

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Family Support Administration

45 CFR Part 95

Automatic Data Processing Equipment
and Services; Conditions for Federal
Financial Participation (FFP)AGENCY: Family Support Administration,
HHS.

ACTION: Final rule.

SUMMARY: This document makes amendments concerning automatic data processing equipment and services, conditions for Federal financial participation. This amendment addresses an inadvertent omission from § 95.611(a)(3) of the phrase " * * * from the Department as specified in paragraph (b) of this section, * * * ". The Department has in the past, and continues to require prior written approval of State plans to acquire ADP equipment and services in support of the operation of the approved State Medicaid System, in accordance with the provisions of § 95.611(b), as they appeared prior to the final revised rules published on February 7, 1990, and as modified by the February 7, 1990 revision. This amendment brings the requirement of the rule technically in line with past and continued practice, as well as with the requirements of part 11, of the State Medicaid Manual entitled "Medicaid Management Information Systems".

EFFECTIVE DATE: February 7, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph F. Costa, Director, State Data Systems Staff, Office of Management and Information Systems, Family Support Administration, Washington, DC 20447, telephone (202) 401-9366.

List of Subjects in 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs, Social programs, Social Security.

Dated: March 15, 1991.

Fred Wirth,

Acting Deputy Assistant Secretary for
Information Resources Management.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: Secs. 402(a)(5), 452(a)(1), 1102, and 1902(a)(4) of the Social Security Act (42 U.S.C. 602(a)(5), 652(a)(1), 1302, 1396(a)(4); 5 U.S.C. 301 and 8 U.S.C. 1521.)

§ 95.611 [Amended]

2. The first phrase of § 95.611(a)(3) is changed from "A State shall obtain prior written approval," to "A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section."

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

50 CFR Part 640

[Docket No. 901224-1056]

RIN 0648-AD22

Spiny Lobster Fishery of the Gulf of
Mexico and South AtlanticAGENCY: National Marine Fisheries
Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 3 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). This rule (1) imposes a fee of \$25 per application to cover the administrative costs of issuing commercial, seasonal vessel permits, and (2) specifies who must meet the earned income from fishing requirement for a commercial, seasonal vessel permit. The intended effects of this rule are to recover the cost to the Government for the services provided in reviewing applications and issuing commercial, seasonal vessel permits and to ensure that commercial permits are not obtained by persons for whom the spiny lobster bag limit is intended to apply.

EFFECTIVE DATE: This rule is effective March 25, 1991, for applications for spiny lobster permits for the season that commences August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-883-3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery of the Gulf of Mexico and South Atlantic is managed under the FMP, prepared and amended 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 3 to the FMP (1) contains a definition of overfishing for spiny lobster, as required by 50 CFR 602.11(c), and specifies actions to be taken if overfishing occurs; (2) authorizes NMFS to charge a fee for reviewing and processing applications and issuing the Federal seasonal vessel permits that are required for the commercial spiny lobster fishery in the exclusive economic zone; and (3) states the Councils' intent that a person not be able to use a corporate structure to circumvent the ten-percent earned income from fishing requirement to obtain a commercial, seasonal vessel permit and, thus, exceed the bag limits. To implement the Councils' intent, this rule specifies that the qualifying requirement must be met by a shareholder or officer of a corporate-owned vessel, a general partner of a partnership-owned vessel, or the vessel operator.

Additional information on the definition of overfishing and actions to be taken if overfishing occurs is contained in Amendment 3, the availability of which was announced in the Federal Register on November 30, 1990 (55 FR 49659). Additional information on the changes to the regulations is contained in Amendment 3 and in the proposed rule, which was published on December 20, 1990 (55 FR 52190).

Comments and Responses

Comments were received on Amendment 3 and the proposed rule from a commercial fisherman, a private individual, and a recreational diver. Comments and responses by subject matter follow.

Permit Fee

The commercial fisherman objected to the fee for the commercial, seasonal vessel permit. NOAA disagrees. Individuals benefitting from management of the fishery and the permitting system should bear the administrative costs associated with such system, as is authorized by the Magnuson Act.

Permit Regime

The commercial fisherman also recommended that if the Federal government requires fishing permits, it should follow Florida's example by issuing one license with endorsements for specified fisheries. NOAA believes that the recommendation has merit. Such a regime will be considered for future development.

Definition of Overfishing

The private individual believed that the present regulatory regime has allowed the prevailing fishing mortality rates to reduce the reproductive potential of the spiny lobster resource. He recommended a more conservative definition of overfishing (i.e., an egg per recruit ratio greater than 6 percent), and regulatory changes to achieve this goal. A team of scientists from academia, Florida, and NOAA developed the definition of overfishing and the recovery plan. The Scientific and Statistical Committees of the Councils reviewed and concurred with the team's recommendations. The Science and Research Director, Southeast Fisheries Center, certified that the definition of overfishing and associated recovery plan are based on the best available scientific information. Therefore, the definition of overfishing and the recovery plan are approved. However, NOAA shares the commenter's concern about the ability of the management regime to prevent overfishing. NOAA has urged the Councils to consider modification in the near future of the definition of overfishing to make it more sensitive to resource abundance.

Eligibility Requirements for the Commercial Permit

The recreational diver opposed Amendment 3 and the regulations because the proposed regulatory regime favors the commercial sector by tightening up the eligibility requirements for the commercial permit. The result, in his opinion, requires recreational divers to comply with an unnecessary bag limit. NOAA agrees that one of the effects of the change in the eligibility requirements is to prevent a recreational diver from obtaining a commercial permit. To reduce the potential for overfishing the resource, the Councils' intent is to ensure that only bona-fide commercial fishermen obtain permits and exceed the bag limit that has been determined necessary to prevent overfishing.

Changes From the Proposed Rule

In § 640.4(c), the phrase specifying that fees are applicable for permit applications for the season that commences August 6, 1991, is removed as unnecessary. As stated under **EFFECTIVE DATE**, above, all parts of this rule are effective for permit applications for that season.

Classification

The Secretary determined that Amendment 3 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 Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Councils prepared a regulatory impact review (RIR) that analyzes the economic impacts of this rule and describes its effects on small business entities. The RIR concludes that Amendment 3 will have minimal economic effects and will not have a significant economic impact on a substantial number of small entities. Accordingly, the General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities; and a regulatory flexibility analysis was not prepared.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

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 Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not participate in the coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida, North Carolina, and South Carolina agreed with the determination. The other states did not comment within the statutory time period; therefore, consistency is presumed.

This rule involves a previously approved collection-of-information requirement subject to the Paperwork Reduction Act, namely, applications for commercial, seasonal vessel permits. Office of Management and Budget Control Number 0648-0205 applies.

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

The Assistant Administrator, pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)(3)), finds for good cause, namely, to ensure that all applications

for spiny lobster permits for the season that commences August 6, 1991, are reviewed on the same basis and are subject to the same fee, that it is contrary to the public interest to delay for 30 days the effective date of this rule.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 19, 1991.

Michael F. Tillman,

Acting 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 § 640.4, the heading is revised, paragraphs (c) through (i) are redesignated as paragraphs (d) through (j), and new paragraphs (a)(4) and (c) are added to read as follows:

§ 640.4 Permits and fees.

(a) * * *

(4) For a corporation or partnership to be eligible for a seasonal vessel permit specified in paragraph (a)(1) of this section, the earned income qualification specified in paragraph (b)(2)(viii) of this section must be met by, and the statement required by that paragraph must be submitted by, a shareholder or officer of the corporation, a general partner of the partnership, or the vessel operator.

(c) *Fees.* A fee of \$26 will be charged for each permit application submitted under paragraph (b) of this section. The appropriate fee must accompany each permit application.

§ 640.7 [Amended]

3. In § 640.7, in paragraph (t), the reference to "§ 640.4(f)" is revised to read "§ 640.4(g)."

[FR Doc. 91-6945 Filed 3-22-91; 8:45 am]

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50 CFR Part 650

[Docket No. 901247-1059]

Atlantic Sea Scallop Fishery

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