

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 90893-9248]

RIN 0648-AC29

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Notice of approval of an amendment to a fishery management plan.

SUMMARY: NOAA announces approval of Amendment 2 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). Amendment 2 establishes a regulatory amendment procedure for the future implementation of specified types of gear and harvest restrictions applicable to the fishery in the exclusive economic zone (EEZ) and makes other minor changes to the FMP. The intended effects of the procedure are to provide a more flexible and timely system implementing rules governing the conduct of the spiny lobster fishery, enhance cooperative Florida (State)/Federal management, reduce Federal management costs, improve the effectiveness of necessary rules, and presumably increase productivity from the resource.

EFFECTIVE DATE: Amendment 2 was approved on October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 640, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 2 to the FMP was submitted by the Councils on July 19, 1989. A notice of availability of the amendment and request for comments was published on July 26, 1989 (54 FR 31063). A proposed rule to implement Amendment 2 was published on August 24, 1989 (54 FR 35212).

The FMP manages the spiny lobster fishery throughout the EEZ off the coastal states from the Virginia/North Carolina border south and through the Gulf of Mexico. The preamble to the proposed rule contained information on the fishery, discussed the proposed regulatory changes, and analyzed the benefits of the proposed changes. That information is not repeated here.

Comments and Responses

Four written responses were received commenting on the proposed rule and amendment. Two Federal agencies, the U.S. Coast Guard and the Department of Interior, Fish and Wildlife Service, recommended approval of Amendment 2. The Organized Fishermen of Florida (OFF), an organization that represents commercial fishermen, recommended that changes to the commercial gear and harvest restrictions be made by amendment of the FMP rather than by regulatory amendment initiated by the Florida Marine Fisheries Commission (FMFC). OFF does not believe that the FMFC has the capability to evaluate potential economic and social impacts of the critical measures in the detail required to meet the Federal requirements and does not allow ample and fair opportunity for public input into the State rulemaking process. A local chamber of commerce expressed concerns about the potential for adverse impacts resulting from future changes to the gear and harvest restrictions. NOAA disagrees with both concerns. Submission of proposed regulations addressing gear and harvest restrictions under the regulatory amendment process does not constitute automatic approval and implementation of such regulations in the EEZ. Supporting analyses prepared by the FMFC must meet the requirements of the Magnuson Act and other applicable Federal law before the proposed regulations can become effective in the EEZ. The public will have the same opportunity to comment on proposed gear and harvest restrictions, and to have those comments considered in NOAA's decision as to whether and in what form any proposed restrictions should be issued, as it does under all other proceedings carried out under the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553. Furthermore, the procedures established by Amendment 2 require that the FMFC also inform the Councils of each recommended rule and supporting analysis. If either Council determines that a rule is not consistent with the Magnuson Act or the FMP, and so informs the Regional Director, NOAA cannot proceed with rulemaking under Amendment 2 until the Council withdraws its objection.

Concomitant with the proposed regulatory amendment procedure for changing certain gear and harvest limitations, Amendment 2 also (1) amends and adds to the issues of the "Problems and Issues in the Fishery" identified in the FMP; (2) adds to the FMP a "Management Objective" to

provide for a more flexible management system that minimizes regulatory delay, thus assuring more effective, cooperative State and Federal management of the fishery; (3) modifies the statement of optimum yield to remove numerically specified minimum legal carapace and tail lengths, thus permitting modification of those lengths by the regulatory amendment process contained in Amendment 2; (4) adds a "Vessel Safety" section; and (5) updates the "Habitat of the Stocks" section. No comments were received on these changes and additions.

Based on the comments received, NOAA finds no basis for disapproval of the amendment.

Changes From the Proposed Rule

The proposed rule would have codified the procedure for the future implementation of specified types of gear and harvest restrictions applicable to the spiny lobster fishery in the EEZ. That procedure would apply only to the Florida Marine Fisheries Commission, the Councils, and NMFS but is not regulatory in nature because it does not control the behavior of fishermen. Accordingly, NOAA has concluded that regulatory language is not necessary to implement the procedure. NOAA chose to publish the procedure as a proposed rule as the most effective means of notifying persons who would be affected and obtaining public comments. Accordingly, while Amendment 2 has been approved, the proposed rule has been withdrawn, by a notice appearing elsewhere in this issue, in view of NOAA's conclusion that regulatory language is unnecessary.

Classification

The Secretary of Commerce determined that Amendment 2 is necessary for the conservation and management of the spiny lobster fishery and that it is consistent with the Magnuson Act and other applicable law.

The Councils prepared an environmental assessment (EA) for Amendment 2 and, based on the EA, the Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant adverse impact on the human environment as a result of Amendment 2.

Since Amendment 2 has no implementing regulations, preparation of and conclusions based on a regulatory impact review (RIR)/regulatory flexibility analysis (RFA), normally required by E.O. 12291 and the Regulatory Flexibility Act, are not required. It should be noted, however, that each future action initiated under

the procedure established in Amendment 2 will be accompanied by an RIR and, if it will have a significant economic impact on a substantial number of small entities, an RFA will be prepared.

The Councils determined that Amendment 2 is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not have approved coastal zone management programs. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida, Louisiana,

North Carolina, Mississippi, and South Carolina agreed with the Councils' determination. Alabama did not comment within the statutory time period, and, therefore, consistency is automatically implied.

Amendment 2 does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Deputy Assistant Secretary of Commerce for Intergovernmental Affairs determined that Amendment 2 and the proposed rule had sufficient federalism implications to warrant preparation of a Federalism Assessment (FA). The FA concluded that Amendment 2 is consistent with the principles, criteria, and requirements of E.O. 12612 and will

reduce the governmental costs of managing the spiny lobster fishery in Florida's waters and the EEZ without increasing costs to the industry or consumers.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: November 14, 1989.

James E. Douglas, Jr.,

*Deputy Assistant Administrator for Fisheries,
National Wildlife Fisheries Service.*

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