

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 tail-separation permit specified in § 640.4(a)(2) has been issued to and is on board the vessel.

[57 FR 56520, Nov. 30, 1992, as amended at 59 FR 53119, Oct. 21, 1994]

§ 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. Hook, as used in this paragraph (a)(1), does not include a hook in a hook-and-line fishery for species other than spiny lobster; and possession of a spiny

lobster that has been speared, pierced, or punctured by such hook is not considered evidence that prohibited gear was used to take the spiny lobster, provided no prohibited gear is on board the vessel.

(2) A spiny lobster may not be taken in a directed fishery by the use of a net or trawl. See § 640.23(d) 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, Department of Environmental Protection, in accordance with the procedures in Rule 46-24.006(7), Florida Administrative Code, in effect as of June 1, 1994. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a)

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and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904-487-0554. Copies may be inspected at the Office of the Regional Administrator; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

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

[57 FR 56520, Nov. 30, 1992, as amended at 58 FR 38980, July 21, 1993; 60 FR 41831, Aug. 14, 1995; 69 FR 18803, Apr. 9, 2004]

§ 640.23 Bag/possession limits.

(a) *EEZ off the southern Atlantic states, other than Florida.* The daily bag or possession limit for spiny lobster in or from the EEZ off the southern Atlantic states, other than Florida, is two per person for commercial and recreational fishing, year-round.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* Except as specified in paragraphs (b)(3) and (b)(4) of this section, during the commercial and recreational fishing season specified in § 640.20(b)(1), the daily bag or possession limit of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, is six per person.

(2) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 640.20(b)(2), the daily bag or possession limit of spiny lobster—

(i) In or from the EEZ off the Gulf states, other than Florida, is six per person;

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

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

(3) *Exemption from the bag/possession limit.* During the commercial and rec-

reational fishing season specified in § 640.20(b)(1), a person is exempt from the bag and possession limit specified in paragraph (a) of this section, provided—

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

(ii) The vessel from which the person is operating has on board the required licenses, certificates, or permits, as specified in § 640.4(a)(1).

(4) *Harvest by net or trawl.* During the commercial and recreational fishing season specified in § 640.20(b)(1), aboard a vessel with the required licenses, certificates, or permits 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 off Florida and off the Gulf states, other than Florida, 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 1.6 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 (b)(4), the term “net or trawl” does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(5) *Diving at night.* The provisions of paragraph (b)(3) 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 (b)(1) 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.

(c) *Combination of bag/possession limits.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not combine the bag or possession limits of those paragraphs or combine such bag or possession limit with a bag or possession limit applicable to state waters.