

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Alabama, by adding Opelika, Channel 244A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16369 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-495; RM-6421]

Radio Broadcasting Services; Montauk, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Nanette Markunas, allots Channel 235A to Montauk, New York, as the community's second local FM service. Channel 235A can be allotted to Montauk in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.1 miles) southwest to avoid a short-spacing to Station WOCB(FM), Channel 235B, West Yarmouth, Massachusetts. The coordinates for this allotment are North Latitude 41-01-00 and West Longitude 72-00-00. Canadian concurrence has been received since Montauk is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATES: Effective August 21, 1989. The window period for filing applications will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-495, adopted June 15, 1989, and released July 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended for Montauk, New York, by adding Channel 235A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16372 Filed 7-12-89; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 642**

[Docket No. 90493-9141]

RIN 0648-AC15

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

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement a partial approval of Amendment 3 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) and to remove inconsistencies that have developed in implementing Amendment 2. This rule (1) prohibits the use of drift gill nets for Gulf migratory group king and Spanish mackerel and for Atlantic migratory group Spanish mackerel, (2) states more clearly the scope of each management measure, (3) clearly differentiates between commercial and recreational fisheries, (4) makes minor changes that are necessary to reflect the previous implementation of Amendment 2 to the FMP, and (5) clarifies or corrects minor ambiguities, inconsistencies, and errors in the regulations. The intended effects of this rule are to prevent the adverse impacts on the users of traditional gill net and hook-and-line gear where, under necessary quota restrictions on overfished stocks, the use of drift gill nets would contribute to early closures of the commercial fisheries, such closures being the likely result of allowing the introduction of drift gill nets into the commercial fisheries for overfished stocks of king

and Spanish mackerel; and to clarify the regulations.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-693-3722.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 3 to the FMP, as submitted by the Councils, proposed to: (1) Prohibit the use of purse seines for the Atlantic migratory group of king mackerel; (2) prohibit the use of drift gill nets for all coastal migratory pelagic species; (3) prohibit the use of run-around gill nets for the Atlantic migratory group of king mackerel; (4) add an objective to minimize waste and bycatch in the fishery; (5) update the habitat section of the FMP; and (6) evaluate the effects of the FMP on vessel and crew safety. Background and analysis of these measures were included in the proposed rule (54 FR 14256, April 10, 1989) and are not repeated here.

Based upon the most recent assessment of the mackerel stocks and comments received during Secretarial review of the amendment and the proposed rule, Amendment 3 has been partially approved. Specifically, NOAA has approved a prohibition on the use of drift gill nets in fisheries for Gulf group king mackerel and Gulf and Atlantic groups of Spanish mackerel. These three groups are overfished, necessitating restrictive quotas to protect and rebuild these stocks. Resulting commercial quotas have been so low that existing users with traditional gears (hook-and-line and run-around gill nets) already take the entire quota. Under these circumstances, NOAA agrees with the Councils that it would be unfair to allow the introduction of drift gill nets (a gear presently not used in commercial fisheries for these three groups) in an already stressed industry. Further, the fishing potential of drift gill nets is such that quota overruns could occur before closures could be effected, thus conservation purposes would not be served. This prohibition is approved with the proviso that the Councils will reconsider the use of this gear when the stocks recover and the other gear types

cannot take the entire quota. NOAA has also approved the updated habitat section of the FMP, as well as the vessel safety considerations.

Disapproved measures are those that would prohibit the use of nets for harvesting Atlantic group king mackerel and other coastal pelagic species and the addition of a new objective. Disapproval was based upon insufficient justification for the proposed actions, and non-compliance with the Magnuson Act and other applicable law as discussed below. The disapproved measures are severable and do not disrupt the continuity of the approved portions of the amendment.

Comments and Responses

Seventy-one submissions were received reflecting the comments of 201 people. Sixty submissions supporting the proposed rule were received from constituents, primarily of the recreational sector, including 35 form letters and two petitions bearing 119 and seven signatures, respectively. A state marine resource department and a state fisheries commission also provided supporting comments. Eleven submissions opposing the proposed rule were received, primarily from the commercial sector. Non-supportive comments were also contained in a letter from a federal agency and in a minority report signed by four members of the South Atlantic and three members of the Gulf of Mexico Fishery Management Councils. Comments are addressed in three categories that follow:

Prohibition of Nets

Comments. Opposition to the net prohibitions outlined in the proposed rule focused on the appropriateness of eliminating net gears from the commercial fishery for Atlantic group king mackerel. Collectively, opponents contended that removal of net gears from this fishery (1) is inconsistent with the best scientific information available (national standard 2) because the 1989 Stock Assessment Report concluded that the Atlantic group of king mackerel is not overfished; (2) is unjustified where the commercial quota proposed for the 1989/90 fishing year is sufficiently high to forestall an early closure; (3) is inconsistent with national standard 1 because historical landings show the hook-and-line sector alone cannot take the commercial quota proposed, thereby preventing optimum yield (OY) from the resource; (4) unfairly removes net fishermen from competition for an available resource, contrary to national standard 4; (5) amounts to a reallocation of the available resource among

commercial fishermen, which is unrelated to conservation objectives, also contrary to national standard 4; (6) amounts to an unwarranted regulation against efficiency, thereby depriving the public of less expensive fishery products, in opposition to national standard 5; (7) ignores reasonable regulatory alternatives that would allow efficient net gears to continue to operate in the fishery consistent with the objectives of the current management regime; and (8) eliminates variation in methods of harvesting Atlantic group king mackerel and selectively inflicts an inordinate economic burden on affected net fishermen, fish houses, and coastal communities reliant on the resource, contrary to national standards 6 and 7. With respect to the drift gill net prohibition in general, commentators suggested it was inappropriate to extend that prohibition to other coastal migratory species that are not overfished and to prevent the retention of such species in other drift net fisheries in implementing a drift net prohibition, a provision which they regarded as wasteful.

Response. NOAA agrees with the comments received in opposition to the net prohibitions proposed for the Atlantic group king mackerel commercial fishery. The prohibition of net gears (drift and run-around gill nets, and purse seines) from the Atlantic group king mackerel fishery is not justified. As reflected in Amendment 3, the prohibition on the use of drift gill nets, purse seines, and run-around gill nets in the Atlantic group king mackerel fishery was proposed primarily because it appeared that the group was overfished and, under necessary quota reductions, the continued use of these net gears would negatively impact traditional hook-and-line participants by contributing to early closure of the commercial fishery. Subsequent to the formal submission of Amendment 3, the 1989 Stock Assessment Panel determined that the Atlantic migratory group of king mackerel is not overfished. Therefore, this part of the supporting rationale is no longer supported by the best and most recent scientific information available. With respect to the remaining part of the rationale, the Councils' proposed increase in TAC for the 1989/90 fishing year supports a commercial quota that appears sufficient to allow harvest by both hook-and-line and net fishermen without an early closure. Last year's estimated total commercial harvest is well below the proposed allocation for 1989/90 fishing year. Absent the unusual environmental conditions that contributed to last year's

heavy commercial catch early in the season, catch returned to normal levels this past April. Thus, continued use of net gear would not negatively impact traditional hook-and-line participants this year. Further, dedicating the commercial quota to the hook-and-line sector almost assures that the total commercial quota will not be harvested, since landings show the hook-and-line fishery has historically been unable to take the amount of fish allotted to the commercial sector. Under the FMP, the TAC from which allocations and quotas are derived represents the annual specification of OY. Therefore, this is inconsistent with national standard 1 and the FMP in that it would prevent achievement of OY. Prohibiting net fishermen from taking what would otherwise be surplus fish is also unfair and inequitable as measured against national standard 4. Therefore, NOAA has determined that approval of this ban on net fishing would not comply with the provisions of the Magnuson Act. Selective restrictions, instead of an outright prohibition on the entire net fishery appear feasible and would be justifiable on the record developed by the Councils. Such an action would allow the hook-and-line and net fishermen to coexist. Such measures, if timely submitted, could very well be implemented prior to the commencement of the 1990/91 fishing year. Therefore, NOAA suggests that the Councils consider this course of action. A prohibition against all types of net fishing for Atlantic king mackerel is not supported by the current record.

As noted above, NOAA approves the prohibition of drift gill nets from the fisheries for Gulf migratory group king mackerel and Gulf and Atlantic groups of Spanish mackerel. Rationale for the prohibitions is essentially the same as that supporting the prohibition of purse seines from these same overfished resources as approved in Amendment 2 (54 FR 23836, June 25, 1987). The approved net prohibitions will not lead to any substantive losses necessitating action under E.O. 12630 because drift gill nets are not known to operate in the three overfished mackerel fisheries. In this regard, it is significant that the public comment on the proposed rule included no criticism by any affected persons of the elimination of this gear in these three fisheries. In implementing the drift net prohibition for these groups, NOAA has maintained the provision that prevents other drift net fisheries from retaining incidentally caught king and Spanish mackerel because that provision is necessary for the enforceability of the approved measure.

New FMP Objective

Comment. The opposition commended rejection of the newly proposed FMP objective because of its inconsistency with national standard 5. They believed that this new objective to minimize waste would unfairly elevate market value of landed fish while removing efficient gears from the fishery.

Response. NOAA disapproved the addition of the new objective, not because of disagreement with the concept of eliminating waste and bycatch in the fishery, but because of the Councils' characterization of economic waste in the objective. The amendment describes the differences between ex-vessel values of catches by hook-and-line and net gears as economic waste, implying that the price differential is related solely to quality differences. However, the price differential also may be related to short-term supply fluctuations. In that regard, the implicit assumption that lower ex-vessel prices translate into economic losses is incorrect. Such notion disregards the concept of consumer surplus and the difference between total revenue and producer surplus. In other words, the way the objective deals with economic waste could lead toward inefficient methods of production, which would be inconsistent with national standard 5 of the Magnuson Act.

Other Concerns

Comments. Proponents of the broad prohibition of drift gill nets proposed in the amendment cited numerous other concerns with this gear as generally supportive of the measure, including localized overfishing; negative impacts on endangered and threatened sea turtles; waste of incidental catch; bycatch of recreational fishes; disruption of migration, schooling, and spawning behavior; ghost fishing; habitat damage; displacement of traditional fishermen and gear; navigation hazard; gear conflict; impact on ex-vessel price; and lower quality of net caught fish.

Response. As acknowledged in Amendment 3, many of these concerns over the use of drift gill nets are the subject of data which are either limited, nonexistent, or conflicting. NOAA concurs with the Councils' interpretation and therefore concludes that the prohibition of net gear based solely on these concerns, singularly or collectively, is not justified, particularly when alternatives for the reasonable regulation of the gear could resolve many of these concerns.

Changes From the Proposed Rule

For the reasons indicated above, (1) prohibitions on the use of purse seines (§§ 642.7(e) and 642.24(b)) and on the use of run-around gill nets (§§ 642.7(y) and 642.24(a)(4)) to fish for Atlantic migratory group king mackerel are not included in this final rule, (2) the allowance of 0.4 million pounds of Atlantic migratory group king mackerel that may be harvested by purse seines (§ 642.21(a)(2)) is retained, and (3) the prohibition on the use of drift gill nets (§ 642.24(a)(3)) is revised so that it applies only to Gulf migratory group king mackerel and to the Gulf and Atlantic migratory groups of Spanish mackerel.

Classification

The Secretary of Commerce determined that the approved portion of Amendment 3 is necessary for the conservation and management of the coastal migratory pelagic resources and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a regulatory impact review for Amendment 3. A summary of the economic effects was included in the proposed rule. Those effects are significantly mitigated by partial disapproval of Amendment 3.

An initial regulatory flexibility analysis—part of the Councils' regulatory impact review—concluded that the proposed rule, if adopted, would have significant effects on small entities. However, in disapproving parts of Amendment 3, those effects have been substantially reduced. Indeed, because drift gill nets have not been used in the fishery for Gulf migratory group of king mackerel and are not known to be used in the Spanish mackerel fisheries, the General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule implementing the partial approval will not have a significant economic impact on a substantial number of small

entities. As a result, a final regulatory flexibility analysis was not prepared.

The Councils determined that the proposed rule for implementing Amendment 3 would be implemented in a manner that was 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) and submitted their determination for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. North Carolina, South Carolina, Florida, and Louisiana agreed with their determination. Alabama and Mississippi did not comment within the statutory time period and, therefore, consistency is automatically implied. All measures implemented by this final rule were encompassed within Amendment 3 as submitted. Therefore, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) finds the determination of consistency remains applicable.

The Councils prepared an environmental assessment (EA) for Amendment 3 and, based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: July 7, 1989.

James W. Brennan,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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 SOUTH ATLANTIC

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

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

2. In § 642.1, paragraph (b) is revised to read as follows:

§ 642.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of coastal migratory pelagic fish off the Atlantic coastal States south of the Virginia/North Carolina border and off the Gulf of Mexico coastal States.

3. In § 642.2, the definition for *Commercial fisherman* is removed; in the definition for *Charter vessel crew*, the word "captain" is revised to read "operator"; in the definition for *Regional Director*, the semicolon after the ZIP code is removed and a comma is added in its place; in the definition for *Species*, the words "refers to" are removed and the word "means" is added in their place; the definition for *Charter vessel* is revised; and new definitions for *Commercial fishery*, *Drift gill net*, *Gill net*, *Recreational fishery*, and *Run-around gill net* are added in alphabetical order to read as follows:

§ 642.2 Definitions.

Charter vessel (includes a headboat) means a vessel whose operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. A charter vessel with a permit to fish on a commercial allocation for king or Spanish mackerel is under charter when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

Commercial fishery means the harvesting of king or Spanish mackerel by a person fishing under the annual vessel permit specified in § 642.4(a)(1).

Drift gill net means a gill net having a float line that is more than 1,000 yards in length; or any gill net having a float line that is 1,000 yards or less in length, other than a run-around gill net, that, when used, drifts in the water, that is, is not anchored at both ends, whether or not it is attached to a vessel.

Gill net means a wall of netting, suspended vertically in the water by floats along the top and weights along the bottom, that entangles the head, gills, or other body parts of fish that attempt to pass through the meshes.

Recreational fishery means the harvesting of king or Spanish mackerel by a person fishing under a bag limit.

Run-around gill net means a gill net with a float line 1,000 yards or less in length that, when used, encloses an area of water.

4. In § 642.4, in paragraph (a)(1), the word "which" before "fishes" is revised to read "that" and the phrase "in the EEZ" is added after the word "mackerel"; in paragraph (a)(3) the word "which" before fishes is revised to read "that" and the phrase "in the EEZ" is added after the word "fish"; in paragraphs (b)(3) and (c), the words "or his designee" after "Regional Director" are removed; and in paragraph (a)(2), the second sentence is revised to read as follows:

§ 642.4 Permits and fees.

(a) * * *

(2) * * * A charter vessel in the EEZ must adhere to the applicable bag limit while under charter.

5. In § 642.5, in paragraph (a)(2), a comma is added after the word "fish" and the words "as defined" are removed; and paragraphs (a) introductory text, (b) introductory text, (c) introductory text, and (e) are revised to read as follows:

§ 642.5 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators*. An owner or operator of a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter in or from the EEZ or adjoining State waters, or whose vessel is issued a permit under § 642.4(a)(1), and who is selected to report, must provide the following information regarding any fishing trip to the Science and Research Director:

(b) *Charter vessel owners and operators*. An owner or operator of a charter vessel that fishes for or lands coastal migratory pelagic fish in or from the EEZ or adjoining State waters, or whose vessel is issued a permit under § 642.4(a)(3), and who is selected to report, must maintain a daily fishing record on forms provided by the Science and Research Director. These forms must be submitted to the Science and Research Director weekly and must provide the following information:

(c) *Dealers and processors*. A 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 such fish, or parts thereof, in or from the EEZ or adjoining State waters, and who is selected to report, must provide the following information to the Science and Research Director at monthly intervals, or more frequently if

requested, and on forms provided by the Science and Research Director:

(e) *Availability of fish for inspection*. An owner or operator of a commercial, charter, or recreational vessel or a dealer or processor shall make any coastal migratory pelagic fish, or parts thereof, available, upon request, for inspection by the Science and Research Director for the collection of additional information or by an authorized officer.

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

§ 642.6 Vessel Identification.

(a) *Official number*. A vessel engaged in fishing for king or Spanish mackerel under a commercial allocation and the permit specified in § 642.4(a)(1) must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) 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; and

(4) Permanently affixed to or painted on the vessel.

7. In § 642.7, in paragraph (k), a comma is added after the phrase "under a commercial allocation" and the reference and word "§ 642.24(c) and" are added between the word "in" and the reference "§ 642.28(c)(2)"; in paragraph (m), a comma is added after the phrase "under a commercial allocation"; in paragraph (n), after the reference to "§ 642.28", the comma and the phrase "except as provided for under § 642.21 (a) and (c)" are removed; in paragraph (v), the word "which" is revised to read "that"; paragraphs (g), (j), (q), and (r) are revised; and new paragraph (x) is added to read as follows:

§ 642.7 Prohibitions.

(g) Falsify or fail to report information, as specified in §§ 642.4 and 642.5.

(j) Purchase, sell, barter, trade, or accept in trade king or Spanish mackerel harvested in the EEZ from a specific migratory group or zone for the remainder of the appropriate fishing year, specified in § 642.20, after the allocation or quota for that migratory group or zone, as specified in § 642.21 (a) or (c), has been reached and closure has been invoked, as specified in

§ 642.22(a). (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.)

(q) Possess or land Spanish mackerel or cobia without the head and fins intact, as specified in § 642.23(c).

(r) Land, consume at sea, sell or possess, in or from the EEZ, king or Spanish mackerel harvested 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).

(x) Fish with a drift gill net for king mackerel from the Gulf migratory group or for Spanish mackerel from the Gulf or Atlantic migratory group or possess any king or Spanish mackerel aboard a vessel with a drift gill net aboard, as specified in § 642.24(a)(3).

8. In § 642.21, a new paragraph (c)(3) is added to read as follows:

§ 642.21 Allocations and quotas.

(c) * * *

(3) A fish is counted against the commercial allocation when it is first sold.

9. In § 642.22, the heading, the second sentence of paragraph (a), and paragraph (b) are revised to read as follows:

§ 642.22 Closures and bag limit reductions.

(a) * * * The notice of closure for an allocation or quota specified under § 642.21 (a) or (c) will also provide that the purchase, barter, trade, and sale of king or Spanish mackerel taken in the

EEZ from the closed area after the closure is prohibited for the remainder of that fishing year. * * *

(b) The Secretary, after consulting with the Councils and by publication of a notice in the Federal Register, will reduce to zero the bag limit for the king or Spanish mackerel recreational fishery in the EEZ for a particular migratory group when the allocation under § 642.21 (b) or (d) for that migratory group has been reached or is projected to be reached and when that group is overfished. After such reduction, a king or Spanish mackerel caught in the EEZ from that group must be returned immediately to the sea, and possession of king or Spanish mackerel of that group in or from the EEZ on board a vessel in the recreational fishery is prohibited.

10. In § 642.23, in paragraph (a)(1), the word "or" between the words "recreational" and "commercial" is revised to read "and"; in paragraph (a)(2), the phrase "in the commercial fishery" is added between the words "allowed" and "equal"; and paragraph (c) is revised to read as follows:

§ 642.23 Size restrictions.

(c) Head and fins intact. A Spanish mackerel or cobia possessed in the EEZ must have its head and fins intact and a Spanish mackerel or cobia taken from the EEZ must have its head and fins intact through landing.

11. In § 642.24, in the first sentence of paragraphs (a) (1) and (2) the word "allowable" is added after the word "minimum" and the phrase "in the EEZ" is added after the word "fish"; new paragraph (a)(3) is added; and paragraph (d) is revised to read as follows:

§ 642.24 Vessel, gear equipment limitations.

(a) * * *

(3) Drift gill nets. The use of a drift gill net to fish in the EEZ for king mackerel from the Gulf migratory group or for Spanish mackerel from the Gulf or Atlantic migratory group is prohibited. A vessel in the EEZ or having fished in the EEZ with a drift gill net aboard may not possess any Spanish mackerel. A vessel in the EEZ within the boundaries specified in § 642.29(a) or having fished in the EEZ within such boundaries may not possess any king mackerel.

(d) Purse seine incidental catch allowance. A vessel with a purse seine aboard will not be considered as fishing for king mackerel or Spanish mackerel in violation of the prohibition of purse seines under paragraph (b) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 642.22(a), provided the catch of king mackerel does not exceed one percent or the catch of Spanish mackerel does not exceed ten percent of the catch of all fish aboard the vessel. Incidental catch shall be calculated by both number and weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the allocations and quotas provided for under § 642.21 (a) or (c) and are subject to the prohibition of sale under § 642.22(a).

12. In § 642.28, in paragraph (a) introductory text, the word "incidental" is added between the words "seine" and "catch".