

the burden on respondents. The rule also restates a requirement for mandatory reporting of employment data in the Annual Processed Products Report. This requirement is estimated to take 2 minutes per response and has been approved by OMB under control number 0648-0018. Any comments on the proposed Interactive Voice Response system should be sent to the address specified in ADDRESSES.

#### List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: April 26, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 625 is proposed to be amended as follows:

#### PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

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

2. In § 625.2, the definition for "reporting month" is added, in alphabetical order, to read as follows:

##### § 625.2 Definitions.

\* \* \* \* \*

*Reporting month* means the calendar month.

\* \* \* \* \*

3. Section 625.6 is amended by redesignating paragraphs (a)(2) through (a)(6) as paragraphs (a)(3) through (a)(7); by revising paragraph (a)(1), and newly redesignated paragraphs (a)(3), (a)(6), and (a)(7); and by adding new paragraphs (a)(2) and (a)(8) to read as follows:

##### § 625.6 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Weekly report.* Dealers must submit the following information, and any other information required by the Regional Director, on a weekly basis to the Regional Director, or an official designee, via an Interactive Voice Response (IVR) system established by the Regional Director: Dealer number, pounds of summer flounder purchased, week in which summer flounder was purchased, and state(s) of landing for summer flounder purchased. Even if no summer flounder are purchased during the week, a report so stating must be submitted through the IVR system.

(2) *Monthly reports.* Dealers must send by mail to the Regional Director, or an official designee, on a monthly basis

on forms supplied by or approved by the Regional Director, a report of all fish purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Director, must be provided in the report: Name and mailing address of dealer; dealer number; name and permit number, or name and hull number (U.S. Coast Guard Documentation Number or state registration number, as appropriate) of the vessels from which fish were landed or received; dates of purchases; pounds by species (by market category if applicable); price by species (by market category if applicable) or value by species (by market category if applicable); and port landed. Even if no fish were purchased during the month, a report so stating must be submitted on the required form. All monthly report forms must be signed by the dealer or the dealer's authorized representative.

(3) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; completion of other sections on that form is voluntary. Required data are the number of employees handling fishery products by month. Reports for a given calendar year must be submitted to: NMFS Statistics, One Blackburn Drive, Gloucester, MA 01930-2298, and must be postmarked by February 10th of the following year.

(6) *Submitting reports.* Weekly reports must be made by noon each Tuesday for the previous reporting week. Monthly reports must be made within 10 days after the end of each reporting month. If monthly reports are mailed, such reports will be considered made in a timely manner if postmarked within 10 days after the end of the reporting month. Dealers will be sent, shortly after receipt of a dealer permit, forms and instructions, including a chart identifying reporting weeks, the telephone number and instructions for the IVR system for submission of weekly reports, and the address to which to submit monthly reports. If no fish are purchased during a required reporting period, a report so stating must be submitted.

(7) *At-sea activities.* All federally permitted summer flounder dealers purchasing, receiving, or processing any fish at sea for landing at any port of the United States must submit information identical to that required by paragraphs (a)(1), (2) and (3) of this section and

provide those reports to the Regional Director or designee on the same frequency basis.

(8) *Additional data and sampling.* Dealers are required to allow access to their premises and to make available to an official designee of the Regional Director any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measurements of fish and the collection of age structures such as otoliths or scales.

\* \* \* \* \*

[FR Doc. 95-10739 Filed 5-1-95; 8:45 am]

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#### National Oceanic and Atmospheric Administration

##### 50 CFR Part 640

[Docket No. 950424112-5112-01; I.D. 032095B]

RIN 0648-AF37

#### Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 4

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 4 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). Amendment 4 would allow the harvest of spiny lobster year-round and establish a daily bag or possession limit of two spiny lobster per person in the exclusive economic zone (EEZ) off the southern Atlantic states, other than Florida (i.e., EEZ off North Carolina, South Carolina, and Georgia).

**DATES:** Written comments must be received on or before June 12, 1995.

**ADDRESSES:** Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 4, which includes a regulatory impact review and an environmental assessment, and the FMP, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609-2486, FAX 813-225-7015, or to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407-4699, FAX 803-769-4520.

**FOR FURTHER INFORMATION CONTACT:**

Georgia Cranmore, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the Gulf of Mexico Fishery Management Council (Gulf Council) and the South Atlantic Fishery Management Council (South Atlantic Council) and is implemented through regulations at 50 CFR part 640 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

**Amendment 4**

The FMP currently provides for a commercial and recreational fishing season throughout the Gulf of Mexico and South Atlantic of August 6 through March 31, except for a 2-day special recreational season in July. During the August 6 through March 31 season, there are no bag or possession limits in the commercial fishery and recreational fishermen are limited to six spiny lobster per person per day. In the EEZ off the southern Atlantic states, other than Florida, Amendment 4 would (1) allow the take of spiny lobster year-round, and (2) establish a daily bag or possession limit of two spiny lobster per person in both the recreational and commercial fisheries. The purpose of Amendment 4 is to allow fishermen in the EEZ north of Florida to harvest the resource during the warm-weather months when the season currently is closed.

Commercial and recreational landings of spiny lobster outside Florida are negligible. According to the NMFS Accumulated Landings Database, no landings from spiny lobster traps have been reported from North Carolina or South Carolina since 1990. Since 1990, only 78.0 lb (35.4 kg) were reported landed from traps in Georgia. Commercial spiny lobster divers in North Carolina took an estimated 288.0 lb (130.6 kg) in 1992 and, in 1993, the only reported harvest by commercial divers north of Florida was 1,334 lb (605 kg) landed in South Carolina.

According to NMFS' 1991 Marine Recreational Fisheries Statistics Survey, no spiny lobster recreational trips were reported in South Carolina and Georgia during a survey of southeastern states other than Florida. However, another study conducted by NMFS in 1993 attempted specifically to characterize the directed and incidental take of spiny lobster by sport divers in offshore waters of the southeastern states. This study involved a telephone survey of dive shops and clubs and indicated that a small number of spiny lobster were harvested by recreational divers in North Carolina, South Carolina, and Georgia.

According to testimony of North Carolina recreational fishermen before the South Atlantic Council, the fishery takes place about 30 nautical miles (55.6 km) offshore in at least 100 ft (30.5 m) of water. A typical dive trip at these depths lasts about 30 minutes. Lobsters harvested ranged from 2 to 16 lb (0.9 to 7.3 kg). Divers believe that the spawning season off North Carolina does not begin until July, due to the colder water temperatures. They reported seeing egg-bearing lobsters as late as September and early October. Amendment 4 would not change the current prohibition on taking egg-bearing female lobsters.

The Gulf Council and the South Atlantic Council (Councils) have concluded that a year-round daily harvest limit of two spiny lobster per person north of Florida will allow recreational fishermen to catch spiny lobster during the months when the weather is favorable. There is scientific debate regarding the biological status and population dynamics of spiny lobsters in waters north of Florida, including the issue of recruitment and the fate of larvae from the adult population in this area. However, based on the best available scientific information, the Councils believe that allowing a limited year-round harvest in the subject area will have no adverse biological impacts on the lobster resource.

The Councils have concluded that the proposed action is consistent with the FMP's objective to protect long-run yields and prevent depletion of lobster stocks, because lowering the daily recreational limit from six to two and establishing a commercial harvest limit would prevent significant increases in fishing mortality. If Amendment 4 is implemented, the South Atlantic Council would monitor the level of spiny lobster harvests north of Florida and lower the daily limit, if necessary.

Additional background and rationale for the measures discussed above are contained in Amendment 4, the availability of which was announced in the **Federal Register** on March 27, 1995, (60 FR 15743).

**Additional Measures Proposed by NMFS**

Pursuant to the FMP's framework procedure for implementing specified gear and harvest restrictions, certain portions of Florida's management scheme were incorporated by reference into these Federal regulations on November 30, 1992 (57 FR 56516) and October 21, 1994 (59 FR 53118). A full description of the Florida measures was contained in the preamble to the proposed rule incorporating those

measures (57 FR 32956, July 24, 1992). At the time these State statutes and regulations were incorporated, specific reference to the incorporation was not mentioned in the regulatory text. To ensure that the incorporation by reference meets procedural specifications for the Office of the Federal Register, NMFS adds appropriate language to sections 640.4(a)(1), 640.6(a), 640.20(c), and 640.22(b)(3), with references to the State statutes and regulations as recodified in 1994.

NMFS proposes a technical amendment to section 640.22 to correct and conform current regulations to the original FMP, which prohibited the use by divers, not by hook-and-line fishermen, of gear containing hooks. (See section 12.4.1, *Measures Proposed for Adoption*, Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, March 1982, pages 12-20). Gear such as spears, and spear-like devices with a hook on the end, were originally prohibited because divers using such gear were unable to accurately gauge the size of lobsters prior to mortally puncturing them. Such lobsters frequently turn out to be undersized. However, the language of the prohibition in the current regulations precludes harvest or retention of a spiny lobster taken unintentionally in a hook-and-line fishery for other species.

The technical amendment will allow fishermen using hook-and-line gear to retain lobsters incidentally harvested with such gear. According to the administrative record, the occurrence of spiny lobster harvest by hook-and-line fishermen is quite rare and occurs primarily aboard headboats operating north of Florida. The record further shows that lobsters harvested in that area are much larger than the current minimum size limit. Therefore, allowing retention of spiny lobsters harvested by hook-and-line fishermen should not increase the mortality of undersized lobsters. However, to enhance enforceability of the intended prohibition, that is, the prohibition on intentional hooking of spiny lobsters with prohibited gear, a spiny lobster that is taken by hook and line could not be retained aboard a vessel that has prohibited gear aboard.

**Classification**

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a council within 15 days of receipt of an amendment and regulations. At this time, NMFS has not determined that Amendment 4 is consistent with the

national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The year-round daily harvest limit of two spiny lobster north of Florida would not: (1) Reduce annual gross revenues in excess of 5 percent, (2) significantly increase compliance or production costs of participants, (3) require capital investment to comply with the rule, or (4) require a current participant to cease business. All entities involved are small entities. As a result, a regulatory flexibility analysis was not prepared.

#### List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: April 26, 1995.

#### Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out 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 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, definitions for “Off the Gulf states, other than Florida” and “Off the southern Atlantic states, other than Florida” are added, in alphabetical order, to read as follows:

#### § 640.2 Definitions.

\* \* \* \* \*

*Off the Gulf states, other than Florida* means the area from the coast to the outer limit of the EEZ between the Texas/Mexico border to the Alabama/Florida boundary (87°31'06" W. long.).

*Off the southern Atlantic states, other than Florida* means the area from the coast to the outer limit of the EEZ between the Virginia/North Carolina boundary (36°34'55" N. lat.) to the Georgia/Florida boundary (30°42'45.6" N. lat.).

\* \* \* \* \*

3. In § 640.4, paragraph (a)(1) is revised to read as follows:

#### § 640.4 Permits and fees.

(a) \* \* \*

(1) *Licenses, certificates, and permits.*

(i) *EEZ off Florida and spiny lobster landed in Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida, and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, such person must have the licenses and certificates specified to be a “commercial harvester,” as defined in Rule 46–24.002(2), Florida Administrative Code, in effect as of June 1, 1994. This incorporation by reference has been submitted to the Director of the Office of the Federal Register for approval in accordance with 5 U.S.C. 552(a) 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 Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; or the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(ii) *EEZ other than off Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested in the EEZ other than off Florida or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, a Federal vessel permit must be issued to the harvesting vessel and must be on board. However, see paragraph (a)(1)(i) of this section for the licenses and certificates required for a person to possess or land spiny lobster harvested in the EEZ other than off Florida and subsequently possessed in the EEZ off Florida or landed from a fishing vessel in Florida.

\* \* \* \* \*

4. In § 640.6, in paragraph (c), the word “Secretary” is revised to read “Assistant Administrator” and paragraph (a) is revised to read as follows:

#### § 640.6 Vessel and gear identification.

(a) *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 in Sections 370.14 and 370.142, Florida Statutes, in effect as of July 1, 1994, and in Rule 46–24.006(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994.

(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 in Rule 46–24.006(6), Florida Administrative Code, in effect as of June 1, 1994.

(3) The incorporation by reference in paragraphs (a)(1) and (a)(2) of this section of Sections 370.14 and 370.142, Florida Statutes, and Rule 46–24.006(3), (4), (5), and (6), Florida Administrative Code, has been submitted to the Director of the Office of the Federal Register for approval in accordance with 5 U.S.C. 552(a) 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 Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; or the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

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#### § 640.7 [Amended]

5. In § 640.7, in paragraph (e), the reference to “§ 640.20 (c)(1) and (c)(2)” is revised to read “§ 640.20(b)(3)(i) and (b)(3)(ii)”; in paragraph (f), the reference to “§ 640.20(d)” is revised to read “§ 640.20(b)(4)”; in paragraph (p), the reference to “§ 640.23(a) or (b)” is revised to read “§ 640.23(a), (b)(1), or (b)(2)” and the reference to “§ 640.23(c) and (d)” is revised to read “§ 640.23(b)(3) and (b)(4)”; in paragraph (q), the reference to “§ 640.23(d)” is revised to read “§ 640.23(b)(4)”; in paragraph (r), the reference to “§ 640.23(g)” is revised to read “§ 640.23(d)”; and in paragraph (s), the reference to “§ 640.23(h)” is revised to read “§ 640.23(e)”.

6. Section 640.20 is revised to read as follows:

#### § 640.20 Seasons.

(a) *EEZ off the southern Atlantic states, other than Florida.* In the EEZ off the southern Atlantic states, other than Florida, there are no seasonal restrictions on the harvest of spiny lobster or on the possession of traps.

(b) *EEZ off Florida and off the Gulf states, other than Florida.*

(1) *Commercial and recreational fishing season.* The commercial and recreational fishing season for spiny lobster in the EEZ off Florida and the EEZ off the Gulf states, other than Florida, begins on August 6 and ends on March 31.

(2) *Special recreational fishing seasons.*

(i) *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.

(ii) *EEZ off the Gulf states, other than Florida.* There is a 2-day special recreational fishing season in the EEZ off the Gulf states, other than 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.)

(3) *Possession of traps.*

(i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 46-24.005(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994, apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. This incorporation by reference has been submitted to the Director of the Office of the Federal Register for approval in accordance with 5 U.S.C. 552(a) 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 Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; or the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(ii) In the EEZ off the Gulf states, other than Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season specified in paragraph (b)(1) of this section beginning on August 1 and

must be removed from the water after such season not later than April 5.

(iii) A spiny lobster trap, buoy, or rope in the EEZ off Florida or the EEZ off the Gulf states, other than Florida, during periods not authorized in paragraphs (b)(3)(i) and (b)(3)(ii) of this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(4) *Possession of spiny lobsters.* A spiny lobster or part thereof in or from the EEZ off Florida or the EEZ off the Gulf states, other than Florida, may be possessed only during the periods specified in paragraphs (b)(1) and (b)(2) of this section, unless accompanied by proof of lawful harvest in the waters of a foreign nation. A spiny lobster in a trap in the water during a time such trap is authorized to be in the EEZ off Florida or the EEZ off the Gulf states, other than Florida, under paragraph (b)(3)(i) or (b)(3)(ii) 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.

(c) *Primacy of seasonal restrictions in the EEZ off Florida.* The seasonal restrictions on possession of a spiny lobster or trap in the EEZ off Florida apply to all spiny lobsters and traps, including spiny lobsters that may have been lawfully harvested from or traps that may have been lawfully used in the EEZ other than off Florida.

7. In § 640.22, a sentence is added to the end of paragraph (a)(1) and paragraph (b)(3)(i) is revised to read as follows:

**§ 640.22 Gear and diving restrictions.**

(a) \* \* \*

(1) \* \* \* 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.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(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 has been submitted to the Director of the Office of the Federal Register for approval in accordance with 5 U.S.C. 552(a) 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 Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; or the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

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8. Section 640.23 is revised to read as follows:

**§ 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 recreational 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.

(d) *Responsibility for bag/possession limits.* The operator of a vessel that fishes for or possesses spiny lobster in or from the EEZ is responsible for the cumulative bag or possession limit specified in paragraphs (a) and (b) of this section applicable to that vessel, based on the number of persons aboard.

(e) *Transfer at sea.* 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 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 [Amended]**

9. In § 640.24, the word "Secretary" is revised to read "Assistant Administrator".

[FR Doc. 95-10737 Filed 4-27-95; 3:57 pm]

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