

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

(Docket No. 70345-8026)

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

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

ACTION: Final Rule.

SUMMARY: NOAA issues this final rule to implement a portion of Amendment 1 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP). Measures implemented by this rule: (1) Change the dates of the two-day non-trap recreational season and the beginning of the regular season; (2) remove a daily boat limit of 24 spiny lobsters during the two-day non-trap recreational season; (3) provide for a ten-day extension of the period for trap removal after the season closes, under certain circumstances; and (4) revise the requirements for holding undersized spiny lobsters for use as attractants. The intended effects of the rule are to prevent overfishing of the spiny lobster stocks, to rebuild and maintain the stocks at a maximum sustainable yield level through protection of undersized lobsters, and to provide for more consistent State and Federal management measures.

EFFECTIVE DATE: May 11, 1988.**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery is managed under the FMP and its regulations at 50 CFR Part 640 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This rule implements five conditionally approved measures contained in Amendment 1 to the FMP which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). A notice of availability of the amendment and request for comments was published on February 25, 1987 (52 FR 5564). A proposed rule to implement Amendment 1 was published on March 18, 1987 (52 FR 8485). A notice of availability of a minority report on the amendment by some members of both Councils was published on April 3, 1987 (52 FR 10780; corrected at 52 FR 13257, April 22, 1987). A final rule to implement a part of Amendment 1 was published on June 15, 1987 (52 FR 22656; corrected at 52 FR 23450, June 22, 1987).

The FMP manages the spiny lobster fishery throughout the exclusive economic zone (EEZ) off the South Atlantic coastal States from the Virginia/North Carolina border south and through the Gulf of Mexico. The management unit for the FMP consists of the spiny lobster, *Panulirus argus*, and the slipper (Spanish) lobster, *Scyllarides nodifer*.

The preamble to the proposed rule contained information on the fishery, discussed problems in the fishery, discussed the proposed regulatory changes, and analyzed the benefits of the proposed changes. That information is not repeated here.

The preamble to the final rule responded to written comments on the proposed rule and Amendment 1, approved Amendment 1, and discussed procedures for implementing delayed measures. That information is not repeated here.

Implementation of Delayed Measures

Five measures, whose conditions for implementation have been met either by changes in Florida's laws or by resolution of the Coast Guard's vessel safety concerns, are as follows:

1. Change the two-day non-trap recreational fishery from the first full weekend preceding July 21 to the first full weekend preceding August 1.
2. During the two-day non-trap recreational season, remove the daily limit of 24 lobsters per boat, leaving a daily bag and possession limit of six spiny lobsters per person.
3. Change the opening of the regular season from July 26 to August 6.
4. Provide for a ten-day extension of the period for trap removal after the season closes, under certain circumstances.
5. Require the use of live wells on vessels when undersized spiny lobsters are held for use as attractants in traps.

On June 2, 1987, Florida approved new spiny lobster regulations that, among other things, (1) changed the dates of their two-day sport season and the opening date of the regular season, beginning in 1988; (2) provided for extension of the period for removal of traps from the water at the end of the season, up to a maximum of ten days; and (3) established a daily bag and possession limit of six spiny lobsters per person during the two-day sport season. Thus, the conditions for implementing corresponding measures from Amendment 1 to the FMP have been met.

The safety aspects of the use of live wells have been examined in consultation with the Naval Architecture Branch, Office of the

Commandant, U.S. Coast Guard. It is recognized that the installation and use of a live well, as with any structural modification, may affect vessel stability. However, the significance of the effect will depend on a vessel's inherent stability, the amount and location of the added weight, and the "free surface effect" of enclosed liquids. The following excerpt from the Coast Guard's Navigation and Vessel Inspection Circular No. 5-88, "Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels", discusses the effects of modifications on a fishing vessel's stability:

1. Nearly all of the fishing vessel casualties investigated by the Coast Guard involve vessels in which one or more modifications have been made. Typically, the changes have not been documented nor has the stability of the vessel been reevaluated in order to provide updated stability information to the operator. In most cases, the modifications consist of adding deck equipment, such as winches, A-frames, or other fishing gear, adding or modifying deckhouses, or changing out engines. Where modifications have been made, they have generally increased the displacement of the vessel, resulting in a decrease in reserve buoyancy. In many cases, these changes have also substantially increased the VCG [vertical center of gravity] of the vessel. Both of these actions adversely affect the stability of the vessel.

2. So that operators and naval architects alike will recognize the extent of stability analysis needed following modification, the Coast Guard offers the following recommendations:

a. If the cumulative total of weights added plus weights removed is less than one percent of the original lightship weight,¹ no inclining experiment or deadweight survey is required. A weight summation may be used to adjust the stability information to the operator.

b. If the cumulative total of weights added plus weights removed is between one and ten percent of the original lightship weight, then a corrected lightship weight, VCG and LCG [longitudinal center of gravity] should be calculated based on the weight summation and then verified by a deadweight survey. If the results of the deadweight survey show a change in the lightship displacement of more than ten percent or a change in the LCG of more

¹ "Lightship weight" means the displacement of the vessel with fixed ballast and with machinery liquids at operating levels but without any cargo, stores, consumable liquids, or fuel, water ballast, or persons and their effects.

than one percent of the LBP [length-between-perpendiculars], then an inclining experiment should be conducted.

c. If the cumulative total of weights added plus weights removed is greater than ten percent of the original lightship weight, a new inclining experiment is recommended.

d. As an example, assume a fishing vessel whose lightship displacement is 100 tons. During a conversion, 8 tons are added and 12 tons are removed. Because the total of weights added and removed, 20 tons, is greater than ten percent of the lightship weight, a new inclining and stability analysis should be completed.

3. Operators should be aware that weight summation calculations are only as good as the weight, VCG, and LCG estimates. The Coast Guard's experience has been that many of these estimates are not accurate enough because some items are overlooked or weights, VCG, and LCG values are incorrect. Thus, the operator should keep a record of the weights added and removed. The record should include the estimated weight, the distance from a known longitudinal reference point such as a bulkhead or the end of a deck house and the distance above a known vertical reference point, such as the main deck. When the record book shows that the sum of the weights added and removed exceeds one per cent of the original lightship weight, a new stability analysis should be conducted.

4. The Coast Guard also recommends that surveyors take photographs at each survey so that changes to the vessel can be readily detected and the need for a new stability analysis thoroughly evaluated. Likewise, the Coast Guard recommends that designers maintain plans and calculations which indicate the vessel's configuration and the equipment on board at the time of the most recent inclining experiment and stability analysis.

5. Vessels also have a tendency to "grow" in displacement over a period of a few years. This may be due to new equipment brought aboard the vessel, additional stores and spare parts not accounted for, or piecemeal modification. Although few of these changes have a major effect by themselves, they do have a cumulative effect. As a check, operators should record the actual draft or freeboard readings for a particular loading condition (i.e. departure condition) at least every six months to ensure that the vessel has not added unaccounted weights. If these readings changed more than two inches from the original readings, then the operator should ask for a new stability evaluation. Painted

lines, such as waterlines or boot toppings, should not be used since these may change when the vessel is repainted.

The effect of free surface on stability depends principally on the level of liquid in the well and its length/breadth ratio. That is, a well that is either empty or a closed well that is completely full will have less adverse effect on stability than a well that is partially full; and the transverse orientation of a rectangular live well is more critical to stability than its longitudinal orientation. For a full discussion of these and other vessel stability considerations, as well as other vessel safety considerations, owners and operators may obtain a copy of "Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels", NVIC No. 5-86, from U.S. Coast Guard Marine Safety Center, 2100 Second St. SW., Washington, DC 20593, at a cost of \$11.00.

There is no basis for concluding that the installation and use of a live well, by itself, will endanger a vessel in the spiny lobster fishery. Stability-related vessel accidents are not indicated as being a present problem in this fishery. Fishermen are not pressured to operate in marginal weather conditions under present management measures. Further, the fishery is restricted to daylight hours, is generally close to shore, and is conducted on a day-to-day schedule. A vessel owner or operator, however, should seek the advice of a naval architect on any significant changes in vessel configuration or loading.

Three measures from Amendment 1 to the FMP remain unimplemented, namely, (1) the requirement for a permit to harvest commercial quantities of spiny lobsters, (2) the requirement for a permit to wring tails from spiny lobsters taken in the commercial fishery, and (3) the establishment of a recreational bag limit during the regular season. The latter two measures hinge on the commercial permit, which is necessary to distinguish between commercial and recreational harvesters. Florida's management regime does not provide a meaningful way of distinguishing between these groups.

Changes from the Proposed Rule

In §§ 640.2 and 640.22(b), the term "live well" is substituted for "live box" more clearly to describe the container required for undersized spiny lobsters held for use as attractants in traps. The definition of "live well" is revised to include the requirement that it be shaded, a requirement previously contained at § 640.22(b). Further, the definition provides for continuous circulation of seawater, more clearly to

express the requirement of Amendment 1 that a live well be part of an "open system", i.e., open to the sea. Finally, the definition is modified to explain that seawater circulated at a rate that replaces the water at least every 8 minutes meets the requirement for aeration. The underlying principle for aeration of water in a live well is to prevent deoxygenation of the water and the resulting increased mortality of spiny lobsters held therein. However, seawater that is circulated in an open system at a sufficiently high rate does not need independent aeration—the process of such circulation aerates. Aeration through the prescribed rate of circulation obviates the necessity of alternative methods of aeration, such as spraying the seawater through air or bubbling air through the seawater, both of which are more cumbersome and expensive and less efficient. The concept of aeration through circulation at the rate of 8 minutes for complete seawater replacement was developed by the Florida Marine Fisheries Commission through a process which included public hearings. Individual fishermen and representatives of fishermen's organizations who were present at those hearings supported the concept. Spiny lobster fishermen will benefit from this change since it clarifies that the State standard satisfies this Federal requirement.

In §§ 640.7 and 640.21(c), specific prohibitions are added which clarify the intent of the existing regulations to hold a vessel operator responsible for the cumulative recreational catch limit applicable to the vessel and to prevent transfer at sea of spiny lobsters caught under the recreational catch limit. These prohibitions enhance substantive provisions of the regulations and will facilitate effective enforcement.

In §§ 640.7 and 640.20(a)(3), a prohibition and a requirement are added relating to the extension of the trap removal period at the end of the regular season. In § 640.20(a)(3), the procedures for obtaining an extension of the trap removal period are simplified by using the procedures established by Florida for its waters. These changes will enhance enforcement and provide fishermen with uniform standards and procedures to follow whether their traps are in the EEZ or State waters.

Classification

The Regional Director determined that Amendment 1 is necessary for the conservation and management of the spiny and slipper lobster fishery of the Gulf of Mexico and the South Atlantic

and that it is consistent with the Magnuson Act and other applicable law.

The Councils prepared an environmental assessment for the amendment and the Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant impact on the environment as a result of the amendment's management measures, which are, in part, implemented by this rule.

The Administrator of NOAA determined that this rule is not a "major rule", requiring a regulatory impact analysis under Executive Order 12291. The amendment's management measures are designed to increase current landings, enhance productivity of the stock, and prevent overfishing of the spiny and slipper lobster stock. The major benefits from the amendment are greater than the associated Federal costs to manage the fishery on a continuing basis. The Councils prepared a supplemental regulatory impact review which concluded that the management measures contained in this rule will increase the likelihood of achieving the projected benefits described in the FMP through more effective enforcement and a reduction in mortality of undersized lobsters. No regulatory-induced price increases or Federal enforcement costs should occur.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because it will not significantly reduce harvest levels, alter current fishing practices, or impose significant new costs on the industry. As a result, a regulatory flexibility analysis was not prepared.

The proposed rule contained a collection of information requirement subject to the Paperwork Reduction Act; however, § 640.4, which contained that collection of information requirement, is not being implemented now. Approval from the Office of Management and Budget will be obtained before § 640.4 is implemented.

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. Florida, Louisiana, Mississippi, and South Carolina agreed with this determination. Alabama and North Carolina did not respond; therefore, consistency is automatically

implied. Georgia and Texas do not have approved coastal zone management programs.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 10, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

For reasons set forth in the preamble, 50 CFR Part 640 is amended as follows:

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 640 continues to read as follows:

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

2. In § 640.2, the definition for *Live box* is removed and the definition for *Live well* is added in its place to read as follows:

§ 640.2 Definitions.

Live well means a shaded container used for holding live lobsters aboard a vessel in which aerated seawater is continuously circulated from the sea. Circulation of seawater at a rate that replaces the water at least every 8 minutes meets the requirement for aeration.

3. In § 640.7, the word "or" at the end of paragraph (a)(20) is removed; the period at the end of paragraph (a)(21) is removed and a semicolon is added in its place; and new paragraphs (a)(22), (a)(23), and (a)(24), are added to read as follows:

§ 640.7 General prohibitions.

(a) * * *

(22) Operate a vessel that fishes for spiny lobster in the EEZ with spiny lobster aboard in excess of the cumulative recreational catch limit, as specified in § 640.21(c)(3);

(23) Transfer at sea in the EEZ spiny lobster caught under the recreational catch limit specified in § 640.21(c) from a fishing vessel to any other vessel or to so transfer at sea any such spiny lobster taken from the EEZ; or

(24) Fail to have on board or present for inspection an extension authorization, as required under § 640.20(a)(3).

4. Section 640.20 is revised to read as follows:

§ 640.20 Seasons.

(a) *Fishing season.* (1) The commercial and recreational fishing season for spiny

lobster begins on August 6; one hour before official sunrise, and ends on March 31, one hour after official sunset.

(2) Prior to the season, spiny lobster traps may be placed in the water one hour before official sunrise on August 1 (soak period).

(3) After the season, traps must be removed from the water by one hour after official sunset on April 5 (removal period) unless an extension to the removal period is granted by Florida in accordance with Chapter 46-24, Spiny Lobster (Crawfish) and Slipper Lobster, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code. The extension authorization must be carried aboard the boat retrieving the traps and must be presented for inspection upon request of an authorized officer.

(4) Except as provided in paragraphs (a)(2) and (a)(3) of this section, no trap may be transported on the waters of the EEZ during the period from one hour after official sunset on March 31 to one hour before sunrise on August 6.

(5) A spiny lobsters trap, buoy, or rope in the management area at times not authorized in this paragraph will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such a trap remains subject to appropriate civil penalties.

(b) *Special non-trap recreational fishery.* There is a special non-trap recreational fishing season on the first full weekend preceding August 1 from 0001 hours, Saturday, until 2400 hours, Sunday.

(c) *Possession.* Spiny lobsters or any parts thereof may be possessed in the EEZ only during the seasons specified in paragraphs (a)(1) and (b) of this section, unless accompanied by a proper bill of landing or other proof indicating lawful harvest outside the EEZ. Holding a spiny lobster in a trap while in the water during the soak period or during the removal period, or an extension thereto, will not be deemed possession provided such spiny lobster is returned immediately to the water unharmed whenever a trap is removed from the water during these periods.

5. In § 640.21, paragraph (c) is revised to read as follows:

§ 640.21 Harvest limitations.

(c) *Recreational catch.* (1) During the special non-trap recreational season described in § 640.20(b), the daily catch and possession of spiny lobsters in or

from the EEZ is limited to six per person.

(2) A person who fishes for spiny lobster in the EEZ may not combine the recreational catch and possession limit of paragraph (c)(1) of this section with any bag or possession limit applicable to State waters.

(3) The operator of a vessel that fishes for spiny lobster in the EEZ during the special non-trap recreational season is responsible for the cumulative recreational catch, based on the number

of persons aboard, applicable to that vessel.

(4) A person who fishes for or possesses spiny lobsters under the recreational catch and possession limit specified in paragraph (c)(1) of this section may not transfer spiny lobsters at sea from a fishing vessel to any other vessel.

6. In § 640.22, paragraph (b) is revised to read as follows:

§ 640.22 ~~State Waters~~

(b) *Attractants*. A live lobster under the minimum size may be retained for use as an attractant in a trap provided it is held in a live well aboard the vessel. No more than 100 undersized lobsters may be carried on board for use as attractants. The live well must provide a minimum of 3/4 gallons of seawater per spiny lobster.

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