

may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rulemaking proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission Dockets Reference Room (Room 239) at its headquarters in Washington, DC (1919 M Street NW.).

20. For further information concerning this proceeding, contact Barrett L. Brick, Cable Television Branch, Mass Media Bureau (202) 632-7480.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 89-8399 Filed 4-7-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council has submitted Amendment 12a to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATE: Comments on the plan amendment should be submitted on or before May 22, 1989.

ADDRESS: All comments should be sent to Steve Pennoyer, Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802.

Copies of the amendment and the environmental assessment, regulatory impact review, and initial regulatory flexibility analysis are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (National Marine Fisheries Service, Alaska Region), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This Act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve this amendment.

If approved, Amendment 12a will establish a bycatch control procedure to limit the incidental take of *C. bairdi* Tanner Crab, red king crab, and halibut in the Bering Sea and Aleutian Islands trawl fisheries.

Regulations proposed by the North Pacific Fishery Management Council and based on this amendment are scheduled to be published within 15 days (16 U.S.C. 1801 *et seq.*).

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: April 5, 1989.

Alan Dean Parsons,
Acting Director of Office, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-8452 Filed 4-5-89; 4:28 pm]

BILLING CODE 3510-22-M

50 CFR Part 642

[Docket No. 90493-9093]

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

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement 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 proposed rule would (1) prohibit the use of purse seines for the Atlantic migratory group of king mackerel, a prohibition already in effect for the Gulf of Mexico migratory group of king mackerel and Atlantic and Gulf migratory groups of Spanish 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) state more clearly the scope of each management measure, (5) clearly differentiate between commercial and recreational fisheries, (6) make minor changes that are necessary to reflect the previous implementation of Amendment 2 to the FMP, and (7) clarify or correct minor ambiguities, inconsistencies, and errors in the regulations. The intended effects of this proposed rule are to prevent the adverse impacts on the users of traditional hook and line gear of early closures of the commercial fisheries, such closures being the likely result of allowing the use of purse seines, run-around gill nets, and drift gill nets in the commercial fisheries; and to clarify the regulations.

DATE: Written comments must be received on or before May 22, 1989.

ADDRESS: Comments may be sent to, and copies of the draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis may be obtained from, Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

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).

Recent reduction of the total allowable catch (TAC) of Atlantic migratory group king mackerel has increased the risk of early closure of the commercial fishery. Early closures cause adverse economic impacts on traditional hook and line commercial fishermen. Amendment 3 proposes to ameliorate this potential problem by prohibiting the use of newly introduced net gears that are highly efficient and capable of

capturing a substantial portion of the reduced commercial allocation quickly. Prohibition of purse seines, run-around gill nets, and drift gill nets from the commercial fishery for Atlantic migratory group king mackerel would reduce the potential for early closure and, thus, would protect users of traditional hook and line gear. Further, to reduce bycatch and waste, Amendment 3 would prohibit the use of drift gill nets in all fisheries for coastal migratory pelagic species.

Draft Amendment 3 was prepared and distributed to interested parties in September and October, 1988. Public hearings were held in 10 cities from Key West, FL to Manteo, NC in October 1988. After considering comments received at the public hearings and Council meetings, written public comments, and comments from their Scientific and Statistical Committees and Advisory Panels, the Councils made their final selection of preferred options at the November/December 1988 joint meeting. The issues, their impacts, and the rationale for the Council's preferred options are summarized below. A more complete analysis appears in Amendment 3, the availability of which was announced in the Federal Register '84 FR 11252, March 17, 1989).

Background

According to the 1988 mackerel stock assessment, the status of Atlantic migratory group king mackerel is as follows: (1) Spawning stock biomass remained relatively constant through 1984, after which a decrease may have occurred; (2) fishing mortality rates appear to be at or slightly above rates of full exploitation; (3) catches were high and variable from 1980 to 1985, but catches in 1986 and 1987 declined; and (4) four of five data sets of catch per unit effort indicates declines in abundance. These results led the Councils to conclude that the Atlantic migratory group of king mackerel is overfished.

Based on the 1988 assessment, the Councils reduced TAC for the 1988/89 fishing season from 9.68 million pounds to 7.0 million pounds (28 percent reduction). This reduction was based on the Councils' concern for the apparent declining stock and their decision to be conservative rather than risk continued overfishing. The resulting commercial allocation was reduced from 3.59 to 2.6 million pounds. This allocation was reached in November 1988 and would normally have resulted in early closure of the commercial fishery. Early closures of this sort negatively impact traditional hook and line commercial participants. If purse seines, drift gill nets, and run-around gill nets continue to be allowed

in the Atlantic migratory group king mackerel fishery, early closures are expected to occur each year.

The Councils are also concerned about the waste and bycatch that occur in the drift gill net fishery.

Issue 1. Purse Seines in the Atlantic Migratory Group King Mackerel Fishery

Current regulations prohibit the use of purse seines for Gulf group king mackerel and Atlantic and Gulf groups of Spanish mackerel because they are overfished and the existing commercial allocations are fully utilized by historical commercial gear types. For these species/migratory groups, the users of historical gear have had seasonal closures. Commercial allocations for the Atlantic migratory group of king mackerel had not been filled in the past, though the harvest was approaching TAC. During the 1988/89 fishing season, however, the commercial allocation was reached and the fishery was to be closed on November 23, 1988, but remained open until February 23, 1989, by court order. In addition, the Councils are concerned that there may be a shift of purse seine effort onto the Atlantic migratory group as fishermen are restricted from fishing other groups of mackerel.

The Councils considered three options: Option 1 (status quo)—continue a separate allowance (currently 400,000 pounds) for purse seines on the Atlantic migratory group of king mackerel; Option 2—not specify a separate allowance for purse seines but allow them to continue to fish under the commercial allocation; and Option 3—prohibit the use of purse seines on the Atlantic migratory group of king mackerel.

The Councils selected Option 3 because:

1. The Atlantic migratory group of king mackerel is currently overfished.
2. Allowing a new user group into an overfished fishery when historic users are forced to reduce catches is imprudent and unfair. When stocks recover and traditional commercial fishermen do not take the allocation, this issue will be reconsidered.
3. The use of purse seines in the fishery for Atlantic migratory group king mackerel is of recent origin and limited in number. There is no record of a purse seine fishery on Atlantic migratory group king mackerel before April 1988 in the Ft. Pierce, FL area. Purse seine and run-around gill nets together caught approximately 340,000 pounds of king mackerel.
4. Allocating the resource to the users of traditional fishing gears benefits the greatest number of fishermen.

5. Prohibiting the use of purse seines for mackerel is consistent with the management regimes in all adjacent State waters.

6. The marginal value of a fish allocated to the traditional commercial fishery is higher than that of a fish allocated to the purse seine fishery. Ex-vessel price information for 1987 southeast Florida landings indicates that hook and line-caught king mackerel usually were valued at \$0.20 more per pound than net-caught king mackerel.

The number of purse seine vessels that participated in the Atlantic migratory group king mackerel fishery for the first time in April 1988 was very small. The number of vessels was so small that purse seine catches had to be combined with run-around gill net catches for presentation to avoid disclosure of confidential data. Using the combined purse seine and run-around gill net catches in 1988, the prohibition would impact the affected fishermen by preventing the harvest of approximately 340,000 pounds of king mackerel.

Issue 2. Drift Gill Nets in the Coastal Migratory Pelagics Fishery

Currently, no Federal regulations specifically address this newly developed fishery. Drift entanglement nets were first tried in 1980, initially fishing the Ft. Pierce, FL area, with little success because of shark damage to catch and gear.

By 1987 and 1988, 13 boats were using drift gill nets with catches in 1987 of 800,000 pounds of Atlantic migratory group king mackerel. Preliminary catch figures for 1988 are 808,000 pounds with final figures expected to be higher. Nets are made of #9 nylon webbing, have 5 inch stretched mesh, are about 50 feet deep, and range from 1,200 to 5,000 yards long, with most full-time boats using at least 3,000 yards. During an observer program on vessels using this gear, no marine mammals or birds were observed tangled in the nets on any trip. Porpoises and sea turtles were observed in the vicinity of the nets on haulback and numerous trips. One leatherneck turtle was observed in the net at haulback by a fisherman; however, by the time the observer reached the stern, the turtle freed itself and swam away. Reports from the observer study indicate that little tunny made up 23 percent of the total catch and 67 percent of the discarded bycatch, by number; barracuda comprised 4 percent of the total catch and 11 percent of the discarded bycatch; and other species comprised less than 1.2 percent and 3.6 percent, respectively. There were 22

sailfish caught on observed trips for an average of 0.58 per trip. If this is expanded for the total number of drift gill net trips in 1987, the total sailfish bycatch would be 419 per year. Approximately 14 percent of the total bycatch is landed and sold.

The Councils considered eight options for regulating drift gill nets ranging from no action to a total prohibition. The Councils chose to prohibit the use of drift gill net gear in directed fisheries for all coastal migratory pelagic resources in the South Atlantic and Gulf of Mexico and to prohibit the retention of these species in other drift gill net fisheries. The Councils are concerned that they cannot adequately protect overfished king and Spanish mackerel resources if these fish are allowed to be taken as a bycatch in drift gill net fisheries for other coastal pelagic species. Currently, there is no directed drift gill net fishing for cobia, cero, little tunny, dolphin, or bluefish. Because drift gill nets are an indiscriminate gear, they cannot exclusively fish for any of these coastal pelagic species without taking a bycatch of king and Spanish mackerel. The shark drift net fishery is the only fishery of which the Councils are aware that will be impacted by this prohibition on retention of all coastal migratory pelagic resources. The Councils do not have sufficient information about this fishery to evaluate the level of impact.

In this proposed rule, a drift gill net is defined by the length of its float line and, in the alternative, by how it is used. Length was chosen as a determinant because of its relative ease of discernment ashore. The length of 1,000 yards was selected because the vast majority of drift gill nets exceed that length. The use determinant will be employed only for gill nets that are 1,000 yards or less in length. Drift gill nets are not, *per se*, prohibited—only their use to fish for coastal migratory pelagic fish or the possession of such fish aboard a vessel with a drift gill net aboard.

Impacts on Commercial Hook and Line Fisheries.

Based on drift gill net catches in 1987, a prohibition on use of drift gill nets would potentially make an additional 765,226 pounds of king mackerel available for harvest by the traditional commercial hook and line fisheries. How this additional catch would be distributed geographically is unknown, but in all probability the catches in the area of Ft. Pierce and southward would increase due to increased local availability. Also, highly valued recreational species taken incidentally to the mackerel drift gill net fishery would become available to the

recreational fishery. The addition of 765,226 pounds of king mackerel, if caught entirely by the commercial hook and line fishery, would produce revenues of \$1,078,969.

Impacts on the Drift Gill Net Fishery

Data for 1987 and preliminary data for 1988 indicate that 13 vessels and between 39 and 52 fishermen were engaged in the drift gill net fishery for Atlantic migratory group king mackerel. These vessels and fishermen also fish (1) in the run-around gill net fishery for Gulf migratory group king mackerel and Gulf and Atlantic migratory groups of Spanish mackerel and (2) in the shark drift gill net fishery. Periodically they also fish with smaller gill net boats (outboards) in the Indian River and outside the inlets. As of September 1987 there were approximately 38,000 yards of drift gill nets in the fishery worth between \$194,000 and \$232,800 when new. Prohibiting this gear for coastal migratory pelagic species would result in foregone catches of king mackerel of 765,226 pounds, based on drift gill net catches in 1987. The revenue produced by this catch is estimated at \$925,923. The range of losses to the individual drift gill net vessels would be from 3,968 to 122,987 pounds with revenues from \$4,801 to \$148,814. In addition, loss from other species that are landed and sold would total approximately 65,755 pounds with estimated revenue of \$65,755 for the fishery as a whole. Loss in value of gill nets is unknown because of uncertainties as to age and the amount that would not be convertible to other fisheries.

The Councils selected the option of total prohibition of drift gill nets because:

1. It most appropriately meets the objectives of the FMP, is least burdensome, and has the greatest likelihood of correcting the problem of early closure of the commercial fishery, which adversely affects traditional hook and line fishermen.

2. When the quantified and non-quantified benefits are combined, a net benefit to society results.

3. It is in agreement with Florida's regulations, thereby easing enforcement.

Issue 3. Run-around Gill Nets in the Atlantic Migratory Group King Mackerel Fishery

The Councils considered two options: Option 1 (status quo)—continue to allow the use of run-around gill nets on Atlantic migratory group king mackerel; and Option 2—prohibit the use of run-around gill nets to take Atlantic migratory group king mackerel.

Run-around gill nets have been used sporadically to harvest Atlantic migratory group king mackerel. The only recent catches were taken during April 1988. The Councils reviewed available information and chose to prohibit run-around gill nets for taking Atlantic migratory group king mackerel because of the overfished status of this group and because allowing the use of run-around gill nets will likely result in early closure of the commercial fishery, which would adversely impact traditional hook and line commercial participants. Further, run-around gill net gear is not considered a traditional gear in the Atlantic migratory group king mackerel fishery. This prohibition is not being applied to Atlantic or Gulf migratory group Spanish mackerel or Gulf migratory group king mackerel because run-around gill nets are considered traditional gear in those fisheries.

The number of run-around gill net vessels that participated in the Atlantic migratory group king mackerel fishery for the first time in April 1988 was very small. The number of vessels was so small that run-around gill net catches had to get combined with purse seine catches for presentation to avoid disclosure of confidential data. Using the combined run-around gill net and purse seine catches, the prohibition would impact the affected fishermen by preventing the harvest of approximately 340,000 pounds of king mackerel.

In addition to the above issues, Amendment 3 also does the following:

1. Adds an objective to the FMP to minimize waste and bycatch in the fishery. Waste includes both discarded catch and economic waste due to product quality problems.

2. Adds to the FMP the most recent information available to the Councils concerning habitat.

3. Adds to the FMP an evaluation of the FMP's effects on vessel safety.

Additional Changes

In addition to the regulatory changes associated with Amendment 3, NOAA proposes changes necessary to reflect fully the previous implementation of Amendment 2 and otherwise to correct and clarify the regulations.

The purpose and scope (§ 642.1) would be modified to express the scope of the regulations in the broadest terms consistent with the FMP. This approach avoids the possibility of misleading fishermen, dealers, processors as to the scope of the regulations in this part.

To clarify what constitutes the commercial and recreational fisheries, the definition for "Commercial fisherman" would be removed and new

definitions for "Commercial fishery" and "Recreational fishery" would be added. The definition for *Charter vessel* would be revised to clarify that (1) a charter vessel holding either a king or Spanish mackerel commercial permit is subject to the criteria specified for establishing when the vessel is under charter and (2) the number of persons aboard is not the sole criterion for determining when a vessel is under charter. Other minor changes to some of the definitions are proposed for clarity and consistency.

The introductory texts for the reporting requirements (§ 642.5 (a), (b), and (c)) would be revised to state more succinctly the geographical extent of fishing for which reports may be required. In § 642.5(b), reference is added to the section requiring permits for charter vessels to add emphasis to that requirement. Other changes to these sections and to § 642.5(e) are proposed for clarity.

The vessel identification requirements relating to the official number (§ 642.6(a)) would be restated for clarity and brevity.

Section 642.7(j) would be modified to correct the references in that paragraph.

The prohibition of fishing for, retaining, or having in possession aboard a permitted vessel king mackerel after a closure (§ 642.7(k)) would be clarified to include in the exceptions reference to the limited incidental catch of king mackerel in the Spanish mackerel gill net fishery (§ 642.24(c)). Such incidental catch of king mackerel is not excepted from the prohibition on sale (§ 642.7(l)).

Prohibited activities relating to king or Spanish mackerel under a recreational allocation after reduction of a bag limit to zero (§ 642.7(r)) would be restated to parallel prohibited activities specified for king or Spanish mackerel harvested on possessed in excess of a bag limit (§ 642.7(n)).

The allocations and quotas section (§ 642.21) would be revised to clarify that both king and Spanish mackerel are counted against a commercial allocation when they are first sold.

To express more clearly the contents of the closures section (§ 642.22), the heading for the section would be revised by adding reference to bag limit reductions. Section 642.22(b) would be revised to describe the geographical extent of a bag limit reduction in language parallel to the description in the preceding paragraph of the geographical extent of a commercial closure and to clarify that a bag limit reduction applies to the EEZ.

The catch allowance for undersized Spanish Mackerel (§ 642.23(a)(2)) would

be revised to clarify that the allowance applies only to the commercial fishery.

To enforce the minimum size limits, the head and fins of Spanish mackerel and cobia must be intact. The present wording of the requirement for head and fins to be intact precludes enforcement of the requirement when a vessel is boarded at sea. Accordingly, § 642.23(c) would be revised to require head and fins to be intact on any Spanish mackerel or cobia possessed in the EEZ and, when taken from the EEZ, through landing.

The language regarding gill nets (§ 642.24(a)) would be revised to clarify that the specified mesh sizes are the minimum allowable sizes.

The purse seine catch allowance (§ 642.24(d)) would be revised to clarify the the allowance is for incidental catch and the amount of such catch is restated for clarity.

NOAA proposes other minor, technical changes to remove redundant language and conform to current usage.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 3, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making the determination, will take into account the data, views, and comments received during the comment period.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, 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 which concludes that this rule will have the economic effects discussed above in the analysis of the management measures of Amendment 3. A copy of the review may be obtained at the address listed above.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would have significant effects on small entities. Thirteen vessels (small entities) would be prohibited from using drift gill nets to take any coastal migratory pelagic fish. Operators of these vessels would have limited opportunities to use this gear in other fisheries. Income based on use of this gear would be lost. In addition, a small but unknown number of vessels (small entities) would be prohibited from using purse seines and run-around gill nets to take Atlantic group king mackerel. These gears have been used in other fisheries but were first actively used in the Atlantic group king mackerel fishery during the 1987/88 fishing year. Operators of vessels with purse seines and run-around gill nets have alternate fisheries in which to use this gear. You may obtain a copy of this analysis from the Council at the address listed above.

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. Georgia and Texas do not have approved coastal zone management programs. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and Comments on it are requested.

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

This proposed 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: April 5, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries
National Marine Fisheries Service.

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

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

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

Authority: 16 U.S.C. 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 of 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 possesses a permit issued 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 possesses a permit issued 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"; paragraph (e), (g), (j), (q), and (r)

are revised; and new paragraphs (x) and (y) are added to read as follows:

§ 642.7 Prohibitions.

(e) Fish in the EEZ for king or Spanish mackerel from either the Gulf or Atlantic migratory group using a purse seine, as specified in § 642.24(b).

(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 specific migratory group or zone for the remainder of the appropriate fishing year, specified in § 642.20, after the allocation or quote 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 coastal migratory pelagic fish or possess any such fish aboard a vessel with a drift gill net aboard, as specified in § 642.24(a)(3).

(y) Fish with a run-around gill net for king mackerel from the Atlantic migratory group or possess any such fish aboard a vessel with a run-around gill net aboard, as specified in § 642.24(a)(4).

8. In § 642.21, in paragraph (a)(2), the last sentence is removed, and 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 paragraphs (a) (3) and (4) are added; and paragraphs (b) and (d) are 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 coastal migratory pelagic fish is prohibited. A vessel in the EEZ or having fished in the EEZ with a drift gill net aboard may not possess any coastal migratory pelagic fish.

(4) *Run-around gill nets.* The use of a run-around gill net to fish in the EEZ for king mackerel from the Atlantic migratory group is prohibited. A vessel in the EEZ or having fished in the EEZ within the range of king mackerel from the Atlantic migratory group with a run-around gill net aboard may not possess any king mackerel.

(b) *Purse seines.* Except as provided in paragraph (d) of this section, the use of a purse seine to fish in the EEZ for king or Spanish mackerel is prohibited.

(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, 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).

§ 642.28 [Amended]

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