

Issued: June 19, 1990.

Harold T. Duryee,

Administrator, Federal Insurance
Administration.

[FR Doc. 90-15039 Filed 6-27-90; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

50 CFR Part 640

[Docket No. 70345-0122]

RIN: 0648-AC25

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 the previously unimplemented portions 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) Require a permit to harvest spiny lobsters in the exclusive economic zone (EEZ) in quantities in excess of the bag limits or to sell spiny lobsters in or from the EEZ, (2) require a permit to wring tails from spiny lobsters in or from the EEZ, and (3) establish a recreational bag limit for spiny lobsters harvested in the EEZ during the regular season. The intended effects of this rule are to prevent overfishing of the spiny lobster resource and to provide for more consistent state and Federal management measures.

EFFECTIVE DATE: July 30, 1990, except that § 640.4 is effective June 28, 1990.

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), 16 U.S.C. 1801 *et seq.* The FMP and Amendment 1 were prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). This rule implements three measures of Amendment 1 that were approved but not implemented.

A notice of availability of Amendment 1 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

Amendment 1 by some members of both Councils was published on April 3, 1987 (52 FR 10780; corrected at 52 FR 13257, April 22, 1987). Final rules to implement parts of Amendment 1 were published on June 15, 1987 (52 FR 22656; corrected at 52 FR 23450, June 22, 1987) and May 18, 1988 (53 FR 17194).

The FMP manages the spiny lobster fishery throughout the 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. The information is not repeated here.

Implementation of Delayed Measures

The three measures of Amendment 1 that were approved by not previously implemented are:

1. The requirement for a permit to harvest spiny lobsters in the EEZ in quantities exceeding the bag limit or to sell spiny lobsters in or from the EEZ.
2. The requirement for a permit to wring tails from spiny lobsters taken in the EEZ in the commercial fishery.
3. The establishment of a recreational bag limit for spiny lobsters taken in the EEZ during the regular season.

These measures are interrelated and are dependent on the requirement for a Federal commercial permit which serves as a device to distinguish between commercial and recreational fishermen in the EEZ. To be eligible for a commercial permit, the owner or operator of a vessel must derive at least 10 percent of his or her earned income from commercial fishing during the calendar year preceding his or her application.

Florida's permitting system did not provide a compatible distinction between commercial and recreational fishermen in its waters. Therefore, NOAA did not implement these measures in either of the two previous rules to implement portions of Amendment 1. Florida has distinguished between commercial and recreational fishermen by establishing a requirement for a spiny lobster recreational license. NOAA considers the state permitting system to be sufficiently compatible with the permitting system proposed in Amendment 1. Therefore, the remaining measures of Amendment 1 may now be implemented.

The requirement for a permit to wring tails from spiny lobster limits this practice to situations where wringing tails is necessary to maintain a quality commercial product when a vessel is on a lengthy trip in the EEZ. Unrestricted, tail wringing has hampered Federal and state enforcement of the minimum size limit and the prohibition on taking spiny lobster using spears, hooks, or similar devices.

Implementing the recreational bag limit provides a much needed limitation on the recreational harvest of spiny lobster from the EEZ during the regular season. The bag limit in this rule is compatible with the existing bag limit applicable to Florida's waters, thereby, facilitating enforcement.

Changes From the Proposed Rule

In § 640.4, the paragraph on fees is removed and the heading of the section is revised accordingly. The Secretary of Commerce, under the Magnuson Act, may establish the level of fees that are authorized in an FMP or amendment. Neither the FMP nor Amendment 1 authorizes fees. The paragraph on issuance of permits is revised so permits may be issued throughout the year rather than only during June and July thus providing more flexibility for applicants and for permit issuers. Permits are for the season beginning in August, rather than for the calendar year, so that two permits will not be required during a season. An exemption from the permit requirements is added to § 640.4 to cover legally harvested lobsters or tails that are merely in transit through the EEZ. *imports*

The requirement that a permit applicant provide a copy of his state permit is removed as unnecessary for administration of the Federal permitting system. In lieu thereof, an owner and operator need report only his or her Florida saltwater products license number, if applicable. An applicant must provide a copy of the vessel's U.S. Coast Guard certificate of documentation or state registration certificate as verification of the vessel's name, official number, and length. NOAA frequently has found inaccuracies in this information on applications. The requirements to provide the vessel's tonnage and radio call sign are deleted as unnecessary. Furthermore, the approximate live well capacity will be reported only in gallons.

The provision for validity of a permit for a period not to exceed 80 days after sale of a permitted vessel is removed to preclude participation in the commercial fishery by a person who does not meet the earned income requirement for a

permit, as was intended in Amendment 1. The provision in the proposed rule authorizing the Regional Director to disregard the earned income requirement for a permit in a case of documented hardship is not included in this final rule. Such authorization is not contained in Amendment 1 and is contrary to the procedures of the Regional Director in other fisheries that have earned income requirements.

Additional documents identifying owners and operators of vessels applying for permits are required, and the permits section is reordered and reworded for clarity.

In § 640.7, for clarity, specific prohibitions are added (1) regarding purchase or sale of spiny lobsters that are smaller than the minimum size or that are taken in the EEZ by a vessel that does not have a seasonal vessel permit, (2) regarding purchase or sale of separated spiny lobster tails that are taken by a vessel that does not have a tail-separation permit, and (3) regarding possession of separated spiny lobster tails by a vessel that does not have a tail-separation permit.

The qualification that possession of separated spiny lobster tails in or from the EEZ must be incidental to a trip of 48 hours or more is added to § 640.21(d). In the proposed rule, that qualification was contained only in the section dealing with an application for a tailing permit. The addition of that qualification to § 640.21(d) clarifies the restriction on removing the tails of spiny lobsters, as was intended in Amendment 1. In support of that qualification, a definition for "trip" is added.

Comments and Responses

In its comments on the proposed rule, the U.S. Coast Guard opposed the use of a tailing permit because it would be too difficult to enforce. As noted above, under certain circumstances, the wringing of tails is necessary to maintain a quality commercial product. The validity of a tail-wringing permit is limited to those circumstances. Under the status quo, there are no limitations on tail wringing in the EEZ and Florida's prohibition on tail wringing can be enforced only when it is known that the spiny lobsters were harvested in state waters. Accordingly, NOAA concludes that, overall, enforceability will be enhanced and conservation of the resource will be aided by implementation of the tail-wringing permit.

Classification

The Regional Director, Southeast Region, NMFS, determined that Amendment 1 is necessary for the

conservation and management of the spiny 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 Amendment 1 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.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a supplemental regulatory impact review for Amendment 1. A summary of the economic effect was included in the proposed rule at 52 FR 8487 (March 18, 1987) and is not repeated here.

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.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. This collection of information has been approved by the Office of Management and Budget. OMB control number 0648-0205 applies. The public reporting burden for this collection of information is estimated to average 15 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Mike Justen, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33742; and to the Office of Information and Regulatory Affairs, Office of

Management and Budget, Washington, DC 20503 (Attn: paperwork reduction act project 0648-0205).

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. Georgia and Texas do not have approved coastal zone management programs. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida, Louisiana, Mississippi, and South Carolina agreed with these determinations. The other states did not respond within the statutory time period, and, therefore, consistency is automatically implied.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

The Assistant Administrator for Fisheries, NOAA, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), finds for good cause, namely, to provide fishermen the maximum amount of time before the commencement of the next season to apply for and receive permits to engage in the commercial spiny lobster fishery, that it is not necessary to delay for 30 days the effective date of § 640.4 of this rule.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 22, 1990.

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

For the 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, a new definition for *Trip* is added in alphabetical order to read as follows:

§ 640.2 Definitions.

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that

terminates with return to a dock, berth, beach, seawall, or ramp.

3. Section 640.4 is revised to read as follows:

§ 640.4 Permits.

(a) *Applicability.* (1) To sell a spiny lobster in or from the EEZ, or to be exempt from the daily catch and possession limit of spiny lobster in or from the EEZ specified in § 640.21(c)(1)(i), an owner or operator of a vessel must obtain a seasonal vessel permit.

(2) To possess a separated spiny lobster tail in or from the EEZ aboard a vessel, the owner or operator of that vessel must obtain a tail-separation permit. A tail-separation permit will not be issued to an owner or operator who does not qualify for a seasonal vessel permit.

(3) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobsters or separated tails in the EEZ incidental to such foreign harvesting is exempt from the permit requirements of paragraphs (a) (1) and (2) of this section provided a proper bill of lading or other proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

(b) *Application for permit.* (1) An application for a seasonal vessel or tail-separation permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or state registration certificate;

(ii) The vessel's name, official number, length, home port, and engine horsepower.

(iii) Name, mailing address including zip code, telephone number, and Florida saltwater products license number, if applicable, of the owner of the vessel;

(iv) Name, mailing address including zip code, telephone number, and Florida saltwater products license number, if applicable, of the applicant, if other than the owner;

(v) Social security number and date of birth of the applicant and the owner;

(vi) Approximate live well capacity in gallons;

(vii) Any other information concerning vessel and gear characteristics requested by the Regional Director;

(viii) A sworn statement by the applicant certifying that at least 10

percent of his or her earned income was derived from commercial fishing during the calendar year preceding the application;

(ix) Proof of certification, as required by paragraph (b)(3) of this section; and

(x) If a tail-separation permit is desired, a sworn statement by the applicant certifying that his fishing activity—

(A) Is routinely conducted in the EEZ on trips of 48 hours or more; and

(B) Necessitates the separation of carapace and tail to maintain a quality product.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(viii) of this section before a permit is issued or to substantiate why such a permit should not be denied, revoked, or otherwise sanctioned under paragraph (g) of this section.

(4) Any change in the information specified in paragraph (b)(2) of this section must be submitted in writing to the Regional Director by the permit holder within 30 days of any such change. The permit is void if any change in the information is not reported.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to the applicant.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(d) *Duration.* A permit remains valid for the remainder of the season for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(e) *Transfer.* A permit issued under this section is not transferable or assignable. A person purchasing a vessel with a seasonal vessel permit must apply for a new permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of an executed (signed) bill of sale.

(f) *Display.* A permit issued under this section must be carried on board the permitted vessel at all times and such vessel must be identified as provided for in § 640.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(g) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(h) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

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

4. In § 640.7, paragraphs (i) and (j) are revised and new paragraphs (q) through (u) are added to read as follows:

§ 640.7 Prohibitions.

(i) Exceed the recreational daily catch and possession limit, as specified in § 640.21(c)(1).

(j) Retain a spiny lobster smaller than the minimum size, except as specified in § 640.22; or purchase, barter, trade, or sell a spiny lobster smaller than the minimum size, as specified in § 640.22(a) (1) or (2).

(q) Purchase, barter, trade, or sell a spiny lobster taken in the EEZ by a vessel that does not have a seasonal vessel permit, as specified in § 640.4(a)(1).

(r) Purchase, barter, trade, or sell a separated spiny lobster tail taken in the EEZ by a vessel that does not have a tail-separation permit, as specified in § 640.4(a)(2).

(s) Falsify information specified in § 640.4(b)(2) on an application for a permit; or fail to report a change in such information, as specified in § 640.4(b)(4).

(t) Fail to display a permit, as specified in § 640.4(f).

(u) Possess a separated spiny lobster tail, except as specified in § 640.21(d).

5. In § 640.21, paragraphs (c)(1) and (c)(3) are revised and new paragraph (d) is added to read as follows:

§ 640.21 Harvest limitations.

(c)
(1) The daily catch and possession of spiny lobsters in or from the EEZ is limited to six per person:

(i) During the fishing season described at § 640.20(a), except for spiny lobsters possessed aboard a vessel with the seasonal vessel permit specified in § 640.4(a)(1); and

(ii) During the special non-trap recreational season described at § 640.20(b).

(3) The operator of a vessel that fishes for spiny lobster in the EEZ is responsible for the cumulative recreational catch, based on the number of persons aboard, applicable to that vessel.

(d) *Tail separation.* The possession of a separated spiny lobster tail is authorized only—

(1) Aboard a vessel having on board the tail-separation permit specified in § 640.4(a)(2); and

(2) When the possession is incidental to fishing in the EEZ on a trip of 48 hours or more.

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

§ 640.22 Size limitations.

(a) *Length.* Except as provided in paragraph (b) of this section, a spiny lobster—

(1) With a carapace length of 3.0 inches (7.62 centimeters) or less; or

(2) Aboard a vessel authorized under § 640.21(d) to possess a separated spiny lobster tail, with a tail length less than 5.5 inches (13.97 centimeters)—must be returned immediately to the water unharmed.

[FR Doc. 90-14973 Filed 6-25-90; 12:01 pm]
BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 91048-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of apportionment and notice of closure; request for comments.

SUMMARY: NOAA announces the apportionment of amounts of Alaskan groundfish to the domestic annual processing (DAP) portion of the domestic annual harvest (DAH), and closure of the Bering Sea and Aleutian Islands subareas to further directed fishing for Atka mackerel under provisions of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). These actions are necessary to assure maximum use of groundfish in that area and prevent the total allowable catch (TAC) for Atka mackerel in the BSAI from being exceeded before the end of the fishing year. The intent of this action is to assure optimum use of groundfish while conserving Atka mackerel stocks.

DATES: Effective from noon, Alaska local time (ALT), June 26, 1990 through December 31, 1990. Comments will be accepted through July 10, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director,

Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone within the BSAI under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and part 675. Initial specifications for 1990 TACs were published at 55 FR 1434 (January 16, 1990). The same notice established a 15-percent non-specific reserve, and then apportioned additional amounts from that reserve to joint venture processing (JVP) in order to provide bycatch amounts for other targeted JVP fisheries. Amounts needed to supplement DAP were retained in the reserve to be apportioned as needs arose later in the year. On June 24, 1990, 700 mt of DAP were reapportioned to JVP for arrowtooth flounder and 2,110 mt of DAP were reapportioned to JVP for Pacific cod. Reserves were reduced by 2,800 mt, thereby increasing JVP and TAC for two target species groups (300 mt being reapportioned for JVP and TAC for pollock and 2,500 mt for JVP and TAC for "other species"), to provide bycatch for a reopening of the JVP directed fisheries for yellowfin sole and "other flatfish".

Notice of Apportionment

The following action is taken by this notice to apportion groundfish from the non-specific reserve to the BSAI DAP for Atka mackerel. The current TAC for Atka mackerel is set at 17,850 metric tons (mt). The entire TAC is apportioned to DAP. In the BSAI, the estimated DAP catch of Atka mackerel through June 16 is 16,500 mt, leaving a remainder of 1,350 mt. At current catch rates, the entire apportionment of Atka mackerel will be taken soon. In order to extend the DAP fishing season and allow full commercial use of the available Atka mackerel stock, an additional 3,150 mt is apportioned from the non-specific reserve to DAP for Atka mackerel. This apportionment does not result in overfishing of Atka mackerel, as the resulting TAC amount (21,000 mt) is less than its acceptable biological catch which is 24,000 mt.

Notice of Closure to Directed Fishing

The Regional Director has determined that fisheries for Pacific Ocean perch will require up to 500 mt of Atka mackerel for bycatch. Under § 675.20(a)(8), when the Regional Director finds that the remaining amount of TAC of any target species is likely to be reached, he may establish a directed fishing allowance (DFA) for that species, considering the amount of that species which will be taken as incidental catch in directed fishing for other species in the same area. Further, if the DFA is reached or is likely to be reached, the Secretary will publish a notice prohibiting directed fishing for that species for the remainder of the fishing year.

The Regional Director has determined that the amount of Atka mackerel that will remain on June 26, 1990, about 500 mt, will be necessary for bycatch in other fisheries; therefore he is establishing a DFA of 20,500 mt for Atka mackerel, and prohibiting further directed fishing for Atka mackerel at noon, June 26, 1990. After that time, in accordance with § 675.20(h)(5), during each trip a vessel may lawfully retain Atka mackerel only in an amount less than 20 percent of the total amount of all other fish species (based on round weight equivalents) retained at the same time on the vessel during the same trip.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. Immediate effectiveness of this notice is necessary to prevent the TAC for Atka mackerel from being exceeded by the end of June, 1990. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

This action is taken under the authority of §§ 675.20(a)(8), and 675.20(h), and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 25, 1990.

Richard H. Schaefer,
Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.