackerel, king mackerel, and cobia. Dolphin, bluefish, little tunny, and cero are minor species in the fishery, and only the data collection requirements of the FMP apply to these species.

Background

The recent history of Spanish mackerel catches is one of declining landings and catch rates. The commercial net fishery comprises approximately 60 to 75 percent of the total catch, and it occurs during a two- to three-month period in the winter in south Florida.

Catches in the early 1970s averaged over 15 million pounds while catches in 1984 and 1985 were below 10 million pounds. The Councils' Stock Assessment Panel (Panel) has recommended a reduced MSY, based on new data, and a reduced acceptable biological catch (ABC) to allow recovery of the stock over a period of about three years. Recent information also suggests that Atlantic and Gulf Spanish mackerel are separate migratory groups that should be divided geographically for management purposes.

The Panel recommended an increase in the size at harvest of Spanish mackerel, and this proposed rule increases the minimum allowable mesh size in gill nets, which take most of the catch in this fishery.

Special allocations of king and Spanish mackerels for evaluating the use of purse seines are discontinued after completion of the study and review of the catch information.

Framework Measures and Seasonal Stock Assessment

The FMP provides for an annual mackerel stock assessment by the Panel. The Councils are required to convene their advisory panels for review. A proposed change would the Councils the option of convening the advisory panels as they wish. The Councils may request the Regional Director make changes of MSYs, TACs, quotas, bag limits, or permits by notice in the Federal Register.

Maximum Sustainable Yield and Total Allowable catch

The MSY for Spanish mackerel originally was set at 27 million pounds within a range 13.5 to 49.1 million pounds, based on 1975 commercial landings and an adjusted estimate of recreational catch. This wide range was due to data limitations, and the MSY was set too high. New information has resulted in a lower estimate of natural mortality rate (M). A consequence of lower M, with other conditions constant, is a decrease in the estimated number of recruits produced by the stock and an increase in the estimated size of first capture, the latter resulting in an increased yield per recruit. The Panel recommended and the Councils endorsed a change in MSY to 18 million pounds in a range of 15.7 to 19.7 million pounds.

The Panel suggested a reduction in TAC of Spanish mackerel to permit the stock to recover. TAC of 4.7 million pounds will be specified to allow the spawning stock biomass to double and the stock to recover in three years. Based on recent stock identification studies, the Spanish mackerel will be divided into Atlantic and Gulf groups at the Dade/Monroe county boundary in Florida. TAC is divided into 1.8 and 2.9 million pounds for the Gulf and Atlantic groups, respectively. To distribute the reduced catches fairly among users, TAC is allocated between recreational and commercial users based on historic catches from 1979 through 1985, the most recent period for which catch data are available.

A requirement that TAC must be set within the range of the ABC and may not be increased by more than 30 percent in a year will be revised. TAC may not exceed the upper limit of ABC if the stock is overfished. If the stock is not overfished, TAC may increase by

any amount but may not exceed MSY by more than 10 percent. This change will provide the Councils with more flexible management but still protect the Spanish mackerel stock from overfishing.

The fishing year for Spanish mackerel will be revised to coincide with the fishing years of king mackerel groups. For Atlantic Spanish mackerel the fishing year will be April 1 through March 31, and for the Gulf group it will be July 1 through June 30. This revises the Spanish mackerel calendar fishing year which divided the principal commercial seasons of November through March and allows TAC to be set for a biological year.

Commercial Quotas

Commercial quotas based on historical catch patterns are established to allocate the reduced TAC. The commercial Spanish mackerel quota for the Gulf group is set at 57 percent of TAC, 1.03 million pounds initially. The commercial Spanish mackerel quota for the Atlantic group is set at 76 percent of TAC, 2.2 million pounds initially. This fixed percentage distribution will adjust the quotas as TAC is revised.

Bag Limits

The recreational allocation for Spanish mackerel, based on historic catch patterns, is set at 43 percent of the Gulf group TAC, 0.77 million pounds initially, and 24 percent of the Atlantic group TAC, 0.7 million pounds initially. This percentage distribution is based on average recreational catch from 1979 through 1985 and will adjust the allocations as TAC is revised.

The initial bag limit for Spanish mackerel, intended to reduce and distribute the recreational catch, is not specified in this rule. It will be implemented by notice in the Federal Register on completion and review by the Councils of the 1987 stock assessment.

The Councils will review the 1987 stock assessment at their joint meeting April 27, 1987, and recommended appropriate bag limits. The proposed bag limits will be published in the Federal Register as a notice of preliminary change. A 15-day public comment period will be provided. The Councils also will prepare a Supplemental Regulatory Impact Review (SRIR) analyzing the impacts of the proposed bag limit on the recreational fishing industry. The SRIR will be available for review during the public comment period. The bag limit will become zero in any group when the allocation is taken if overfishing on that group is occurring.

The transfer from vessels at sea of mackerel taken under a recreational bag limit is prohibited in order to facilitate enforcement of the bag limits.

Permits

To be exempt from the bag limit and fish under the commercial quota Spanish mackerel, permits are required. This arrangement is the same as the present king mackerel permit system and allows a fair distribution of catch. To qualify for a permit to fish under a commercial quota, the owner or operator must be able to show that ten percent of his earned income the previous calendar year came from commercial fishing, i.e., the sale of the catch.

Charter vessels fishing for coastal pelagic species in this management group are required to have a charter vessel permit. The number of charter vessels is not known, and many enter and leave the business each year. To evaluate the catch of this separate group, it is necessary to require a permit. Charter vessels must fish under the bag limit when under charter. When not under charter, they may fish under the commercial quota provided they have a permit to do so.

Gear Restrictions

Following a three-year study and special allocation for purse seines for taking mackerel, the use of purse seines will be prohibited for king and Spanish mackerels. The Councils determined it would be imprudent to introduce a highly efficient gear into an overfished resource when traditional users are being severely restricted. Use of purse seines is inconsistent with the regulations of all adjacent States. The special allocation for the study was not filled, yet the other commercial users approach closure each year under reduced quotas. Purse seines have the potential of catching large numbers of mackerel under favorable conditions and could substantially overfish a quota before it could be closed. The Councils will review this prohibition when a mackerel stock or group recovers and is again capable of producing its MSY and when traditional commercial fishermen are not taking their allocation.

A minimum mesh size of 3½ inches stretch measure is provided for Spanish mackerel gill nets to increase the minimum size of harvest to about 14 inches. This is the preferred size for the commercial market and will increase the yield of fish recruited to the fishery.

Other Changes

To conform the regulations to current law, "FCZ" will be changed to "EEZ"

wherever it appears. Minor changes in wording are proposed for clarity.

Classification

Section 304(b)(3)(B)(iii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce, upon receipt of a previously disapproved FMP amendment and proposed implementing regulations, to publish the proposed implementing regulations as soon after receipt as possible. At this time the Secretary has not determined that the revised FMP amendment this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared an environmental assessment (EA) for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the EA from the address above.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring preparation of a regulatory impact analysis under Executive Order 12291. The rule's management measures are designed to maintain the productivity of each user group to the maximum extent possible by restoring overfished stocks and preventing overfishing of the king and Spanish mackerel and cobia stocks. The major benefits from Amendment 2 are greater than the associated Federal costs to manage the fishery on a continuing basis. The SRIR concluded that greater benefits will result from this proposed rule in terms of overall poundage produced than from the other alternatives.

The principal action of this proposed rule is to restrict harvest of Spanish mackerel for three years to allow the depleted stocks to recover. In 1983, the king and Spanish mackerel commercial fleet consisted of 188 small net boats and 121 power-assisted net boats which also harvested other species. By the 1985-86 season, the latter declined to fewer than 50. Short-term losses in catch will be exceeded by long-term gains. The present value of the unregulated fishery is \$18.6 million, while the present value under the proposed rule would be \$29.45 million. For the first three years there would be an annual loss of \$891,000, after which there would be an annual increase of \$1.74 million.

While values for the recreational fishery for Spanish mackerel are not

available, a parallel, long-term benefit can be expected. It is not known what effect a bag limit would have on the charter boat industry. The impact could be significant on those boats relying heavily on Spanish mackerel and having few alternatives if the bag limits resulted in reduced charters.

Federal and state enforcement costs of the proposed regulations are estimated at \$58,000 if States adopt compatible regulations and at \$132,000 if they do not. These figures reflect enforcement costs to achieve a reasonable level of compliance for all measures. New measures for Spanish mackerel represent a small percentage of the cost. A copy of the SRIR may be obtained at the address above.

This proposed rule is exempt from the procedure of Executive Order 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 99-659, require the Secretary to publish this proposed rule as soon as possible after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of the order.

The Council prepared an initial regulatory flexibility analysis as part of the SRIR which concluded that this proposed rule will have an insignificant effect on commercial fishing entities and potentially a significant impact on charter vessel entities, depending on customer reaction to the bag limits. A copy of this analysis may be obtained at the address above.

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the PRA. When mandatory reporting by selected recreational fishermen is required, an additional request will be submitted to OMB.

The Councils have determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. Georgia and Texas do not have approved coastal zone management programs. These determinations have been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 24, 1987.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

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

2. In § 642.2, under the definition for *Coastal migratory pelagic fish*, the word "mackerel" is removed from the phrase "Cero mackerel", the definition for *Fishery conservation zone (FCZ)* is removed, the definitions for *Migratory group* and *Total allowable catch (TAC)* are revised, and new definitions for *Exclusive Economic Zone (EEZ)* and *Overfishing* are added in alphabetical order, to read as follows:

§ 642.2 Definitions.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Migratory group means a group of fish that may or may not be a separate genetic stock but which for management purposes may be treated as a separate stock (See Figure 2 and § 642.29(a) for the geographical and seasonal boundaries between migratory groups of king mackerel and § 642.29(b) for the geographical boundary between migratory groups of Spanish mackerel.)

Overfishing or overfished means an excessive mortality rate on a stock of fish (mortality rate exceeds F_{MSY} or $F_{0.1}$) or spawning biomass is low enough to affect recruitment.

Total allowable catch (TAC) means the maximum permissible level of annual harvest specified for a stock or

migratory group after consideration of the biological, economic, and social factors with such level usually being specified from below the upper range of ABC. TAC may be set above the ABC range when it will not result in overfishing.

3. In § 642.4, paragraph (c) is removed, paragraphs (a) and (b) are revised, paragraphs (d) through (k) are redesignated as (c) through (j), and newly redesignated paragraphs (c), (e), and (g) are revised, to read as follows:

§ 642.4 Permits and fees.

(a) Applicability.

(1) An owner or operator of a fishing vessel which fishes for king or Spanish mackerel under the commercial quotas in § 642.21 (a) or (c) is required to obtain an annual vessel permit.

(2) A qualifying owner or operator of a charter vessel may obtain a permit to fish under the commercial allocations for king or Spanish mackerel. Charter vessels must adhere to bag limits while under charter.

(3) An owner or operator or a charter vessel which fishes for coastal migratory pelagic fish is required to obtain an annual charter vessel permit.

(b) Application for permit.

(1) An application for a permit may be submitted to the Regional Director at any time. Applications must be signed by the owner or operator.

(2) An applicant for a permit to fish under the commercial quotas for king and/or Spanish mackerel must provide the following information:

- (i) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel;
- (ii) Name of vessel;
- (iii) The vessel's official number;
- (iv) Home port or principal port of landing, gross tonnage, radio call sign and length of vessel;
- (v) Approximate fish hold capacity of the vessel;

(vi) A sworn statement by the owner or operator certifying that at least 10 percent of his or her earned income was derived from commercial fishing, i.e., sale of the catch, during the preceding calendar year (January 1 through December 31);

(vii) Any other information concerning vessel, gear characteristics, or fishing area requested by the Regional Director;

(viii) The migratory group of king and/or Spanish mackerel that will be fished; and

(ix) Proof of certification as required by paragraph (b)(3) of this section.

(3) The Regional Director or his designee may require the applicant to

provide documentation supporting the sworn statement submitted under paragraph (b)(2)(vi) of this section before a permit is issued or to substantiate why such a permit should not be revoked under paragraph (h) of this section.

(4) An applicant for a charter vessel permit must provide the following information:

- (i) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel;
- (ii) Name of vessel;
- (iii) the vessel's official number;
- (iv) Homeport or principal port of landing, and length of vessel; and
- (v) Passenger capacity.

(c) *Issuance.* The Regional Director or his designee will issue permits at any time for an April through March permit year. Permits for the following permit year become available in February. Until a permit to fish under a commercial quota is received, bag limits apply.

(e) *Duration.* A permit is valid only for that portion of the permit year remaining after it is issued (April 1 through March 31 is the full permit year), unless revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(g) *Display.* A permit issued under this section must be carried aboard the fishing vessel, and a vessel permitted to fish under the commercial quotas must be identified as provided for in § 642.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

4. In § 642.5, paragraphs (a), introductory text, and (a)(1) are revised, to read as follows:

§ 642.5 Reporting requirements.

(a) *Commercial vessel owners and operators.* Any person who owns or operates a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter, or that fishes under a permit required in § 642.4(a)(1) in the Gulf of Mexico EEZ or South Atlantic EEZ or in adjoining State waters, and who is selected to report must provide the following information regarding any fishing trip to the Center Director:

- (1) Name and official number of vessel;

5. In § 642.6, paragraph (a), introductory text, is revised, to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in fishing for king or Spanish mackerel under a commercial quota and the permit specified in § 642.4(a)(1) must—

6. In § 642.7, paragraph (a)(18) is amended by removing the reference to Table 2, and paragraphs (a) (5), (6), (13), (17), (19) through (22), and (27) through (30) are revised, to read as follows:

§ 642.7 Prohibitions.

(5) Possess in the EEZ king or Spanish mackerel on board a vessel with gill nets with a minimum mesh size less than that specified in § 642.24(a), except for an incidental catch allowance as specified in § 642.24(c);

(6) Fish for king or Spanish mackerel using a purse seine;

(13) Fail to transfer or to display a permit as provided for in § 642.4 (f) and (g);

(17) Purchase, sell, barter, trade, or accept in trade, king or Spanish mackerel, harvested in the EEZ from a specific migratory group or specific allocation zone, for the remainder of the appropriate fish year specified in § 642.20, after the quota for that migratory group or allocation zone as specified in § 642.21 (a), (b), (c), or (d) has been reached and closure as specified in § 642.22 has been invoked. (This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by dealers and processors);

(19) Sell the incidental catch allowance of king or Spanish mackerel taken in the EEZ under § 642.24 (c) and (d) after the quotas specified in § 642.21 (a) and (c) have been reached and closure has been invoked as specified in § 642.22(a);

(20) Fish for, retain, or have in possession in the EEZ aboard a vessel permitted to fish under § 642.4 Spanish mackerel from a migratory group after the commercial quota for that migratory group specified in § 642.21(c) has been reached and closure has been invoked under § 642.22(a), except as provided for in § 642.28(c)(2);

(21) Land, consume at sea, sell, or have in possession at sea or at time of landing king or Spanish mackerel in excess of the bag limits specified in § 642.28, except as provided for under § 642.21 (a) and (c);

(22) Fish for king or Spanish mackerel from the Gulf and Atlantic migratory groups in the EEZ as defined in § 642.29 under the quotas specified in § 642.21 (a) and (c) without a permit as specified in § 642.4;

(27) Possess king or Spanish mackerel harvested in the EEZ under a recreational allocation set forth in § 642.21 (b) or (d) after the bag limit for that recreational allocation has been reduced to zero under § 642.22(b);

(28) Sell king or Spanish mackerel harvested under the recreational bag limits in § 642.28(a) except as specified in § 642.28(d);

(29) Operate a vessel that fishes for king or Spanish mackerel in the EEZ with king or Spanish mackerel aboard in excess of the cumulative bag limit, based on the number of persons aboard, applicable to the vessel, as specified in § 642.28(f); or

(30) Transfer at sea in the EEZ from a fishing vessel to any other vessel king or Spanish mackerel caught under the bag and possession limits specified in § 642.28(a) or transfer at sea any such king or Spanish mackerel taken from the EEZ.

7. Section 642.20 is revised to read as follows:

§ 642.20 Seasons.

The fishing year for the Gulf migratory groups of king and Spanish mackerel for allocations and quotas begins at 0001 hours, July 1, and ends at 2400 hours, June 30, local time (see Figure 2). The fishing year for the Atlantic migratory groups of king and Spanish mackerel begins at 0001 hours, April 1, and ends at 2400 hours, March 31, local time. The fishing year for all other coastal migratory pelagic fish begins at 0001 hours, January 1, and ends at 2400 hours, December 31, local time.

8. In § 642.21, paragraph (a)(3) is amended by removing the reference to Table 2 of Appendix A; paragraph (a)(1)(iii) and (e) are removed; paragraph (a)(1) (i) and (ii), (c), and (d) are revised; and paragraph (f) is redesignated as (e) and revised, to read as follows:

§ 642.21 Quotas.

(a) *Commercial quotas for king mackerel.*

(1) the commercial allocation for the Gulf migratory group of king mackerel is 0.93 million pounds per fishing year. This allocation is divided into quotas as follows:

- (i) 0.64 million pounds for the eastern allocation zone; and

(ii) 0.29 million pounds for the western allocation zone.

(c) Commercial quotas for Spanish mackerel.

(1) The commercial quota for the Gulf migratory group of Spanish mackerel is 1.03 million pounds per fishing year.

(2) The commercial quota for the Atlantic migratory group of Spanish mackerel is 2.2 million pounds per fishing year.

(d) Recreation allocations for Spanish mackerel.

(1) The recreational allocation for the Gulf migratory group of Spanish mackerel is 0.77 million pounds per fishing year.

(2) The recreational allocation for the Atlantic migratory group of Spanish mackerel is 0.7 million pounds per fishing year.

(e) Allocation zones. The boundary between the eastern and western zones established for commercial allocation of the Gulf migratory group of king mackerel is a line extending directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to the outer limit of the EEZ (Figure 2).

9. In § 642.22, paragraphs (a) and (b) are revised, to read as follows:

642.22 Closures.

(a) The Secretary, by publication of a notice in the **Federal Register**, will close the king or Spanish mackerel commercial fishery in the EEZ for a particular allocation zone or migratory group when the quota under § 642.21 for that allocation zone or migratory group has been reached or is projected to be reached. The notice of closure for quotas specified under § 642.21 (a) and (c) will also provide that the purchase, barter, trade, and sale within the boundaries of the closed area of king or Spanish mackerel taken from the EEZ after the closure is prohibited for the remainder of that fishing year. This prohibition does not apply to trade in Spanish or king mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by dealers or processors.

(b) The Secretary, after consulting with the Councils and by publication of a notice in the **Federal Register**, may reduce the bag limit for the recreational fishery for king or Spanish mackerel in the Atlantic or Gulf migratory group to zero when the allocation for that group under § 642.21 (b) or (d) is reached or is projected to be reached, only when that group is overfished. After such reduction, all king or Spanish mackerel caught from that group must be returned to the sea immediately and possession of king or Spanish mackerel of that

group on board recreational vessels is prohibited.

10. Section 642.24 is revised, to read as follows:

§ 642.24 Vessel, gear, equipment limitations.

(a) Gill nets.

(1) *King mackerel.* The minimum mesh size for gill nets used to fish for king mackerel is 4¾ inches (stretched mesh).

(2) *Spanish mackerel.* The minimum mesh size for gill nets used to fish for Spanish mackerel is 3½ inches (stretched mesh).

(b) Purse seines. The use of purse seines to fish for king and Spanish mackerels is prohibited except as provided in paragraph (d) of this section.

(c) Incidental catch allowance. An incidental catch of king mackerel is allowed equal to ten percent of the total catch by number of Spanish mackerel on board a vessel with gill nets with a minimum mesh size smaller than that specified in paragraph (a)(1) of this section.

(d) Purse seine catch allowance and exclusions. A vessel with a purse seine aboard will not be considered as fishing for king mackerel or Spanish mackerel and will not be considered in violation of the prohibition of purse seines under § 642.24(b) provided the catch of king mackerel or Spanish mackerel does not exceed one percent or ten percent, respectively, by weight or number (whichever is less) of the catch of all fish aboard the vessel. Such king or Spanish mackerel will be counted toward the quotas provided for under § 642.21 (a) and (c) and are subject to the prohibition of sale under § 642.22(a).

11. In § 642.27, paragraphs (b), (f)(1)(ii), and (f)(2) are revised, to read as follows:

§ 642.27 Stock assessment procedures.

(b) The Councils will consider the report and recommendations of the Group and hold public hearings at a time and place of the Councils' choosing to discuss the Group's report. The Councils may convene the Advisory Panel and the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, the Councils will make findings on the need for changes.

*(f) * * **

*(1) * * **

(ii) Spanish mackerel—15.7 million pounds to 19.7 million pounds.

(2) Setting TACs for each stock or group of fish which should be managed separately, as identified in the FMP. A TAC may not exceed the upper level of

ABC if it results in overfishing. No TAC will exceed the best point estimate of MSY by more than ten percent. Reductions or increases in allocations as a result of changes in TAC are to be as equitable as may be practicable, utilizing similar percentage changes to all participants in a fishery. (Changes in bag limits cannot always accommodate the exact desired level of change.)

12. Section 642.28 is revised, to read as follows:

§ 642.28 Bag and possession limits.

(a) Bag limits. A person who fishes for king or Spanish mackerel from the Gulf of Atlantic migratory groups (see Figure 2) in the EEZ, except a person fishing under the permits and quotas specified in § 642.4(a)(1) and § 642.21(a) or (c), or possessing the purse seine catch allowance specified in § 642.24(d), is limited to the following:

(1) *King mackerel Gulf migratory group.*

(i) Possessing three king mackerel per person per trip, excluding the captain and crew, or possessing two king mackerel per person per trip, including the captain and crew, whichever is the greater, when fishing from a charter vessel.

(ii) Possessing two king mackerel per person per trip when fishing from other vessels.

(2) *King mackerel Atlantic migratory group.* Possessing three king mackerel per person per trip.

(3) *Spanish mackerel.* [Reserved]

(b) All king mackerel must be landed in identifiable form as to number all species (with the understanding that head and tail can be removed). All Spanish mackerel must be landed with head and fins intact.

(c) After a closure under § 642.22(a) is invoked for the allocations and quotas specified in § 642.21(a) and (c):

(1) A vessel permitted under § 642.4(a)(1) may not fish for that species of mackerel in the zone(s) for that allocation or quota under the bag limit specified in paragraph (a) of this section except as provided for under paragraph (c)(2) of this section.

(2) Charter vessels permitted to fish under the commercial quotas for mackerel may continue to harvest fish under the bag limit specified in paragraph (a) of this section provided they are under charter and the recreational fishing allocation for the respective migratory group of mackerel under § 642.21(b) and (d) have not been reduced to zero under § 642.22(b).

(d) A fisherman may sell his catch of mackerel taken under the bag limits in

paragraph (a) of this section unless the respective migratory group or allocation or the commercial quota in § 642.21(a) or (c) has been reached and closure under § 642.22(a) has been invoked. Mackerel sold by fishermen are counted against the appropriate commercial allocation or quota in § 642.21(a) or (c) for the area where they are caught.

(e) A person who fishes for mackerel in the EEZ may not combine the bag and possession limits of this part with any bag or possession limits applicable to State waters.

(f) The operator of a vessel that fishes for mackerel in the EEZ is responsible for the cumulative bag limit, based on the number of persons aboard, applicable to that vessel.

(g) A person who fishes for king or Spanish mackerel from the EEZ under the bag limits specified in § 642.28(a), or who possesses such king or Spanish mackerel in the EEZ, may not transfer at sea king or Spanish mackerel from a fishing vessel to any other vessel.

13. Section 642.29 is revised, to read as follows:

§ 642.29 Area and time separation.

(a) *King mackerel.*

(1) *Summer separation.* During the summer period (April 1 through October 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25°48' N. latitude) to the outer limit of the EEZ (Figure 2).

(2) *Winter separation.* During the winter period (November 1 through March 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25' N. latitude) to the outer limit of the EEZ (Figure 2).

(b) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is a line extending directly east from the

Dade/Monroe County, Florida boundary (25°20.4' N. latitude) to the outer limit of the EEZ.

Appendix A—[Amended]

14. In Appendix A, Tables 1 and 2 are removed.

§ 642.3 [Amended], § 642.5 [Amended], § 642.7 [Amended], § 642.23 [Amended], § 642.26 [Amended]

15. In addition to the amendments set forth above, the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places:

§ 642.3(c);

§ 642.5 (b) and (c);

§ 642.7(a) (3), (4), (12), and (18);

§ 642.23 (a) and (b); and

§ 642.26(a)(1)(iii) and (2).

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