

Watson, S. 1880. Botany of California. University Press, Cambridge, Mass.
 Wester, L. 1981. Composition of native grasslands in the San Joaquin Valley, California. *Madroño* 28:231-241.
 White, K.L. 1967. Native bunch grass (*Stipa pulchra*) on Hastings Reservation, California. *Ecology* 48:949-955.
 Wiggins, I.L. 1951. Malvaceae. In: Abrams, L., illus. Flora Pacific States. III. Stanford Univ. Press.
 Wolf, C.B. 1938. California plant notes II. Occasional Papers Rancho Santa Ana Bot. Gard. Ser. I, No. 2:64-68.

Jim A. Bartel (see ADDRESSES section, 916/978-4866, FTS 460-4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

Author

The primary author of this final rule is

Species	Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name				
Asteraceae—Aster family:					
<i>Lambertia congdonii</i>	San Joaquin wooly-threads	U.S.A. (CA)	E	395 NA	NA
Brassicaceae—Mustard family:					
<i>Caulanthus californicus</i>	California jewelflower	U.S.A. (CA)	E	395 NA	NA
Cactaceae—Cactus family:					
<i>Opuntia treleasei</i>	Bakersfield cactus	U.S.A. (CA)	E	395 NA	NA
Malvaceae—Mallow family:					
<i>Eremalche kernensis</i>	Kern mallow	U.S.A. (CA)	E	395 NA	NA
Polemoniaceae—Phlox family:					
<i>Eriastrum hooveri</i>	Hoover's wooly-star	U.S.A. (CA)	T	395 NA	NA

Dated: June 29, 1990.
 Richard N. Smith,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 90-16814 Filed 7-18-90; 8:45 am]
 BILLING CODE 4310-56-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 900495-0175]

RIN 0648-AC77

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 Amendment 5 to the

Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This rule (1) Extends the management area for Atlantic migratory groups of king and Spanish mackerel through the Mid-Atlantic Fishery Management Council's area of authority, that is, the exclusive economic zone (EEZ) off the States of New York through Virginia; (2) revises the fishing year for Gulf migratory group Spanish mackerel; (3) revises the definition of "overfishing," adds a separate definition of "overfished," and adds a definition of "conflict;" (4) makes the South Atlantic Fishery Management Council responsible for pre-season adjustments of total allowable catch and bag limits for the Atlantic Management Council responsible for such adjustments for the Gulf migratory groups of king and Spanish mackerel; (5) specifies that the earned income requirement to qualify for an annual permit for a vessel owned by a corporation or partnership must be met by a shareholder or officer of the

corporation, a general partner of a partnership, or the vessel operator; (6) redefines recreational bag limits from trip limits to daily bag limits; (7) prohibits the use of gear other than hook and line and run-around gill nets to fish in the EEZ for king mackerel from the Gulf migratory group; (8) imposes a daily bag limit of two cobia per person; (9) establishes a minimum size limit of 12 inches (30.48 centimeters) fork length or 14 inches (35.56 centimeters) total length for king mackerel and requires that king mackerel be landed with head and fins intact; (10) removes the provision allowing sale of mackerel taken under a bag limit; (11) charges a fee to cover the administrative costs of issuing permits; (12) clarifies the requirement that fish subject to a minimum size limit must be landed with head and fins intact; and (13) makes minor corrections and clarifications to the regulations and conforms them to current usage. The intended effects are to continue rebuilding the king and

migratory groups of king and Spanish mackerel and the Gulf of Mexico Fishery

Spanish mackerel resources, provide additional protection for cobia and other coastal migratory pelagic fish, provide equitable access to the available king and Spanish mackerel, improve the management regime, and correct and clarify the regulations.

EFFECTIVE DATE: August 20, 1990.

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), 16 U.S.C. 1801 *et seq.*

Amendment 5 is a major revision of the FMP. It substantially changes the description of the problems in the fishery that the FMP addresses and updates the objectives of the FMP. The revised problems and objectives and the regulatory changes to address the problems and pursue the objectives were discussed in the proposed rule (55 FR 14981, April 20, 1990) and are not repeated here.

In addition to the changes contained in Amendment 5, NOAA is making changes to (1) Clarify the time required to obtain a permit, (2) implement a fee for permits, and (3) clarify the requirement that fish subject to a minimum size limit must be landed in a whole condition. The specific changes were discussed in the proposed rule and are not repeated here.

Comments and Responses

Comments were received during the comment period from three commercial fishermen, a seafood dealer, a charterboat company, and a fishing club. Most of the comments opposed specific Amendment 5 actions and focused on the eligibility requirements for corporate-owned vessels to obtain permits, annual permit fees, gear restrictions for the Gulf group king mackerel, daily bag/possession limits for cobia and mackerels, and the 12-inch minimum size restriction for king mackerel. Summarized comments and responses by subject follow.

Bag Limits

Comments: Two respondents expressed opposition to including commercial fishermen under the two-fish cobia bag limit but supported its imposition on the recreational fishery.

They contend that only a small number of commercial fishermen rely on cobia for infrequent seasonal catches as an important revenue source. These commercial catches, they believe, are insignificant compared to the recreational catch such that continued commercial access to this resource above the proposed two-fish bag limit would not significantly affect stocks.

One respondent opposed the changing of bag limits from trip limits to daily bag/possession limits. He believes that daily limits will reduce repeat diurnal charterboat hiring and that such limitations are unfair and inappropriate in view of the thousands of pounds of mackerel captured in a single gillnet haul.

Response: NOAA supports the two fish bag limit for cobia and agrees with the Councils' rationale. Available data indicate that only a small fraction of fishing trips landed two or more cobia. Also, the Councils believe that most commercial landings were produced by recreational fishermen who sold their catch. Landings information further indicated to the Councils that cobia are an infrequent and opportunistic catch, rather than a targeted catch, and thus provide an income supplement. Therefore, limiting commercial catches to the two-fish bag limit should affect only a small percentage of fishing trips while still providing some supplementary income. The economic effects appear to be minimal, reasonable, and necessary to protect and rebuild the stocks. The effects eventually may be reduced, if the two-fish bag limit improves stock conditions to levels that would support greater fishing mortality, i.e., higher bag limits.

NOAA supports daily bag/possession limits for mackerels and cobia. Daily bag limits establish a reasonable, responsible, and conservative harvest standard for all anglers throughout the management area. They are also compatible with the regulations recently implemented under the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico and with certain state possession/landing laws. Trip limits provide an unfair advantage to those users who have easy, short-distance access to fishing grounds. Recreational participants in the fishery for coastal migratory pelagic resources take up to 75 percent of the annual mackerel harvest. Their catches appear to be insignificant on a per angler basis and when compared to the considerably larger daily landings of commercial vessels. However, on an aggregate basis, the additional harvest resulting from multiple trips during a day accelerates attainment of annual

allocations and subsequent implementation of zero bag limits for overfished mackerel groups—a distinct disadvantage to a large portion of the estimated 1–2 million recreational fishermen.

Commercial Permits

Comments: Three respondents objected to the individual income requirements necessary for a charter vessel to qualify for a commercial permit and the \$23 annual fee for permits. Specifically, one representative of the charter boat industry expressed opposition to permitting vessels through the qualifying incomes of operators rather than directly through the corporation's income. He considers this a disadvantage because qualified operators who can satisfy the income requirements are irregularly available, particularly to charter vessels operating in seasonal fisheries. Conversely, one permitted commercial mackerel fishermen favored permitting vessels only through the operator's income. One respondent questioned the \$23 annual fee when a \$10 fee was previously indicated and inquired as to the disposition of the resulting revenues; whereas, another opposed the initiation of any permit fee.

Response: NOAA supports the more specific requirements clarifying who must meet the earned income requirement for a commercial permit when a vessel is owned by a corporation. The requirements are designed to permit only those vessels whose owners or operators are legitimate participants in commercial mackerel fisheries and to disqualify those who have incorporated solely for the purposes of circumventing the regulations and the intent of the Councils and the NMFS.

When the mackerel permit system was implemented in August 1985, a fee of \$10 per permit was estimated but not implemented. Under the Magnuson Act, fees for permits are permissible but must not exceed the administrative cost of issuing the permit. Recent analysis indicates the current administrative cost is \$23. NOAA believes that this amount is fair and equitable, and can be reasonably borne by participants in the fishery. Permit fees are deposited into the general funds of the U.S. Treasury.

Gear and Size Restrictions

Comments: Three commercial fishermen commented on restricting the harvest of the Gulf group king mackerel only to hook-and-line gear and run-around gillnets, and the minimum size limit of 12 inches, fork length, for king

mackerel. Two supported the gear restrictions but suggested the need for further regulations that would establish separate quotas for these gears under the commercial allocation and thus protect commercial hook-and-line fishermen from excessive harvest by more efficient gillnet vessels. The third fisherman disapproved of the gear restrictions because he supports the prohibition of all nets in fisheries for Gulf and Atlantic groups of king and Spanish mackerel. One of the three contended that the 12-inch minimum size limit was insufficient to protect king mackerel and suggested that it be doubled to 24 inches fork length.

Response: NOAA believes that restricting the harvest of Gulf group king mackerel specifically to hook-and-line gear and run-around gillnets is necessary. Both gear types historically have been active in the fishery, and to protect their share of harvest under the current reduced allocations, the prohibition of additional and potentially more efficient gear types is justified. Similar rationale supported prohibition of purse seines and drift gillnets from this fishery. To provide fair and equitable harvesting access for the two permitted gear types, the Councils considered additional management measures, including separate commercial gear quotas. The Councils elected not to include separate gear quotas in Amendment 5.

Although the 12-inch size restriction will offer some benefit to king mackerel, it will principally benefit the Spanish mackerel resource by increasing enforceability of the same minimum size restriction for that species. Most mackerel under the 12-inch minimum are taken in the directed Spanish mackerel fishery and differentiating king and Spanish mackerel of this small size is difficult. Therefore, a 12-inch size minimum for both species will discourage harvest of undersized fish and eliminate enforcement problems arising from misidentification.

Changes From the Proposed Rule

A definition of *Councils* is added to clarify the use of that term in the regulations.

To further clarify who must meet the ten-percent earned income from fishing requirement for an annual vessel permit, language is added to cover ownership of a vessel by a partnership. Similar to a corporate-owned vessel, the earned income requirement must be met by a general partner.

Language is added to § 642.4(d) to specify that fees will be charged for permits beginning with those issued for

the permit year that commences April 1, 1991.

In the proposed rule, minimum size limits for king mackerel and cobia and gillnet minimum mesh sizes were stated in inches and, parenthetically, in centimeters to the nearest tenth of a centimeter. For enforcement purposes, NOAA cannot afford any discrepancy between the English (inches) and metric (centimeters) equivalents. Accordingly, the metric equivalents for the minimum sizes are stated in this final rule to the nearest hundredth of a centimeter. Authorized officers will measure fish and gillnets using the English system of measurement (inches) for the purpose of determining compliance with those limits.

In § 642.23(a)(2) and § 642.24(c), the word "incidental" is added before "catch allowance" in the headings to describe more clearly the contents of those paragraphs.

In § 642.24, in paragraph (a)(2)(ii), as an exception to the prohibition on possession of certain fish aboard a vessel with prohibited gear aboard, a reference to the purse seine incidental catch allowance of paragraph (c) of that section is added for clarity.

For consistency, the phrase "gill net" or "gill nets" is revised to read "gillnet" or "gillnets" throughout 50 CFR part 642.

Extension of the management area for Atlantic migratory groups of king and Spanish mackerel through the mid-Atlantic states requires the addition of statistical reporting grids to report the area fished. Accordingly, in Appendix A to part 642, that part of Figure 3 showing Statistical Grids for the South Atlantic is revised.

Approval and Implementation of Amendment 5

The Secretary of Commerce (Secretary) has approved Amendment 5 to the FMP which is implemented by this final rule. While this rule is effective on August 20, 1990, for the purpose of monitoring allocations, the revised fishing year for Gulf group Spanish mackerel and the extension of the management unit for Atlantic group king and Spanish mackerel into the EEZ off the mid-Atlantic states commenced April 1, 1990.

In addition to the changes proposed in this rule to the section on bag and possession limits (§ 642.23), the preliminary notice of change in the total allowable catch, allocations, quotas, and bag limits proposes changes to the bag limits for Gulf group Spanish mackerel. (See 55 FR 25986, June 28, 1990.)

Classification

The Secretary determined that Amendment 5 is necessary for the conservation and management of the coastal migratory pelagic resources and 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 the preparation of 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 geographical 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 markets.

The Councils prepared a regulatory impact review (RIR) for Amendment 5. A summary of the economic effects was included in the proposed rule.

The RIR prepared by the Councils concludes that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this conclusion was summarized in the proposed rule. Accordingly, the General Counsel of the Department on Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis was not prepared.

The Councils prepared an environmental assessment (EA) that discusses the impact of Amendment 5 on the environment. Based on the EA, the Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant adverse impact on the human environment as a result of this rule.

The Councils have 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 New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Florida, Alabama, Louisiana, and Mississippi. Georgia and Texas do not have approved coastal zone management programs. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. New Jersey,

Pennsylvania, Delaware, North Carolina, South Carolina, Florida, and Louisiana agreed with this determination. None of the other states responded within the statutory time period and, therefore, consistency is automatically implied.

This rule does not contain a new collection-of-information requirement for purposes of the Paperwork Reduction Act. However, expansion of the management area will affect two information collections approved under Office of Management and Budget control numbers 0648-0013 and 0648-0205.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12812.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 13, 1990.

James E. Douglas, Jr.,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the 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—

(1) King and Spanish mackerel off the Atlantic coastal states south of the New York/Connecticut border and off the Gulf of Mexico coastal states; and

(2) All other 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 of *Overfishing* or *overfished* is removed and new definitions of *Conflict*, *Councils*, *EEZ*, *Overfished*, and *Overfishing* are added in alphabetical order to read as follows:

§ 642.2 Definitions.

Conflict means an incident at sea involving one or more fishing vessels—

(a) In which contact between one fishing vessel or its gear with another vessel or gear results in damage or

destruction of fishing gear, loss of gear and associated catch through disappearance of the gear or its location buoys, preemption of fishing grounds, removal of catch from the gear, or vessel collision;

(b) In which there is imminent threat of one fishing vessel or its gear coming into contact with another vessel or gear; or

(c) In which competition for a resource between one fishing vessel or its gear and another vessel or gear—

(1) Results in displacement of a traditional fishery by new gear,

(2) Results in reduced catches in the traditional fishery, or

(3) Leads the Councils to conclude that the situation will result in displacement of a traditional fishery by new gear or in reduced catches in the traditional fishery.

Competition is not in and of itself conflict; however, when competition is intensified, it can lead to conflict.

Councils means:

(a) The South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407-4699; and

(b) The Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 881, Tampa, FL 33609.

EEZ, as defined in § 620.2,

(a) For requirements related to king and Spanish mackerel, means the EEZ off the Atlantic coastal states south of the New York/Connecticut border and off the Gulf of Mexico coastal states;

(b) For requirements related to all other coastal migratory pelagic fish except bluefish, means the EEZ off the Atlantic coastal states south of the Virginia/North Carolina border and off the Gulf of Mexico coastal states; and

(c) For requirements related to bluefish, means the EEZ off the Gulf of Mexico coastal states.

Overfished means that the spawning stock biomass per recruit (SSBR) of a mackerel, or cobia stock is less than the target level percentage recommended and approved in accordance with the stock assessment procedures. The target level percentage will be recommended by the assessment group and approved by the Scientific and Statistical Committees of the Councils, and may not be less than 20 percent.

Overfishing means—

(a) That an overfished stock is being harvested at a rate that is not consistent with a program that has been established to rebuild the stock to the target level percentage; or

(b) That a stock that is not overfished is being harvested at a rate that, if continued, would lead to a state of the stock that would not allow a harvest at least equal to optimum yield on a continuing basis.

4. In § 642.4, a new paragraph (a)(4) is added; and paragraphs (b)(1), (c), and (d) are revised to read as follows:

§ 642.4 Permits and fees.

(a) * * *

(4) For a corporation or partnership to be eligible for an annual vessel permit specified in paragraph (a)(1) of this section, the earned income qualification specified in paragraph (b)(2)(vi) of this section must be met by, and the statement required by that paragraph must be submitted by, a shareholder or officer of the corporation, a general partner of the partnership, or the vessel operator.

(b) * * *

(1) An application for a permit may be submitted to the Regional Director at any time but should be submitted at least 60 days prior to the date on which the applicant desires to have the permit made effective. An application must be signed by the owner or operator.

(c) *Issuance*. The Regional Director will issue a permit at any time for an April through March permit year. Upon receipt of a complete application, a permit will normally be issued in 30 days but may take as long as 60 days during peak periods of activity (February and March). Until an annual vessel permit specified in paragraph (a)(1) of this section is on board, bag limits apply.

(d) *Fees*. A fee of \$23 will be charged for each permit issued under paragraph (a) of this section, beginning with permits issued for the permit year that commences April 1, 1991. The appropriate fee must accompany each permit application.

5. In § 642.5, a new paragraph (f) is added to read as follows:

§ 642.5 Recordkeeping and reporting.

(f) For an owner or operator of a commercial, charter, or recreational vessel or a dealer or processor in the states from New York through Virginia, or in the waters off those states, for the purposes of paragraphs (c) and (e) of this section, the term "Science and Research Director" means the Science and Research Director, Northeast Fisheries Center, NMFS, Woods Hole,

MA 02543, telephone 508-548-5123, or a designee.

6. In § 642.7, in paragraph (i), the words "vessel identification" between the words "official" and "number" are removed; in paragraphs (k) and (m), the references to "§ 642.28(c)(2)" are revised to read "§ 642.28(a)(4)(ii)"; in paragraph (1), the reference to "§ 642.24 (c) or (d)" is revised to read "§ 642.24 (b)(1) or (c)"; paragraphs (p) and (s) are removed and reserved; paragraph (x) is removed; and paragraphs (b), (d), (e), (j), (n), (q), (t), and (u) are revised to read as follows:

§ 642.7 Prohibitions.

(b) Possess in or harvest from the EEZ king or Spanish mackerel under the minimum size limit specified in § 642.23(a)(1), except for the catch allowance specified in § 642.23(a)(2).

(d) Fish in the EEZ for coastal migratory pelagic fish with prohibited gear or possess any coastal migratory pelagic fish in or from the EEZ aboard a vessel with prohibited gear aboard, as specified in § 642.24(a).

(e) Fish in the EEZ for king or Spanish mackerel with a gillnet with a mesh size less than the minimum allowable, or possess king or Spanish mackerel in or from the EEZ on board a vessel that has aboard a gillnet with a mesh size less than the minimum allowable, as specified in § 642.24(b).

(j) Purchase, barter, trade, or sell, for the remainder of the appropriate fishing year, king or Spanish mackerel harvested in the EEZ from a specific migratory group or zone after the commercial allocation or quota for that migratory group or zone in § 642.21 (a) or (c) has been reached and closure under § 642.22(a) has been invoked, as specified in § 642.28(a)(4)(iii). (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 a dealer or processor.)

(n) Land, consume at sea, sell, or have in possession at sea or at time of landing king mackerel, Spanish mackerel, or cobia in excess of the bag limits specified in § 642.28 (a) and (b).

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

(t) Operate a vessel in the EEZ with king mackerel, Spanish mackerel, or cobia aboard in excess of the

cumulative bag limit applicable to the vessel, as specified in § 642.28(d).

(u) Transfer king mackerel, Spanish mackerel, or cobia at sea, as specified in § 642.28(e).

7. Section 642.20 is revised to read as follows:

§ 642.20 Seasons.

The fishing year for the Gulf migratory group of king mackerel for allocations and quotas begins on July 1 and ends on June 30. The fishing year for the Atlantic migratory groups of king and Spanish mackerel and the Gulf group of Spanish mackerel begins on April 1 and ends on March 31. The fishing year for all other coastal migratory pelagic fish begins on January 1 and ends on December 31.

8. In § 642.21, paragraphs (a)(3) and (c)(3) are revised to read as follows:

§ 642.21 Allocations and quotas.

(3) A fish is counted against the commercial quota or allocation for the area where it is caught when it is first sold.

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

9. Section 642.23 is revised to read as follows:

§ 642.23 Size restrictions.

(1) *King and Spanish mackerel*—(1) *Minimum size.* The minimum size limit for the possession of king or Spanish mackerel in or taken from the EEZ is 12 inches (30.48 centimeters) fork length or 14 inches (35.56 centimeters) total length for both recreational and commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

(2) *Incidental catch allowance.* (i) A catch of king mackerel under the minimum size limit is allowed in the commercial fishery equal to five percent by weight of the total catch of king mackerel on board.

(ii) A catch of Spanish mackerel under the minimum size limit is allowed in the commercial fishery equal to five percent by weight of the total catch of Spanish mackerel on board.

(b) *Cobia.* The minimum size limit for the possession of cobia in or taken from the EEZ is 33 inches (83.82 centimeters) fork length or 37 inches (93.98 centimeters) total length for both recreational and commercial fisheries.

(c) *Head and fins intact.* A Spanish mackerel, king mackerel, or cobia

possessed in the EEZ must have its head and fins intact and a Spanish mackerel, king mackerel, or cobia taken from the EEZ must have its head and fins intact through landing. Such Spanish mackerel, king mackerel, or cobia may be eviscerated but must otherwise be maintained in a whole condition.

10. Section 642.24 is revised to read as follows:

§ 642.24 Vessel, gear, equipment limitations.

(a) *Prohibited gear*—(1) *Drift gillnets.* The use of a drift gillnet 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 gillnet aboard may not possess any coastal migratory pelagic fish.

(2) *Other Gear.* (i) Fishing gear is prohibited for use in the EEZ for migratory groups of king and Spanish mackerel as follows:

(A) King mackerel Gulf migratory group—all gear other than hook and line and run-around gillnets.

(B) Spanish mackerel Gulf and Atlantic migratory groups—purse seines.

(ii) Except for the purse seine incidental catch allowance specified in paragraph (c) of this section, a vessel in the EEZ in an area specified in § 642.29 for a migratory group or having fished in the EEZ in such area with prohibited gear aboard may not possess any of the species for which that gear is prohibited.

(b) *Gillnets.* (1) *King mackerel.* The minimum allowable mesh size for a gillnet used to fish in the EEZ for king mackerel is 4¾ inches (12.07 centimeters) (stretched mesh). A vessel in the EEZ or having fished in the EEZ with a gillnet aboard that has a mesh size less than 4¾ inches (12.07 centimeters) (stretched mesh) may possess an incidental catch of king mackerel that does not exceed 10 percent of the total lawfully possessed catch by number of Spanish mackerel on board.

(2) *Spanish mackerel.* The minimum allowable mesh size for a gillnet used to fish in the EEZ for Spanish mackerel is 3½ inches (8.89 centimeters) (stretched mesh). A vessel in the EEZ or having fished in the EEZ with a gillnet aboard that has a mesh size less than 3½ inches (8.89 centimeters) may not possess any Spanish mackerel.

(c) *Purse seine incidental catch allowance.* A vessel in the EEZ or having fished in the EEZ with a purse seine aboard will not be considered as fishing or having fished for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (a)(2) 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 10 percent of the catch of all fish aboard the vessel. Incidental catch will 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).

11. In § 642.27, in paragraph (e), at the end of the first sentence the phrase, "prior to the appropriate fishing year" is removed; and paragraphs (a) and (c) are revised 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 mackerel, Spanish mackerel, and cobia in the management unit on an annual basis. Such assessment will include determinations of overfished and overfishing. When a determination of overfishing is made for a stock, the group will develop and recommend appropriate ABC ranges for recovery periods consistent with a program to rebuild that stock. The Group will present a report of its assessment and recommendations to the Councils.

(c) If changes are needed in MSYs, TACs, allocations, quotas, bag limits, or permits, the Councils will advise the Regional Director in writing of their recommendations, accompanied by the assessment group's report, relevant background material, and public comment. Recommendations for the Atlantic groups of king and Spanish mackerel will be the responsibility of the South Atlantic Fishery Management Council, and recommendations for the Gulf groups of king and Spanish mackerel will be the responsibility of the Gulf of Mexico Fishery Management Council. The Councils' reports will be submitted each year by such date as may be specified by the Councils.

12. Section 642.28 is revised to read as follows:

§ 642.28 Bag and possession limits.

(a) *King and Spanish mackerel*— (1) *Bag limits.* A person who fishes for king or Spanish mackerel from the Gulf or Atlantic migratory group in the EEZ, except a person fishing under a permit

specified in § 642.4(a)(1) and an allocation specified in § 642.21 (a) or (c), or possessing the purse seine incidental catch allowance specified in § 642.24(d), is limited to the following:

(i) *King mackerel Gulf migratory group.* (A) Possessing three king mackerel per person per day, excluding the captain and crew, or possessing two king mackerel per person per day, including the captain and crew, whichever is the greater, when fishing from a charter vessel.

(B) Possessing two king mackerel per person per day when fishing from other vessels.

(ii) *King mackerel Atlantic migratory group.* (A) Possessing two king mackerel per person per day from the southern area.

(B) Possessing three king mackerel per person per day from the northern area.

(iii) *Spanish mackerel Gulf migratory group.* (A) Possessing four Spanish mackerel per person per day from the eastern area.

(B) Possessing ten Spanish mackerel per person per day from the western area.

(iv) *Spanish mackerel Atlantic migratory group.* (A) Possessing four Spanish mackerel per person per day from the southern area.

(B) Possessing ten Spanish mackerel per person per day from the northern area.

(2) *Multi-day possession limit.* A person subject to a bag limit specified in paragraph (a)(1) of this section may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any king or Spanish mackerel in excess of such bag limit, except that a person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is aboard a charter vessel or headboat, and,

(i) The vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours, and

(ii) Each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(3) *Areas.* (i) For the purposes of paragraphs (a)(1) (ii) and (iv) of this section, the boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ.

(ii) For the purposes of paragraph (a)(1)(iii) of this section, the boundary between the eastern and western areas (identical to the eastern and western zones in the commercial fishery) is a line extending directly south from the

Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ.

(4) *Fishing after a closure.* After a closure under § 642.22(a) is invoked for a commercial allocation or quota specified in § 642.21 (a) or (c), for the remainder of the fishing year specified in § 642.20:

(i) A vessel permitted under § 642.4(a)(1) to fish under a commercial allocation for mackerel may not fish under a bag limit specified in paragraph (a)(1) of this section for the closed species/migratory group/zone, except as provided for under paragraph (a)(4)(ii) of this section.

(ii) A charter vessel permitted to fish under a commercial allocation for mackerel may continue to harvest fish under a bag and possession limit specified in paragraphs (a) (1) and (2) of this section provided it is under charter and the recreational allocation for the respective migratory group of mackerel under § 642.21 (b) or (d) has not been reduced to zero under § 642.22(b).

(iii) The purchase, barter, trade, or sale of king or Spanish mackerel taken in the EEZ from the closed area is prohibited.

(b) *Cobia.* The daily bag and possession limit for cobia in or from the EEZ of the Gulf of Mexico and the Atlantic Ocean south of the Virginia/North Carolina border is two fish per person, without regard to whether or not the cobia are taken aboard a vessel with a commercial permit.

(c) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag or possession limit of this part with any bag or possession limit applicable to state waters.

(d) *Responsibility for bag and possession limits.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag limit, based on the number of persons aboard, applicable to that vessel.

(e) *Transfer of fish.* A person for whom a bag or possession limit specified in this section applies may not transfer at sea king mackerel, Spanish mackerel, or cobia—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such king mackerel, Spanish mackerel, or cobia was taken.

13. In addition to the amendments set forth above,

§ 642.2 [Amended].

a. In § 642.2 the phrase "gill net" is revised to read "gillnet" where it appears in the term *Drift gillnet* and its definition (a total of four places); in the term *Gillnet*; and in the term *Runaround*

gillnet and its definition (a total of two places); and

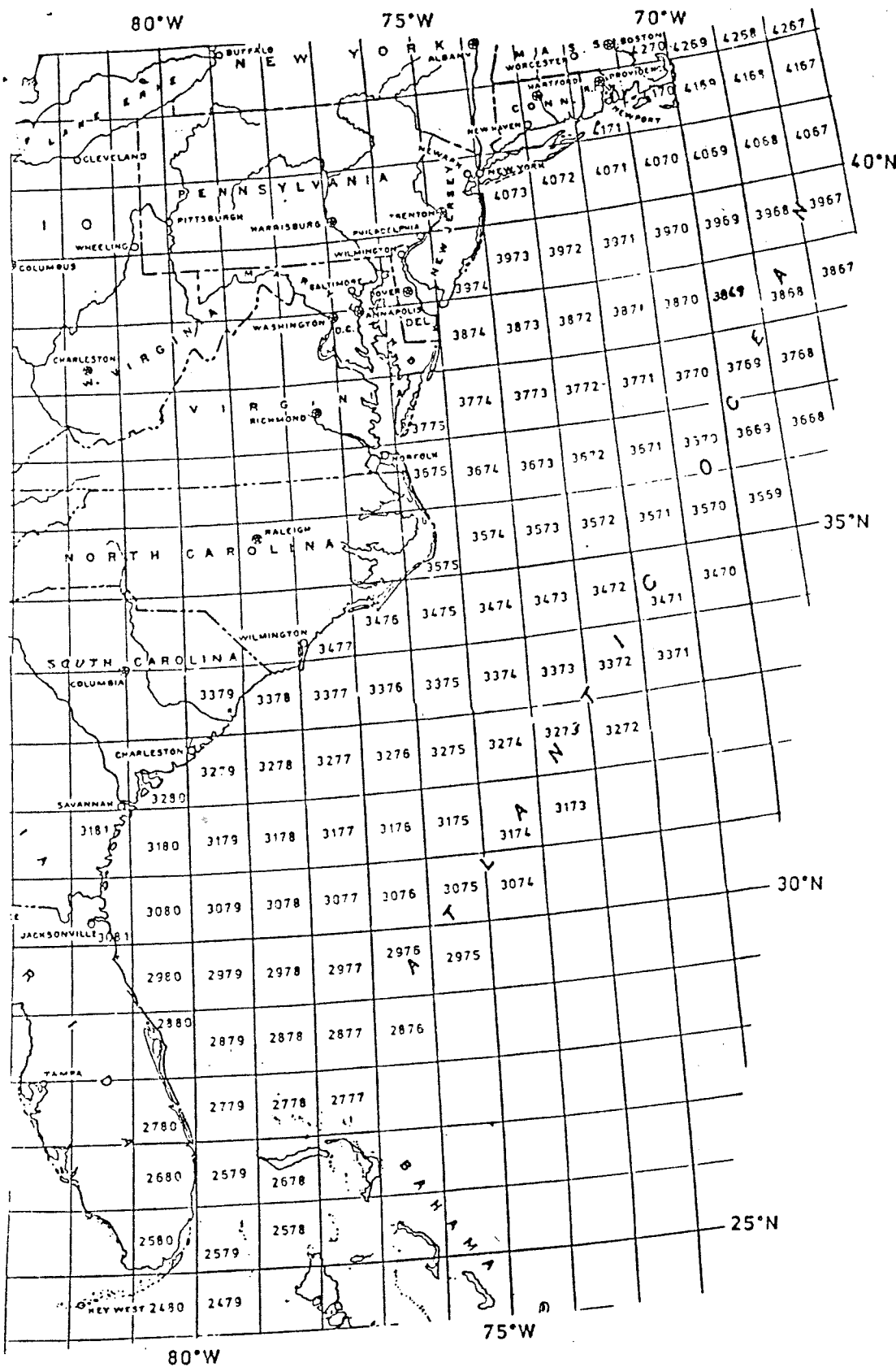
§ 642.26 [Amended].

b. In § 642.26 the phrase "gill nets" is revised to read "gillnets" where it appears in paragraph (a)(1)(iii).

Appendix A—[Amended]

14. In Appendix A to part 642, that part of Figure 3 showing Statistical Grids for the South Atlantic is revised to read as follows:

BILLING CODE 3510-22-M



STATISTICAL GRIDS FOR THE SOUTH ATLANTIC AND MID-ATLANTIC