

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The Assistant Administrator for Fisheries has initially approved the Fishery management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic. NOAA announces that copies of the fishery management plan are available, issues this proposed rulemaking to implement the plan, and requests comments on the plan and implementing regulations. The plan and proposed implementing regulations: (1) Provide management measures to minimize conflicts between user groups; (2) establish optimum yields for king and Spanish mackerel and cobia and quotas for king and Spanish mackerel; (3) establish size limits for Spanish mackerel and cobia; (4) provide for observers on vessels harvesting king and Spanish mackerel with purse seines; and (5) establish a minimum mesh size for gill nets used to harvest king mackerel. The intended effect of these regulations is to reduce user-group conflicts and prevent overfishing of the king and Spanish mackerel and cobia stocks.

DATES: Written comments must be received on or before July 2, 1982.

ADDRESSES: Comments and requests for copies of this fishery management plan or the regulatory impact review should be sent to: Mr. Jack T. Brawner, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Mr. Harold B. Allen, 813-893-3141.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries initially approved the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) on April 1, 1982, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). These proposed regulations implement the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic

Fishery Management Councils (Councils).

The FMP manages the coastal pelagic fishery throughout the fishery conservation zone (FCZ) off the southern Atlantic coastal States from the Virginia-North Carolina border south and through the Gulf of Mexico. The FMP covers Spanish mackerel, king mackerel, cobia, dolphin, bluefish, little tunny and cero mackerel. The last four are minor species in the fishery that are caught incidentally to the directed fishing effort for king and Spanish mackerel and cobia; only data collection requirements of the FMP apply to these minor species. Bluefish are exempt from data collection requirements in the Atlantic because the Mid-Atlantic Fishery Management Council intends to develop a plan for bluefish.

Historically, the majority of the coastal pelagic fishery is conducted from the Virginia-North Carolina border south and in the Gulf of Mexico. Minor commercial catches of Spanish and king mackerel are taken north to the mid-Atlantic States and Chesapeake Bay. However, because these catches always have been less than two percent of the southern catches, they were not used in calculating maximum sustainable yield (MSY). For this reason, regulations would not apply to these areas.

Background

The coastal migratory pelagic (mackerel) fishery of the Gulf of Mexico and south Atlantic is of importance to recreational and commercial fishermen, the businesses directly serving them, and the regional economies. The MSY of the migratory pelagic management unit in the Gulf and south Atlantic is 65 million pounds. This estimate includes stocks of king mackerel, Spanish mackerel, and cobia.

The recreational fishery occurs both inshore (within three miles of shore) and offshore for Spanish and king mackerel. Recreational surveys indicated that in 1975, anglers caught 33.1 million pounds and in 1979, 15 million pounds. The poor nature of recreational catch statistics makes it difficult to say whether catches have been declining over time. However, expenditures related to recreational fishing have been constantly increasing over time: in 1980, the value of sales related to the management unit was an estimated \$103 million with an associated 2,840 person-years of employment.

The commercial fishery for king mackerel is conducted offshore, while the Spanish mackerel fishery occurs in both zones. Commercial landings of king mackerel peaked at 10.5 million pounds in 1974, and Spanish mackerel

commercial landings peaked at 18.0 million pounds in 1976. The value of the commercial fishery increased steadily; in 1980, the dockside value of the king and Spanish mackerel fisheries was \$3.5 million and its contribution to the Gross National Product exceeded \$20 million.

The increasing level of effort in both fisheries may have contributed to a decline in the relative abundance of stocks of both mackerel species. Cobia stocks in particular are overfished. In addition, intense conflicts exist between recreational and commercial users of the mackerel stocks, and between commercial users employing different gears.

Quotas

The Councils established the optimum yield (OY) for king mackerel at 37 million pounds annually. This amount is equal to the best available estimate of MSY and it is expected to balance the risk of overfishing against the chance of failure to maximize utilization of the resource. The total allowable catch is set at OY and is divided into allocations of 23 million pounds for the recreational fishery and 9 million pounds for the commercial fishery. The commercial allocation is further divided between hook-and-line fishermen (3,877,200 pounds) and net fishermen (5,122,600 pounds). Division of the annual quota for king mackerel will prevent one or more groups from taking such a large portion of the harvest that other users are unable to engage in their traditional fishery. The fishery will be closed for a user group, including the recreational fishery, when its allocation has been harvested.

The OY for Spanish mackerel is also set at MSY, which is 27 million pounds annually, with no quotas by user group. This permits some increase in the present catch and allows optimization of economic and social benefits to users. The fishery will be closed when OY is harvested. For both species, catches will be counted against the quotas for the fishing year in which they are harvested, not when they are sold.

The OY for cobia is determined to be the available amount of cobia at a size equal to or greater than a 33-inch fork length, measured from the tip of the head to the center of the tail. This OY will reduce the possibility of recruitment overfishing, stabilize catch at or near MSY, and increase yield and average size of fish. No other catch limitation is set for cobia.

It is anticipated that domestic fishermen will harvest the OYs of king and Spanish mackerel and cobia; therefore, the total allowable level of

foreign fishing is specified as zero for these species.

Size limits

To reduce the potential for overfishing by commercial and recreational fishermen, a size limit of 12 inches is proposed for Spanish mackerel. This will discourage harvest of Spanish mackerel below the size required for optimum biological yield.

A catch allowance for undersized fish will be allowed equal to five percent of the total catch by weight of Spanish mackerel on board. This allowance will provide for any incidental catch and yet will discourage marketing of small fish. The size limit for cobia is 33 inches. There is no size limit for king mackerel.

Gear limitations

A minimum mesh size of 4 1/4 inches is proposed for king mackerel gill nets. This measure will eliminate the harvest of small, less valuable fish and will increase the potential yield from the fishery. The use of gill nets for the harvest of king mackerel is extremely controversial and has resulted in intense conflicts between netters and commercial hook-and-liners and recreational fishermen. Commercial hook-and-liners and sport fishermen perceive this management measure as necessary to prevent overfishing of the resource by users of gill nets. The proposed minimum mesh size is consistent with Florida law; presently all gill netting of mackerel takes place in waters off the coast of the State of Florida.

Fishing group conflicts

Procedures are proposed in the FMP to resolve conflicts when they occur between recreational and commercial fishermen and between commercial hook-and-line fishermen and commercial net fishermen. Upon determining that a conflict exists, the Secretary of Commerce (Secretary), after consultation with the Councils, may implement by regulatory amendment such FMP measures as (1) separation of user groups by fishing time and area; (2) prohibition of specific gear; (3) establishment of bag limits for recreational fishermen and trip limits for commercial fishermen; and (4) establishment of a size limit for king mackerel.

In addition, specific measures are proposed for field order action to resolve recurring conflicts between king mackerel gillnet fishermen and hook-and-line fishermen in the FCZ off the southern coast of Florida between 27°00.6' N. latitude and 27° 50' N. latitude. These measures include

establishment of an area within which the use of gill nets or hook-and-line gear may be restricted, and the establishment of two other areas between 27° 10' N. latitude and 27° 50' N. latitude where the use of gear may be alternated or fishing for king mackerel may be prohibited. These measures can be implemented by the Secretary only after consultation with the South Atlantic Fishery Management Council, appropriate law enforcement agencies, the State of Florida agency with fishery management responsibility, and any other persons that the Secretary deems appropriate.

Purse Seines

There presently are no prohibitions against harvesting king and Spanish mackerel with purse seines in the FCZ. However, certain State possession and landing laws have effectively prohibited use of this gear, both in State waters and the FCZ. Implementation of the FMP is expected to affect the validity of these laws as applied to FCZ-harvested fish, and to affect their enforceability in State waters.

Purse seines are very efficient and highly controversial gear. Both Councils and most users of the resource, including purse-seine operators, believe unrestricted purse seining will result in overfishing and in adverse socioeconomic impacts on all users of the mackerel stocks. Since data for evaluating the effect of this gear are inadequate, the Councils have restricted the quantity of mackerel that may be harvested with purse seines (400,000 pounds of king mackerel and 300,000 pounds of Spanish mackerel in the Gulf of Mexico and the same amounts in the Atlantic). Also, the Councils require that all vessels fishing purse seines have observers on board. This will facilitate collecting information on catch per unit of effort and size selectiveness of this gear. Harvest restrictions will protect the resource while these data are collected and appropriate management measures are developed for the control of purse seines.

Statistical Reporting

Better information on landings is needed for effective management of the pelagic fishery. Currently, statistics on commercial landings are based only on data obtained through dealers and processors. Obtaining complete, detailed biological, social, and economic data from each user would be prohibitively expensive. Therefore, NMFS is developing a mandatory reporting system that utilizes sampling methods whenever a sample will provide adequate information. The Center Director, Southeast Fisheries Center,

National Marine Fisheries Service, will determine the number of individuals selected, the reporting interval, and the duration of reporting, based on specific management needs.

Because this system has not been completely developed and the forms are not yet prepared, the proposed regulations reserve the section that provides for data reporting. It is anticipated that the mandatory report system will be proposed as soon as sampling procedures and reporting forms are developed and approved. The forms will be submitted to the Office of Management and Budget for clearance under section 3507 of the Paperwork Reduction Act, Pub. L. 98-511.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that the plan complies with the national standards, other provisions of the Magnuson Act, and other applicable law.

The adoption and implementation of the FMP is a major Federal action that will have a significant impact on the quality of the human environment. Under the National Environmental Policy Act and NOAA Directive 02-1 draft environmental impact statement was filed with the Environmental Protection Agency. The notice of availability was published on February 5, 1980 (45 FR 7831).

The Administrator, NOAA, has determined that these proposed regulations are not major under Executive Order 12291. A Regulatory Impact Review (RIR) has been prepared that analyzes the expected benefits, costs of the regulatory action. The review provides the basis for the Administrator's determination. The FMP's management measures are designed to maintain current landings and productivity of each user group, while preventing overfishing of the king and Spanish mackerel and cobia stocks.

The RIR indicates that the proposed regulations will result in benefits to fishermen and the economy that are greater than the associated Federal costs to manage the fishery on a continuing basis. Benefits that will accrue from implementation of the proposed measures come from the prevention of overfishing. The benefits of pounds of fish, is the difference between the OY specified in the plan and the amount caught after overfishing occurs; in monetary terms, the benefit is the difference between the contribution to the Gross National Product (GNP) by OY and the contribution to GNP associated with the catch after

overfishing occurs. The expected benefits range from \$5.8 million to \$27.9 million annually over the next five years.

Empirical data indicate that the level of fishing effort by commercial and recreational fishermen is increasing rapidly and mackerel stocks and catch will decline if effort increases. The FMP and implementing regulations will not increase the Federal paperwork burden as defined by the Paperwork Reduction Act, because the data collection system will not be implemented at this time. Section 642.24(b) of the implementing regulations requires that owners or operators of purse seine vessels fishing for king and Spanish mackerel report their catch for each trip by telephone. Since there are fewer than 10 vessels in this fleet, this information is to be gathered from fewer than ten persons, so no "collection of information" is involved under the Paperwork Reduction Act.

These regulations will have a significant impact on a substantial number of small entities, under the Regulatory Flexibility Act. An initial regulatory flexibility analysis has been prepared in compliance with the Regulatory Flexibility Act and has been combined with the RIR summarized above.

The Coastal Zone Management offices on each State having an approved program under the Coastal Zone Management Act and whose territorial waters are adjacent to the management area have reviewed the FMP. These offices have determined the FMP to be consistent with their coastal zone management programs. The States of Georgia and Texas do not have approved programs.

List of Subjects in 50 CFR Part 642

Fish; Fisheries.

Dated: May 12, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

50 CFR is amended by adding a new Part 642 to read as follows:

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

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

Subpart A—General Provisions

§ 642.1 Purpose and scope.

(a) The purpose of this Part is to implement the Fishery Management Plan for Coastal Migratory Pelagic Resources developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under the Magnuson Act.

(b) This Part regulates fishing for coastal migratory pelagic fish by fishing vessels of the United States within the fishery conservation zone off the Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

§ 642.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this Part have the following meanings:

Authorized Officer means:

- Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
- Any certified enforcement officer or special agent of NMFS;
- Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or
- Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Center Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149; telephone 305-381-5781.

Coastal migratory pelagic fish means the following species:

- King mackerel—*Scomberomorus cavalla*
- Spanish mackerel—*Scomberomorus maculatus*
- Cero mackerel—*Scomberomorus regalis*
- Cobia—*Rachycentron canadum*
- Little tunny—*Euthynnus alletteratus*
- Dolphin—*Coryphaena hippurus*
- Bluefish—*Pomatomus saltatrix* (Gulf of Mexico only)

Commercial fisherman means a person who sells any part of his catch.

Dealer means the person who first receives or purchases fish directly from a commercial fisherman.

Fishery conservation zone (FCZ) means that area adjacent to the territorial sea of the constituent States of the United States which, except where modified to accommodate international boundaries, encompassed 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.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

- The catching, taking, or harvesting of fish;
- The attempted catching, taking, or harvesting of fish;
- Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
- Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

- Fishing; or
- Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fork length means the distance from the tip of the head to the center of the tail (caudal fin).

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)

NMFS means the National Marine Fisheries Service.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

- Any person who owns that vessel in whole or in part;
- Any charterer of the vessel, whether bareboat, time or voyage; or
- Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; and
- Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Processor means a person who processes fish products for commercial use or consumption.

Regional Director means the Regional Director, Southeast Region, NMFS, Duval Building, 6450 Koger Boulevard, St. Petersburg, Florida 33702; telephone, 813-893-3141, or a designee.

Secretary means the Secretary of Commerce or a designee.

U.S. fish processor means a facility located within the United States for, and vessels of the United States used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) A vessel documented or numbered by the U.S. Coast Guard under United States law; or

(b) A vessel under five net tons that is registered under the laws of any State.

§ 642.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

(c) These regulations apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico and south Atlantic FCZ.

§ 642.4 Permits and fees.

No permits or fees are required for domestic recreational or commercial fishing vessels engaged in fishing in the coastal migratory pelagic fishery.

§ 642.5 Recordkeeping and reporting requirements. (Reserved)

§ 642.6 Vessel identification (Reserved).

§ 642.7 Prohibitions.

It is unlawful for any person to:

(a) Fail to comply immediately with enforcement and boarding procedures specified in § 642.8;

(b) Fish for king or Spanish mackerel in violation of any area closures or

season closures as specified in § 642.22 or § 642.28;

(c) Possess in the FCZ Spanish mackerel under the minimum size limit specified in § 642.23(a)(1), except for the catch allowance specified in § 642.23(a)(2);

(d) Possess in the FCZ cobia under the minimum size limit specified in § 642.23(b);

(e) Fish for king mackerel using gill nets with a minimum mesh size less than that specified in § 642.24(a)(1), except for a catch allowance as specified in § 642.24(a)(2);

(f) Fish for king or Spanish mackerel using a purse seine, except in compliance with § 642.24(b);

(g) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any fish or parts thereof taken or retained in violation of the Magnuson Act, this Part, or any other regulation under the Magnuson Act;

(h) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this Part or any other regulation or permit issued under the Magnuson Act;

(i) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (h) of this section;

(j) Resist a lawful arrest for any act prohibited by this Part;

(k) Interfere with, delay, or prevent by any means the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this Part;

(l) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested pelagic fish to any foreign fishing vessel, while such vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under Section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested pelagic fish; or

(m) Violate any other provision of this Part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 642.8 Facilitation of enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logbook, and catch for

purposes of enforcing the Magnuson and this Part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard cutter or aircraft or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" means "You should stop your vessel instantly."

(2) "SQ3" means "You should stop heave to; I am going to board you," and

(3) "AA AA AA etc." is the call to an unknown station, to which the signaled vessel should respond by illuminating any vessel identification.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(2) Provide a safe ladder for the Authorized Officer and his party if necessary;

(3) When necessary to facilitate the boarding, provide a man rope, safety line, and illumination for the ladder; and

(4) Take such other actions as necessary to ensure the safety of the Authorized Officer and his party and to facilitate the boarding.

§ 642.9 Penalties.

Any person or fishing vessel found to be in violation of this Part is subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, and to 50 CFR Parts 600 (Citations) and 621 (Civil Procedures) and other applicable law.

Subpart B—Management Measures

§ 642.20 Seasons.

The fishing year for all species of coastal migratory pelagic fish begins on July 1 and ends on June 30.

§ 642.21 Quotas.

(a) *Hook-and-line and net fishing.—King mackerel.* The total allowable catch for king mackerel is 37 million pounds per year.

(i) Annual quotas are 28 million pounds for the recreational fishery and 9 million pounds for the commercial fishery. A fish is counted against the commercial quota if it is sold.

(ii) The commercial quota is further divided between hook-and-line fishing and net fishing as follows:

Hook and Line: 3,877,200 pounds
Net: 5,122,800 pounds

(2) *Spanish mackerel*. The total allowable catch for Spanish mackerel is 7 million pounds per year.

(b) *Purse seine fishing*—(1) *King mackerel*. The harvest of king mackerel by purse seines is limited to 400,000 pounds in the Atlantic and 400,000 pounds in the Gulf of Mexico per year. King mackerel harvested by purse seines are included in the net quota under paragraph (a)(1)(ii) of this section.

(2) *Spanish mackerel*. The harvest of Spanish mackerel by purse seines is limited to 300,000 pounds in the Atlantic and 300,000 pounds in the Gulf of Mexico per year. Spanish mackerel harvested by purse seines are included in the total allowable catch under paragraph (a)(2) of this section.

(3) *Geographic boundary*. The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and the 83° W. longitude, proceeds north to 24°35' N. latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland.

§ 642.22 Closures.

(a) The Secretary, by publication of a notice in the Federal Register, shall close the king or Spanish mackerel fishery for a particular gear type or user group when the quota is reached for that gear type or user group under § 642.21(a)(1) or (b).

(b) The Secretary, by publication of a notice in the Federal Register, shall close the king or Spanish mackerel fishery when the total allowable catch for the fishery under § 642.21(a)(1) or (2) has been harvested.

§ 642.23 Size restrictions.

(a) *Spanish mackerel*—(1) *Minimum size*. The minimum size limit for possession of Spanish mackerel in the FCZ is 12 inches (fork length) for both the recreational and commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

(2) *Catch allowances*. A catch of Spanish mackerel under the 12-inch fork length is allowed equal to five percent of the total catch by weight of Spanish mackerel on board.

(b) *Cobia*. The minimum size limit for the possession of cobia in the FCZ is 33 inches (fork length).

§ 642.24 Vessel, gear, equipment limitations.

(a) *Gill nets*—(1) *Minimum size*. The minimum mesh size for king mackerel gill nets is 4½ inches (stretched mesh).

(2) *Catch allowances*. A catch of king mackerel is allowed equal to ten percent

of the total catch by weight of Spanish mackerel on board a vessel using gill nets with a minimum mesh size smaller than that specified in paragraph (a)(1) above.

(b) *Purse seines*. Owners or operators of purse seine vessels fishing for king and Spanish mackerel shall:

(1) Send a letter of intent to fish for king or Spanish mackerel to the Regional Director, at least three months in advance of beginning fishing each fishing year.

(2) Notify the Center Director by telephone, in advance of each trip, of the expected landing port, dock, and date;

(3) Report to the Center Director, by telephone, the quantity of landings, by species, for each trip as soon as practical after landing, and not later than 15 hours after unloading.

(4) Upon request by NMFS, accommodate observers for scientific and statistical purposes; and

(5) Provide for embarkment and disembarkment of observers as determined by the Center Director.

§ 642.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

§ 642.26 Area, time limitations.

(a) *Field orders*. Subject to the procedures and restrictions set forth in paragraphs (b) and (c) of this section, the Secretary may take any of the following actions by field order under the circumstances specified:

(1) If the Secretary determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in an area of the FCA between 27°00.5' N. latitude and 27°50' N. latitude off the east coast of the State of Florida, the Secretary may:

(i) Prohibit use of gillnet gear to take king mackerel within the areas (depicted in Figure 1 and described in Table 1) encompassed by points 1, 2, 5, and 6; 2, 3, 4, and 5; or 1, 2, 3, 4, 5, and 6;

(ii) Prohibit use of hook-and-line gear to take king mackerel in the FCZ landward of a line between points 1 and 2, 2 and 3, or 1, 2, and 3;

(iii) In the first year a conflict arises, close the FCZ between 27°30' N. latitude and 27°10' N. latitude to the use of gill nets for taking king mackerel, and close the FCZ between 27°30' N. latitude and 27°50' N. latitude to the use of hook-and-line gear for taking king mackerel (In any succeeding year that a conflict develops, the Secretary may change the zone that is closed to each gear); or

(iv) Alternate daily the use of each gear within the area between 27°10' N.

latitude and 27°50' N. latitude as follows:

(A) On even days of the month, close the area to the use of gillnet gear to take king mackerel.

(B) On odd days of the month, close the area to the use of hook-and-line gear to take king mackerel.

(2) If a conflict described in paragraph (e)(1) of this section results in death or serious bodily injury or significant gear loss, the Secretary may close the fishery for king mackerel to all users in the FCZ between 27°10' N. latitude and 27°50' N. latitude.

(b) *Procedures*. The Secretary shall use the following procedures in determining whether a conflict exists for which a field order is appropriate:

(1) When the Secretary is advised by any person that a conflict exists, he will confirm the existence of such a conflict through information supplied him by NMFS, the U.S. Coast Guard, other appropriate law enforcement agencies, or personnel of the State of Florida agency with marine fishery management responsibility.

(2) The Secretary shall also confer with the Chairmen of the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils), the State of Florida agency with marine fishery management responsibility, and such other persons as the Secretary deems appropriate.

(c) *Restrictions on field orders*.

(1) No field order may be implemented which results in exclusive access of any user group or gear type to the fishery during the time the field order is in effect.

(2) No field order may be effective for more than five days, except under the conditions set forth in paragraph (c)(4) of this section.

(3) When the Secretary submits to the Federal Register a field order for implementation under this section, he will immediately arrange for a fact-finding meeting in the area of the conflict, to be convened no later than 72 hours from the time of implementation of the field order:

(i) The following persons will be advised of such a meeting:

(A) The Chairmen of the Councils;

(B) The State of Florida agency with fishery management responsibility;

(C) Local media;

(D) Such user-group representatives or organizations as may be appropriate and practicable; and

(E) Other persons as deemed appropriate by the Secretary or as requested by the Chairmen of the Councils or the State of Florida agency.

(ii) The fact-finding meeting will be held for the purpose of evaluating the following:

(A) The existence of a conflict needing resolution by field order;

(B) The appropriate term of the field order, i.e., either greater or less than five days;

(C) Other possible solutions to the conflict besides Federal intervention; and

(D) Other relevant matters.

(4) If the Secretary determines, as a result of the fact-finding meeting, that the term of the field order should exceed five days, he may, after consultation with the Chairmen of the Councils and the State of Florida agency, extend such field order for a period not to exceed 30 days from the date of initial implementation. If the Secretary determines that it is necessary or appropriate for the term of such field order to extend beyond 30 days, he may extend it a second time, after consulting with the Chairman of the Council, for

such period of time as necessary to resolve the conflict.

(5) The Secretary may rescind a field order if he finds, through application of the same procedures set forth in paragraph (b) of this section, that the conflict no longer exists.

TABLE 1

Point 1—Bethel Shoal light at 27°44.3' N. latitude, 80°10.4' W. longitude.

Point 2—A wreck 15 miles southwest of Fort Pierce Inlet at 27°23.5' N. latitude, 80°03.7' W. longitude.

Point 3—Market WR 18, five miles northeast of Jupiter Inlet at 27°00.6' N. latitude, 80°02.0' W. longitude.

Point 4—27°00.6' N. latitude, 79°44.0' W. longitude at approximately the 100 fm. depth due east of Point 3.

Point 5—27°23.5' N. latitude, 79°54.0' W. longitude at approximately the 100 fm. depth due east of Point 2; and

Point 6—27°44.3' N. latitude, 79°53.5' W. longitude at approximately the 100 fm. depth due east of Point 1.

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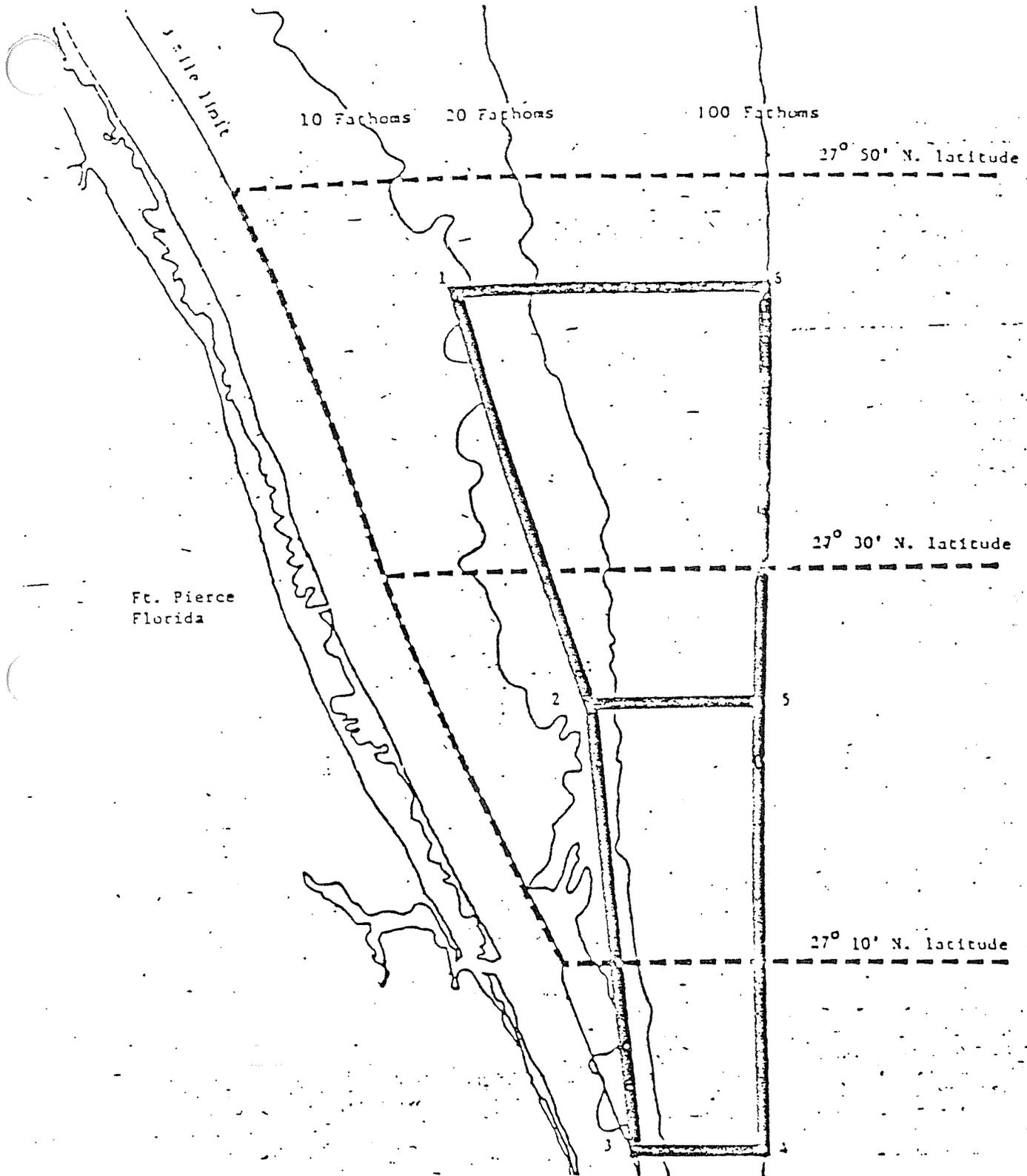


Figure 1 Area divisions under 4 642.26