

the fishing seasons for commercial and recreational harvest of spiny lobsters, (4) establish a recreational bag limit, and (5) revise the requirements for holding undersized spiny lobsters for use as attractants. The intended effect of this rule is to prevent overfishing of the spiny lobster and slipper lobster stocks, to rebuild and maintain the stocks at a maximum sustainable yield (MSY) level through protection of undersized lobsters, and to provide for more consistent State and Federal management measures.

DATES: Written comments must be received on or before Saturday, April 18, 1987.

ADDRESSES: Comments on the proposed rule and requests for copies of Amendment 1 to the FMP, the supplemental environmental assessment, and the supplemental regulatory impact review should be sent to Michael E. Justen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL, 33702.

Comments on the information collection requirements of this proposed rule may be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

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

SUPPLEMENTARY INFORMATION: The spiny lobster fishery is managed under the FMP and its implementing regulations at 50 CFR Part 640 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This proposed rule would implement Amendment 1 to the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils).

Background

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 to the United States/Mexico border. The proposed rule applies only to this area. The management unit for the FMP consists of the spiny lobster *Panulirus argus*; this rule proposes to add the slipper (Spanish) lobster *Scyllarides nodifer*.

Optimum yield (OY)

OY for the spiny lobster fishery is specified, in the FMP, to be all spiny lobsters with a carapace length of more

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 70345-7045]

Spiny Lobster Fishery in the Gulf of Mexico and the South Atlantic

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

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 1 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP). This proposed rule provides for measures which (1) include slippers lobster in the management unit and prohibit the stripping of eggs from berried (egg-bearing) female slipper lobsters, (2) require permits for commercial harvesting and separation of spiny lobster tails at sea, (3) change

than 3.0 inches, or having a tail not less than 5.5 inches in length, that can be harvested legally by commercial and recreational fishermen given existing technology and prevailing economic conditions. In the FMP, OY is estimated to be 9.5 million pounds.

OY for the slipper (Spanish) lobster fishery is specified as all non-egg-bearing slipper lobster that can be harvested legally by commercial and recreational fishermen given existing technology and prevailing economic conditions.

Permit requirements

Currently, there are no permit requirements for lobsters in the EEZ. Historically, Florida has issued a general spiny lobster vessel permit and a tail separation permit for commercial fishing craft operating in State waters. In the past, there was no need to issue permits to fish for spiny lobsters in Federal waters. However, two major problems have occurred in the spiny lobster fishery which necessitate the issuance of Federal permits.

First, the spiny lobster fishery is substantially overcapitalized: the industry has requested both the State and Federal governments to evaluate limited entry. Both Councils and NMFS are jointly funding an anthropological and economic study of the fishery with particular emphasis on identifying alternative limited entry programs. Currently, anyone can fish in Federal waters at no cost and in Florida's waters for a \$50.00 permit fee. Consequently, although there are only about 600 commercial fishing craft in the fishery, over 4,000 Florida permits have been issued as of the 1986 fishing season. Obviously, any consideration of a limited entry program must first identify the participants in the fishery and associated user groups. The issuance of Federal spiny lobster fishing craft permits to owners or operators with ten percent earned income from commercial fishing is needed to (1) identify those lobster fishing firms that can be considered as commercial fishermen, (2) provide the opportunity for permit sanctions against repeat offenders, and (3) prevent recreational fishermen from circumventing the bag limit. It is necessary to identify user groups to determine their relative impacts on the resource and to assure a fair and equitable allocation of the resource. The opportunity to assess permit sanctions against repeat offenders has been endorsed by the NOAA General Counsel as an effective enforcement tool. A duplication of Florida permit requirements is necessary because Florida does not adequately identify the various user

groups harvesting the resource in either State or Federal waters. In addition, the Federal permit system is required to complement Florida's permit requirements to provide better enforcement of both State and Federal management measures.

Second, historically, Florida has issued a special permit to separate the carapace and tail of the spiny lobster (i.e., tailing) while at sea; otherwise tailing was prohibited. Currently, tailing is permitted in the EEZ. The lack of a tailing prohibition in Federal waters has dramatically hampered both State and Federal efforts at enforcing the minimum size requirement of § 644.22(a) and the spear fishing prohibition of § 640.23(b). The fishing industry and State and Federal enforcement agencies have reached an agreement regarding the prohibition on tailing and the responsibility for issuing the tailing permit to qualified vessel owners or operators; Florida has discontinued tailing permits for State waters, since tailing is needed to maintain a quality product only when the vessel is operating in the EEZ away from port for two or more days. Tailing is to be prohibited in the EEZ except by special permit, with the requirement that the permittee is a commercial fisherman, fishes in the EEZ, and makes fishing trips of 48 or more hours' duration. This measure is anticipated to have no negative impact on the resource or the commercial and recreational fisheries.

Fishing seasons

The regular fishing season of July 26 through March 31 for spiny lobsters is proposed to be changed to August 5 through March 31 to further protect the population during the spawning season which extends from April through August. Annual increases in fishing effort have resulted in proportionally more lobsters being harvested during the beginning of the fishing season: the increased harvest during July and August is coincident with the final months of the spawning season and one of the major periods of molting and growth during the year.

This change is proposed to maintain compatibility with Florida regulations, because the Florida Marine Fisheries Commission (FMFC) is proposing the same seasonal change for State waters. The impact on the commercial and recreational fisheries will be significant initially, since fishing will be prohibited for an additional ten days at the beginning of the fishing season; however, it is anticipated that total catch for the August-September period will not decrease because those lobsters not harvested during the ten-day closure

extension will be harvested when the season opens. Consequently, the overall impact will be positive because the change in season dates will provide a greater opportunity for undersized lobsters to molt and grow to legal size before the opening of the season; August is a period of increased molting frequency and growth for spiny lobsters.

Gear modifications

Current regulations require undersized lobsters used as attractants to be kept in a shaded live box while being transported between traps. Typical live boxes currently in use are constructed of wood with numerous openings to allow free flow of air to the lobsters. Recent research demonstrates that the holding of lobsters exposed to air causes significant mortality, has reduced potential yield from the fishery, and has prevented the fishery from obtaining OY. This proposed rule requires the live box to be constructed so that the undersized lobsters held as attractants will be completely immersed in aerated, circulating water to prevent desiccation due to exposure to air. The consequent increased survivability of attractant lobsters will significantly increase both the catch of legal lobsters and available stock size of undersized lobsters, given effective compliance and enforcement.

Slipper (Spanish) lobster

The FMP currently does not regulate slipper lobsters, because at the time the FMP was implemented no directed harvest of slipper lobsters occurred. Currently, slipper lobsters are harvested seasonally by shrimp vessels with trawl gear. Landings have averaged about 80,000 pounds annually with about half harvested during the summer reproductive season. A substantial quantity (greater than 50 percent) of the summer landings are of egg-bearing females. Evidence from other slipper lobster fisheries, worldwide, indicate that the slipper lobster stock is not capable of supporting extensive commercial fishing. To maintain the incipient fishery without overfishing the population, the harvest, possession, or stripping of egg-bearing female slipper lobsters will be prohibited and all captured egg-bearing slipper lobsters must be released alive to the open water.

Recreational bag limit

Currently, there is no bag limit on spiny lobsters in the EEZ; this differs from the Florida regulation which restricts the possession of spiny lobsters to 24 lobsters per fishing craft per day without a valid permit. The absence of a

bag limit in Federal waters has substantially hampered the State's efforts at enforcing its bag limit. Further, the bag limit of six lobsters per person per day is needed, in conjunction with the permit requirement, to better define the recreational and commercial user groups. The current Florida permit is available to anyone who pays the \$50 permit fee and does not differentiate between a commercial or recreational user. Florida is currently considering a bag limit of six lobsters per person per day to be compatible with this proposed bag limit in Federal waters.

Recreational Fishing Permit

Currently, there is no requirement for a recreational fishing permit in either the EEZ or State waters. A recreational fishing permit requirement has been developed as part of this amendment. NOAA proposes to implement recreational fishing permits in the EEZ through a regulatory amendment upon approval of a recreational fishing permit for State waters by Florida. Criteria for this permit will appear in the proposed regulatory amendment at a later date.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of the amendment to the FMP and regulations. At this time the Secretary has not determined that Amendment 1 to the FMP, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared an environmental assessment (EA) for this amendment and concluded that there will be no significant impact on the environment due to this rule. A copy of the EA may be obtained from NMFS (See ADDRESSES).

The Administrator, NOAA, has determined that this proposed rule is not a "major rule", requiring the preparation of a regulatory impact analysis under Executive Order 12291. The amendment's management measures are designed to maintain and increase current landings and the productivity of the stock, restore overfished stocks, and prevent overfishing of the spiny and slipper (Spanish) lobster stocks. The major benefits from this amendment are greater than the associated Federal costs to manage the fishery on a

continuing basis. The Councils prepared a supplemental regulatory impact review (SRIR) which concludes that this proposed rule will have the following economic effect.

Greater benefits will result from this proposed amendment, due to increased poundage, than from the alternatives considered and rejected. The no-action alternative would have resulted in a 20 percent decline in long-term abundance, if fishing pressure remained unchanged. The proposed regulations should restore the spiny lobster landings to within five to ten percent of OY, estimated in the FMP to be 9.5 million pounds, in three to five years, given effective compliance with and enforcement of proposed regulations. The proposed regulations, which strengthen the FMP's objectives, are expected to increase the likelihood of achieving the proposed benefits described in the FMP through more effective enforcement and a reduction in mortality of undersize lobsters. No regulatory-induced price increases nor Federal enforcement costs should occur. A copy of the SRIR may be obtained from NMSF (see ADDRESSES).

This proposed rule is exempt from the procedure of Executive Order 12291, under section (a)(2) of that order. The proposed rule is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, 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 new costs on the industry. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act (RPA). A request to collect this information under this mandatory requirement has been submitted to OMB for review under section 350(h) of the PRA. Comments on this requirement may be sent to OMB (see ADDRESSES).

The Councils have 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 have been submitted for review by the responsible State agencies

under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 13, 1987

William E. Evans,

Assistant Administrator for Fisheries,
National Marine Fisheries Service

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

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

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

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

2. In § 640.1, the second sentence is revised, to read as follows:

§ 640.1 Purpose and scope.

* * * The regulations in this part govern fishing for spiny lobsters and slipper (Spanish) lobsters by vessels of the United States within the EEZ in the Atlantic Ocean and Gulf of Mexico along the coast of the South Atlantic States from the Virginia/North Carolina border south and through the Gulf of Mexico.

3. Section 640.2 is amended by removing the definition for *Fishery conservation zone (FCZ)*, revising the definitions for *Fish* and *Live box*, and adding in alphabetical order new definitions for *Commercial fishing*, *Exclusive economic zone (EEZ)*, *Recreational fishing*, and *Slipper (Spanish) lobster*, to read as follows:

§ 640.2 Definitions.

* * * * *

Commercial fishing means any fishing or fishing activities which result in the harvest of any marine or freshwater organisms, one or more of which (or parts thereof) is sold, traded, or bartered.

* * * * *

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

Fish includes the spiny lobster, *Panulirus argus*, and the slipper (Spanish) lobster, *Scyllarides nodifer*.

Live box means a container with aerated circulating seawater that is used for holding live lobsters aboard a vessel.

Recreational fishing means fishing or fishing activities which result in the harvest of fish, none of which (or parts thereof) is sold, traded, or bartered.

Slipper (Spanish) lobster means the species *Scyllarides nodifer*.

4. Section 640.4 is revised, to read as follows:

§ 640.4 Permits and fees.

(a) *Commercial fishing permit*—(1) *Applicability.* Owners or operators of fishing vessels which fish for spring lobster and harvest or possess more than six spring lobsters per person per day in the EEZ, or sell spiny lobster harvested in the EEZ, are required to obtain a vessel permit from the Regional Director.

(2) *Application for permit.* (i) An application for a permit must be submitted to the Regional Director and signed by the owner or operator of the vessel. Permit applications may be made at any time during the year.

(ii) Permit applicants must provide the following information:

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

(B) Name of vessel;

(C) The vessel's official number;

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

(E) Approximate live box capacity in gallons and number of lobsters;

(F) A sworn statement by the owner or operator certifying that at least ten percent of his earned income was derived from commercial fishing during the preceding calendar year (January 1 through December 31), and;

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

(iii) Spiny lobster permittees of any State must also provide a copy of their State permit, in addition to the information required in § 640.4(a)(2)(ii).

(3) *Proof of certification.* The Regional Director or his designee may require the applicant to provide documentation supporting the sworn statement required under paragraph (a)(2)(ii)(F) of this section before a permit is issued or to substantiate why such a permit should

not be revoked under paragraph (a)(9) of this section.

(4) *Issuance.* (i) The Regional Director or his designee will issue permits to the applicants only during June and July of each year, after permit applications are submitted according to paragraph (a)(2) of this section. The Regional Director may issue permits at other times to newly registered or documented vessels, or in case of demonstrated hardship. Until the permit is received, fishermen must comply with the possession limits under § 640.21(c).

(ii) The Regional Director or his designee may grant permits to owners or operators of vessels who fail to meet the annual income requirement specified in § 640.4(a)(2)(ii)(F) in case of documented hardship where the applicant has a history of ten percent or more dependence on commercial fishing.

(5) *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 form; it will be limited to the administrative cost of issuing the permit and may not exceed \$10.

(6) *Duration.* A permit is valid only for the duration of the year for which it is issued (August 1–July 31) unless revoked or suspended under Subpart D of 15 CFR Part 904.

(7) *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 for spiny lobsters must comply with the provisions of paragraph (a)(2) of this section. The application must be accompanied by a copy of any executed (signed) bill of sale. New owners who have purchased a permitted vessel may fish with the preceding owner's permit until a new permit has been issued, for a period not to exceed sixty days from the date of purchase. Until a new permit is received, a copy of the executed (signed) bill of sale must be aboard the vessel and available for inspection by an authorized officer.

(8) *Display.* A permit issued under this section must be carried on board the fishing vessel, and the 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 any authorized officer.

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

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

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

(12) *Change in permit application information.* Permittees must notify the Regional Director within 30 days after any changes in the permit application information required by § 640.4(a)(2).

(b) *Recreational fishing permit.* [Reserved]

(c) *Tail separation permit*—(1) *Applicability.* Owners or operators of fishing vessels which possess, or have applied for, a commercial fishing permit under paragraph (a) of this section may apply for a permit for the purpose of separating the carapace and tail of spiny lobsters harvested in the EEZ, and possessing separated spiny lobster tails while fishing in the EEZ.

(2) *Application for a tail separation permit.* An application for a spiny lobster tail separation permit may be made to the Regional Director anytime during the year and must include the following information: (i) A copy of a commercial fishing permit or commercial fishing permit application.

(ii) A sworn statement by the owner or operator of the vessel certifying that his fishing activity is routinely conducted in the EEZ for extended periods of time (a minimum of 48 hours) away from his home or principal port and his activities necessitate the separation of carapace and tail to maintain a quality product.

(iii) The Regional Director or his designee may require the applicant to provide documentation supporting the sworn statement in paragraph (a)(2)(ii)(F) of this section before a permit is issued or to substantiate why such a permit should not be revoked under paragraph (a)(9) of this section.

(3) *Permit conditions.* The tail separation permit, when issued, becomes a part of the commercial fishing permit and is subject to the conditions described in paragraphs (a)(4) through (11) of this section.

(5) Section 640.7 is amended by revising the introductory text and designating it as paragraph (a); redesignating existing paragraphs (a) through (r) as (a)(1) through (a)(18); in the newly redesignated (a)(15), removing the reference to paragraph "(n)" and adding "(9)" in its place, and in the newly redesignated paragraph (a)(18), removing the word "or"; redesignating existing paragraph (a) as (b); revising the newly redesignated paragraphs (a)(4), (a)(7), and (b); and adding new paragraphs (a)(19), (20), and (21), to read as follows:

§ 640.7 General prohibitions.

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

(4) Harvest spiny lobsters with traps during the closed season specified in § 640.20 (b) and (c);

(7) Strip eggs from or otherwise molest any berried lobster, as specified in § 640.21;

(9) Fish commercially for spiny lobsters without a permit, as required by § 640.4;

(20) Fail to transfer or to display a permit as provided for in § 640.4(a)(7) and (8); or

(21) Falsify or fail to report information required to be submitted by § 640.4(a)(2).

(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. In § 640.20, paragraph (b) is removed, paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), and paragraph (a) and the newly redesignated paragraph (b) are revised, to read as follows:

§ 640.20 Seasons.**(a) Fishing season.**

(1) The commercial and recreational fishing season for spiny lobsters begins on August 6, one hour before official sunrise, and ends March 31, one hour after official sunset.

(2) Spiny lobster traps may be placed in the water on August 1, one hour before official sunrise, but spiny lobsters may not be harvested until the beginning of the season. Traps must be removed prior to one hour after official sunset on April 5.

(3) A ten-day extension for trap removal (ending at one hour after official sunset on April 15) may be granted upon request to the Regional Director. Such requests must document the hardship or emergency which resulted in the inability to remove traps prior to April 6. Any spiny lobster taken between 0001 hours April 1 and 2400 hours April 15 must be returned to the water unharmed.

(4) Traps in the management area during the period between 0001 hours April 18 and 2400 hours July 31 will be considered unclaimed or abandoned property and may be disposed in accordance with § 640.6(i).

(b) *Special non-trap recreational fishery.* There is a special non-trap recreational fishing season from one hour before official sunrise on July 18, 1987, until one hour after official sunset on July 19, 1987. Effective January 1, 1988, the special non-trap recreational fishing season will be the first full weekend preceding August 1st from 0001 hours Saturday until 2400 hours Sunday.

7. Section 640.21 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d), to read as follows:

§ 640.21 Harvest limitations

(a) *Berried lobsters.* All berried (egg-bearing) spiny lobsters and slipper (Spanish) lobsters must be returned immediately to the water unharmed. If found in a trap, a berried lobster may not be retained in the trap. Berried lobsters may not be stripped of their eggs or otherwise molested.

(c) *Recreational catch.* (1) During the regular fishing season described in § 640.20(a), the catch and possession is limited to six lobster per person per day.

(2) During the special non-trap recreational season described in

§ 640.20(b), the catch and possession is limited to six lobsters per person per day.

(d) *Tail separation.* The separation of a spiny lobster's carapace and tail and the possession of separated spiny lobster tails is permitted in the EEZ only if the vessel has been issued a tail separation permit under paragraph § 640.4(c).

8. Section 640.22 is revised, to read as follows:

§ 640.22 Size limitations.

(a) *Carapace length.* Except as provided in paragraph (b) of this section, any spiny lobster (*Panulirus argus*) with a carapace length of 3.0 inches or less, or, if the carapace and tail are to be separated as provided in § 640.21(d), with a tail length of less than 5.5 inches, must be returned immediately to the water unharmed.

(b) *Attractants.* Live lobsters under the minimum size may be held in a shaded live box aboard a vessel for use as attractants in traps. No more than one hundred undersized lobsters may be carried on board for use as attractants. The live box must provide a minimum of 3/4 gallons of aerated circulating sea water per spiny lobster held as an attractant.

§§ 640.3, 640.6, 640.7, 640.20, 640.23
(Amended)

9. In addition to the amendments set forth above, the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places:

§ 640.3(a);
§ 640.6(g), (h), and (i);
§ 640.7(a)(5) and (a)(16);
§ 640.20(c); and
§ 640.23(b)(1).

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