

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 642****[Docket No. 50537-5133]****Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic****AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Final rule.

SUMMARY: NOAA issues a final rule to implement conservation and management measures as prescribed in Amendment I (amendment) to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This final rule provides for measures designed (1) to maintain more effectively the landings and productivity of each user group to the maximum extent possible; (2) to restore the overfished stock of Gulf king mackerel; and (3) to prevent overfishing of king and Spanish mackerel, and cobia. The intended effect is to rebuild and maintain all stocks at a maximum sustainable yield (MSY) level.

EFFECTIVE DATE: September 22, 1985.

ADDRESSES: Copies of the final supplemental regulatory impact review/regulatory flexibility analysis are available from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), approved the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) on April 1, 1982, and the Secretary of Commerce (Secretary) implemented final regulations on February 4, 1983 (48 FR 5272), under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). This final rule implements the amendment to the FMP which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). The FMP manages the coastal migratory pelagic fishery throughout the fishery conservation zone (FCZ) off the South Atlantic coastal states from the Virginia-North Carolina border south and through the Gulf of Mexico to the Texas-Mexico border. The rule applies only to this area. The management unit for the FMP

consists of Spanish mackerel, king mackerel, and cobia. Dolphin, bluefish (Gulf of Mexico only), little tunny and cero mackerel are minor species in the fishery, and data collection requirements of the FMP apply only to these seven species. The preamble to the proposed rulemaking for the amendment contained a description of recent data and analyses which indicate there are two migratory groups of king mackerel and that these should be treated as separate stocks for management purposes. In addition, allocations by user groups, quotas, bag limits, statistical reporting, optimum yield, and a flexible management system were discussed in detail. These discussions are not repeated here.

Comments and Responses

Forty-five comments on the proposed rule were received from 18 commenters. Commenters included State marine resource agencies, commercial fishing organizations, the Gulf and South Atlantic Fishery Management Councils, a recreational fishing organization, and fishermen.

Inconsistency With National Standards

A recreational fishing organization stated that the objective of stabilizing yield at MSY inconsistent with national standard 1. NOAA does not agree. The long-term goal of optimum yield is to achieve MSY as is stated in the definition of the word "optimum" in the Magnuson Act (section 3(XVIII)(B)) and to prevent overfishing, which is the primary objective of national standard 1. Therefore, no change is made in the final rule.

The same recreational fishing organization stated that the rule is inconsistent with national standard 2 because the best scientific information available was not used. NOAA does not agree. All of the best scientific information available, including the catch records identified by the organization, was factored into the scientific assessments. Therefore, no change is made in the final rule.

This recreational fishing organization also stated that the rule is inconsistent with national standard 4 because of the differences in catch reduction among user groups. NOAA does not agree. The percentage reduction in the commercial catch is smaller than the recreational reduction because the Councils took into account the sale of king mackerel by recreational fishermen and thus transferred 2 percent of the recreational allocation to the commercial quota. Therefore, no change is made in the final rule.

The same recreational fishing organization stated that the rule deprives the Secretary of Commerce from approving or rejecting Council plans. NOAA does not agree. The Secretary has delegated authority to the Regional Director to serve as his designee therefore the Secretary is not denied access to the approval process. In addition, the Regional Director may not act arbitrarily if he should deem it appropriate to reject the Council's recommendations made under § 642.27. To reject a recommendation, the Regional Director must find that the recommendation is inconsistent with the objectives of the FMP, the Magnuson Act or other applicable law. Further, the rejection must be supported in writing. Paragraph § 642.27(d) has been modified to clarify this requirement.

Boundaries for King Mackerel Stocks

A commercial fishermen's non-profit corporation requested that the winter boundary between the Gulf and Atlantic king mackerel stocks be moved to the Volusia/Brevard County, Florida line and one individual recommended a move to Cape Canaveral. The Volusia/Flagler County, Florida line was established based on the best tagging and stock assessment data available. NOAA is currently conducting additional tagging studies to better determine distribution of the two stocks of king mackerel. Therefore, NOAA is implementing the Volusia/Flagler location for the line of separation in the final rule until new data indicate that the issue should be readdressed by the councils.

Quotas and Allocations

A recreational fishing organization stated that the number of fish killed and lost by purse seine operations should be counted against the commercial quota. NOAA points out that the amendment establishes a quota for purse seines for the purpose of studying the impacts. The study will be completed on April 30, 1986. Once the study results are available the Councils will readdress the purse seine issue.

A major fishery organization and a commercial non-profit corporation commented that the division of the commercial quota between Florida commercial fishermen and Louisiana commercial fishermen is unfair. A member of the Florida Marine Fisheries Commission expressed concern with the allocation between Louisiana and Florida fishermen but in general agreed with it. NOAA shares this concern and agrees that from a historical perspective Florida fishermen will suffer a greater percentage of the reduced catch.

Nevertheless, NOAA believes it is the Council's prerogative to distribute the allocations so that one geographical area does not take a disproportionate share of the catch. It should also be noted that the western geographical area includes Alabama, Mississippi and Texas in addition to Louisiana. From the perspective that Florida will get 69 percent of the allocation and the western area 31 percent, the allocation does not appear to be unfair to Florida fishermen. Therefore, the measure is implemented in the final rule as proposed.

A non-profit commercial fishing corporation expressed concern over the ratio of recreational and commercial harvest of king mackerel and requested that this be monitored. They were primarily concerned with the sale of recreationally caught fish which are counted against the commercial quota. The harvest of both groups and other issues will be monitored by NMFS through the FMP's permit and statistics programs. Should the monitoring program indicate the need to readdress the allocations, they may be modified by FMP amendment. Therefore, NOAA has made no change in the final rule.

A recreational fishing organization stated the rule discriminates against consumers because the netters will take such large quantities in a short period of time that consumers use will be restricted to frozen products. NOAA does not agree. Netting occurs primarily in the winter months on the southeast coast of Florida. The amendment will not change this pattern. Best available data shows that netters take about 44 percent of the commercial catch, yet only 15 percent goes to the frozen market. No change is made in the final rule because there is no evidence that net catches will increase under this amendment, thus the amount going to the freezer should not increase.

The State of Florida commented that total allowable catch (TAC) for Spanish mackerel was too high and, along with a recreational fishing organization, commented that a recent assessment by Florida's Department of Natural Resources shows that the Spanish mackerel stock is declining. NOAA concludes that TAC was set based on the best scientific information available at the time the amendment was prepared. Any necessary changes in TAC based on more recent information can be made under provisions set forth in § 642.27 of the rule.

The State of Florida further commented that the TAC for king mackerel should be near 11 million pounds. NOAA does not agree.

Although a TAC of 11 million pounds would rebuild the stock more quickly, the Councils chose the higher range based on lessening the socio-economic impacts while simultaneously protecting and rebuilding the stock. Therefore, TAC is set as proposed.

A recreational fishing organization stated that enforcement costs are too low. NOAA's reassessment of the costs showed they were too low. Revised estimates are \$60,000 if the States adopt compatible regulations. Without compatible State regulations, the regulations would be extremely expensive to enforce.

Closing of Fishing

One individual recommended a two year moratorium on commercial and recreational fishing for king and Spanish mackerel. Another suggested a five year moratorium on net fishing. One sport fishing association and four individuals recommended eliminating fishing with gill nets and purse seines along with the use of spotter planes. The State of Florida and one commercial fishing organization suggested the prohibition of purse seines. The State of Florida also suggested banning the use of roller rigs and deep gill nets in the Spanish mackerel fishery. Two commenters suggested prohibiting all commercial fishing for king mackerel. While data indicate the need for management of the mackerel stocks, there is no justification for implementing such severe measures that would be economically devastating for the commercial fishing industry or that would deny recreational fishermen access to the resource.

Information is being gathered on purse seines through the use of observers authorized under the FMP. This study will terminate in the spring of 1986. When the study data as well as information from other studies become available necessary modification to the FMP will be considered. However, because of the lack of justification NOAA is not implementing the commenters' recommendations in the final rule.

Bag Limit

A suggestion was received from one individual recommending a change of the king mackerel bag limit of two fish per person per trip to two fish per person per day. This requirement was considered but abandoned since it is impossible to enforce bag limits on a daily basis because of the question of when a fishing day starts or ends. Therefore, NOAA has made no change in the "per trip" requirements.

One commenter expressed concern for king mackerel caught and released after a bag limit is taken. He was concerned with the possible damaging effects of some types of hooks and caught fish being susceptible to predators due to exhaustion. NOAA is aware of the potential for these problems, however, it is also the intent of the measure to discourage fishermen from continuing to fish in areas where mackerel are abundant and/or modify their gear after they have taken their limit. Therefore, NOAA has made no change in the final rule.

One commenter suggested a bag limit of 5 fish because fishermen were going to continue fishing after catching 2 fish and the caught fish would die anyway due to exhaustion and hook damage. NOAA does not agree with an increase in bag limits because the best scientific information available suggests a 2 fish bag limit is necessary to rebuild the stock. As previously mentioned the intent of this measure is to discourage fishing after the bag limit is reached so that fish are not unnecessarily killed. Therefore, the two fish per person per trip is implemented as proposed.

Equitable Treatment for Commercial and Recreational Fishermen

One individual questioned whether restrictions were being implemented for commercial fishing. The final rule contains the following measures which directly affect commercial fishing for king mackerel: (1) Requirement of a permit (Gulf only), (2) reporting requirements, (3) identification requirements for a vessel, (4) annual allocations (including a purse seine quota), and (5) size limits for Spanish mackerel and cobia. No changes have been made in these measures in the final rule as the result of this comment.

A major fishery organization commented that the variable allocation formula will guarantee that the recreational sector will get increasingly more of future allocations while the commercial sector will get less. Conversely, a recreational organization commented that the future allocation formula discriminated against recreational fishermen. NOAA agrees that the allocation formula does not provide fair and equitable treatment among user groups and is therefore inconsistent with national standard 4. The formula for modification of future allocations has been disapproved and the allocations are fixed in the final rule for both migratory groups at the ratios set forth in the amendment for the first year. Future changes in allocations may be made only by plan amendment.

A member of the Florida Marine Fisheries Commission agreed with the charterboat bag limit. A major fishing association commented that charterboat captains will suffer more economic loss than anyone else. NOAA shares this concern and agrees that from a perspective of vessel catches, charterboat catches will be reduced by a larger percentage than private boats. However, from a perspective of individual fishermen, anglers aboard charterboats are entitled to 3 fish per trip (excluding captain and crew) which is an advantage over anglers on private boats. While this may be viewed as unfair from the perspective of the anglers aboard private boats, NOAA believes this is an appropriate socioeconomic consideration given the importance of the charterboat industry to coastal economies. Therefore, this measure is implemented as proposed.

Fishing Permits

One commenter questioned the fairness of the requirement that at least ten percent of an individual's income must be from fishing during the preceding year in order to qualify for a permit. He was concerned that retired persons on pensions and/or social security would be denied a permit because their income from commercial fishing would be less than 10 percent of their total income. The criteria for this requirement states "that at least 10 percent of his or her earned income (§ 642.4(b)(6)) was derived from commercial fishing". The reference to "earned income" excludes income from pensions and/or social security in making the determination of 10 percent. Therefore NOAA has made no change to this requirement in the final rule.

One commenter recommended a 2-year moratorium on fishing followed by a requirement for permits for which a fee would be charged. He suggested these monies be used for enforcement purposes. The Magnuson Act prohibits charging fees for permits in excess of the administrative costs of issuing the permit. The \$10 charge at § 642.4(e) is based upon administrative cost estimates from States that issue and charge for licenses or permits. Because of this limitation NOAA may not collect funds for enforcement purposes, and therefore no change is made in the final rule.

The South Atlantic and Gulf of Mexico Fishery Management Councils recommended that § 642.4(b)(6) be revised to state that earned income was derived from commercial fishing during the previous calendar year rather than the 3 preceding years as published in the proposed rule. NOAA concurs with this

recommendation since the 3-year requirement was published in error. The final rule is revised to reflect this change.

The South Atlantic Fishery Management Council (SAFMC) stated it did not approve assessing a fee for any permit under § 642.4(e). No change has been made in the final rule because the SAFMC approved the amendment which allows for an administrative fee up to \$10. NMFS, however, does not plan to charge a fee during the initial years of the amendment.

Owners or operators of commercial vessels fishing for Gulf migratory group king mackerel are required to have aboard the vessels a permit issued under § 642.4 during the initial fishing season for that group (September 22, 1985 through June 30, 1986). Applications for permits will be accepted by the Regional Director through November 29, 1985.

Mandatory Reporting

The Texas Parks and Wildlife Department objected to mandatory reporting by recreational fishermen. The mandatory reporting requirements for private recreational fishing vessels have been placed in reserve and will not be implemented until NMFS Southeast Fisheries Center determines the exact data requirements and develops a system to collect the data. Data being collected by the State of Texas will be considered in that determination.

Approval/Disapproval of the Amendment

A Florida sportsfishing club favored approval of the amendment with no changes. A major fishing organization recommended rejecting the amendment and implementing emergency regulations because of discrimination against commercial fishermen. NOAA does not agree because, except for the variable allocation formula which was disapproved, the amendment contains measures that are necessary to protect and rebuild the stock and simultaneously ensure fair and equitable treatment for all user groups. Emergency regulations would be effective for only 90 days with possible extension to 180 days. This would not be sufficient time to protect adequately the stocks since the emergency regulations would expire at the height of the fishing season. Therefore, NOAA implements the FMP amendment, with the exception of the variable allocation program.

Changes From the Proposed Rule

Section 642.4

Paragraph (a) was revised by adding the words "unless they will charter only in the Atlantic migratory group area." to clarify that a charter vessel which fishes in an area occupied by the Gulf group does not qualify for a permit.

In response to the Councils' recommendation and because of an error the time period required for qualifying for a permit is changed from three years to one year in paragraph (b)(6).

A new paragraph titled (j) *Alteration*, is added.

A new paragraph titled (k) *Replacement*, is added.

Section 642.5

Paragraph (d) *Recreational fishing vessels* is reserved in the final rule until more exact information is required than is currently obtained under the NMFS Marine Recreational Fishery Statistics Survey.

Section 642.7

In the final rule paragraph (13) is deleted to eliminate duplication with paragraph (22). Paragraphs (14) through (27) are renumbered (13) through (26).

Section 642.27

In paragraphs (c) and (d) the word "regulations" is removed and the words "draft notice action" inserted for clarification.

In paragraph (d) the wording "written reasons will be provided to the Councils for the rejection and" is inserted between the words "recommendations, existing" for clarification.

The allocation formula in the proposed rule has been disapproved by NOAA, therefore, paragraph (f)(3) is deleted from the final rule and former paragraph (f)(4) in renumbered (f)(3).

Section 642.28

In paragraph (a)(1) the words "captain and" are inserted between the words "vessel crew" in two places for clarification of FMP intent.

Classification

The Regional Director determined that the amendment is necessary for the conservation and management of the coastal migratory pelagic resources of the Gulf of Mexico and the South Atlantic, and that it is consistent with the Magnuson Act and other applicable law except for the variable allocation formula.

The Councils prepared a final supplemental environmental impact statement for this amendment that was

filed on August 2, 1985, with the Environmental Protection Agency.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. Summary published at 50 FR 24244, June 10, 1985. However, the enforcement costs in the Summary are revised from the estimate of \$40,000 with comparable State regulations and \$64,000 without such regulations to \$60,000 with State regulations and being extremely costly without comparable regulations.

The Councils prepared a final regulatory flexibility analysis which describes the effects this rule will have on small entities. A copy of this analysis may be obtained from the address listed above.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information, except for recreational fishermen, has been approved by the Office of Management and Budget, OMB control numbers 0648-0097, -0016, and -0159. When mandatory reporting by selected recreational fisherman is required, an additional request will be submitted to OMB.

The Councils determined that this 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. This determination was 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: August 22, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Services.

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

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

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

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

2. In Part 642, the Table of Contents is amended by revising the headings for § 642.5 from "Recordkeeping and reporting requirements [Reserved]" to read "Reporting requirements", and for § 642.6 from "Vessel identification

[Reserved]" to "Vessel identification" and by adding under Subpart B three new section designations to read as follows:

Subpart B—Management Measures

Sec.

- 642.27 Stock assessment procedures.
- 642.28 Bag and possession limits.
- 642.29 Area and time separation.

3. Section 642.2 is amended by adding the words ", or designee" to the end of the definition for Center Director, by changing the phrase "U.S. harvested fish" to "U.S.-harvested fish" throughout Part 642, and adding in alphabetical order the new definitions "Acceptable biological catch", "Allocation", "Charter Vessel", "Migratory group", "Species", "Statistical area", "Total allowable catch", "Total length", and "Trip", to read as follows:

§ 642.2 Definitions.

Acceptable biological catch (ABC) means a range of harvest levels computed from stock assessment parameters that sets forth the levels of harvest which can be taken from a stock or migratory group while maintaining the stock at or near maximum sustainable yield. ABC may vary due to fluctuating recruitment, fluctuating abundance, and intensity of fishing effort.

Allocation means that portion or percentage of the total allowable catch of a stock or migratory group of fish which is allocated to a specific user group for harvest during a fishing year. Harvest levels may be limited to an allocation by specifying harvest quotas or by specifying nonquota restrictions such as bag limits, etc.

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee.

Charter vessel crew means those individuals, including the licensed vessel captain, who receive monetary or other compensation from the vessel owner or from the passengers who are engaged in fishing from the vessel as anglers.

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 for geographical and seasonal boundaries

between migratory groups of king mackerel.)

Species refers to the specific scientific name for each fish identified under the definition of *coastal migratory pelagic fish*.

Statistical area means one or more of the statistical grids depicted in Figure 3.

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 being specified from within the range of acceptable biological catch.

Total length means the distance from the tip of the head to the tip of the tail (caudal fin) while the fish is laying on its side normally extended.

Trip means a fishing trip regardless of number of days duration which begins with departure from a dock, berth, beach, seawall, or ramp and which terminates with return to a dock, berth, beach, seawall, or ramp.

4. Section 642.4 is revised in its entirety to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability.* Owners or operators of fishing vessels which fish for Gulf migratory group king mackerel under the commercial quotas are required to obtain an annual vessel permit. Owners or operators of charter vessels and headboats are excluded from eligibility for a vessel permit unless they will charter only in the Atlantic migratory group area.

(b) *Application for permits.* An application for a permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director or his designee within 60 days prior to July 1 of each year. Owners or operators of newly registered or documented vessels may submit an application at any time during a fishing year provided it is received by the Regional Director within 60 days after registration or documentation. In cases of demonstrated hardship the Regional Director may accept applications at other times. Permit applicants must provide the following information:

- (1) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel;
- (2) Name of vessel;
- (3) The vessel's official number;
- (4) Home port or principal port of landing, gross tonnage, radio call sign and length of vessel;
- (5) Approximate fish hold capacity of the vessel;

(6) 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 during the preceeding calendar year (January 1 through December 31), and that the vessel for which the permit is intended will not be operated as a charter vessel in an area in which the Gulf migratory group of king mackerel is occurring; and

(7) Any other information concerning vessel, gear characteristics and fishing area requested by the Regional Director.

(c) *Proof of certification.* The Regional Director or his designee may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(6) before a permit is issued or to substantiate why such a permit should not be revoked under paragraph (i).

(d) *Issuance.* The Regional Director or his designee will issue a permit to the applicant only during May and June of each year. The Regional Director will issue permits to newly registered or documented vessels, or cases of demonstrated hardship at other times, as found at paragraph (b) of this section. Until the permit is received, fishermen must comply with the bag limit under § 642.28.

(e) *Fees.* A fee may be assessed for any permit issued under this section. The cost of the permit, if any, will be posted on the application from and will be limited to the administrative cost of issuing the permit which may not exceed \$10.00.

(f) *Duration.* A permit is valid only for the duration of the year for which it is issued (July 1—June 30) unless revoked or suspended pursuant to Subpart D of 15 CFR Part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. New owners purchasing a permitted vessel to fish under the Gulf migratory group quota must comply with the provisions of paragraph (b) of this section. The application must be accompanied by an executed (signed) bill of sale. New owners who have purchased a permitted vessel may fish with the preceeding owner's permit until a new permit has been issued, but for a period not to exceed 60 days from date of purchase.

(h) *Display.* A permit issued under this section must be carried aboard the fishing vessel, and the vessel 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.

(i) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this section.

(j) *Alteration.* Any permit which is altered, erased, or mutilated is invalid.

(k) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(Approved by the Office of Management and Budget under control number 0648-0097)

5. A new § 642.5 is added 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, in the Gulf of Mexico FCZ or South Atlantic FCZ 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 or official number of vessel;
- (2) Poundage of catch of any coastal migratory pelagic fish as defined by species;
- (3) Depth fished and information regarding fishing location that is specific enough to enable the Center Director to ascertain the statistical area fished (see Figure 3);
- (4) Amount and person to whom sold, bartered, or traded;
- (5) Number, size and type of gear; and
- (6) Period (hours or days) of fishing.

(b) *Charter vessel owners and operators.* Any person who owns or operates a charter vessel that fishes for or lands coastal migratory pelagic fish in the Gulf of Mexico FCZ or South Atlantic FCZ or adjoining State waters, and who is selected to report must maintain a daily fishing record on forms provided by the Center Director. These forms must be submitted to the Center Director weekly. Information to be included in the forms must include:

- (1) Name or official number of vessel;
- (2) Operator's Coast Guard license number;
- (3) Date of trip;
- (4) Number of fishermen on trip;
- (5) Area fished;
- (6) Fishing methods and type of gear;
- (7) Hours fished;
- (8) Species targeted; and
- (9) Number and estimated weight of fish caught by species.

(c) *Dealers and processors.* Any person who receives coastal migratory pelagic fish or parts thereof by way of purchase, barter, trade, or sale from a

fishing vessel or person that fishes for, or lands said fish, or parts thereof in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and who is selected to report, must provide the following information to the Center Director at monthly intervals, or more frequently if requested, and on forms provided by the Center Director:

(1) Dealers or processors name and address;

(2) County where fish were landed;

(3) Total poundage of each species received during that month, or other requested interval;

(4) Average monthly price paid for each species; and

(5) Proportion of total poundage landed by each gear type.

(d) *Recreational fishing vessels.*

[Reserved]

(e) Any owner or operator of commercial, charter, or recreational vessels, and dealers or processors may be required upon request to make such fish or parts thereof available for inspection by the Center Director for the collection of additional information or for inspection by an authorized officer.

(Approved by the Office of Management and Budget under control numbers 0648-0016 and -0159)

6. A new § 642.6 is added to read as follows:

§ 642.6 **Vessel identification.**

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

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any

other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

7. Section 642.7 is amended by revising the introductory text and designating it as paragraph (a), redesignating existing paragraphs (a) through (m) as (1) through (13), revising paragraph (6), removing old paragraph (13), adding new paragraphs (13) through (26), and adding a new paragraph (b) to read as follows:

§ 642.7 **Prohibitions.**

(a) It is unlawful for any person to do any of the following:

* * * * *

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

* * * * *

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

(14) Falsify or fail to report information required to be submitted by § 642.4 and § 642.5;

(15) Fail to make fish available for inspection as required by § 642.5(e);

(16) Falsify or fail to display the official vessel identification number or comply with other provisions for vessel identification as specified in § 642.6;

(17) Purchase, sell, barter, trade, or accept in trade, king mackerel, harvested in the FCZ from a specific migratory group or specific allocation zone or by purse seine gear, for the remainder of that fishing year specified in § 642.20, after the quota for that migratory group or allocation zone, or purse seine gear as specified in § 642.21 (a) or (b) has been reached and closure as specified in § 642.22 has been invoked (Table 2). (This prohibition does not apply to trade in king mackerel harvested, landed and bartered, traded or sold prior to the closure and held in cold storage by dealers and processors);

(18) Fish for, retain, or have in possession in the FCZ aboard a vessel permitted under § 642.4 king mackerel from a migratory group or allocation zone after the quota for that migratory group or allocation zone specified in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22 (Table 2);

(19) Fish for king or Spanish mackerel in the FCZ with purse seines after the quotas specified in § 642.21 (b) and (d) have been reached and closure has been invoked as specified in § 642.22 (Table 2);

(20) Fish for or have in possession onboard Spanish mackerel in or from the FCZ or purchase, sell, barter, trade or accept in trade, Spanish mackerel

after the total allowable catch specified in § 642.21(c) is reached and closure has been invoked as specified in § 642.22 (Table 2);

(21) Land, consume at sea, sell, or have in possession at sea or time of landing, Gulf migratory group king mackerel harvested from the FCZ in excess of the bag limits specified in § 642.28, except as provided for under § 642.21;

(22) Fish for king mackerel from the Gulf migratory group in the FCZ as defined in § 642.29 under the quotas specified in § 642.21(a) without a permit as specified in § 642.4;

(23) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(24) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken coastal migratory pelagic fish or the final disposition of such coastal migratory pelagic fish through the sale of the coastal migratory pelagic fish;

(25) Land king mackerel from the Gulf migratory group in other than an identifiable form as specified in § 642.28(b); or

(26) Land Spanish mackerel and cobia without the head and fins intact as required by § 642.23(c).

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

8. Section 642.20 is revised in its entirety to read as follows:

§ 642.20 **Seasons.**

The fishing year for the Gulf migratory group of king mackerel for the commercial quota including purse seines begins at 0001 hours July 1 and ends at 2400 hours on June 30, local time (see Figure 2). The fishing year for the Atlantic migratory group of king mackerel begins at 0001 hours on April 1 and end at 2400 hours on March 31, local time. The purse seine quotas for king mackerel begin at 0001 hours on July 1 and end at 2400 hours on June 30, local time. The fishing year for all other coastal migratory pelagic fish begins at 0001 hours on January 1 and ends at 2400 hours on December 31, local time (Table 1).

9. Section 642.21 is revised in its entirety to read as follows:

§ 642.21 **Quotas**

(a) *Commercial quotas for king mackerel.* The initial commercial allocation for the Gulf migratory group of king mackerel is 4.552 million pounds per fishing year. This allocation is

divided into quotas as follows: (1) 2.940 million pounds for the eastern allocation zone; (2) 1.328 million pounds for the western allocation zone; and (3) 0.284 million pounds for purse seines (see Figure 2 and paragraph (e) of this section for description of allocation zones). The commercial allocation for the Atlantic migratory group of king mackerel is 4.382 million pounds per fishing year. A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Purse seine quota for king mackerel.* The harvest of king mackerel by purse seines from the Gulf migratory group is limited to 284,000 pounds each fishing year. The total harvest of king mackerel by purse seines from the Atlantic Ocean is limited to 400,000 pounds each fishing year. King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraph (a) of this section (Table 2).

(c) *Spanish mackerel.* The TAC of Spanish mackerel is 27 million pounds per fishing year in aggregate for all user groups (Table 2).

(d) *Purse seine quota for Spanish mackerel.* The harvest of Spanish mackerel by purse seines is limited to 300,000 pounds in the Gulf of Mexico and to 300,000 pounds in the Atlantic Ocean per fishing year. Spanish mackerel harvested by purse seines are included in the TAC specified in paragraph (c) of this section (Table 2).

(e) *Geographic boundaries and allocation zones.* The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and 83° W. longitude, proceeds north to 24°35' N. latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland. The boundary between eastern and western zones established for commercial allocation of the Gulf migratory group of king mackerel is a line beginning at the boundary between the States of Alabama and Florida (30°16'53" N. latitude and 87°31'06" W. longitude) and running directly south to its intersection with the outer limit of the FCZ (Figure 2).

10. Section 642.22 is revised in its entirety to read as follows:

§ 642.22 Closures.

The Secretary, by publication of a notice in the *Federal Register*, will close the king or Spanish mackerel fishery to fishing in the FCZ for a particular gear type, allocation zone, or user group when the quota for that gear type, allocation zone, or user group under § 642.21 has been reached or is

projected to be reached (Table 2). The notice of closure for quotas specified under § 642.21 will also provide notice that the purchase, barter, trade, and sale of king or Spanish mackerel taken from the FCZ after the closure for the migratory group or allocation zone affected 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.

11. In § 642.23, paragraphs (a)(1) and (b) are revised and a new paragraph (c) is added to read as follows:

§ 642.23 Size restrictions.

(a) *Spanish mackerel*—(1) *Minimum size.* The minimum size for the possession of Spanish mackerel in or taken from the FCZ is 12 inches (fork length) or 14 inches (total length) for both recreational or commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

(b) *Cobia.* The minimum size limit for the possession of cobia in or taken from the FCZ is 33 inches (fork length) or 37 inches (total length).

(c) All Spanish mackerel and cobia must be landed with the head and fins intact.

12. In § 642.24, paragraph (b)(1)(i) is revised and a new paragraph (c) is added to read as follows:

§ 642.24 Vessel, gear, and equipment limitations.

(b)(1) * * *

(i) at least 30 days in advance of the beginning of the fishing year, *

(c) *Purse seine catch allowance and exclusions.* A vessel with a purse seine abroad will not be considered as fishing for king or Spanish mackerel for the purposes of paragraph (b) of this section and will not be considered in violation of a purse seine closure affected in accordance with § 642.22 provided the catch of king mackerel or Spanish mackerel does not exceed one or ten percent, respectively, by weight or number (whichever is less) of the catch of all fish aboard the vessel. Such king and Spanish mackerel must be reported in accordance with paragraph (b)(3) of this section and will be counted in the quotas provided for under § 642.21 and subject to the prohibition on sale provided for under § 642.22.

13. A new § 642.27 is added to read as follows:

§ 642.27 Stock assessment procedures.

(a) The Councils will appoint an assessment group (Group) that will assess the condition of each stock of king and Spanish mackerel in the management unit on an annual basis. The Group will present a report of its assessment and recommendations to the Councils.

(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 will convene an Advisory Panel and may convene the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, Councils will make findings on the need for changes.

(c) If changes are needed in MSYs, TACs, bag limits, quotas, or permits, the Councils will advise the Regional Director in writing of their recommendations, accompanied by the Group's report, relevant background material, and public comment. This report will be submitted each year by such date as agreed upon by the Councils.

(d) The Regional Director will review the Councils' recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejects the recommendations, he will provide written reasons to the Councils for the rejection and existing regulations will remain in effect until the issue is resolved.

(e) If the Regional Director concurs that the Councils' recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director will recommend that the Secretary publish notice in the *Federal Register* of any preliminary changes prior to the appropriate fishing year. A 15-day period for public comment will be afforded. After consideration of public comments, the Secretary may publish notice in the *Federal Register* of any final changes for that fishing year.

(f) Appropriate adjustments which may be implemented by the Secretary by notice in the *Federal Register* are:

(1) Adjustment of the point estimates of MSY for mackerel within the following ranges:

(i) King mackerel—21.9 million pounds to 35.2 million pounds.

(ii) Spanish mackerel—13.5 million pounds to 49.1 million pounds.

(2) Setting TACs for each stock or group of fish which should be managed separately, as identified in the FMP. The TAC may be increased, not to exceed 30

percent annually when warranted by new information. Any number of increases may be made so long as they do not exceed 30 percent in any one year and provided that no TAC will exceed the best point estimate of MSY by more than ten percent. Downward adjustments of any percentage are allowed in order to protect the stock and prevent overfishing. Reductions or increases in allocations as a result of changes in the TAC are to be as equitable as may be practicable utilizing similar percentage changes to all participants in a fishery. (Changes in bag limit cannot always accommodate the exact desired level of change.)

(3) Implementing or modifying quotas, bag limits, or permits as necessary to limit the catch of each user group to its allocation.

14. A new § 642.28 is added to read as follows:

§ 642.28 Bag and possession limits.

(a) *Recreational allocation bag limit.* Persons who fish for king mackerel from the Gulf migratory group (see Figure 2) in the FCZ (except those fishing under the permit and quotas specified in

§ 642.4, § 642.21 and § 642.24(c)) are limited to the following:

(1) Possessing three (3) king mackerel per person per trip, excluding the vessel captain and crew or possessing two (2) king mackerel per person per trip, including the vessel captain and crew, whichever is the greater, when fishing from a charter vessel.

(2) Possessing two (2) king mackerel per person per trip when fishing from other vessels;

(b) All king mackerel from the Gulf migratory group must be landed in an identifiable form as to number and species (with the understanding that head and tail can be removed).

(c) After a closure under § 642.22 is invoked for a migratory group or allocation zone specified in § 642.21 vessels permitted under § 642.4 may not fish for Gulf migratory king mackerel under the bag limit specified under paragraph (a) of this section nor can persons fishing under the bag limit sell their fish.

15. A new § 642.29 is added to read as follows:

§ 642.29 Area and time separation.

(a) *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 FCZ (Figure 2).

(b) *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 FCZ (Figure 2).

TABLE 1.—FISHING SEASONS FOR COASTAL MIGRATORY PELAGIC FISH IN THE FCZ

Type	Begins—	Ends—
King mackerel:		
Gulf migratory group.....	0001 hours July 1.	2400 hours June 30.
Atlantic migratory group.....	0001 hours Apr. 1.	2400 hours Mar. 31.
Purse seine quotas.....	0001 hours July 1.	2400 hours June 30.
Other fish and fishing:		
All other fishing.....	0001 hours Jan. 1.	2400 hours Dec. 31.

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES ¹

Migratory group(s)	Fishing year	Gear	Allocation zone	Initial year quota/TAC (million pounds)	Prohibition on sale and/or catch invoked when—
King Mackerel:					
Atlantic.....	1 Apr.-31 Mar.....	All types.....	Entire range ²	4.382	Sales from migratory group are projected to reach quota.
Gulf.....	1 July-30 June.....	All types.....	Entire range ²	4.552	Sales from migratory group are projected to reach quota.
Gulf.....	1 July-30 June.....	All types.....	Western zone ³	1.328	Sales from allocation zone are projected to reach quota.
Gulf.....	1 July-30 June.....	All types.....	Eastern zone ³	2.940	Sales from allocation zone are projected to reach quota.
Gulf.....	1 July-30 June.....	P.S. ⁴	Entire range ²	0.284	Landings from migratory group are projected to reach quota.
G.A. ⁵	1 July-30 June.....	P.S. ⁴	Atlantic Ocean ⁴	0.400	Landings from migratory group are projected to reach quota.
Spanish mackerel.....	1 Jan.-31 Dec.....	All types.....	G.A. ⁵	27.000	When landings are projected to reach TAC.
	1 Jan.-31 Dec.....	P.S. ⁴	Atlantic Ocean.....	0.300	When landings are projected to reach quota.
	1 Jan.-31 Dec.....	P.S. ⁴	Gulf of Mexico.....	0.300	When landings are projected to reach quota.

¹ See Figure 2 for delineation of migratory group ranges and allocation zones.
² The range of migratory groups varies by season (§ 642.29)—See Figure 2.
³ See Figure 2 and § 642.21(e).
⁴ See § 642.21(e).
⁵ Purse Seines.
⁶ Gulf & Atlantic.

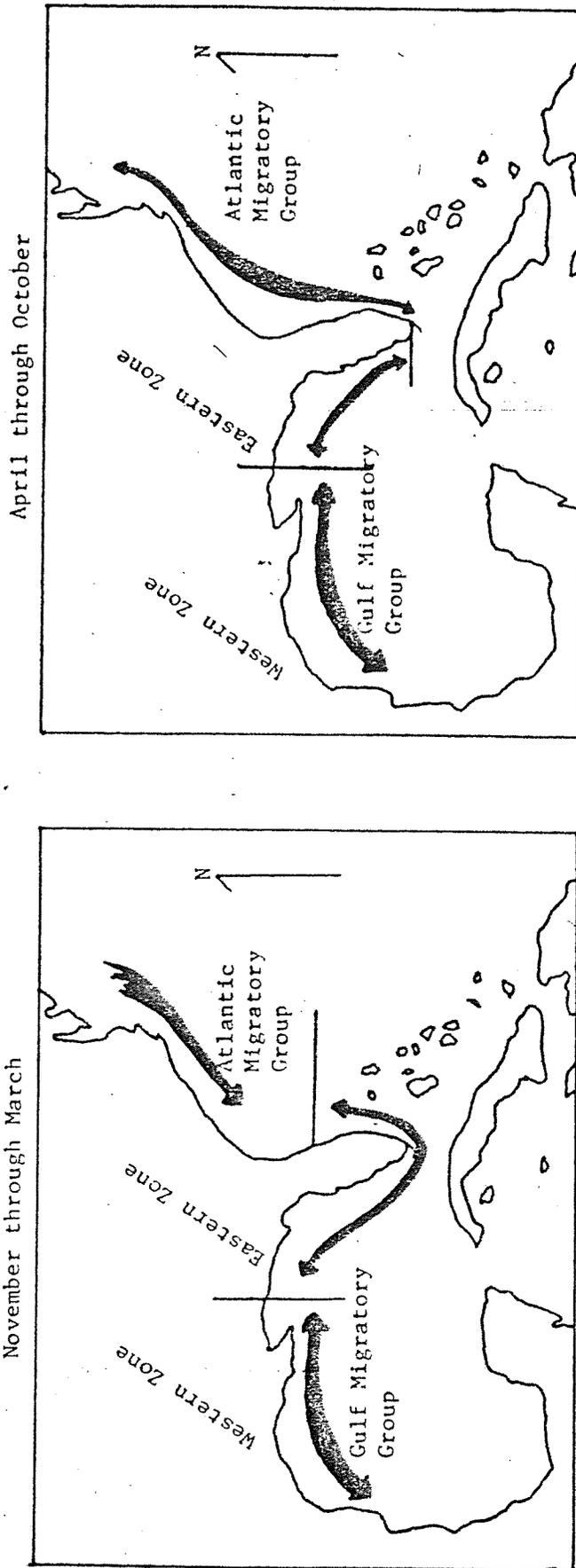
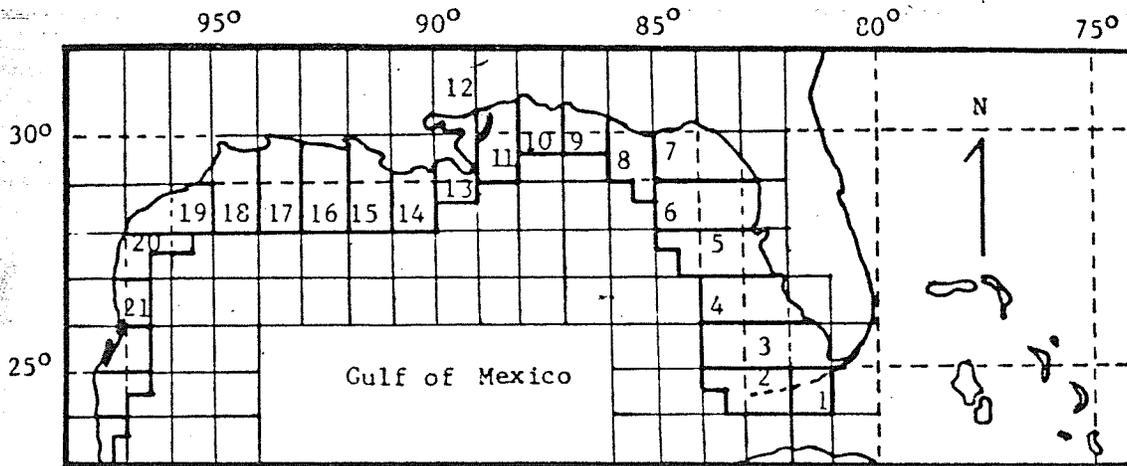
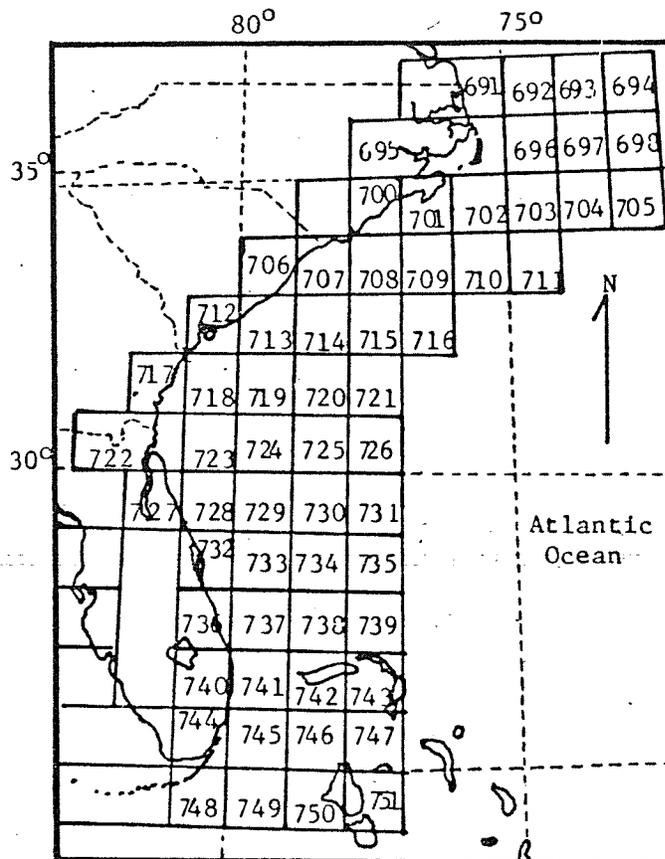


Figure 2. Range of Gulf and Atlantic migratory groups of king mackerel during winter and summer periods and commercial allocation zones for Gulf group king mackerel.

Figure 3. Statistical Grids for Reporting the Harvest of Coastal Migratory Pelagic Fish.



Statistical Grids in the Gulf of Mexico



Statistical Grids in the South Atlantic