

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 640**

[Docket No. 920661-2262]

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). This final rule adopts in the exclusive economic zone (EEZ) off Florida, Florida's spiny lobster trap certificate, trap reduction, and trap identification programs; requires that divers measure spiny lobsters harvested in the EEZ while in the water; requires in the EEZ the same number size for marking spiny lobster trap buoys as is required in Florida's waters; restricts divers who harvest spiny lobsters in the EEZ at night to the bag limit; specifies diving and use of a bully net, hoop net, and trap as the only authorized method/gears in the EEZ in a directed fishery for spiny lobster; establishes a catch limit of 5 percent, by weight, of all fish aboard for the incidental harvest of spiny lobsters by trawls in the EEZ; standardizes the Florida and Federal size limit for spiny lobster traps used in the EEZ off Florida; reduces the number of undersized spiny lobsters that may be retained in the EEZ for use as attractants in traps to 50 per vessel, or one per trap on board, whichever is greater; and otherwise simplifies and clarifies the regulations and conforms them to current usage. The intended effects of this rule are to enhance cooperative Florida/Federal management of the spiny lobster fishery, reduce management costs, improve effectiveness of necessary regulations, and protect the valuable spiny lobster resource.

EFFECTIVE DATE: December 30, 1992.**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-893-3161.

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).

The FMP, as amended, contains a regulatory amendment procedure for implementing specified gear and harvest restrictions applicable to the spiny lobster fishery in the EEZ. In accordance with that regulatory amendment procedure, the Florida Marine Fisheries Commission (FMFC) requested the Director, Southeast Region, NMFS, to implement in the EEZ, with the Councils' oversight, modifications to certain gear and harvest limitations that were proposed by the FMFC and approved by the Governor and Cabinet of Florida for implementation in Florida's waters.

In addition to the modifications requested by the FMFC or related to those modifications, NMFS proposed to remove from regulations definitions no longer needed; revise and add definitions as appropriate to conform them to those contained in Florida's statutes and regulations; revise the permitting requirements to conform them, to the extent possible, with the Federal permitting requirements in other fisheries; and otherwise simplify and clarify the regulations.

The specifics, backgrounds, and rationales for the FMFC- and NMFS-initiated modifications are contained in the proposed rule published on July 24, 1992 (57 FR 32956) and are not repeated here.

Comments and Responses

Comments were received on the proposed rule from three organizations and five individuals. Comments and responses by subject matter follow. One addition has been made to the proposed rule that makes explicit the Florida regulations that are being incorporated.

Appropriateness of Federal Regulations

The Southeastern Fisheries Association, Inc., and an owner of a fish house and several shrimp vessels stated that the proposed changes should not be implemented because they are not consistent with the Magnuson Act and other applicable law and because of the President's moratorium on new regulations. It is contended that the changes have not gone through the fishery management council process.

NMFS does not agree. The changes in this rule were initiated by the FMFC, reviewed and concurred in by the Councils and NMFS, and published by NMFS in accordance with the regulatory amendment procedure established in Amendment 2 to the FMP. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), finds this rule to be consistent with the Magnuson Act and other applicable law. The President's moratorium on new regulations does not apply to regulations that foster economic growth. (Memorandum for certain department and agency heads on reducing the burden of regulation, p. 3, para. (a), January 28, 1992. Harmonizing the Florida and Federal spiny lobster regulations will contribute to long-term economic growth.

Prohibition of a Directed Trawl Fishery for Spiny Lobster

The Southeastern Fisheries Association, Inc., the Monroe County Commercial Fishermen, Inc., and an owner of a fish house and several shrimp vessels opposed the limitation on trawl-caught spiny lobster. They contend that this limitation is unnecessary because a directed fishery for spiny lobster by trawling does not exist and because use of turtle excluder devices in shrimp trawls prevents fishermen from catching large numbers of spiny lobster. The fish house owner reported that 87 pounds of lobster tails was the largest catch he recorded from a shrimp trawler.

NMFS believes this limitation is needed to prevent the development of a trawl fishery for spiny lobster and to standardize Florida and Federal regulations. As stated in the proposed rule, harvesting of spiny lobster by trawls has the potential of injury to the lobster by crushing and by breaking antennae and appendages, which can contribute to mortality or retard growth. If catches of spiny lobster by trawls is minimal, the impact of this limitation will be minimal.

Use of Undersized Spiny Lobster as Attractants in Traps

The Stuart Sailfish Club, a sport fishing club, and the owner of a commercial dive shop opposed the use of undersized spiny lobster (shorts) as attractants in traps. They contend this practice causes unnecessary mortality to juvenile lobsters.

NMFS agrees that the use of shorts contributes to the mortality of juvenile lobsters. Reducing to fifty the number of shorts that may be retained, with the existing requirement for use of a live

well for holding shorts, will reduce this source of mortality.

Trap Construction Requirements

A commercial fisherman opposed use of wire traps in the lobster fishery. He contends that fishermen use wire traps to circumvent the Federal prohibitions on the use of fish traps. He provided several photographs of wire traps in the water containing tropical and other reef fish.

The Councils believe that wire traps enhance the ability to fish for lobsters in deeper water and, therefore, proposed that their use in the EEZ be allowed. NMFS concurs. The mortality of tropical and other reef fish that may enter wire spiny lobster traps has not been documented. In addition, the incidental catch limitations on snapper-grouper species taken by spiny lobster traps in the Atlantic Ocean preclude an economically viable snapper-grouper fishery using spiny lobster traps in that area.

Maximum Size Limitation for Spiny Lobster Traps

A commercial fisherman commented that implementation of the maximum size limitation for spiny lobster traps used in the EEZ should be delayed until after the current season, which ends on March 31, 1993. His traps are larger than the proposed 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm).

NMFS finds no basis for such a delay. The benefits of standardizing Florida and Federal requirements, as discussed in the proposed rule, apply equally to this and other measures. Conformance of Florida and Federal trap requirements has been discussed in public forums at least since such conformance was requested by the FMFC in December 1991. Prior knowledge of the proposed maximum size limitation and the 30-day delayed effectiveness of this final rule should suffice to allow fishermen to replace oversized spiny lobster traps in the EEZ.

Standardization of Florida and Federal Bag Limits

A recreational diver requested identical Florida and Federal bag limits during the regular season. Federal regulations allow a recreational fisherman to possess up to 6 lobsters per day; whereas, Florida regulations allow a recreational fisherman to possess up to 6 lobsters per day or 24 per vessel, whichever is greater. Thus, Florida regulations allow a recreational fisherman in a party of three or less to possess more than 6 lobsters.

NMFS believes that the Federal regulation is more conservative and

should continue. In addition, a change in the Federal bag limit was not requested by the FMFC or the Councils under the regulatory amendment procedure. Accordingly, such a change is outside the scope of this rulemaking.

Changes From the Proposed Rule

In §§ 640.6 (a)(1) and (a)(2), 640.20(c)(1), and 640.22(b)(3)(i) references are made to sections of the Florida Administrative Code. For clarity, the date of publication of this final rule is added to each of those references. Subsequent changes by Florida to the referenced sections would be effective in the EEZ only upon their submission and approval under the regulatory amendment procedure of the FMP.

Classification

The Assistant Administrator has determined that this final rule is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

The Assistant Administrator has 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 for this action and, as a part thereof, an initial regulatory flexibility analysis (IRFA). Based on the IRFA, the Assistant Administrator has determined that this rule will have significant effects on small entities. A summary of those effects is contained in the proposed rule and is not repeated here.

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 impact on the human environment as a result of this rule.

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 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, Louisiana, and North Carolina agreed with the determination. The other states did not respond within the statutory time period; therefore, consistency is presumed.

This final rule restates the collection-of-information requirement for applications for commercial vessel permits and clarifies the requirement for reporting the sale or transfer of traps. These collection-of-information requirements, which are subject to the Paperwork Reduction Act, were previously approved under OMB Control No. 0648-0205. These requirements have a public reporting burden 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 the collection of information, including suggestions for reducing the burden, to Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

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

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 24, 1992.

William W. Fox, Jr.,

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. Section 640.1 is revised to read as follows:

§ 640.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson Act.

(b) This part governs conservation and management of spiny lobster and slipper (Spanish) lobster in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico.

(c) 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 requirements of this part 640, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

3. In § 640.2, Figure 1 is redesignated as Figure 1 of this part 640 and is placed at the end of this part; the definitions for "Degradable panel" and "Management area" are removed; the definitions for "Carapace length" and "Tail length" are revised; and new definitions for "Bully net", "Hoop net", and "Off Florida" are added in alphabetical order to read as follows:

§ 640.2 Definitions.

Bully net means a circular frame attached at right angles to the end of a pole and supporting a conical bag of webbing. The webbing is usually held up by means of a cord which is released when the net is dropped over a lobster.

Carapace length means the measurement of the carapace (head, body, or front section) of a spiny lobster from the anteriormoat edge (front) of the groove between the horns directly above the eyes, along the middorsal line (middle of the back), to the rear edge of the top part of the carapace, excluding any translucent membrane.

Hoop net means a frame, circular or otherwise, supporting a shallow bag of webbing and suspended by a line and bridles. The net is baited and lowered to the ocean bottom, to be raised rapidly at a later time to prevent the escape of lobster.

Off Florida means the area from the Florida coast to the outer limit of the EEZ between the Georgia/Florida boundary (30°42'45.6"N. latitude) and the Alabama/Florida boundary (87°31'06"W. longitude).

Tail length means the lengthwise measurement of the entire tail (segmented portion), not including any protruding muscle tissue, of a spiny lobster along the top middorsal line (middle of the back) to the rearmost extremity. The measurement is made with the tail in a flat, straight position with the tip of the tail closed.

4. Section 640.4 is revised to read as follows:

§ 640.4 Permits and fees.

(a) *Applicability.* (1) During the commercial and recreational fishing season specified in § 640.20(a), for a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster in or from the EEZ or for a person to be exempt from the daily bag and possession limit for spiny lobster in or from the EEZ specified in § 640.23(a), a Federal vessel permit must be issued to the harvesting vessel and be on board.

(2) During the commercial and recreational fishing season specified in § 640.20(a), for a person to possess aboard a fishing vessel a separated spiny lobster tail in or from the EEZ, a tail-separation endorsement must be included on the vessel's Federal vessel permit, which must be on board.

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

(4) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Application for a permit.* (1) An application for a Federal vessel permit must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder, in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address including zip code, telephone number, social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been assigned by the Internal Revenue Service, and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(2)(vi) of this section and the operator does meet that qualification, the name, mailing address including zip code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the Regional Director and included on the application form.

(vi) A sworn statement by the applicant certifying that at least 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, during the calendar year preceding the application.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(3) of this section.

(viii) If a tail-separation endorsement 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.

(ix) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (h) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the Regional Director within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany

each application. An application for a Federal vessel permit with tail-separation endorsement, combined, is considered one application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(vi) of this section. An application is complete when all requested forms, information, and documentation have been received.

(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 date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued pursuant to this section is not transferable or assignable. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale.

(h) *Display.* A permit issued pursuant to this section must be carried on board the vessel, and such vessel must be identified as required by § 640.6. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

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

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

5. Section 640.6 is revised to read as follows:

§ 640.6 Vessel and gear identification.

(a) *Traps and diving in the EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobsters by traps in the EEZ off Florida must comply with the vessel and gear

identification requirements applicable to the harvesting of spiny lobsters by traps in Florida's waters, as specified on November 30, 1992 in Sections 370.14 and 370.142, Florida Statutes, and in Rule 46-24.006(2), (3), and (4), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code.

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters, as specified on November 30, 1992 in Rule 46-24.006(5), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code. If the owner or operator of such vessel does not have a current Florida crawfish license or trap number, the Federal vessel permit number must be shown in the location specified in Rule 46-24.006(5) for the Florida number.

(b) *Other gears and areas.* (1) The owner or operator of a vessel for which a Federal vessel permit has been issued under § 640.4 that is used to harvest spiny lobsters in the EEZ off Florida by other than spiny lobster traps or diving, or that is used to harvest spiny lobsters in the EEZ other than off Florida, must meet the following vessel and gear identification requirements:

(i) The vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number must be permanently and conspicuously displayed horizontally on the uppermost structural portion of the vessel in numbers at least 10 inches (25.4 cm) high so as to be readily identifiable from the air and water;

(ii) If the vessel uses spiny lobster traps in the EEZ, other than off Florida—

(A) The vessel's color code, as assigned by Florida or, if a color code has not been assigned by Florida, as assigned by the Regional Director, must be permanently and conspicuously displayed above the number specified in paragraph (b)(1)(i) of this section so as to be readily identifiable from the air and water, such color code being in the form of a circle at least 20 inches (50.8 cm) in diameter on a background of colors contrasting to those contained in the assigned color code;

(B) A buoy or timed-release buoy of such strength and buoyancy to float must be attached to each spiny lobster trap or at each end of a string of traps;

(C) A buoy used to mark spiny lobster traps must bear the vessel's assigned color code and be of such color, hue.

and brilliancy as to be easily distinguished, seen, and located;

(D) A buoy used to mark spiny lobster traps must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number in numbers at least 2 inches (5.08 cm) high, and

(E) A spiny lobster trap must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number permanently and legibly affixed.

(2) A spiny lobster trap in the EEZ, other than off Florida, will be presumed to be the property of the most recently documented owner. Upon the sale or transfer of a spiny lobster trap used in the EEZ, other than off Florida, within 5 days of acquiring ownership, the person acquiring ownership must notify the Florida Division of Law Enforcement of the Department of Natural Resources, for a trap that bears a Florida crawfish license or trap number, or the Regional Director, for a trap that bears a Federal vessel permit number, as to the number of traps purchased, the vendor, and the crawfish license or trap number, or Federal vessel permit number, currently displayed on the traps, and must request issuance of a crawfish license or trap number, or Federal vessel permit, if the acquiring owner does not possess such license or trap number or permit.

(c) *Unmarked traps and buoys.* An unmarked spiny lobster trap or buoy in the EEZ is illegal gear. Such trap or buoy, and any connecting lines, 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 trap or buoy remains subject to appropriate civil penalties.

6. Section 640.7 is revised to read as follows:

§ 640.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster in or from the EEZ without a Federal vessel permit, as specified in § 640.4(a)(1).

(b) Falsify information specified in § 640.4(b)(2) on an application for a permit.

(c) Fail to display a permit, as specified in § 640.4(b).

(d) Falsify or fail to display and maintain vessel and gear identification, as required by § 640.6 (a) and (b).

(e) Possess a spiny lobster trap in the EEZ at a time not authorized, as specified in § 640.20 (c)(1) and (c)(2).

(f) Possess a spiny lobster in or from the EEZ at a time not authorized, as specified in § 640.20(d).

(g) Fail to return immediately to the water a berried spiny lobster or slipper lobster; strip eggs from or otherwise molest a berried spiny lobster or slipper lobster; or possess a spiny lobster or slipper lobster, or part thereof, from which eggs, swimmerettes, or pleopods have been removed or stripped, as specified in § 640.21(a).

(h) Possess or fail to return immediately to the water unharmed a spiny lobster smaller than the minimum size limits specified in § 640.21 (b)(1) and (b)(3), except as provided in § 640.21(c).

(i) Harvest or attempt to harvest a spiny lobster by diving without having and using in the water a measuring device, or fail to release an undersized spiny lobster in the water, as specified in § 640.21(b)(2).

(j) Possess an undersized spiny lobster for use as an attractant in a trap in quantities or under conditions not authorized in § 640.21(c).

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

(l) Possess a spiny lobster harvested by prohibited gear or methods; or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 640.22 (a)(1) and (a)(3).

(m) Use or possess in the EEZ a spiny lobster trap that does not meet the requirements specified in § 640.22(b)(1).

(n) Pull or tend a spiny lobster trap other than during daylight hours, as specified in § 640.21(b)(2).

(o) Pull or tend another person's spiny lobster trap, except as authorized in § 640.22(b)(3).

(p) Possess spiny lobsters in or from the EEZ in an amount exceeding the daily bag and possession limit specified in § 640.23(a), except as authorized in § 640.23 (b) and (c).

(q) Possess spiny lobsters aboard a vessel that uses or has on board a net or trawl in an amount exceeding the limits, as specified in § 640.23(c).

(r) Operate a vessel that fishes for or possesses spiny lobster in or from the EEZ with spiny lobster aboard in an amount exceeding the cumulative bag and possession limit, as specified in § 640.23(f).

(s) Transfer or receive at sea spiny lobster in or from the EEZ caught under the bag and possession limits, as specified in § 640.23(g).

(t) Interfere with, obstruct, delay, or prevent by any means an investigation,

search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

7. Subpart B of part 640 is revised to read as follows:

Subpart B—Management Measures

Sec.	
640.20	Seasons.
640.21	Harvest limitations.
640.22	Gear and diving restrictions.
640.23	Bag and possession limits.
640.24	Authorized activities.

Subpart B—Management Measures

§ 640.20 Seasons.

(a) *Commercial and recreational fishing season.* The commercial and recreational fishing season for spiny lobster in the EEZ begins on August 6 and ends on March 31.

(b) *Special non-trap recreational fishing season.* There is a 2-day special non-trap recreational fishing season in the EEZ on Saturday and Sunday on the first full weekend preceding August 1.

(c) *Possession of traps.* (1) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters, as contained on November 30, 1992 in Rule 46-24.005.(3), (4), and (5), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida.

(2) In the EEZ, other than off Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season specified in paragraph (a) of this section beginning on August 1 and must be removed from the water after such season not later than April 5.

(3) A spiny lobster trap, buoy, or rope in the EEZ during periods not authorized in paragraphs (c)(1) and (c)(2) of this section 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 trap, buoy, or rope remains subject to appropriate civil penalties.

(d) *Possession of spiny lobsters.* A spiny lobster or part thereof in or from the EEZ may be possessed only during the periods specified in paragraphs (a) and (b) of this section, unless accompanied by proof indicating lawful harvest outside the EEZ. A spiny lobster in a trap in the water during a time such trap is authorized to be in the EEZ under paragraph (c)(1) or (c)(2) of this section will not be deemed to be possessed provided such spiny lobster is returned immediately to the water unharmed

when a trap is removed from the water during such time.

§ 640.21 Harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) spiny lobster or slipper lobster in or from the EEZ must be returned immediately to the water unharmed. If found in a trap in the EEZ, a berried spiny lobster or slipper lobster may not be retained in the trap. A berried spiny lobster or slipper lobster in or from the EEZ may not be stripped of its eggs or otherwise molested. The possession of a spiny lobster or slipper lobster, or part thereof, in or from the EEZ from which eggs, swimmerettes, or ploopods have been removed or stripped is prohibited.

(b) *Minimum size limits.* (1) Except as provided in paragraph (c) of this section—

(i) No person may possess a spiny lobster in or from the EEZ with a carapace length of 3.0 inches (7.62 cm) or less; and

(ii) A spiny lobster, harvested in the EEZ by means other than diving, with a carapace length of 3.0 inches (7.62 cm) or less must be returned immediately to the water unharmed.

(2) No person may harvest or attempt to harvest a spiny lobster by diving in the EEZ unless he or she possesses, while in the water, a measuring device capable of measuring the carapace length. A spiny lobster captured by a diver must be measured in the water using such measuring device and, if the spiny lobster has a carapace length of 3.0 inches (7.62 cm) or less, it must be released unharmed immediately without removal from the water.

(3) Aboard a vessel authorized under paragraph (d) of this section to possess a separated spiny lobster tail, no person may possess in or from the EEZ a separated spiny lobster tail with a tail length less than 5.5 inches (13.97 cm).

(c) *Undersized attractants.* A live spiny lobster under the minimum size limit specified in paragraph (b)(1) of this section that is harvested in the EEZ by a trap may be retained aboard the harvesting vessel for future use as an attractant in a trap provided it is held in a live well aboard the vessel. No more than fifty undersized spiny lobsters, or one per trap aboard the vessel, whichever is greater, may be retained aboard for use as attractants. The live well must provide a minimum of $\frac{3}{4}$ gallons (1.7 liters) of seawater per spiny lobster. An undersized spiny lobster so retained must be released to the water alive and unharmed immediately upon leaving the trap lines and prior to one hour after official sunset each day.

(d) *Tail separation.* The possession aboard a fishing vessel of a separated

spiny lobster tail in or from the EEZ is authorized only when the possession is incidental to fishing exclusively in the EEZ on a trip of 48 hours or more and a Federal vessel permit specified in § 640.4(a)(1) that contains a tail-separation endorsement has been issued to and is on board the vessel.

§ 640.22 Gear and diving restrictions.

(a) *Prohibited gear and methods.* (1) A spiny lobster may not be taken in the EEZ with a spear, hook, or similar device, or gear containing such devices. In the EEZ, the possession of a speared, pierced, or punctured spiny lobster is *prima facie* evidence that prohibited gear was used to take such lobster.

(2) A spiny lobster may not be taken in a directed fishery by the use of a net or trawl. See § 640.23(c) for the bycatch limits applicable to a vessel that uses or has on board a net or trawl.

(3) Poisons and explosives may not be used to take a spiny lobster or slipper lobster in the EEZ. For the purposes of this paragraph (a)(3), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster or slipper lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

(b) *Traps.* (1) In the EEZ, a spiny lobster trap may be no larger in dimension than 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm), or the volume equivalent. A trap constructed of material other than wood must have a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap. Such panel must be located in the upper half of the sides or on top of the trap, so that, when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

(2) A spiny lobster trap in the EEZ may be pulled or tended during daylight hours only, that is, from 1 hour before official sunrise to 1 hour after official sunset.

(3) A spiny lobster trap in the EEZ may be pulled or tended only by the owner's vessel, or by a vessel for which permission to pull or work traps belonging to another person has been granted—

(i) For traps in the EEZ off Florida, by the Florida Division of Law Enforcement, as specified on November 30, 1992 in Rule 46-24.006(6), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code; or

(ii) For traps in the EEZ, other than off Florida, by the Regional Director, as may be arranged upon written request.

§ 640.23 Bag and possession limits

(a) The daily bag and possession limit of spiny lobster in or from the EEZ is six per person and applies—

(1) During the commercial and recreational fishing season specified in § 640.20(a), except as provided in paragraphs (b) and (c) of this section; and

(2) During the special non-trap recreational fishing season specified in § 640.20(b).

(b) During the commercial and recreational fishing season specified in § 640.20(a), a person is exempt from the bag and possession limit specified in paragraph (a) of this section, provided—

(1) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(2) The person is aboard a vessel that has on board a Federal vessel permit specified in § 640.4(a)(1).

(c) During the commercial and recreational fishing season specified in § 640.20(a), aboard a vessel with a vessel permit specified in § 640.4(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.8 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (c), the term "net or trawl" does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(d) The provisions of paragraph (b) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (a) of this section, whether or not a Federal vessel permit specified in § 640.4(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(e) A person who fishes for or possesses spiny lobster in or from the EEZ under the bag and possession limits specified in paragraphs (a) or (c) of this section may not combine such bag and possession limits with any bag or possession limits applicable to state waters.

(f) The operator of a vessel that fishes for or possesses spiny lobster in or from the EEZ is responsible for the

cumulative bag and possession limit specified in paragraph (a) of this section applicable to that vessel, based on the number of persons aboard.

(g) A person who fishes for or possesses spiny lobster in or from the EEZ under the bag and possession limits specified in paragraph (a) or (c) of this section may not transfer a spiny lobster at sea from a fishing vessel to any other vessel, and no person may receive at sea such spiny lobster.

§ 640.24 Authorized activities.

The Secretary may authorize, for the acquisition of information and date, activities otherwise prohibited by the regulations in this part.

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50 CFR Part 646

[Docket No. 920811-2211]

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Emergency interim rule; extension of effectiveness.

SUMMARY: An emergency interim rule is in effect through November 30, 1992, that establishes a definition of "sea bass pot", applicable in the exclusive economic zone (EEZ) off North Carolina and South Carolina, and that removes the possession limits for snapper-grouper applicable to fishermen using sea bass pots aboard commercially permitted vessels in the EEZ off North Carolina and South Carolina. NMFS

extends the emergency interim rule for an additional 90 days because conditions justifying the emergency action remain unchanged and to prevent a lapse in these management measures prior to completion of action to address permanent changes to the regulations. The intended effect is to respond to an economic emergency without jeopardizing the rebuilding program for those snapper-grouper species that are overfished.

EFFECTIVE DATES: December 1, 1992, through February 28, 1993.

ADDRESSES: Copies of documents supporting this action may be obtained from Peter J. Eldridge, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813-893-3181.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states, including sea bass, are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Under section 305(c)(2)(B) and (c)(3) of the Magnuson Act, NMFS published an emergency interim rule (57 FR 39365, August 31, 1992) effective for 90 days (August 31 through November 30, 1992) to establish a definition of "sea bass pot", applicable in the exclusive economic zone (EEZ) off North Carolina and South Carolina, and to remove the possession limits for snapper-grouper

applicable to fishermen using sea bass pots aboard commercially permitted vessels in the EEZ off North Carolina and South Carolina. The Council requested extension of the emergency interim rule because conditions justifying the emergency action remain unchanged and to prevent a lapse in these management measures prior to completion of action under the framework procedure for adjusting management measures to address permanent changes to the regulations. NMFS concurs and extends the emergency interim rule for an additional 90 days in accordance with section 305(c)(3)(B) of the Magnuson Act.

Details concerning the basis for the emergency interim rule and the classification of the rulemaking are contained in the initial emergency interim rule and are not repeated here.

Classification

This extension of the emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided for in section 8(a)(1) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: November 23, 1992.

William W. Fox, Jr.,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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