TABLE 2

Comsat Monthly Circuit Revenue Requirements Comparison

	Annual Revenue Requirements Increase From $165M in 1986											
	$165M + 0/Year			$165M + $10M/Year			$165M + $15M/Year			$165M + $20M/Year		
	BL	2%	AT&T	BL	2%	AT&T	BL	2%	AT&T	BL	2%	AT&T
1986	601	608	614	601	608	614	601	608	614	601	608	614
87	513	545	561	544	578	596	559	594	613	575	611	630
88	470	490	516	527	549	579	555	579	610	584	609	641
89	431	438	474	510	517	560	549	557	603	588	597	646
90	363	391	449	451	486	558	494	534	613	538	581	667
91	298	351	435	388	457	566	433	510	632	478	563	698
Total	2676	2823	3049	3021	3195	3473	3191	3382	3685	3364	3569	3896
Average Monthly Revenue Require. Per Ckt.	446	471	508	504	533	579	532	564	614	561	595	649
% Diff. Compared to Balanced Loading	-	+5.61	+13.90	-	+5.75	+14.88	-	+6.02	+15.41	-	+6.06	+15.69
1986-88 Sub Total	1584	1643	1691	1672	1735	1789	1715	1781	1837	1760	1828	1885
Average Montly Revenue Require. Per Ckt.	528	548	564	557	578	596	572	594	612	587	609	628
% Diff. Compared to Balanced Loading	-	+3.72	+6.76	-	+3.76	+6.99	-	+3.84	+7.11	-	+3.86	+7.10

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 542

[Docket No. T85-01; Notice 2]

Procedures for Selection of Covered Vehicles; Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule is issued under Title VI of the Motor Vehicle Information and Cost Savings Act. It sets forth the procedures to be followed when determining which passenger motor vehicle lines introduced on or after January 1, 1983, are to be covered under the proposed vehicle theft prevention standard. That standard would require the marking of major component parts on all cars in lines subject to its requirements. Under these procedures, the manufacturer will apply the relevant criteria in preparing its views as to which of its lines should be selected as high theft lines for purposes of the theft prevention standard. The manufacturer would submit its views to the agency, together with the facts it considered and the supporting rationales for those views. NHTSA will consider these submissions and inform the manufacturer of its agreement with the manufacturer's views or of its preliminary determination that different lines should be selected. If the manufacturer does not request reconsideration of the preliminary determination, it automatically becomes the final determination. If the manufacturer does request reconsideration, it must provide the facts and arguments underlying its objections. NHTSA considers the request for reconsideration and promptly issues its final determination.

DATE: This rule is effective on and after November 1, 1985.

Note.—This rule refers to the appendices to Part 541, which is the proposed vehicle theft prevention standard. The notice of proposed rulemaking to establish Part 541 was published at 50 FR 19728, May 10, 1985. NHTSA anticipates a final rule for Part 541 will be published before this rule becomes effective. If that final rule has not been published by the date this rule is scheduled to become effective, the agency will publish a notice delaying the effective date for this rule.

ADDRESS: Any petitions for reconsideration of this rule must be received by NHTSA no later than September 27, 1985, and should be addressed to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Title VI requires NHTSA, by delegation from the Secretary of Transportation, to promulgate a vehicle theft prevention standard mandating a marking system for the major component parts of high theft lines. To implement the mandate of the Theft Act, NHTSA must divide each manufacturer's fleet of passenger motor vehicles into different "lines". A "line" is a group of vehicles sold with the same nameplate, such as Mustang, Camaro, or Aries. The agency must then select those lines which are "high theft lines" and, therefore, subject to the marking requirements of the theft prevention standard.

Section 603(a)(1) of the Cost Savings Act (15 U.S.C. 2023(a)(1)) specifies three different groups of lines that are designated as high theft lines for purposes of the theft prevention standard. The groupings are as follows:

(1) Existing lines that are determined on the basis of actual theft data to have a theft rate exceeding the median theft rate for all new passenger motor vehicles in 1983 and 1984 are high theft lines under the provisions of section 603(a)(1)(A). "Existing lines" are those lines introduced before January 1, 1983. (This date is predicated on promulgation of the final rule establishing the theft prevention standard in 1985.)

(2) Lines introduced on or after January 1, 1983, that are likely to have a theft rate exceeding the median theft rate are high theft lines under the provisions of section 603(a)(1)(B).

(3) Lines whose theft rate is or is likely to be below the median theft rate, but whose major component parts are interchangeable with a majority of the major component parts of a line that is subject to the theft prevention standard under section 603(a)(1) (A) or (B), are high theft lines under the provisions of section 603(a)(1)(C). However, car lines whose theft rate is or is likely to be below the median theft rate will not be treated as high theft lines pursuant to this third grouping if such low theft or likely low theft lines account for greater than 90 percent of total production of all lines containing such interchangeable parts, section 603(a)(1)(C) (i) and (ii).

Section 603(a)(3) of the Cost Savings Act specifies that not more than a total of 14 of a manufacturer's lines introduced before the effective date of the standard can be selected under the first two groups listed above. The 14 line total does not include any of those lines selected as high theft lines under the third group listed above; i.e., car lines which have interchangeable parts with high theft lines.

Section 603(a)(2) of the Cost Savings Act states that the selection of lines as high theft lines subject to the requirements of the theft prevention standard should be accomplished by agreement between the manufacturer and NHTSA, if possible. However, that section also states that the agency must unilaterally select the subject lines if no agreement is reached. In the event that no agreement is reached between the agency and the manufacturer, this section requires NHTS to make the selections on a preliminary basis and give the manufacturer an opportunity to comment on those selections.

The Notice of Proposed Rulemaking

To carry out these statutory mandates, NHTSA published a notice of proposed rulemaking (NPRM) at 50 FR 25603, June 20, 1985. That notice proposed the procedures which the manufacturers and this agency would follow in attempting to agree on the lines to be selected for coverage by the theft prevention standard for all lines introduced after January 1, 1983. The NPRM stated that the selection of lines introduced before January 1, 1983, that have a theft rate exceeding the median theft rate for all new passenger motor vehicles in 1983 and 1984 was being handled in a separate action. A notice setting forth data on passenger motor vehicle thefts in 1983 and 1984 for review and comment was published at 50 FR 18708, May 2, 1985. The agency will soon publish a notice setting forth its final version of the 1983 and 1984 theft data. That notice will provide the basis for selecting high theft lines from lines introduced before January 1, 1983. However, the procedures set forth in this rule will be followed by NHTSA and the manufacturers in making all other selections of high theft lines under the provisions of the Theft Act.

The NPRM also proposed the procedures that would be followed in

applying the 14 line limitation set forth in section 603(a)(3) of the Cost Savings Act. Finally, the NPRM set forth the rights manufacturers would have if they disagreed with the agency's preliminary determination that a specific line should be selected as a high theft line.

It was emphasized that this rulemaking action was simply a procedural adjunct to the theft prevention standard. This rule does not set forth any substantive requirements or restrictions, nor does it actually select any car lines as high theft lines. It merely sets forth the procedures to be followed in determining which of a vehicle manufacturer's lines will be subject to the marking requirements of the theft prevention standard.

The NPRM proposed two sets of procedures for the selection of high theft lines. The first set, contained in §§ 542.1, 542.2, and 542.3, would be used to select the high theft lines from existing lines and new lines introduced on or after January 1, 1983, but before the effective date of the theft prevention standard. The second set, contained in §§ 542.4 and 542.5, would be used to select the high theft lines from all new lines introduced after the effective date of the standard.

Under each of the proposed procedures, the manufacturer would apply the relevant criteria to its currently produced or planned vehicle lines, and submit its views and supporting analysis to NHTSA as to which of its lines should be selected as high theft lines, together with the factual information considered by the manufacturer in reaching its conclusions. The agency would then promptly review the manufacturer's submissions, determine whether it agreed or disagreed with the manufacturer's proposed classification of its lines, and notify the manufacturer in writing of the agency's preliminary determination as to which of its vehicle lines should be selected as high theft lines. The manufacturer would have the right to request agency reconsideration of any preliminary determination to which the manufacturer objected. If the manufacturer did not request reconsideration of a preliminary determination, it would automatically become the agency's final determination. If the manufacturer did request a reconsideration of a preliminary determination, it would have to include all the facts and arguments underlying its objection to the agency's preliminary determination. NHTSA would promptly consider the facts and arguments and notify the manufacturer of its final determination. Should the manufacturer disagree with the final agency determination, regardless of whether the manufacturer has sought reconsideration, it has the right to seek judicial review of the agency determination, as specified in section 610 of the Cost Savings Act (15 U.S.C. 2030).

NHTSA believes that the proposed procedures were simple, straightforward, and compatible with both the timing allowed by the Theft Act for completing the selection of high theft lines and the Theft Act's directive that this selection should be accomplished by agreement between the manufacturer and NHTSA if possible. The NPRM was consciously structured so that the manufacturers and agency would have every opportunity to understand the other's position and agree on the proper selections.

The NPRM noted that section 603(c) of the Cost Savings Act (15 U.S.C. 2023(c)) directs NHTSA to, by rule, require each manufacturer to provide information necessary to select the high theft lines and major parts to be covered by the theft prevention standard. This rule does not *require* the manufacturers to provide any information; it merely sets forth the procedures to be followed by those manufacturers which choose to provide the information and to participate in the selection process. There are no penalties imposed for the failure of a manufacturer to provide the information. This approach was chosen because NHTSA then and now anticipates that the manufacturers will be forthcoming and cooperative in providing the agency with the views and supporting analyses specified in this rule. If, of course, the agency does not receive or otherwise obtain the necessary information on which to base its selections, the agency will propose changes to this rule to specifically require such information.

The Comments and Changes to the Proposed Procedures

Five comments on the NPRM had been received by the agency as of the comment closing date and were considered in developing this final rule. The commenters were all automobile manufacturers, and were generally supportive of the proposed procedures. However, the comments did raise some further issues and request some changes to the proposed procedures. The most significant issues raised in the comments are discussed below.

A. General Comments

1. *Timing.* All of the commenters noted the tight time frames in the propose schedules for both the manufacturers and the agency to complete necessary steps in the selection process. The commenters acknowledged, however, that the tight time frames were imposed by the Theft Act and that they would probably be able to comply with the various dates, assuming that NHTSA is able to meet the statutory deadline for publishing the final rule establishing the theft prevention standard and that there are no serious disagreements as to the lines selected for coverage under that standard.

The agency agrees that the time frames are very tight, but it cannot expand them. The agency intends to meet all the statutory deadlines imposed by the Theft Act and believes that the procedures set forth in this rule will enable the agency, and those manufacturers which submit the necessary information, to agree in most cases on those lines which should be selected for coverage under the theft prevention standard.

Volkswagen (VW) stated that the vehicle manufacturers could not make their submissions under these procedures until the final theft data notice had been published. VW stated that the agency had not yet indicated which source of theft data was going to be used, and repeated its comment to the theft data notice that there were errors in some of the figures and that corrections of those errors would result in a reshuffling of the order of the vehicle theft rates. In conclusion, VW stated that its views as to whether a line introduced after January 1, 1983, should be selected as a high theft line "would likely be influenced by the placement of its predecessor in the earlier list."

NHTSA agrees that the classification of the predecessor line as either a high or low theft line is an important criterion in determining whether a new line should be selected as a likely high theft line. That is why this fact was one of the six criteria proposed in Appendix C of Part 541 for determining whether a new line should be selected as a high theft line. However, it is only one of the six criteria. VW can prepare its views applying the other five criteria, and prepare alternative views on this criterion. This will ensure that NHTSA has received VW's views and that those views reflect VW's belief as to whether the new line should be selected as a likely high theft line, regardless of how the predecessor line is classified in the final theft data notice.

VW further stated that it could not make its submission under this procedural rule until it could obtain vehicle recovery information. The vehicle recovery rate was only proposed

as a criterion for determining whether new lines should be selected as high theft lines in § 542.2. That section will be used to limit, to a total of 14, the number of lines introduced by an individual manufacturer before the effective date of the theft prevention standard that will be selected for coverage by the theft prevention standard. VW does not have more than 14 lines, so this section does not apply to it. All of the other sections of this proposed rule will apply to VW, but none of those sections proposed using vehicle recovery rate as a criterion for the selection of a new line as a high theft line. Accordingly, the agency does not believe that VW needs vehicle recovery data to prepare its submission under this procedural rule.

2. *Definition of "Line".* Several of the commenters disagreed with the agency's proposal to use the same definition of line which was set forth in the proposed vehicle theft standard. General Motors (GM), Chrysler, and BMW all urged the agency to define "line" identically to the way in which that term is defined in 49 CFR Part 565, for the purposes of the vehicle identification number (VIN). The proposed definition of "line" set forth for these procedures and the theft prevention standard incorporates the definition of that term in the Theft Act, supplemented by interpretive examples so that the application of the term "line" under the Theft Act will be as close as possible to the application of the term "line" set forth by the Environmental Protection Agency (EPA) under Title V of the Cost Savings Act. This approach was taken because section 603(b)(1) requires that the theft rate for various lines be calculated using "the production volume of all passenger motor vehicles of that line (*as reported to the EPA under Title V of this Act*) . . ." (emphasis added). In order to use the EPA production data, NHTSA must apply the term "line" in a manner as similar as is possible to that used by the EPA under Title V. Hence, the agency is constrained by Title VI of the Cost Savings Act from simply applying the term "line" in precisely the same way as it has for the purposes of the National Traffic and Motor Vehicle Safety Act (the Safety Act), under 49 CFR 565.

However, NHTSA would like to note that the slightly differing language in the definitions of "line" for purposes of the Theft Act and the Safety Act has not resulted in any manufacturer's fleet of vehicles being grouped into different sets of "lines" for purposes of the different Acts. That is, the agency's grouping of a manufacturer's vehicles into lines thus far for the purposes of the Theft Act has been identical to what that grouping would have been if it were made for purposes of the Safety Act. None of the commenters that urged the agency to adopt identical definitions explained any practical difference which has resulted from the slightly differing wording in the two definitions. Further, the agency does not believe that a situation will arise where a manufacturer's vehicles would be grouped into two different sets of lines for purposes of the Theft Act and the Safety Act.

3. *Definition of "Interchangeable Part".* The NPRM proposed that these procedures would use the same definition for "interchangeable part" as was proposed for the theft prevention standard. To wit, an interchangeable part is "a passenger motor vehicle major part that is sufficiently similar in size and shape to a major part of another car line so that it would be used to replace the major part on a vehicle in that other car line, with no modification to the vehicle other than to the interior or exterior trim."

GM argued that the proposed definition was overly inclusive, and stated that there is no evidence to suggest that thieves would spend the time and money to replace all of the interior trim on a door, for instance, so that it could be used as a replacement part for a different car line. Based on this assertion, GM suggested that the definition of interchangeable part be modified to include only those parts that could be used to replace a major part in another car line with no modifications other than to medallions, molding, or paint.

This final rule does not adopt GM's suggested change. While conceding that there is no evidence to establish conclusively that thieves will make these modifications, the agency concludes that the available evidence strongly suggests that chop shops would make the modifications. The agency must, of course, exercise its judgment based on the available evidence. Police agency comments have consistently referred to the growing sophistication and skill of chop shop operators, which would certainly indicate that the ability exists to change the interior trim of a major part. A chop shop which spent the time and money to change the interior trim of a Chevrolet door, for example, so that it would appear to be an Oldsmobile door could still make a substantial profit on that stolen door, particularly considering the relative price of a new door compared with the interior trim for that door. This would give chop shop operators a motive for changing the interior trim package.

Congress stated that the Theft Act was intended to "decrease the ease with which certain stolen vehicles and their major parts can be fenced", H. Rept. 98–1087, 98th Cong., 2d Sess., at 2 (1984; hereinafter "H. Rept.") and "to make theft more risky" especially for chop shops, H. Rept. at 5. NHTSA must determine which approach better effectuates that intent. The approach suggested by GM simply assumes that thieves would not make this effort, and does nothing to make it more risky or decrease the ease with which that part could be fenced. The proposed definition would require the marking of parts which, with relatively simple and inexpensive modifications, can be fitted onto vehicles in high theft lines. Marking such parts would decrease the ease with which they could be fenced and make thefts of those parts more risky. Given the proliferation of chop shop operations and the large profits which can be made in such illegal operations, both of which were noted in the legislative history of the Theft Act, the agency has determined that it would be inappropriate to adopt the more restrictive definition of "interchangeable part" suggested by GM.

4. *Annual Updates of the Listing of Selected Lines.* The NPRM indicated that the list of those lines which have been selected as high theft lines would be updated annually. The listing of those lines will appear in Appendix A of Part 541, the vehicle theft prevention standard. Chrysler supported the proposal, but Ford suggested that the updating be done every six months, so that law enforcement agencies would be up to date on those vehicles which should be marked. Under the proposed procedures for selecting high theft lines, the final selection for new lines introduced in the 1988 and subsequent model years will be completed no later than 13 months before the new lines are introduced. Thus, no matter when a new line will be introduced, there will be at least one annual update published between the final selection of a new line as a likely high theft line, and its introduction. The only time when there could be a gap would be in the 1987 model year, the first model year in which vehicles in high theft lines would be required to be marked. If there is a time when a line selected as a high theft line would not be listed as such, the agency can, of course, publish a special update to the list. Hence, it does not appear necessary to make a regular updating of this list more frequently than annually.

Both Ford and GM asked that new lines not be listed in Appendix A immediately upon their selection as high theft lines. Ford asked that the listing be postponed until the manufacturer has actually started production of vehicles in that new line, while GM asked that the listing be postponed until the manufacturer has made the vehicle's nameplate public. NHTSA agrees with the implicit point made by GM that there is no reason for the agency to announce a new line's nameplate before the manufacturer does so. However, the Ford suggestion would in almost every instance mean that NHTSA would be withholding information long after the manufacturer itself had made the information public, and there would no longer be a reason for withholding such information. Therefore, the agency will not publicly disclose the name of new lines before the manufacturer itself announces that name. If the manufacturer chooses to delay that announcement until the actual start of production, the agency will not disclose the nameplate prior to that announcement. If that line is selected as a likely high theft line and if vehicles in that line will be introduced before the next regularly scheduled annual update of the listing of new lines selected as high theft lines will be published, NHTSA will make a special update to the listing after the manufacturer's announcement of the nameplate for the line.

5. *Adequacy of Confidentiality Procedures.* The NPRM specifically sought comments on the sufficiency of NHTSA's current procedures for handling confidential information (49 CFR Part 512) to protect the confidential information it may receive from the manufacturers in connection with the selection process. Chrysler specifically stated that the procedures in Part 512 are adequate, and GM did likewise, but with the caveat that no outside contractors employed by NHTSA should be given access to information provided to the agency by manufacturers during the selection process. The agency will not use outside contractors for the selection process, nor does it anticipate that it will make available to outside contractors any information obtained during the selection process. However, NHTSA cannot state that it will never make any information obtained during the selection process available to outside contractors. If such a disclosure must be made, NHTSA will follow appropriate procedures to ensure that the contractor does not disclose the information to other parties.

B. Comments on Specific Sections of the Proposed Rule

1. *Section 542.1: Procedures for selecting pre-standard new lines that are likely to have high theft rates.*

The NPRM proposed that the manufacturers would apply the criteria set forth in Appendix C of Part 541 (the proposed vehicle theft prevention standard) to each line introduced between January 1, 1983, and the effective date. Briefly, the criteria of Appendix C are:

(a) Price;

(b) Vehicle image;

(c) Lines with which the line in question is intended to be competitive;

(d) Line or lines that the new line replaces;

(e) Presence or absence of any new theft prevention devices;

(f) Any available theft data for lines already introduced.

GM commented that the agency should adopt some weighting of each of these criteria, so that the process of selecting a line as a high theft line would be more objectively defined. GM did not suggest how this might be done with the currently available data. NHTSA agrees that ideally there would be sufficient data available so that each of these criteria could be assigned a certain number of points and specify that any line which earned x or more points would be selected as a high theft line. Unfortunately, such a system is simply not possible with the current data.

As noted in the NPRM, these judgments of likely high theft lines are partially subjective judgments. NHTSA concurs with GM's statement that neither price nor vehicle image alone can be strictly correlated to vehicle theft rates. However, NHTSA believe that the six criteria set forth in Appendix C considered together do form an objective basis for predicting if a new line is likely to be a high theft line. If manufacturers in their submissions explain their positions in detail and provide data for each of these criteria, NHTSA anticipates that the question of whether a vehicle should or should not be selected as a high theft line will be fairly simple to answer in most cases. The agency intends to give a full explanation of the bases for its conclusions to the manufacturer in the preliminary and final determinations. If a manufacturer believes that the agency has acted arbitrarily or purely subjectively, the manufacturer has a right to seek judicial review of the selection.

2. *Section 542.2: Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.*

Section 603(a)(3) of the Cost Savings Act establishes a limit of 14 on the combined total of lines introduced before the effective date of the theft prevention standard that may be selected for coverage under that standard because of actual or likely high theft rates. This proposed section provided procedures for implementing that limit.

Under the proposed procedures, each manufacturer producing a total of more than 14 lines that either exceed the median theft rate or are likely to be high theft lines would evaluate and rank those lines in accordance with the extent to which they satisfy the criteria set forth in Appendix B of Part 541, the proposed vehicle theft prevention standard. Those criteria are:

(a) The closeness of the line's theft rate to the median theft rate;

(b) The approximate production volume of vehicles in the line during the next model year;

(c) The likelihood of significant design changes to the line;

(d) The rate at which stolen vehicles in the line are recovered with all parts intact;

(e) The plans for installation of an original equipment anti-theft device in the line, which satisfies the requirements of section 605 of the Cost Savings Act; and

(f) The number of other lines having parts interchangeable with those of that line and the production volumes of those lines.

The manufacturer would then submit its rankings and evaluations to NHTSA, together with the factual information it considered in reaching its rankings.

Again in commenting on this proposed procedure, GM stated that the criteria should be weighted, and again did not suggest how this might be done. The agency's response is the same as that made when GM raised this point in commenting on § 542.1.

GM went on to object strongly to the agency's proposed inclusion of a manufacturer's plans for installing a satisfactory original equipment anti-theft device as one of the criteria for determining which of its lines should be marked. GM stated that this objection would particularly apply if such plans would reduce the chances that that line would be among those selected as one of the 14 to be marked. To explain this objection, GM stated that it believed that "the statutory option of using an approved theft deterrent system was intended to exempt lines which were

otherwise identified as having to meet the standard."

The agency proposed this criterion in Appendix B of Part 541 because of its belief that Congress intended lines with actual or likely high theft rates to either be marked, in accordance with the requirements of the theft prevention standard, or to be equipped with anti-theft devices. However, further examination of this issue has convinced the agency that its proposed course of action should not be adopted in a final rule.

Under the proposed criterion, a manufacturer's plans to install an original equipment anti-theft device in a line could have resulted in that line being excluded from the list of 14 lines to be marked. Thus, the manufacturer would have lost the opportunity under the exemption provision to be permitted to install such devices instead of marking the parts of that line. Congress clearly indicated that it was willing to give these devices the opportunity to be proven as effective as parts marking in deterring vehicles thefts (H. Rept. at 17). The agency has re-examined the proposed criterion and determined that it would have the inadvertent effect of denying manufacturers the opportunity Congress intended. We believe that GM's reading of the statute better effectuates congressional intent and is therefore adopted. Thus, in order to provide this opportunity, NHTSA must permit manufacturers to install such devices on vehicles in lines which would otherwise be required to have their major parts marked.

Accordingly, NHTSA will not consider plans to install an original equipment anti-theft device as a factor militating against the inclusion of that line in the 14 lines chosen for coverage by the theft prevention standard. Further, the final rule setting forth the theft prevention standard will not list this criterion in Appendix B.

3. *Section 542.3: Procedures for selection of pre-standard low theft lines with a majority of major parts interchangeable with those of a high theft line.*

The NPRM proposed that manufacturers would submit their views on whether their lines with theft rates likely to be below the median theft rate had a majority of major parts interchangeable with those of any of the manufacturer's high theft lines, together with the supporting rationales for those views. NHTSA stated in the NPRM that it anticipated that the statement of views and supporting rationales would take the following form. The manufacturers would submit a listing of the number and identity of the major parts which are incorporated in each line believed by the manufacturer to have an actual or likely low theft rate, and which are interchangeable with the major parts of those of its lines believed by the manufacturer to have an actual or likely high theft rate. The manufacturer would then calculate whether low theft lines with a majority of major parts interchangeable with those of a high theft line accounted for more than 90 percent of the total production of the lines with interchangeable parts.

Ford commented that manufacturers should not be expected to list each of its car lines with actual or likely low theft rates and show how many and which of its major parts are interchangeable with those on its likely or actual high theft lines. Instead Ford suggested that the manufacturers should simply be expected to list each of the low theft lines with fewer than eight interchangeable major parts, identify those low theft lines with eight or more interchangeable major parts, and state whether those latter low theft lines constituted more or less than 90 percent of the total production of all lines containing such interchangeable parts.

NHTSA gave serious thought to proposing a procedure similar to that suggested by Ford in its comments. However, the agency ultimately decided to propose the more detailed procedures set forth in the NPRM. The reasoning was as follows: the manufacturers would have to make the detailed analysis set forth in the proposed procedures to be able to make the simple statements suggested by Ford. Hence, the only additional task associated with the more detailed procedures would be that of transcribing the analysis onto paper. This is a minimal task compared with generating the analysis. Further, the detailed listing proposed in the NPRM would help to facilitate agreements between the agency and the individual manufacturer. Both parties would have clearer understanding of the identity of the major parts which the other party believed should or should not be treated as interchangeable. The manufacturer would provide its version of this listing in its submission and the agency would provide its version in its preliminary determination. Any disagreement would therefore be clearly and quickly focused on particular parts, thereby facilitating reaching agreement as to whether the parts really were interchangeable. Since these more detailed explanations would facilitate an expeditious reaching of agreements while imposing only a very minor burden on the manfacturer, the agency decided that the more detailed explanations should be specified in these procedures.

Ford went on to comment that, if the agency decided to adopt the proposed procedures, it should limit the issue of interchangeability to "covered major parts", which term is defined in section 601(6) of the Cost Savings Act as "any major part selected . . . for coverage by the vehicle theft prevention standard issued under section 602." Ford noted that the term "major part" as defined in section 601(7) of the Cost Savings Act includes both covered major parts (those which are required to be marked on high theft lines by the theft prevention standard) and other major parts, which will not be required to be marked by the theft prevention standard.

NHTSA agrees with Ford's comment, and did not intend to suggest that manufacturers should provide interchangeability information on major parts which are not covered major parts. To clarify this intent, this final rule has been changed from the proposed language to refer to covered major parts in both this section and § 542.5.

VW stated that it was not clear if only the interchangeable parts on low theft lines had to be marked or all covered parts, including those which were not interchangeable with any on the high theft line had to be marked. VW further asked if, assuming that all covered parts had to be marked on certain low theft lines, the replacement parts for the non-interchangeable parts had to be marked.

To answer VW's questions, both the original equipment and replacement covered major parts must be marked on those low theft lines that have a majority of covered major parts interchangeable with those of a high theft line, without regard to whether the particular covered major part is itself interchangeable. Congress determined that, although certain vehicles are not themselves from a high theft line, the high degree of interchangeability of their parts with those of a high theft line would make these otherwise low theft vehicles likely targets for car thieves. As likely targets for car thieves, Congress determined that *all* covered major parts on these vehicles should be marked, not just those which were interchangeable with the covered major parts of the high theft line. This will serve as an additional deterrent to the theft of these vehicles. To express these determinations, Congress specified that vehicles in low theft rate lines with a majority of covered major parts interchangeable with those of an actual or likely high theft line are considered high theft lines: section 603(a)(1)(C) of the Cost Savings Act. Section 602(a)

specifies that the theft prevention standard shall require marking of covered major parts that are installed by manufacturers in high theft lines and marking of the major replacement parts for the covered major parts. These provisions make clear that *all* covered major parts on lines selected as high theft lines under section 603 must be marked. Similarly, *all* major replacement parts for the covered major parts of high theft lines selected under section 603 must be marked.

VW also commented on the agency's example showing that a manufacturer's "b" line, a low theft line, had a majority of covered major parts interchangeable with both the "x" and "y" lines, which are both high theft lines. NHTSA stated in the NPRM preamble that the manufacturer would have to determine if total production of the b line accounted for more than 90 percent of the b, x, and y lines combined. VW stated its understanding that the manufacturer would have to make two determinations. First, the manufacturer would determine if b line production accounted for more than 90 percent of the total production of the b and x lines, and then it would determine if b line production accounted for more than 90 percent of the total production of the b and y lines. VW's understanding is correct. The use of the singular "line" in section 603(a)(1)(C)(ii), when referring to high theft lines with covered major parts interchangeable with low theft lines, is in contrast to the use of the plural "lines", when referring to low theft lines with those interchangeable parts throughout the rest of section 603(a)(1)(C). This shows an intent to make the determinations in the manner stated by VW.

Chrysler responded to the agency's proposed means of determining if engines and transmissions should be considered interchangeable between lines. The NPRM proposed that, if an engine or transmission is offered as standard or optional equipment on two or more lines, the engine or transmission should be considered interchangeable among those lines. Chrysler argued that this position was "an arbitrary declaration of complete interchangeability [which] overlooks the above described relatively complex modifications and/or related component installations that would be required to make these assemblies operable." NHTSA agrees that modifications to such parts as fuel lines, wiring harnesses, throttle linkages, electronic engine controls, and emissions controls might well be necessary to substitute a different engine or transmission, and that these modifications are relatively complex. However, all available evidence (specifically the transcript of the public meeting on December 6 and 7, 1984 and agency meetings with police and insurance organizations) indicates that chop shops are relatively sophisticated operations capable of making these modifications. In this case, a few hundred dollars worth of work would allow these shops to install a stolen component worth several thousand dollars. Given this potentially large profit after performing this work and the expressed intent of the Theft Act to impede the operations of chop shops, NHTSA is adopting its proposed interchangeability criteria for engines and transmissions as best effectuating the purposes of the Theft Act.

GM questioned the agency's stated intent to consult current auto parts data publications as an aid in determining interchangeability of parts. Examples of such publications are "The Hollander", Auto-Truck Interchange Edition, Hollander Publishing Co., Inc., Minnetonka, Minnesota, and "Mitchell's Manual", Cordura Publications, San Diego, California. GM stated that it knew of no basis on which to conclude that these publications would be an effective reference for use in determining interchangeability for purposes of the theft prevention standard. Further, GM stated that, since neither the government nor manufacturers control the content of these publications, GM was concerned that they might not be appropriate for use in connection with the theft prevention standard.

NHTSA did not state that these publications would be used as the final arbiter of whether or not parts are interchangeable; it stated only that it would consult these publications. These publications are used daily by repair shops to decide which parts can be used to replace damaged parts. The credibility of these publications depends on their designations of interchangeability being accurate. NHTSA believes that consulting these publications as the best available independent source of interchangeability is proper for the purposes of the theft prevention standard, and hereby announces its intention to do so.

4. *Section 542.4: Procedures for the Selection of New Lines Introduced On or After the Effective Date of the Standard That are Likely to Have High Theft Rates.*

The NPRM proposed that these procedures would be very similar to those proposed under § 542.1, except that the agency would have 90 days to issue its preliminary determination after the manufacturer submitted its views and that the manufacturer would have the right to request a meeting with the agency to further amplify its views during this 90 day period. A special schedule was set out for new lines to be introduced in the 1987 model year because of the time constraints. That special schedule would ensure that final determinations for all new lines to be introduced in the 1987 model year would be made by March 1, 1986.

Both VW and GM stated in their comments that this section would not give them enough leadtime although it would satisfy the statutorily mandated six months of leadtime. VW stated that the agency should allow itself only 30 days to consider the manufacturer's submission before issuing its preliminary determination. VW's argument was that if a 30 day period was sufficient for the purposes of §§ 542.1, 542.2, and 542.3, it should also be sufficient for this section and 542.5. GM stated that it was going to make its submission for its new line to be introduced in the 1987 model year concurrently with its submissions under § 542.1, 542.2, and 542.3 by July 24. GM expressed its hope that this would allow the agency to issue its preliminary determinations under this section concurrently with those under the previous sections, that is, by August 24, 1985.

The agency has carefully considered these comments in the context of both this section and § 542.5. The NPRM explained the agency's belief that the 90 day period between its receipt of the manufacturer's submission and its issuance of a preliminary determination would facilitate agreements on the appropriate selections. The increased opportunity for meetings and detailed analysis of the manufacturer's submission by the agency should ensure that both parties fully understand the other's position. That understanding should, in turn, lead to more agreements during the selections process.

However, for the 1987 model year, the agency believes that the need to ensure adequate leadtime to the manufacturers outweighs the interest in facilitating agreements. Therefore, NHTSA is amending the proposed procedures to specify that the agency will issue its preliminary determination to the manufacturer no later than 30 days after receiving the manufacturer's submission under this section and § 542.5. This change will ensure that manufacturers will have the same leadtime for their new 1987 lines as they will have for

their pre-1987 lines. NHTSA would like to note that it is not changing the date by which it will provide those manufacturers who do not make submissions under this section with the agency's unilateral preliminary determinations. The proposed December 31, 1985 date is adopted in this final rule for such manufacturers.

In the case of the 1988 and subsequent model years, NHTSA is adopting the proposed 90 day period for considering manufacturer's submissions before issuing its preliminary determinations, for the reasons set forth in the NPRM. There will be no leadtime concern in these model years because, even allowing the 90 day period, a final determination for each new line must be made 13 months before the new line is introduced. No manufacturer or any other commenter to Theft Act rulemakings has suggested that a 13 month leadtime is inadequate.

5. *Section 542.5: Procedures for selecting post-standard low theft new lines with a majority of major parts interchangeable with those of a high theft line.*

These proposed procedures were very similar to those set forth in § 542.3, but with a 90 day period for the agency to consider the manufacturer's submission before issuing a preliminary determination and with the manufacturers having the right to request a meeting during this 90 day period. The proposed 90 day period has been shortened to 30 days for the 1987 model year in this final rule for the reasons set forth above in the discussion of § 542.4, and appropriate reference to "covered major parts" have been added, per the explanation in the discussion of § 542.3 above. In all other respects, this rule is adopted as proposed.

GM commented that this section should be deleted from the procedures, because this section is "inappropriate at this time." GM argued that such provisions should only be added if and when a relationship is established between thefts or theft rates and interchangeability. This comment ignores the express language of the Theft Act. Section 603(a)(1)(C) explicitly designates as high theft lines subject to the theft prevention standard those lines introduced after the effective date of the theft prevention standard with likely low theft rates, but when have a majority of covered major parts interchangeable with those of a line with actual or likely high theft rates. Section 603(a)(2) specifies that the specific lines which are to be subject to the standard may be selected by agreement between the manufacturer and the agency. These provisions expressly require this agency to have § 542.5 in these procedures.

Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers

Because this rulemaking is procedural, merely facilitating the implementation of the substantive provision of Part 541, the agency has determined that this rulemaking is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, this rule does not require manufacturers to participate in the selection process and specifies no penalties for not doing so. It merely sets forth the procedures which will be followed by the agency and may be followed by the manufacturers during the selection process. Accordingly, a full regulatory evaluation has not been prepared for Part 542. A full regulatory evaluation was prepared for the proposed theft prevention standard in Part 541. NHTSA believes that the rulemaking does not affect the impacts described in the Part 541 preliminary regulatory evaluation.

B. Small Business Impacts

The agency also has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Since the rule is procedural and does not impose any substantive requirements, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule and determined that this rule will not have a significant impact on the quality of the human environment.

D. Paperwork Reduction Act

The procedures in this rule for manufacturers to submit their views and data to NHTSA as a part of the selection process are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, this rule is being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the Federal Register when OMB makes its decision on this request.

List of Subjects in 49 CFR Part 542

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by adding a new Part 542 to read as follows:

PART 542—PROCEDURES FOR SELECTING LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

Sec.

542.1 Procedures for selecting pre-standard new lines that are likely to have high theft rates.
542.2 Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.
542.3 Procedures for selecting pre-standard low theft lines with a majority of major parts that are interchangeable with those of a high theft line.
542.4 Procedures for selecting post-standard new lines that are likely to have high theft rates.
542.5 Procedures for selecting post-standard low theft new lines with a majority of major parts interchangeable with those of a high theft line.

Authority: 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

§ 542.1 Procedures for selecting pre-standard new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any pre-standard new lines are lines likely to have high theft rates.

(b) *Application.* These procedures apply to each manufacturer that has introduced or will introduce a new line into commerce in the United States after January 1, 1983, and before [the effective date of the standard, 49 CFR Part 541], and to each of those lines.

(c) *Procedures.* (1) Each manufacturer uses the criteria in Appendix C of Part 541 of this chapter to evaluate each new line and to identify those lines the manufacturer believes are likely to have a theft rate exceeding the median theft rate.

(2) The manufacturer submits its evaluations and identifications made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and identifications, to NHTSA by September 3, 1985.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or by August 24, 1985, whichever is sooner,

the agency considers that submission, if any, independently evaluates each new line using the criteria in Appendix C of Part 541 of this chapter, and, on a preliminary basis, determines whether those new lines should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) of this section become final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations by October 24, 1985, and informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.2 Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in implementing the 14 line limit applicable to certain groups of high theft lines in the initial year of the theft prevention standard.

(b) *Application.* These procedures apply to each manufacturer that produces more than 14 lines that have been or will be introduced into commerce in the United States before [the effective date of standard, 49 CFR Part 541] and that have been listed in Appendix A of Part 541 of this chapter or have been identified by the manufacturer or preliminarily determined by the agency to be high theft lines under § 542.1, and to each of those lines.

(c) *Procedures.* (1) Each manufacturer evaluates each of its lines in accordance with the criteria in Appendix B of Part 541 of this chapter and ranks the lines based on the extent to which they satisfy those criteria.

(2) Each manufacturer submits its evaluations and rankings made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and rankings, to NHTSA by September 3, 1985.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, independently evaluates each of the manufacturer's lines using the criteria in Appendix B of Part 541 and, on a preliminary basis, determines which 14 lines should be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and rankings, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider its preliminary ranking under paragraph (c)(3) of this section of any of the highest 14 ranked lines. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section informing it of the agency's evaluations and preliminary rankings. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary rankings. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary rankings of the 14 highest ranked lines under paragraph (c)(3) becomes final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final rankings by October 24, 1985, and informs the manufacturer by letter of those rankings and its response to the request for reconsideration.

§ 542.3 Procedures for selecting pre-standard low theft lines with a majority of major parts that are interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in the determination of whether any pre-standard lines with low theft rates have major parts interchangeable with a majority of the covered major parts of a line with an actual or likely high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States before [the effective date of the standard, 49 CFR Part 541] and that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily determined by the agency to be a high theft line under § 542.1, and

(ii) At least one line that has been or will be introduced into commerce in the United States before that date and that is below the median theft rate; and

(2) Each of those sub-median rate lines.

(c) *Procedures.* (1) For each of its lines with a theft rate below the median rate, each manufacturer identifies how many and which of the major parts of that line are interchangeable with the covered major parts of any other of its lines that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily determined by the agency to be a high theft line under § 542.1.

(2) If the manufacturer concludes that one or more lines with a sub-median theft rate has major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer decides whether all the vehicles of those lines with sub-median theft rates and interchangeable parts account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its identifications and conclusions made under paragraphs (c) (1) and (2) of this section, together with the facts and data underlying those identifications and conclusions, to NHTSA by September 3, 1985.

(4) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of those determinations, together with the bases for the determinations, including the factual information considered by the agency.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4)

informing it of the agency's preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations under paragraph (c)(4) becomes final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes it final determinations by October 24, 1985, and informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.4 Procedures for selecting post-standard new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any post-standard line is likely to have a theft rate above the median rate.

(b) *Application.* These procedures apply to each manufacturer which plans to introduce a new line into commerce in the United States on or after [the effective date of the standard, 49 CFR Part 541], and to each of those lines.

(c) *Procedures.* (1) Each manufacturer uses the criteria in Appendix C of Part 541 of this chapter to evaluate each new line and to conclude whether the manufacturer believes that new line is likely to have a theft rate exceeding the median theft rate.

(2) The manufacturer submits its evaluations and conclusions made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and conclusions, to the NHTSA not more than 24 months before the introduction of each new line and not less than 18 months before that date for new lines to be introduced in the 1988 or subsequent model years. For new lines to be introduced in the 1987 model year, the manufacturer makes this submission not later than October 1, 1985. The manufacturer may request a meeting with the agency during this period to further explain the bases for its evaluations and conclusions.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than December 31, 1985, in the case of new lines introduced in the 1987 model year, and within 90 days after its receipt of the manufacturer's submission under paragraph (a)(2) of this section, or not later than 15 months before the introduction of each new line, in the case of new lines to be introduced in the 1988 or subsequent model years, whichever is sooner, the agency considers that submission, if any, independently evaluates each new line using the criteria in Appendix C of Part 541 of this chapter and, on a preliminary basis, determines whether the new line should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) becomes final 45 days after the agency sends the letter specified in paragraph (c)(3) unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations within 30 days of its receipt of the request for the 1987 model year and within 60 days of its receipt of the request for the 1988 and subsequent model years. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.5 Procedures for selecting post-standard, low theft, new lines with a majority of major parts interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in the determinations of whether any post-standard lines that will be likely to have a low theft rate have major parts interchangeable with a majority of the covered major parts of a line having or likely to have a high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States and that has been listed in Appendix A of Part 541 of this chapter or has been identified by the manufacturer or preliminarily or finally determined by NHTSA to be a high theft line under § 542.1 or § 542.4, and

(b) At least one line that will be introduced into commerce in the United States on or after the [effective date of the standard, 49 CFR Part 541] and that the manufacturer identifies as likely to have a theft rate below the median theft rate; and

(2) Each of those likely sub-median rate lines.

(c) *Procedures.* (1) For each new line that a manufacturer identifies under Appendix G as likely to have a theft rate below the median rate, the manufacturer identifies how many and which of the major parts of that line will be interchangeable with the covered major parts of any other of its lines that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily or finally determined by the agency to be a high theft line under § 542.1 or § 542.4.

(2) If the manufacturer concludes that a new line with a likely sub-median theft rate will have major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer determines whether all the vehicles of those lines with likely sub-median theft rates and interchangeable parts will account for more than 90% of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its evaluations and identifications made under paragraphs (c) (1) and (2) of this section, together with the factual information underlying those evaluations and identifications, to NHTSA not more than 24 months before introduction of the new line and not less than 18 months before that date for new lines to be introduced in the 1988 or subsequent model years. For new lines to be introduced in the 1987 model year, the manufacturer makes this submission not later than October 1, 1985. During this period, the manufacturer may request a meeting with the agency to

further explain the bases for its evaluations and conclusions.

(4) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, or not later than December 31, 1985, in the case of new lines to be introduced in the 1987 model year, and within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than 15 months before the introduction of each new line, in the case of new lines to be introduced in the 1988 or subsequent model years, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with likely sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's preliminary determinations, together with the factual information considered by the agency in making them.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) informing it of the agency's preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations made under paragraph (c)(4) becomes final 45 days after the agency sends the letter specified in that paragraph unless a request for reconsideration of it has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes it final determinations within 30 days of its receipt of the request for the 1987 model year and within 60 days of its receipt of the request for the 1988 and subsequent model years. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

Issued on August 21, 1985.

Diane K. Steed,

Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 50587-5133]

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

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

ACTION: Final rule.

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

EFFECTIVE DATE: September 22, 1985.

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

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

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), approved the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) on April 1, 1982, and the Secretary of Commerce (Secretary) implemented final regulations on February 4, 1983 (48 FR 5272), under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). This final rule implements the amendment to the FMP which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). The FMP manages the coastal migratory pelagic fishery throughout the fishery conservation zone (FCZ) off the South Atlantic coastal states from the Virginia-North Carolina border south and through the Gulf of Mexico to the Texas-Mexico border. The rule applies only to this area. The management unit for the FMP consists of Spanish mackerel, king mackerel, and cobia. Dolphin, bluefish (Gulf of Mexico only), little tunny and cero mackerel are minor species in the fishery, and data collection requirements of the FMP apply only to these seven species. The preamble to the proposed rulemaking for the amendment contained a description of recent data and analyses which indicate there are two migratory groups of king mackerel and that these should be treated as separate stocks for management purposes. In addition, allocations by user groups, quotas, bag limits, statistical reporting, optimum yield, and a flexible management system were discussed in detail. These discussions are not repeated here.

Comments and Responses

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

Inconsistency With National Standards

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

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

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

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

Boundaries for King Mackerel Stocks

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

Quotas and Allocations

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

A major fishery organization and a commercial non-profit corporation commented that the division of the commercial quota between Florida commercial fishermen and Louisiana commercial fishermen is unfair. A member of the Florida Marine Fisheries Commission expressed concern with the allocation between Louisiana and Florida fishermen but in general agreed with it. NOAA shares this concern and agrees that from a historical perspective Florida fishermen will suffer a greater percentage of the reduced catch. Nevertheless, NOAA believes it is the Council's prerogative to distribute the allocations so that one geographical area does not take a disproportionate share of the catch. It should also be noted that the western geographical area includes Alabama, Mississippi and Texas in addition to Louisiana. From the perspective that Florida will get 69 percent of the allocation and the western area 31 percent, the allocation does not appear to be unfair to Florida fishermen. Therefore, the measure is implemented in the final rule as proposed.

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

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

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

The State of Florida further commented that the TAC for king mackerel should be near 11 million pounds. NOAA does not agree. Although a TAC of 11 million pounds would rebuild the stock more quickly, the Councils chose the higher range based on lessening the socio-economic impacts while simultaneously protecting and rebuilding the stock. Therefore, TAC is set as proposed.

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

Closing of Fishing

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

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

Bag Limit

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

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

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

Equitable Treatment for Commercial and Recreational Fishermen

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

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

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

Fishing Permits

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

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

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

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

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

Mandatory Reporting

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

Approval/Disapproval of the Amendment

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

Changes From the Proposed Rule

Section 642.4

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

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

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

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

Section 642.5

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

Section 642.7

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

Section 642.27

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

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

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

Section 642.28

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

Classification

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

The Councils prepared a final supplemental environmental impact statement for this amendment that was filed on August 2, 1985, with the Environmental Protection Agency.

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

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

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

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 22, 1985.

Carmen J. Blondin,

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

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

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

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

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

2. In Part 642, the Table of Contents is amended by revising the headings for § 642.5 from "Recordkeeping and reporting requirements [Reserved]" to read "Reporting requirements", and for § 642.6 from "Vessel identification [Reserved]" to "Vessel identification" and by adding under Subpart B three new section designations to read as follows:

Subpart B—Management Measures

Sec.

* * * * *

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

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

§ 642.2 Definitions.

* * * * *

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

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

* * * * *

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

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

* * * * *

Migratory group means a group of fish that may or may not be a separate genetic stock but which for management purposes may be treated as a separate stock. (See Figure 2 and § 642.29 for geographical and seasonal boundaries

between migratory groups of king mackerel.)

* * * * *

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

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

Total allowable catch (TAC) means the maximum permissible level of annual harvest specified for a stock or migratory group after consideration of the biological, economic, and social factors with such level being specified from within the range of acceptable biological catch.

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

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

* * * * *

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

§ 642.4 Permits and fees.

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

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

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

(2) Name of vessel;

(3) The vessel's official number;

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

(5) Approximate fish hold capacity of the vessel;

(6) A sworn statement by the owner or operator certifying that at least 10 percent of his or her earned income was derived from commercial fishing during the preceeding calendar year (January 1 through December 31), and that the vessel for which the permit is intended will not be operated as a charter vessel in an area in which the Gulf migratory group of king mackerel is occurring; and

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

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

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

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

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

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

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

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

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

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

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

5. A new § 642.5 is added to read as follows:

§ 642.5 Reporting requirements.

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

(1) Name or official number of vessel;

(2) Poundage of catch of any coastal migratory pelagic fish as defined by species;

(3) Depth fished and information regarding fishing location that is specific enough to enable the Center Director to ascertain the statistical area fished (see Figure 3);

(4) Amount and person to whom sold, bartered, or traded;

(5) Number, size and type of gear; and

(6) Period (hours or days) of fishing.

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

(1) Name or official number of vessel;

(2) Operator's Coast Guard license number;

(3) Date of trip;

(4) Number of fishermen on trip;

(5) Area fished;

(6) Fishing methods and type of gear;

(7) Hours fished;

(8) Species targeted; and

(9) Number and estimated weight of fish caught by species.

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

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

(1) Dealers or processors name and address;

(2) County where fish were landed;

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

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

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

(d) *Recreational fishing vessels.* [Reserved]

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

[Approved by the Office of Management and Budget under control numbers 0648-0016 and -0159]

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

§ 642.6 Vessel identification.

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

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

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

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

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

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

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

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

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

§ 642.7 Prohibitions.

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

* * * * *

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

* * * * *

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

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

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

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

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

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

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

(20) Fish for or have in possession onboard Spanish mackerel in or from the FCZ or purchase, sell, barter, trade or accept in trade, Spanish mackerel after the total allowable catch specified in § 642.21(c) is reached and closure has been invoked as specified in § 642.22 (Table 2);

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

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

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

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

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

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

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

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

§ 642.20 Seasons.

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

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

§ 642.21 Quotas

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

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

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

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

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

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

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

§ 642.22 Closures.

The Secretary, by publication of a notice in the **Federal Register**, will close the king or Spanish mackerel fishery to fishing in the FCZ for a particular gear type, allocation zone, or user group when the quota for that gear type, allocation zone, or user group under § 642.21 has been reached or is projected to be reached (Table 2). The notice of closure for quotas specified under § 642.21 will also provide notice that the purchase, barter, trade, and sale of king or Spanish mackerel taken from the FCZ after the closure for the migratory group or allocation zone affected is prohibited for the remainder of that fishing year. This prohibition does not apply to trade in Spanish or king mackerel harvested, landed, and bartered, traded or sold prior to the closure and held in cold storage by dealers or processors.

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

§ 642.23 Size restrictions.

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

* * * * *

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

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

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

§ 642.24 Vessel, gear, and equipment limitations.

* * * * *

(b)(1) * * *

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

* * * * *

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

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

§ 642.27 Stock assessment procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 642.28 Bag and possession limits.

(a) *Recreational allocation bag limit.* Persons who fish for king mackerel from the Gulf migratory group (see Figure 2) in the FCZ (except those fishing under the permit and quotas specified in § 642.4, § 642.21 and § 642.24(c)) are limited to the following:

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

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

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

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

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

§ 642.29 Area and time separation.

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

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

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

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

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

Migratory group(s)	Fishing year	Gear	Allocation zone	Initial year quota/ TAC (million pounds)	Prohibition on sale and/or catch invoked when—
King Mackerel:					
Atlantic	1 Apr.–31 Mar	All types	Entire range [2]	4.382	Sales from migratory group are projected to reach quota.
Gulf	1 July–30 June	All types	Entire range [2]	4.552	Sales from migratory group are projected to reach quota.
Gulf	1 July–30 June	All types	Western zone [3]	1.328	Sales from allocation zone are projected to reach quota.
Gulf	1 July–30 June	All types	Eastern zone [3]	2.940	Sales from allocation zone are projected to reach quota.
Gulf	1 July–30 June	P.S. [5]	Entire range [2]	0.264	Landings from migratory group are projected to reach quota.
G.A. [4]	1 July–30 June	P.S. [5]	Atlantic Ocean [4]	0.400	Landings from migratory group are projected to reach quota.
Spanish mackerel	1 Jan.–31 Dec.	All types	G.A. [4]	27.000	When landings are projected to reach TAC.
	1 Jan.–31 Dec.	P.S. [5]	Atlantic Ocean	0.300	When landings are projected to reach quota.
	1 Jan.–31 Dec.	P.S. [5]	Gulf of Mexico	0.300	When landings are projected to reach quota.

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

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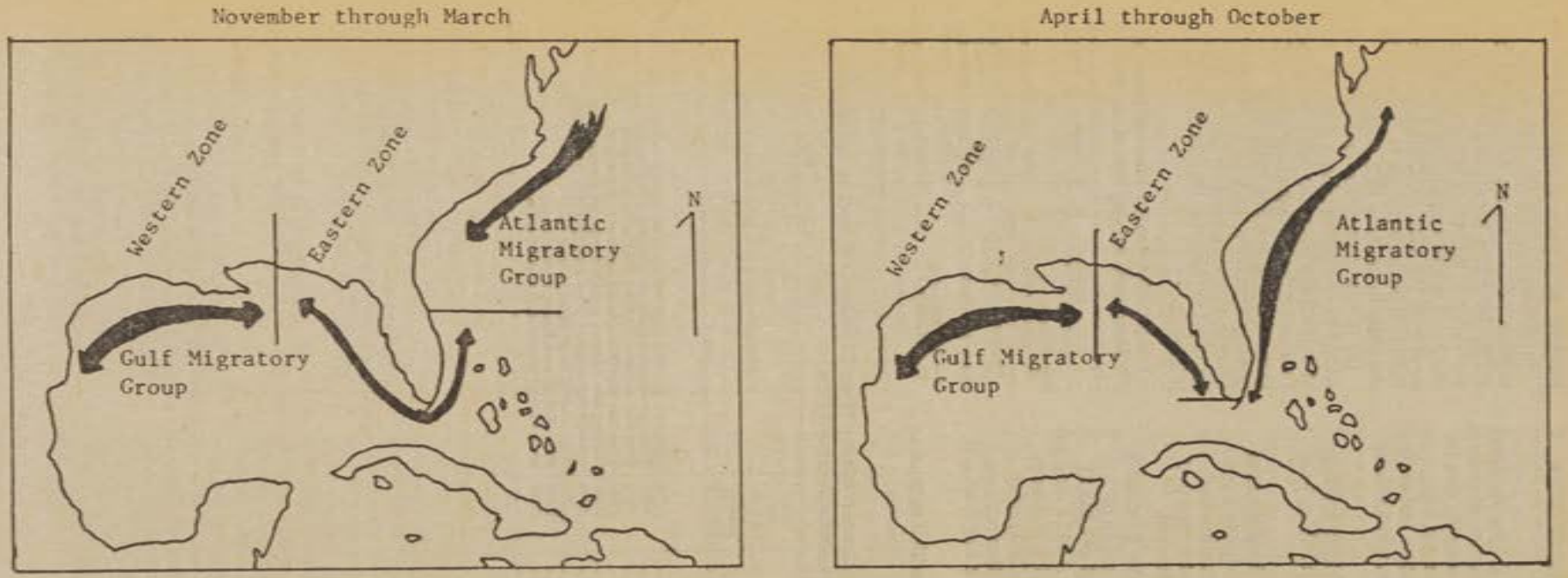
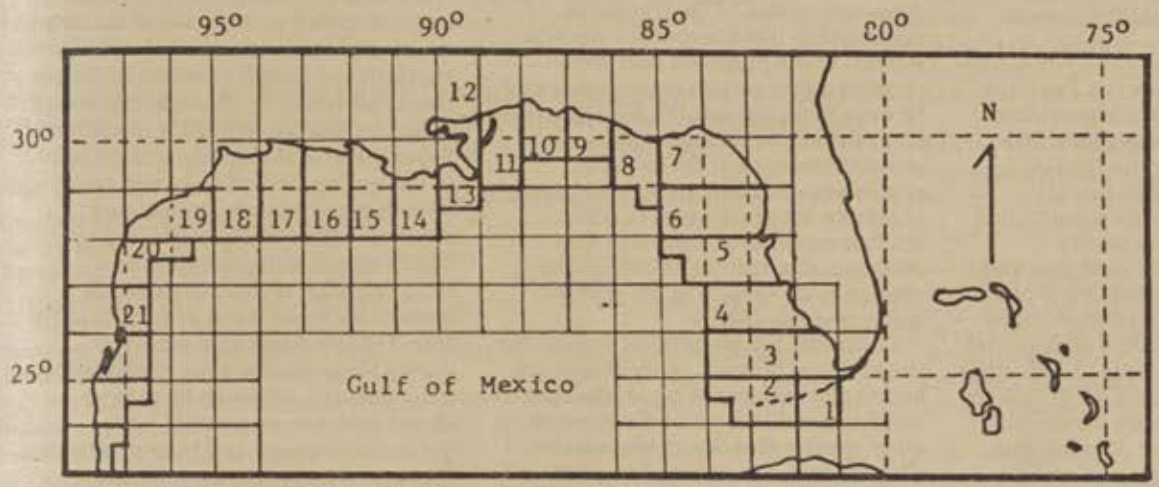
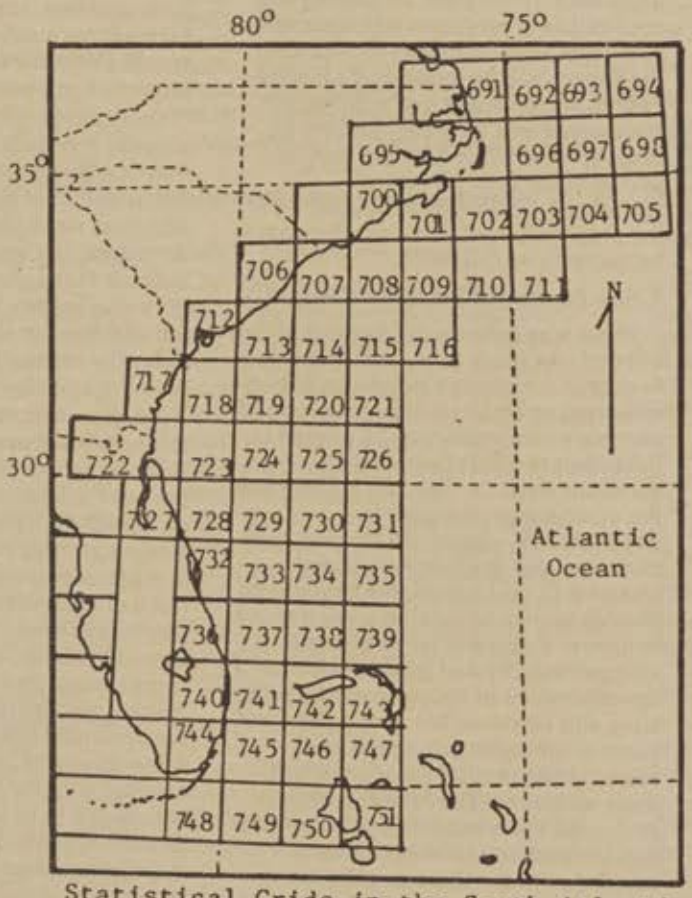


Figure 2. Range of Gulf and Atlantic migratory groups of king mackerel during winter and summer periods and commercial allocation zones for Gulf group king mackerel.

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



Statistical Grids in the Gulf of Mexico



Statistical Grids in the South Atlantic

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