
DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 930491-3167; LD. 032993A]

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

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

ACTION: Final rule.

SUMMARY: NMFS amends 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 modifies the 2-day special recreational fishing season in the exclusive economic zone (EEZ) off Florida by changing the season from the last weekend in July to the last Wednesday and Thursday in July; increasing the daily bag and possession limit to 12 spiny lobsters, except off Monroe County, Florida, where the limit remains 6 spiny lobsters; limiting harvesting of spiny lobster to diving and the use of bully nets or hoop nets; and prohibiting harvesting of spiny lobster by diving at night off Monroe County, Florida. The intended effects of this rule are to enhance cooperative Florida/Federal management of the spiny lobster fishery by implementing Florida's rules in the EEZ off Florida, reduce fishing effort off Monroe County, Florida, during the 2-day special recreational season, protect the valuable spiny

lobster resource, reduce environmental damage, and otherwise improve the effectiveness of necessary regulations.
EFFECTIVE DATE: July 24, 1993.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 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 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 (Regional Director), to implement in the EEZ off Florida, 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.

Specifically, the FMFC requested adoption in the EEZ off Florida of (1) a change in the dates of the special 2-day recreational season from the last weekend in July to the last Wednesday and Thursday in July; (2) an increase in the daily bag and possession limit during that season from six to twelve lobsters in the EEZ off Florida, except off Monroe County, where the limit would remain at six; (3) the elimination of trap fishing in the EEZ off Florida during the 2-day season; and (4) a prohibition on night diving for lobster off Monroe County, Florida, during the 2-day season. The FMFC requested implementation of these changes before the start of their 2-day season on July 28-29, 1993. The procedural requirements for the regulatory amendment procedure and the background and rationale for the requested changes were contained in the proposed rule (58 FR 32639, June 11, 1993) and are not repeated here.

One comment was received on the proposed rule.

Comment. The commenter stated his belief that the intention of the rulemaking is to increase the number of spiny lobster available to the commercial trap fishery.

Response: The intent of the rulemaking is neither to increase nor decrease the commercial harvest of spiny lobster. Rather, the intent is to reduce the recreational effort off Monroe County, Florida, during the special 2-day recreational season.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule 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 determined that the rule is not a "major rule" under E.O. 12291.

The Councils prepared a regulatory impact review for this rule, the economic effects of which were summarized in the proposed rule.

The General Counsel of the Department of Commerce certified to the Small Business Administration that

the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, because revenues are expected to be redistributed but not foregone. As a result, a regulatory flexibility analysis was not prepared.

The Councils prepared an environmental assessment (EA) for this action. 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 program of Florida, the only state affected. This determination was submitted for review by the responsible Florida agencies under section 307 of the Coastal Zone Management Act. The Florida agencies provided information on changes in Florida's legislation on the spiny lobster fishery, such changes not having a substantive effect on implementation of this rule; pointed out a minor error in wording in the Councils' regulatory amendment, which has been corrected; and agreed with the determination of consistency.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act and does not contain policies with federalism implication sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator finds that a delay in implementing this rule beyond July 24, 1993, would unnecessarily prolong incompatible Florida/Federal regulations on spiny lobster, which would be contrary to the public good. In particular, delay beyond July 24 would result in two separate 2-day special recreational fishing seasons in 1993, one in the EEZ off Florida on July 24-25 and the other in Florida's waters on July 28-29. Based on widespread publicity of the expected change in the dates of the 2-day recreational season in the EEZ, the vast majority of the approximately 50,000 people who participate in the spiny lobster fishery during the recreational season have made hotel/motel reservations in the Florida Keys for the July 28-29 dates. Concentration of the entire fishing effort in Florida's waters on these dates would further aggravate environmental damage in these waters. In addition, having two seasons would decrease the effectiveness of Joint Florida/Federal enforcement efforts and increase the cost of enforcement. Accordingly, the Assistant

Administrator finds that, under section 553(d)(3) of the Administrative Procedure Act, good cause exists not to delay for 30 days the effective date of this final rule.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 15, 1993.

Gary Matlock,

Acting Assistant Administrator, 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 "Off Monroe County, Florida" is added in alphabetical order to read as follows:

§ 640.2 Definitions.

* * * * *

Off Monroe County, Florida means the area from the Florida coast to the outer limit of the EEZ between a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude) and a line extending directly west from the Monroe/Collier County, Florida boundary (25°48.0'N. latitude).

* * * * *

3. In § 640.7, in paragraph (g), the comma before "as specified in § 640.21(a)" is revised to semicolon, and paragraphs (l) and (p) through (s) are revised to read as follows:

§ 640.7 Prohibitions.

* * * * *

(1) 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 § 640.20(b) and § 640.22 (a)(1) and (a)(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) or (b), except as authorized in § 640.23 (c) and (d).

(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(d).

(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(g).

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

4. In § 640.20, paragraph (b) is revised to read as follows:

§ 640.20 Seasons.

(b) *Special recreational fishing seasons.*

(1) *EEZ off Florida.* There is a 2-day special recreational fishing season in the EEZ off Florida on the last Wednesday and successive Thursday of July each year during which fishing for spiny lobster is limited to diving or use of a bully net or hoop net. (See § 640.22(a) for general prohibitions on gear and methods.) In the EEZ off Monroe County, Florida, no person may harvest spiny lobster by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, during this 2-day special recreational fishing season.

(2) *EEZ other than off Florida.* There is a 2-day special recreational fishing season in the EEZ other than off Florida during the last Saturday and successive Sunday of July each year during which fishing for spiny lobster may be conducted by authorized gear and methods other than traps. (See § 640.22(a) for general prohibitions on gear and methods.)

§ 640.22 [Amended]

5. In § 640.22, in paragraph (a)(2), the reference to: "§ 640.23(c)" is revised to read "§ 640.23(d)".

6. In § 640.23, paragraphs (b) through (g) are redesignated as paragraphs (c) through (h); in newly designated paragraph (d), in the third sentence, the reference to "this paragraph (c)" is revised to read "this paragraph (d)"; in newly designated paragraph (e), the reference to "paragraph (b) of this section" is revised to read "paragraph (c) of this section"; in newly designated paragraph (f), the reference to "paragraphs (a) or (c) of this section" is revised to read "paragraphs (a), (b), or (d) of this section"; in newly designated paragraph (g), the reference to "paragraph (a) of this section" is revised to read "paragraphs (a) and (b) of this

section"; in newly designated paragraph (h), the reference to "paragraph (a) or (c) of this section" is revised to read "paragraphs (a), (b), or (d) of this section"; paragraph (a) is revised; and new paragraph (b) is added to read as follows:

§ 640.23 Bag and possession limits.

(a) *Commercial and recreational fishing season.* Except as specified in paragraphs (c) and (d) of this section, during the commercial and recreational fishing season specified in § 640.20(a), the daily bag and possession limit of spiny lobster in or from the EEZ is six per person.

(b) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 640.20(b), the daily bag and possession limit of spiny lobster—

(1) In or from the EEZ off Monroe County, Florida is six per person;

(2) In or from the EEZ off Florida other than off Monroe County, Florida is twelve per person; and

(3) In or from the EEZ other than off Florida is six per person.

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