

respectively, are reached, (4) permits for charter vessels and for vessels fishing under a commercial allocation for Spanish mackerel, (5) bag limits for recreational fishermen fishing for Spanish mackerel, (6) restrictions for gill nets and prohibition of the use of purse seines, except for incidental catch, in the Spanish mackerel fishery and the fishery for the Gulf migratory group of king mackerel, and (7) prohibition of the transfer at sea of king or Spanish mackerel taken under a bag limit from the exclusive economic zone (EEZ). The intended effect of this rule is to arrest overfishing of the Spanish mackerel stock and to rebuild and maintain all stocks at a MSY level through flexible management procedures which allow annual adjustments to the management measures.

EFFECTIVE DATES: June 30, 1987, except § 642.7(a)(31) which is effective August 24, 1987.

ADDRESS: Copies of the Supplemental Regulatory Impact Review/Regulatory Flexibility Analysis are available from William N. Lindall, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: William N. Lindall, 813-893-3721.

SUPPLEMENTARY INFORMATION: The mackerel fishery is managed under the FMP and its implementing regulations at 50 CFR Part 642. Amendment 1 to the FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and implemented September 22, 1985 (50 FR 34843, August 28, 1985). These regulations implement the approved measures of Amendment 2 to the FMP which also was prepared jointly by the Councils.

The FMP manages the coastal migratory pelagic fishery throughout the EEZ off the South Atlantic coastal States from the Virginia-North Carolina border south and through the Gulf of Mexico. The regulations, except for § 642.5, apply only to this area. The management unit for the FMP consists of Spanish mackerel, king mackerel, and cobia. Dolphin, bluefish, little tunny, and cero are minor species in the fishery, and only the data collection requirements of the FMP apply to these species.

The preamble to the proposed rule implementing Amendment 2 (52 FR 15519, April 29, 1987) contained a description of recent data and analysis which indicate there are two migratory groups of Spanish mackerel and that they should be treated as separate stocks for management purposes. In

addition, allocations by user groups, quotas, bag limits, permits, and gear restrictions were discussed in detail. These discussions are not repeated here.

Comments and Responses

Six comments on the proposed rule were received from three sources.

The Coast Guard commented that the wording of the prohibition in § 642.7(a)(5) on possession of mackerel aboard a vessel with a gill net with mesh size less than that specified complicates enforcement because it is difficult to prove how the fish were taken. How (or where) the fish were taken is immaterial to the prohibition and need not be proven. Mere possession in the EEZ of mackerel on such a vessel is a violation, except as may be allowed under the incidental catch allowance specified in § 642.24(c). The Coast Guard's suggestion that smaller mesh nets be illegal aboard vessels permitted in the mackerel fishery is impractical as it would preclude permitted gill net vessels from participating in fisheries in which smaller mesh nets are used. NMFS recognizes that without compatible regulations in adjoining State waters this management measure is not readily amenable to dockside enforcement.

The Coast Guard commented that the retention and possession parts of the prohibition in § 642.7(a)(20) applicable to permitted vessels after a commercial closure will be difficult to enforce at sea because illegally caught fish cannot be distinguished from legally caught fish. NMFS does not agree. It is reasonable to believe that any recently caught mackerel possessed within the geographical limits of a particular migratory group were caught from that migratory group. Even if mackerel were taken in the waters of a State located within the geographical limits of a commercial closure after the closure, possession of such mackerel aboard a permitted vessel in the EEZ would be a violation, except as may be authorized for certain charter vessels.

The Coast Guard commented on the difficulty of enforcing at sea the purse seine catch allowance in § 642.24(d), i.e., determining the percentage of total catch made up of mackerel. The Coast Guard suggested making this provision a landing requirement. The present language of the purse seine catch allowance does not require that it be applied only at sea. Under suitable circumstances, weighing or counting of fish may be done upon landing.

A commercial fishing organization objected to the purse seine prohibition as inconsistent with the Magnuson Act

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 604 and 642

[Docket No. 70481-7113]

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

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement conservation and management measures prescribed in Amendment 2 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This final rule provides for: (1) Revision of the framework measure for seasonal stock assessment, (2) changes in maximum sustainable yield (MSY) and total allowable catch (TAC), and establishment of geographical groups, allocations, and quotas for Spanish mackerel, (3) closure of the king or Spanish mackerel commercial fishery or reduction of the bag limit to zero when commercial or recreational allocations,

because it constitutes an allocation without conservation justification; it promotes inefficiency in the fishery and thus increases prices to the consumer. NOAA agrees in part and has disapproved the prohibition of purse seines in the fishery for the Atlantic migratory group of king mackerel. The Atlantic migratory group of king mackerel is not overfished and the traditional commercial fishermen have not taken their allocation. The other mackerel fisheries, however, are overfished. The traditional commercial fishermen in the Gulf have been severely restricted and the fisheries have been closed early in the season when allocations were filled. Allowing additional competition by purse seine vessels would be unfair to the traditional commercial fishermen. Any allowed purse seine quota on the overfished stocks would be very small and would have a minimal effect on cost to the consumer. The available supply of fish has already been so restricted that there are no implications for price changes based on demand considerations. As a further consequence of small purse seine quotas, such quotas could be exceeded easily by a single set of a purse seine; thus, conservation purposes would not be served.

A recreational fisherman commented that sale of mackerel caught under a bag limit should not be allowed. Specifically, he questioned whether charter boat patrons would release their catches when the captain could sell them. Implementation of such a measure without the opportunity to fully assess its impacts would be unwise. Such a ban was not included in the proposed rule and was not addressed in public hearings on Amendment 2.

A recreational fisherman suggested that in order to help with compliance with all Federal regulations, NMFS should require submission of the Coast Guard Captain's License with each application for a charter boat permit. NMFS does not agree that such submission would have the desired effect.

Approval/Disapproval of the Amendment

Except for the prohibition of purse seines in the fishery for the Atlantic migratory group of king mackerel, Amendment 2 is approved. The Councils did not provide adequate rationale for the disapproved prohibition. The strongest rationale presented was that traditional participants in the fishery are faced with such severe limitations in catch that it is unfair to allow purse

seiners to compete for the limited resource. While true for the Spanish mackerel fishery and the fishery for the Gulf migratory group of king mackerel, it is not true for the Atlantic migratory group of king mackerel where the commercial allocation has never been reached. The disapproved measure is severable. Its omission does not alter the effectiveness of the amendment or impede the adoption and implementation of any other management measure.

Changes From the Proposed Rule

In § 642.4, paragraph (g) is redesignated as (f) and revised to make the provisions regarding transfer of a permit upon sale of a permitted vessel applicable to a charter vessel permit. Also in § 642.4, paragraph (k) is added so that the Regional Director will be kept informed of current information regarding permittees. Current information is necessary for statistical analyses and so that the Regional Director has up-to-date addresses to which to send notices of importance to commercial fishermen and charter boat owners or operators.

As discussed above, § 642.7(a)(6), § 642.21(a)(2), and § 642.24 (b) and (d) are revised to allow a purse seine fishery for king mackerel from the Atlantic migratory group.

In § 642.7, paragraph (a)(13) is revised to remove the prohibition on failure to transfer a permit. The regulations provide for transfer of a permit but do not require it. Paragraph (a)(18) is revised for clarity. Also in § 642.7, a new paragraph (a)(31) is added to provide a specific prohibition on owning or operating a charter vessel without the permit required by § 642.4(a)(3). The delayed effective date for § 642.7(a)(31) provides 60 days for charter vessel owners or operators to obtain the required permit.

Throughout this rule, reference to § 642.4 when discussing permitted vessels is changed to § 642.4(a)(1) or § 642.4(a)(3) to distinguish between a vessel permitted to fish under a commercial allocation and one with a charter boat permit.

In § 642.27, paragraph (f)(3) is revised for clarity.

In § 642.28, paragraph (c)(1) is revised for clarity.

In the proposed rule there was inconsistent use on the terms "allocation" and "quota". For consistency and clarity, the initial division of each migratory group of king mackerel or Spanish mackerel between commercial and recreational harvesters is referred to as an allocation. Any

further subdivision, such as between geographical zones, is referred to as a quota. Thus, there are quotas for the eastern and western zones under the commercial allocation of Gulf migratory group king mackerel. This change is reflected in minor rewording throughout the final rule.

Classification

The Regional Director determined that Amendment 2 is necessary for the conservation and management of the coastal migratory pelagic resources of the Gulf of Mexico and the South Atlantic and that it is consistent with the Magnuson Act and other applicable law, except for that part of the amendment that would prohibit the use of purse seines in the fishery for the Atlantic migratory group of king mackerel.

The Councils prepared an environmental assessment (EA) for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the EA from the address above.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The Councils prepared a supplemental regulatory impact review (SRIR) which concluded that greater benefits will result from this rule in terms of overall poundage produced than from the other alternatives. You may obtain a copy of the SRIR from the address above.

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

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0183. When mandatory reporting by selected recreational fishermen is required, an additional request will be submitted to OMB.

The Councils have determined that this proposed 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 was submitted for review by the responsible State agencies under

section 307 of the Coastal Zone Management Act. The State agencies of Mississippi and Louisiana agreed with this determination. Other State agencies failed to comment within the statutory time period.

The Assistant Administrator for Fisheries, NOAA, found that it would be contrary to the public interest in effective management of the coastal migratory pelagic resources to delay for 30 days the effective date of this rule. An emergency interim rule which is in effect through June 29, 1987 (52 FR 10762, April 3, 1987) currently provides necessary conservation measures for Spanish mackerel. To continue those conservation measures without interruption, it is necessary that this rule, with the exception of § 642.7(a)(31), become effective on June 30, 1987.

NOAA has issued a notice of preliminary change in the TAC for the Gulf migratory group of king mackerel and the Atlantic and Gulf migratory groups of Spanish mackerel and bag limits for Spanish mackerel (52 FR 21977, June 10, 1987). Final action on the proposed changes will further amend 50 CFR Part 642 and is expected to be effective on or about July 1, 1987.

List of Subjects

50 CFR Part 604

Reporting and recordkeeping requirements.

50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 19, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Parts 604 and 642 are amended as follows:

PART 604—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION

Requirements

1. The authority citation for Part 604 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

2. The table of § 604.1 is amended by adding the following entry in numerical order by section number:

§ 604.1 OMB control numbers assigned under the Paperwork Reduction Act.

50 CFR Part or section where the information collection requirement is located	Current OMB control No. (all numbers begin 0648-)
§ 642.4(a)(3), (b)(4), and (k).....	0183

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

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

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

4. In § 642.2, under the definition for *Coastal migratory pelagic fish*, the word "mackerel" is removed from the phrase "Cero mackerel", the definition for *Fishery conservation zone (FCZ)* is removed, the definitions for *Migratory group* and *Total allowable catch (TAC)* are revised, and new definitions for *Exclusive Economic Zone (EEZ)*, and *Overfishing* are added in alphabetical order to read as follows:

§ 642.2 Definitions.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Migratory group means a group of fish that may or may not be a separate genetic stock but which for management purposes may be treated as a separate stock (See Figure 2 and § 642.29(a) for the geographical and seasonal boundaries between migratory groups of king mackerel and § 642.29(b) for the geographical boundary between migratory groups of Spanish mackerel.)

Overfishing or overfished means an excessive mortality rate on a stock of fish (mortality rate exceeds F_{MSY} or $F_{0.1}$) or spawning biomass low enough to affect recruitment.

Total allowable catch (TAC) means the maximum permissible level of annual harvest specified for a stock or migratory group after consideration of the biological, economic, and social factors with such level usually being specified from below the upper range of ABC. TAC may be set above the ABC

range when it will not result in overfishing.

5. In § 642.4, paragraph (c) is removed, paragraphs (a) and (b) are revised, paragraphs (d) through (k) are redesignated as (c) through (j), newly redesignated paragraphs (c), (e), (f), and (g) are revised, and paragraph (k) is added, to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability.* (1) An owner or operator of a fishing vessel which fishes for king or Spanish mackerel under a commercial allocation in § 642.21 (a) or (c) is required to obtain an annual vessel permit.

(2) A qualifying owner or operator of a charter vessel may obtain a permit to fish under a commercial allocation for king or Spanish mackerel. Charter vessels must adhere to bag limits while under charter.

(3) An owner or operator of a charter vessel which fishes for coastal migratory pelagic fish is required to obtain an annual charter vessel permit.

(b) *Application for permit.* (1) An application for a permit may be submitted to the Regional Director at any time. An application must be signed by the owner or operator.

(2) An applicant for a permit to fish under a commercial allocation for king and/or Spanish mackerel must provide the following information:

(i) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel;

(ii) Name of vessel;

(iii) The vessel's official number;

(iv) Home port or principal port of landing, gross tonnage, radio call sign, and length of vessel;

(v) Approximate fish hold capacity of the vessel;

(vi) A sworn statement by the owner or operator certifying that at least 10 percent of his or her earned income was derived from commercial fishing, i.e., sale of the catch, during the preceding calendar year (January 1 through December 31);

(vii) Any other information concerning vessel, gear characteristics, or fishing area requested by the Regional Director;

(viii) The migratory group(s) of king and/or Spanish mackerel that will be fished; and

(ix) Proof of certification as required by paragraph (b)(3) of this section.

(3) The Regional Director or his designee may require the applicant to provide documentation supporting the sworn statement submitted under paragraph (b)(2)(vi) of this section before a permit is issued or to

substantiate why such a permit should not be revoked under paragraph (h) of this section.

(4) An applicant for a charter vessel permit must provide the following information:

- (i) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel;
- (ii) Name of vessel;
- (iii) The vessel's official number;
- (iv) Homeport or principal port of landing, and length of vessel; and
- (v) Passenger capacity.

(c) *Issuance.* The Regional Director or his designee will issue permits at any time for an April through March permit year. Permits for the following permit year become available in February. Until a permit to fish under a commercial quota is received, bag limits apply.

(e) *Duration.* A permit is valid only for that portion of the permit year remaining after it is issued (April 1 through March 31 is the full permit year), unless revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(f) *Transfer.* A permit issued under this section is not transferable or assignable except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. A person purchasing a vessel with a permit to fish under a commercial allocation for king or Spanish mackerel or a charter vessel with a permit to fish for coastal migratory pelagic fish must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of an executed (signed) bill of sale. The new owner of a permitted vessel may fish with the preceding owner's permit until a new permit is issued or his application is disapproved, but for a period not to exceed 60 days from the date of purchase. Until a new permit is received, a copy of the executed (signed) bill of sale must be aboard the vessel and available for inspection by an authorized officer.

(g) *Display.* A permit issued under this section must be carried aboard the fishing vessel, and a vessel permitted to fish under a commercial allocation must be identified as provided for in § 642.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(k) *Change in permit application information.* A permittee must notify the Regional Director within 30 days after any change in the permit application

information required by paragraph (b)(2) or (b)(4) of this section.

6. In § 642.5, paragraphs (a) introductory text, and (a)(1) are revised to read as follows:

§ 642.5 Reporting requirements.

(a) *Commercial vessel owners and operators.* Any person who owns or operates a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter, or that fishes under a permit required in § 642.4(a)(1) in the Gulf of Mexico EEZ or South Atlantic EEZ or in adjoining State waters, and who is selected to report must provide the following information regarding any fishing trip to the Center Director:

(1) Name and official number of vessel;

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

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in fishing for king or Spanish mackerel under a commercial allocation and the permit specified in § 642.4(a)(1) must—

8. In § 642.7, paragraphs (a) (5), (6), (13), (17) through (22), and (27) through (30) are revised and paragraph (a)(31) is added, to read as follows:

§ 642.7 Prohibitions.

(5) Possess in the EEZ king or Spanish mackerel on board a vessel with gill nets with a minimum mesh size less than that specified in § 642.24(a), except for an incidental catch allowance as specified in § 642.24(c);

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

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

(17) 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), (b), (c), or (d) has been reached and closure as specified in § 642.22 has been invoked. (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);

(18) Fish for, retain, or have in possession in the EEZ aboard a vessel permitted under § 642.4(a)(1) to fish under a commercial allocation king mackerel from a migratory group or zone after the commercial allocation or quota for that migratory group or zone specified in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22(a), except as provided in § 642.28(c)(2);

(19) Sell the incidental catch allowance of king or Spanish mackerel taken in the EEZ under § 642.24 (c) or (d) after the allocations or quotas specified in § 642.21 (a) or (c) have been reached and closure has been invoked as specified in § 642.22(a);

(20) Fish for, retain, or have in possession in the EEZ aboard a vessel permitted under § 642.4(a)(1) to fish under a commercial allocation Spanish mackerel from a migratory group after the commercial allocation for that migratory group specified in § 642.21(c) has been reached and closure has been invoked under § 642.22(a), except as provided for in § 642.28(c)(2);

(21) Land, consume at sea, sell, or have in possession at sea or at time of landing king or Spanish mackerel in excess of the bag limits specified in § 642.28, except as provided for under § 642.21 (a) and (c);

(22) Fish for king or Spanish mackerel in the EEZ under an allocation specified in § 642.21 (a) or (c) without a permit as specified in § 642.4(a)(1);

(27) Possess king or Spanish mackerel harvested in the EEZ 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);

(28) Sell king or Spanish mackerel harvested under the recreational bag limits in § 642.28(a) except as specified in § 642.28(d);

(29) Operate a vessel that fishes for king or Spanish mackerel in the EEZ with king or Spanish mackerel aboard in excess of the cumulative bag limit, based on the number of persons aboard, applicable to the vessel, as specified in § 642.28(f);

(30) Transfer at sea in the EEZ from a fishing vessel to any other vessel king or Spanish mackerel caught under the bag and possession limits specified in § 642.28(a) or transfer at sea any such king or Spanish mackerel taken from the EEZ; or

(31) Own or operate a charter vessel which fishes for coastal migratory pelagic fish in the EEZ without a permit as specified in § 642.4(a)(3).

9. Section 642.20 is revised to read as follows:

§ 642.20 Seasons.

The fishing year for the Gulf migratory groups of king and Spanish mackerel for allocations and quotas begins at 0001 hours, July 1, and ends at 2400 hours, June 30, local time (see Figure 2). The fishing year for the Atlantic migratory groups of king and Spanish mackerel begins at 0001 hours, April 1, and ends at 2400 hours, March 31, local time. The fishing year for all other coastal migratory pelagic fish begins at 0001 hours, January 1, and ends at 2400 hours, December 31, local time.

10. In § 642.21, paragraph (a)(3) is amended by removing the reference to Table 2 of Appendix A; paragraphs (a)(1)(iii) and (e) are removed; paragraphs (a)(1) introductory text, (a)(1) (i) and (ii), (a)(2), (c) and (d) are revised; and paragraph (f) is redesignated as (e) and revised, to read as follows:

§ 642.21 Quotas and allocations.

(a) *Commercial allocations and quotas for king mackerel.* (1) The commercial allocation for the Gulf migratory group of king mackerel is 0.93 million pounds per fishing year. This allocation is divided into quotas as follows:

(i) 0.64 million pounds for the eastern zone; and

(ii) 0.29 million pounds for the western zone.

(2) The commercial allocation for the Atlantic migratory group of king mackerel is 3.59 million pounds per fishing year. No more than 0.4 million pounds may be harvested by purse seines.

(c) *Commercial allocations for Spanish mackerel.* (1) The commercial allocation for the Gulf migratory group of Spanish mackerel is 1.03 million pounds per fishing year.

(2) The commercial allocation for the Atlantic migratory group of Spanish mackerel is 2.2 million pounds per fishing year.

(d) *Recreational allocations for Spanish mackerel.* (1) The recreational allocation for the Gulf migratory group of Spanish mackerel is 0.77 million pounds per fishing year.

(2) The recreational allocation for the Atlantic migratory group of Spanish mackerel is 0.7 million pounds per fishing year.

(e) *Zones:* The boundary between the eastern and western zones established for the quotas under the commercial allocation of the Gulf migratory group of king mackerel in paragraph (a)(1) of this section is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ (Figure 2).

11. Section 642.22 is revised to read as follows:

§ 642.22 Closures.

(a) The Secretary, by publication of a notice in the *Federal Register*, will close the king or Spanish mackerel commercial fishery in the EEZ for a particular migratory group or zone when the allocation or quota under § 642.21 (a) or (c) for that migratory group or zone has been reached or is projected to be reached. 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 within the boundaries of the closed area of king or Spanish mackerel taken from the EEZ after the closure is prohibited for the remainder of that fishing year. This prohibition does not apply to trade in Spanish or king mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by dealers or processors.

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

12. Section 642.24 is revised to read as follows:

§ 642.24 Vessel, gear, equipment limitations.

(a) *Gill nets*—(1) *King mackerel.* The minimum mesh size for gill nets used to fish for king mackerel is 4¾ inches (stretched mesh).

(2) *Spanish mackerel.* The minimum mesh size for gill nets used to fish for Spanish mackerel is 3½ inches (stretched mesh).

(b) *Purse seines.* Except as provided in paragraph (d) of this section, the use of purse seines to fish for king mackerel from the Gulf migratory group or for Spanish mackerel from the Gulf or Atlantic migratory group is prohibited.

(c) *Incidental catch allowance.* An incidental catch of king mackerel is allowed equal to ten percent of the total catch by number of Spanish mackerel on board a vessel with gill nets with a minimum mesh size smaller than that specified in paragraph (a)(1) of this section.

(d) *Purse seine 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 or Spanish mackerel does not exceed one percent or ten percent, respectively, by weight or number (whichever is less) of the catch of all fish aboard the vessel. Such king or Spanish mackerel will be 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).

13. In § 642.27, paragraphs (b), (c), (f)(1)(ii), (f)(2), and (f)(3) are revised, to read as follows:

§ 642.27 Stock assessment procedures.

(b) The Councils will consider the report and recommendations of the Group and hold public hearings at a time and place of the Councils' choosing to discuss the Group's report. The Councils may convene the Advisory Panel and the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, the Councils will make findings on the need for changes.

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

(f) * * *
(1) * * *
(ii) Spanish mackerel—15.7 million pounds to 19.7 million pounds.

(2) Setting TACs for each stock or group of fish which should be managed separately, as identified in the FMP. A TAC may not exceed the upper level of ABC if it results in overfishing. No TAC will exceed the best point estimate of MSY by more than ten percent. Reductions or increases in allocations as

a result of changes in TAC are to be as equitable as may be practicable, utilizing similar percentage changes to all participants in a fishery. (Changes in bag limits cannot always accommodate the exact desired level of change.)

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

14. Section 642.28 is revised to read as follows:

§ 642.28 Bag and possession limits.

(a) *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 catch allowance specified in § 642.24(d), is limited to the following:

(1) *King mackerel Gulf migratory group.*

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

(ii) Possessing two king mackerel per person per trip when fishing from other vessels.

(2) *King mackerel Atlantic migratory group.* Possessing three king mackerel per person per trip.

(3) *Spanish mackerel.* Bag limits set under § 642.27(c) will be announced in the Federal Register.

(b) All king mackerel must be landed in identifiable form as to number and species (with the understanding that head and tail can be removed). All Spanish mackerel must be landed with head and fins intact.

(c) After a closure under § 642.22(a) is invoked for a commercial allocation or quota specified in § 642.21 (a) or (c):

(1) A vessel permitted under § 642.4(a)(1) to fish under a commercial allocation may not fish under the bag limit specified in paragraph (a) of this section for the closed species/migratory group/zone, except as provided for under paragraph (c)(2) of this section.

(2) A charter vessel permitted to fish under a commercial allocation for mackerel may continue to harvest fish under the bag limit specified in paragraph (a) 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).

(d) A fisherman may sell his catch of mackerel taken under the bag limits in paragraph (a) of this section unless the respective migratory group or zone commercial allocation or quota in § 642.21 (a) or (c) has been reached and closure under § 642.22(a) has been invoked. Mackerel sold by fishermen are counted against the appropriate commercial allocation or quota in § 642.21 (a) or (c) for the area where they are caught.

(e) A person who fishes for mackerel in the EEZ may not combine the bag and possession limits of this part with any bag or possession limits applicable to State waters.

(f) The operator of a vessel that fishes for mackerel in the EEZ is responsible for the cumulative bag limit, based on the number of persons aboard, applicable to that vessel.

(g) A person who fishes for king or Spanish mackerel from the EEZ under the bag limits specified in paragraph (a) of this section, or who possesses such king or Spanish mackerel in the EEZ, may not transfer at sea king or Spanish mackerel from a fishing vessel to any other vessel.

15. Section 642.29 is revised to read as follows:

§ 642.29 Area and time separation.

(a) *King mackerel*—(1) *Summer separation.* During the summer period (April 1 through October 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25°48' N. latitude) to the outer limit of the EEZ (Figure 2).

(2) *Winter separation.* During the winter period (November 1 through March 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25' N. latitude) to the outer limit of the EEZ (Figure 2).

(b) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4' N. latitude) to the outer limit of the EEZ.

Appendix A—[Amended]

16. In Appendix A, Tables 1 and 2 are removed.

§ 642.3, § 642.5, § 642.7, § 642.23, and § 642.26 [Amended]

17. In addition to the amendments set forth above, the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places: Section 642.3(c); Section 642.5(a) introductory text, (b) introductory text and (c) introductory text; Section 642.7(a) (3), (4), and (12); Section 642.23 (a) and (b); and Section 642.26(a)(1) introductory text, (a)(1)(iii) and (a)(2).

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