

However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 9, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02-15872 Filed 6-24-02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[Docket No. 020606141-2141-01; I.D. 031402C]

RIN 0648-AN10

Stone Crab Fishery of the Gulf of Mexico; Amendment 7

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). This proposed rule would establish a Federal trap limitation program for the commercial stone crab fishery in the exclusive economic zone (EEZ) off Florida's west coast, including the area off Monroe County, FL (i.e., the management area) that would complement the stone crab trap limitation program implemented by the Florida Fish and Wildlife Conservation Commission (FFWCC). The Federal program would recognize the FFWCC's license, trap certificates, and trap tags for use in the EEZ in lieu of a Federal permit, but would not require them in addition to a Federal permit. Under the Federal program, a person who could meet the Federal eligibility requirements and who does not possess the license and trap certificates required by the FFWCC would be issued a Federal vessel permit, a trap certificate, and trap tags valid in the EEZ only. In addition, Amendment 7 would revise the Protocol and Procedure for an

Enhanced Cooperative Management System (Protocol) consistent with Florida's constitutional revisions that transferred authority for implementation of fishery-related rules from the Governor and Cabinet to the FFWCC. The intended effects are to establish a Federal program that would complement and enhance the effectiveness of the FFWCC's trap limitation program and, thereby, help to reduce overcapitalization in the stone crab fishery.

DATES: Written comments must be received no later than 4:30 p.m., eastern daylight savings time, on August 9, 2002.

ADDRESSES: Written comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to Robert Sadler, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of Amendment 7, which includes a regulatory impact review and an environmental assessment, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; telephone: 813-228-2815; fax: 813-225-7015; e-mail: gulfcouncil@gulfcouncil.org.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 654.

Background

Fishery information available since the early 1980's indicates that continued expansion of the stone crab fishery in terms of area fished, and numbers of participants and traps has reached a level where the fishery has more participants and traps than necessary to harvest optimum yield. This excessive

growth has reduced efficiency in the fishery and failed to increase annual harvest since the early 1990's. Since moratoriums were first implemented (60 FR 13918, March 15, 1995; 63 FR 44595, August 20, 1998), neither Florida nor NMFS has issued new permits for this fishery. Amendment 7 represents a continuation of cooperative state/Federal efforts to constrain overcapitalization in the stone crab fishery.

In Amendment 7, the Council has proposed measures that would revise management of the stone crab fishery in the Gulf of Mexico EEZ waters off west Florida including Monroe County (i.e., the management area). This proposed rule would establish regulations for the management area that would complement the stone crab trap limitation program recently adopted by the FFWCC. The Council determined that such a complementary Federal program was necessary to enhance the effectiveness of the FFWCC's program and, thus, help to reduce overcapitalization in the stone crab fishery.

The FFWCC Trap Limitation Program

Florida adopted its trap limitation program on June 26, 2000. Its governing agency, the FFWCC, expects to fully implement this program by October 1, 2002, the beginning of the 2002/2003 fishing season. Although the number of fishers has been stabilized by state and Federal permit moratoriums, the number of traps deployed in the fishery in the past decade has doubled. Florida's program endeavors to halt the fishery's escalating effort and overcapitalization trend by halving the number of traps deployed from the current estimate of about 1.3 million to 0.6 million within a projected 30-year period. The expected benefits are increased yield per trap, decreased conflicts between participants in the stone crab and shrimp trawler fisheries, minimized damage to hard bottoms and seagrass beds, and fewer trap ropes and buoys to impede navigation.

Amendment 7 Proposals

To align Federal management of the stone crab fishery with the FFWCC trap limitation program, the Council has proposed the following nine changes to the FMP in Amendment 7: (1) Recognize, but not require, Florida's stone crab licenses and trap tags for vessels operating in the management area; (2) establish a Federal program to issue non-transferable (to other persons) vessel permits, trap certificates, and trap tags for EEZ use only; (3) provide opportunity to apply for the proposed

Federal vessel permit to those who could meet the qualifying criteria but could not or chose not to obtain the stone crab vessel license or tags issued by the FFWCC; (4) allow participants up to 90 days following the effective date of the final rule implementing Amendment 7 to apply for Federal permits and tags; (5) determine the number of Federal trap tags to be issued to qualifying persons by dividing his/her highest seasonal landings of stone crab claws during one of three fishing seasons (1995/96, 1996/97, or 1997/1998) by 5 lb (2.27 kg); (6) charge a fee for the issuance of Federal trap tags and vessel permits and their annual renewals; (7) establish a Federal appeals process for those denied a Federal permit; (8) revise the Protocol to reflect revisions to Florida's Constitution; and (9) replace FMP management objective 3 with a new objective: Take regulatory action to increase catch per unit effort (CPUE) and reduce overcapitalization in terms of gear deployed in the fishery.

Proposed Federal Trap Limitation Program

This proposed rule would establish a Federal stone crab trap limitation program in the management area that would complement the FFWCC program. The Federal program would issue to qualified applicants Federal commercial vessel permits, trap certificates, and annual trap tags. These would not be required for persons or vessels operating in the management area that are in compliance with the FFWCC trap limitation program.

Commercial Vessel Permit Requirement

Beginning October 1, 2002, a vessel not in compliance with the FFWCC stone crab trap limitation program would have to possess on board a Federal vessel permit for stone crab to be authorized to possess or use a stone crab trap, possess more than 1 gallon (4.5 L) of stone crab claws, or sell stone crab claws in or from the management area.

Eligibility Requirements for a Federal Commercial Vessel Permit

To qualify for the Federal permit, the owner of a vessel would have to provide to the Administrator, Southeast Region, NMFS, (RA) documentation substantiating that he/she landed a minimum of 300 lb (136 kg) of stone crab claws harvested from the management area or Florida's state waters during at least one of the three specified stone crab fishing seasons (October 15 through May 15): 1995/1996, 1996/1997, or 1997/1998. An applicant who has a valid FFWCC stone

crab trap certificate or a Florida saltwater products license (SPL) that is currently suspended or revoked would not be eligible for the Federal vessel permit.

Documentation of Eligibility for a Commercial Vessel Permit

To determine if an applicant qualifies under the 300-lb (136-kg) minimum qualifying landings requirement, the RA would accept only documentation for stone crab claws landed in Florida that can be verified through the Florida trip ticket system. Such landings would have to be associated with a single Florida SPL. Landings of stone crab harvested from the management area or Florida's state waters, but landed in a state other than Florida, may be documented by dealer records that clearly specify the species landed (i.e., stone crab), dates and amounts of stone crab landings, and the vessel's name and official number. Such dealer records must be accompanied by a sworn affidavit by the dealer confirming the accuracy and authenticity of the records. The authenticity and accuracy of all submitted documents are subject to NMFS' verification by comparison with state, Federal, or other pertinent records and information. An applicant submitting false documentation could be disqualified from participating in the fishery or subjected to appropriate legal penalties.

Application for a Commercial Vessel Permit

Applications for a Federal commercial vessel permit for stone crab would be available from the RA. An applicant (e.g., a vessel owner, or an eligible person from the owning corporation or partnership) would be required to submit to the RA an application which would include the name and official number of the vessel; a copy of the vessel's valid United States Coast Guard (USCG) certificate of documentation or state registration certificate; information identifying the owner; the required documentation of eligibility; desired color code for identifying the vessel and trap buoys; number and dimensions of traps expected to be deployed; and any other information necessary for the issuance and administration of the permit as specified on the application form.

Such applications would have to be postmarked or hand-delivered to the RA no later than 90 days after the effective date of the final rule implementing Amendment 7. The RA would not issue a vessel permit to an applicant who failed to meet this deadline. If an application is incomplete, the RA would

notify the applicant of the deficiency. If an applicant fails to correct and return it to the RA within 30 days, it would be considered abandoned. Applicants not meeting the eligibility requirements would be notified by the RA within 30 days of receipt of their application.

Appeal Process for Commercial Vessel Permit Denial

An applicant who complied with the application procedures and was initially denied a Federal stone crab vessel permit, would be provided an opportunity to appeal that decision to the RA. After receiving a denial, the applicant would be afforded no more than 60 days to deliver (postmarked or hand-delivered) his/her appeal to the RA. An appeal would have to be submitted in writing, state the reasons the denial should be reversed or modified, and include copies of pertinent landing records or other reliable documentation germane to resolving the issue. The RA would appoint one or more appellate officers to review the appeal and make recommendations to deny the appeal or issue a decision based on its merits. The recommendations of the appellate officers could be affirmed, reversed, modified, or remanded by the RA. Under section 402(b)(1)(F) of the Magnuson-Stevens Act, such a written appeal would authorize the RA to make pertinent and confidential landings information available to the appellate officer(s).

If an appellant requests a hearing, the RA would determine whether such a hearing is necessary and, if so, notify the appellant of the place and date of the hearing. The appellant would be allowed 30 days after the notification date to provide supplementary documentary evidence to support the appeal.

Duration, Renewal, Transferability, and Fees for a Commercial Vessel Permit

A commercial vessel permit would be issued on an annual basis and be valid for the period specified on it unless it is revoked, suspended, or modified, or the vessel is sold. Approximately 2 months prior to the permit's expiration date, the RA would mail a renewal notification to the vessel owner. A vessel owner not receiving such a notification 45 days prior to the permit's expiration date would be obliged to contact the RA about its renewal. The RA would not renew a permit if an application for renewal is not received within 1 year of the permit's expiration date or if the permit has been revoked.

A commercial vessel permit would not be transferable or assignable to

another vessel, except to another (e.g., replacement) vessel owned by the same entity. Neither could it or a trap certificate be leased.

NMFS would charge a fee for each permit application processed (i.e., initial issuance, renewal, and replacement) and for each annual trap tag. These fees would not exceed the administrative costs calculated in accordance with the procedures in the NOAA Finance Handbook. The appropriate fees would have to accompany each application, request for replacement, or request for trap tags.

Issuance of a Federal Trap Certificate and Annual Trap Tags

The RA would issue a trap certificate and annual trap tags only to persons qualifying for and being issued a Federal commercial vessel permit for stone crab. The number of trap tags to be issued would be based on the applicant's stone crab claw landings documented consistent with the requirements of this proposed rule. The applicant's highest documented landings of stone crab claws (pounds) during any one of three fishing seasons (1995/1996, 1996/1997, or 1997/1998) would be divided by 5 lb (2.27 kg). The 5-lb (2.27-kg) divisor represents the average annual harvest expected per trap when the total number of traps in the fishery is reduced to 600,000, the level that would stabilize the fishery at optimum yield. The Council selected this 5-lb (2.27-kg) level for the first year of implementation to accelerate the achievement of the trap reduction goal. This approach would immediately reduce the number of traps in the management area, authorized under the Federal program, to the projected optimal level.

Vessel and Gear Identification

An owner or operator of a vessel for which a valid Federal commercial vessel permit for stone crab has been issued would have to comply with vessel and gear identification requirements that are standard for most federally managed fisheries in the Gulf of Mexico and South Atlantic. A permitted vessel would be required to display its official number and the color code assigned by the RA. Each stone crab trap authorized under the Federal trap limitation program would be required to have a valid annual trap tag issued by the RA attached. A buoy displaying the vessel's official number and assigned color code would have to be attached to each trap or at the end of each string of traps. Improperly marked traps or buoys would be considered illegal gear and could be disposed of in

any appropriate manner by an authorized officer. An owner or operator of a vessel in the management area who is in compliance with the FFWCC stone crab trap limitation program and its vessel and gear marking requirements is exempt from these Federal vessel/gear identification requirements.

Proposed Revision of the Protocol

The FMP protocol and procedure provide for a cooperative state/Federal management program whereby measures constructed under the auspices of the FFWCC can be applied in both state and Federal waters, if appropriate. The appropriateness is based on whether the FFWCC's measures would protect and increase long-term yields, provide fair and equitable opportunity for shareholder participation, be consistent with the FMP and Federal regulations, be considered acceptable by the Gulf Council and for implementation by NMFS, be based on information collected by the FFWCC with necessary NMFS assistance, be presented in written form to the Gulf Council that would include the prescribed information, and be applicable to the management area. The FFWCC also would help with the preparation of the documents necessary for Federal rulemaking. By design, this process prevents adverse impacts on the resources and its user groups in both state and federal waters. Further, it avoids duplication and, thereby, streamlines the rulemaking process to provide a comprehensive and compatible management program for the stone crab fishery both in state and Federal waters.

The Protocol was initially proposed in Amendment 5 to the FMP and its proposed rule (59 FR 55405, November 7, 1994), and approved in a final rule (60 FR 13918, March 15, 1995). The revisions of the Protocol, proposed in Amendment 7, reflect recent changes in Florida's Constitution. Most significantly, the FFWCC is now empowered to act independently in implementing state fishery-related rules without approval from the Governor and Cabinet. In addition, the name of the Florida Marine Fisheries Commission (FMFC) has been changed to FFWCC.

Availability of, and Comments on, Amendment 7

Additional background and rationale for the measures discussed here are contained in Amendment 7, the availability of which was announced in the Federal Register on April 18, 2002 (67 FR 19155). All comments received on Amendment 7 or on this proposed

rule, including those relevant to Section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), during their respective comment periods will be addressed in the preamble of the final rule.

Classification

At this time, NMFS has not determined that the provisions of Amendment 7 that this proposed rule would implement are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. In making that final determination, NMFS 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 Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce 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 as follows:

The Magnuson-Stevens Act provides the statutory basis for the rule. The Stone Crab FMP utilizes a cooperative management system with the State of Florida to ensure more effective management of the fishery.

The proposed rule would: recognize, but not require, Florida's stone crab licenses and trap tags for vessels operating in the management area; establish a Federal program to issue non-transferable (except to another vessel owned by the same person or entity) vessel permits, trap certificates, and trap tags for EEZ use only; provide opportunity for persons who could not or chose not to obtain the Florida vessel licence to apply for the Federal vessel permit; and would establish a Federal appeals process for those denied a Federal permit.

Establishing a Federal stone crab trap limitation program in conjunction with the state program will help alleviate the current problem of overcapitalization. It is expected that most of the current participants in the fishery will continue to remain at current levels of landings and income. Due to the non-transferability provision under the Federal program, reduction in the number of traps in the fishery will take place over several years through attrition. Under the state program, trap reduction will occur as trap certificates are transferred, since the number of trap certificates obtained by the purchaser is reduced by a particular percentage each time a transfer takes place. The target level of 600,000 traps is believed to be sufficient to harvest the maximum sustainable yield, but also reduces overcapitalization. Thus, retail prices and operator income are not expected to be negatively affected by the trap reduction, and some savings may be expected to accrue to operators because of lower gear expenses. In addition, the proposed rule is expected to

further enhance state/Federal management efficiencies, including law enforcement.

According to a recent NMFS economics report, the number of fishing craft (vessels and boats) engaged in the stone crab fishery averaged 720 annually for the period 1985 through 1994. These fishing craft were operated by an average of 1,425 persons annually. The fishing craft consisted of vessels (fishing craft greater than 5 net tons) and boats. Averaged annually, 234 vessels were operated by 590 fishermen and 486 boats were operated by 837 fishermen. Of the total number of fishermen, 1034 were full-time participants (deriving 50 percent or more of their incomes from fishing) while 392 were part-time participants. In 1994, participation reached its maximum level at 2,852 fishermen.

Generally, a fish harvesting business is considered a small business if it is independently owned and operated and not dominant in its field operation, and if it has annual receipts not in excess of \$3.5 million. Although there are several fleet operations in the stone crab fishery, none of these operations may be considered dominant in the harvesting sector. In this case, the gross receipts criterion may be used to define small business.

Business operations in the stone crab fishery consist solely of small business entities. Support for this conclusion is based on the following facts. The highest ex-vessel gross revenue produced by the fishery in a year was \$31.9 million in 1997. Even if we assume all landings were made only by the 234 participating vessels (the average number of vessels for 1985–1994), and, thus, disregard the 486 boats, the average gross revenue would amount to only \$136,000 per entity. Thus, even under this restrictive assumption, business operations in the stone crab fishery clearly fit the definition of small business entities.

The number of participants that will apply and qualify for a Federal stone crab vessel permit is impossible to determine with exact certainty. However, it is expected to be very few, if any, for the following reasons. All or almost all stone crab fishermen on Florida's west coast who could qualify for a Federal vessel permit could also qualify for the state's stone crab endorsement. Applicants who cannot meet the landings requirement would be ineligible for a Federal permit. With the low poundage requirement for eligibility (300 pounds in either the 1995/96, 1996/97, or 1997/98 fishing seasons), the loss to these non-qualifiers would be less than \$2500 per year, assuming their average annual production was less than the qualifying poundage and \$8.25 per pound of stone crab claws (the 2000 average price). Non-qualification for the poundage requirement likely indicates the absence of dependence upon this fishery by these participants. The nature of the state and Federal programs, and the specifics of how the fishery operates, however, indicates that there is little expectation that a participant would apply for the Federal permit and be denied.

Even though no applicants are expected to be denied the Federal permit, on the possibility that such a denial occurs, these ineligible applicants would also have equal

opportunity to enter the stone crab fishery through the transfer provisions specified in the Florida program, and access to fishing in the EEZ since participation in the Florida program will allow fishing in the EEZ, provided that previous fishing violations or other pertinent state or Federal laws would not prohibit such transfers and subsequent entry into state or federally managed fisheries. Such entry, however, will require the additional initial purchase costs of the permit, certificates, and tags. The eventual cost of these items is not known, however the development of a market will demonstrate the perceived economic viability of entry into the fishery via purchase. Further, the permits, certificates and tags will constitute saleable assets that should have lasting if not increasing resale value over time.

The state permit appears to be much more desirable because the state program allows more flexibility. Specifically, vessels in the state program may fish in both state and Federal waters whereas Federal permit holders would be restricted to fishing in the EEZ. Given the fact that, currently, about 55 percent of stone crab landings and nearly 75 percent of stone crab trips are taken in state waters, such a restriction would obviously not be desirable from a fisherman's perspective. Further, and even more importantly, state trap certificates are transferable to other entities while Federal permits, trap certificates, and tags are not. As such, the Federal permits and trap certificates would possess no market value whereas state trap certificates should have a positive market value, assuming that a demand for such certificates exists. Finally, in the 16 years during which persons or entities could apply for a Federal permit if they did not qualify for a state permit, no applications were received for the Federal permits. In fact, other than Florida fishermen who, for unknown reasons, qualified but did not apply for the Florida endorsement/tags or who applied but were denied the Florida endorsement/tags (though these fishermen would likely not qualify for the Federal vessel permit either), the only persons or entities that might conceivably apply for Federal permits and trap certificates would be fishermen that caught stone crab in waters off the west coast of Florida, but landed them in another state because they lacked a Florida Saltwater Products License. Though it is not presently possible to discern how many fishermen might fall into this set of circumstances, the number is likely very small because of the long traveling distance to the fishing grounds from other states and the relatively slow speeds at which these vessels travel, both of which would contribute to relatively high operational costs. Further, there is a need to get the product to market as quickly as possible in order to obtain decent market prices, avoid product spoilage, and thus generate reasonable revenues. In other words, such operations are quite unlikely to be profitable and, thus, highly unlikely to occur.

The determination of significant economic impact can be ascertained by examining two criteria, disproportionality and profitability. The disproportionality question is: do the regulations place a substantial number of

small entities at a significant competitive disadvantage to large entities? Although some variation exists between boats and vessels and a few fishermen own more than one fishing craft, all are classified as small entities. Thus, the issue of disproportionality is irrelevant in the present case.

The profitability question is: do the regulations significantly reduce profit for a substantial number of small entities? Most fishing businesses currently engaged in the stone crab fishery are expected to experience no impacts to their profits as a result of this rule, primarily because the vast majority are expected to qualify under and participate in the state program and not become involved with the Federal program. Thus, these entities will not experience any significant and adverse economic impacts as a result of this rule.

However, should a few fishermen actually apply and qualify for the Federal permit, this small group of entities could be significantly and adversely affected. As previously explained, the Federal program has provisions that not only differ from but are likely economically disadvantageous relative to the state of Florida program. For example, revenues and profits earned from landings in state waters would be unavailable to Federal permit holders. Again, the extent of such revenues and profits to non-Florida fishing craft is unknown. Additional costs must be absorbed by the Federal permit holder which consist of the cost of the permit (about \$50 per vessel) and trap tags (approximately \$1.10 per tag). Under the state program, 1132 persons are expected to qualify for approximately 1.3 million trap certificates, which means that each person would possess approximately 1150 traps, certificates, and trap tags on average. Assuming that those persons qualifying under the Federal program would be similarly situated, the cost of the Federal permit and trap tags would be approximately \$1315. Given approximate maximum average annual revenues of \$136,000 per entity, these costs alone would represent approximately 1 percent of gross revenues. Since operational costs must be positive and, thus, profits must be less than \$136,000 per entity on average, permit and tag costs as a percentage of profits must be even greater than 1 percent. When combined with the potential loss of revenues and profits from landings in state waters, substantial and adverse economic impacts may accrue to a very small number of entities.

As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This proposed rule contains five collection-of-information requirements subject to the PRA. Three of the collection-of-information requirements

are new--documentation of stone crab landings, a commercial vessel permit application, and information to support an appeal of a denial of eligibility for a commercial vessel permit. These collection-of-information requirements have been submitted to OMB for approval. The other two collection-of-information requirements, vessel and gear identification, have been approved by OMB under control numbers 0648-0358 and 0648-0359, respectively. Public reporting burdens for these five collection-of-information requirements are estimated to average 2 hours, 20 minutes, 5 hours, 45 minutes, and 7 minutes per response, respectively, 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 these burden estimates, or any other aspect of the data collection requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 50 CFR Part 654

Fisheries, Fishing.

Dated: June 19, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 654 is proposed to be amended as follows:

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 654 continues to read as follows:

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

2. In § 654.2, the definition of “Regional Director” is removed; a definition of “Regional Administrator” is added in alphabetical order; and the definition of “Stone crab” is revised to read as follows:

§ 654.2 Definitions.

* * * * *

Regional Administrator (RA) for the purposes of this part, means the

Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, or a designee.

Stone crab means *Menippe mercenaria*, *M. adina*, or their interbreeding hybrids, or a part thereof.

§ 654.3 [Amended]

3. In § 654.3, paragraph (d) is removed.

4. Section 654.4 is revised to read as follows:

§ 654.4 Trap limitation program.

The provisions of this section establish a Federal stone crab trap limitation program in the management area that complements the stone crab trap limitation program implemented by the Florida Fish and Wildlife Conservation Commission (FFWCC). The Federal program requires issuance of a commercial vessel permit, a trap certificate, and annual trap tags. A person in the management area who is in compliance with the FFWCC trap limitation program is exempt from the requirements of the Federal trap limitation program specified in this section.

(a) *Commercial vessel permit requirements.* Effective October 1, 2002, for a person aboard a vessel, except a person who is in compliance with the FFWCC stone crab trap limitation program, to possess or use a stone crab trap, possess more than 1 gallon (4.5 L) of stone crab claws, or sell stone crab claws in or from the management area, a valid Federal commercial vessel permit for stone crab must have been issued to the vessel and must be on board.

(1) *Eligibility for a commercial vessel permit.* The owner of a vessel is eligible to receive a Federal commercial vessel permit for stone crab if the owner provides documentation as specified in paragraph (a)(2) of this section substantiating his or her landings of a minimum of 300 lb (136 kg) of stone crab claws harvested from the management area or Florida’s state waters during at least one of the stone crab fishing seasons, October 15 through May 15, for 1995/1996 through 1997/1998. A person who has a valid stone crab trap certificate issued under the stone crab trap limitation program implemented by the FFWCC or a person whose Florida saltwater products license (SPL) has been suspended or revoked is not eligible for a Federal commercial vessel permit for stone crab.

(2) *Documentation of eligibility for a commercial vessel permit.* The only acceptable source of documentation of stone crab claws landed in Florida is landings documented by the Florida trip

ticket system. To be creditable toward the 300-lb (136-kg) minimum qualifying landings, Florida landings must be associated with a single Florida SPL. Landings of stone crab harvested from the management area or Florida’s state waters but landed in a state other than Florida may be documented by dealer records. Such dealer records must definitively show the species known as stone crab and must include the vessel’s name, official number, or other reference that provides a way of clearly identifying the vessel; dates and amounts of stone crab landings; and a sworn affidavit by the dealer confirming the accuracy and authenticity of the records. A sworn affidavit is an official written statement wherein the individual signing the affidavit affirms that the information presented is accurate and can be substantiated, under penalty of law. Documentation of landings are subject to verification by comparison with state, Federal, and other records and information.

Submission of false documentation is a violation of the regulations in this part and may disqualify the owner from participation in the fishery.

(3) *Application for a commercial vessel permit.* Applications for a commercial vessel permit for stone crab are available from the RA. A vessel owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) who desires such a permit must submit an application, including documentation of stone crab landings as specified in paragraphs (a)(1) and (2) of this section, to the RA postmarked or hand-delivered not later than 90 days after the effective date of the final rule that contains this paragraph (a)(1)(3). Failure to apply in a timely manner will preclude permit issuance even when the vessel owner meets the eligibility criteria for such permit.

(i) An applicant must provide the following:

(A) A copy of the vessel’s valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(B) Vessel name and official number.

(C) Name, address, telephone number, and other identifying information of the vessel owner.

(D) Documentation of eligibility as specified in paragraphs (a)(1) and (2) of this section.

(E) The applicant’s desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

(F) Number of traps authorized under § 654.4(b) that will be used and trap dimensions.

(G) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, if specified on the application form.

(H) Any other information that may be necessary for the issuance or administration of the permit, if specified on the application form.

(ii) [Reserved]

(4) *Notification of incomplete application.* Upon receipt of an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned.

(5) *Change in application information.* The owner of a vessel with a commercial vessel permit must notify the RA within 30 days after any change in the application information specified in paragraph (a)(3)(i) of this section. The permit is void if any change in the information is not reported within 30 days.

(6) *Initial commercial vessel permit issuance.* (i) The RA will issue an initial commercial vessel permit for stone crab to an applicant if the applicant submits a complete application that complies with the requirements of paragraphs (a)(1), (2), and (3) of this section. An application is complete when all requested forms, information, and documentation have been received.

(ii) If the eligibility requirements specified in paragraphs (a)(1) and (2) of this section are not met, the RA will notify the vessel owner of such determination and the reasons for it not later than 30 days after receipt of the application.

(7) *Appeal of initial denial of a commercial vessel permit—(i) General procedure.* An applicant for a commercial vessel permit for stone crab who has complied with the application procedures in paragraph (a)(3) of this section and who initially has been denied such permit by the RA may appeal that decision to the RA. The appeal must be postmarked or hand-delivered to the RA not later than 60 days after the date of notification of the initial denial. An appeal must be in writing and must include copies of landing records relating to eligibility, such other reliable evidence upon which the facts related to issuance can be resolved, and a concise statement of the reasons the initial denial should be reversed or modified. An appeal constitutes the applicant's written authorization under § 402(b)(1)(F) of the Magnuson-Stevens Act for the RA to make available to the appellate officer(s) such confidential landings and other

records as are pertinent to the matter under appeal. The applicant may request a hearing. The RA will appoint one or more appellate officers to review the appeal and make recommendations to the RA. The appellate officer(s) may recommend that the RA deny the appeal, issue a decision on the merits of the appeal if the records are sufficient to reach a final judgement, or conduct a hearing. The RA may affirm, reverse, modify, or remand the appellate officer(s) recommendation.

(ii) *Hearings.* If the RA determines that a hearing is necessary and appropriate, the RA or appellate officer(s) will notify the applicant of the place and date of the hearing. The applicant will be allowed 30 days after the date of the notification of the hearing to provide supplementary documentary evidence in support of the appeal.

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

(9) *Transferability of a commercial vessel permit.* A commercial vessel permit issued under this section is not transferable or assignable, except that an owner of a permitted vessel may request that the RA transfer the permit to another vessel owned by the same entity. To effect such a transfer, the owner must return the existing permit to the RA along with an application for a commercial vessel permit for the replacement vessel. A commercial vessel permit or trap certificate can not be leased.

(10) *Renewal of a commercial vessel permit.* A commercial vessel permit required by this section is issued on an annual basis. An owner whose permit is expiring will be mailed a notification by the RA approximately 2 months prior to expiration of the current permit. The notification will include a preprinted renewal application. A vessel owner who does not receive a notification of status of renewal of a permit by 45 days prior to expiration of the current permit must contact the RA. A permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within 1 year of the expiration date of the permit.

(11) *Display of a commercial vessel permit.* A commercial vessel permit issued under this section must be carried on board the vessel. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(12) *Sanctions and denials of a commercial vessel permit.* A commercial vessel 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.

(13) *Alteration of a commercial vessel permit.* A commercial vessel permit that is altered, erased, or mutilated is invalid.

(14) *Replacement of a commercial vessel permit.* A replacement permit may be issued. An application for a replacement permit is not considered a new application.

(15) *Fees.* A fee is charged for each application for initial issuance or renewal of a permit, for each request for replacement of such permit, and for each trap tag as required under this section. The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, 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, request for replacement, or request for trap tags.

(b) *Issuance of a trap certificate and annual trap tags.* The RA will issue a trap certificate and annual trap tags to each person who has been issued a Federal commercial vessel permit for stone crab. The number of trap tags issued will be determined, based upon the documentation of landings submitted consistent with § 654.4(a)(1), (2) and (3), by dividing that person's highest landings of stone crab claws during any one of the fishing seasons for 1995/1996, 1996/1997, or 1997/1998 by 5 lb (2.27 kg).

5. In § 654.6, introductory text is added and paragraphs (a) and (b) are revised to read as follows:

§ 654.6 Vessel and gear identification.

An owner or operator of a vessel for which a valid Federal commercial vessel permit for stone crab has been issued must comply with the vessel and gear identification requirements of this section. An owner or operator of a vessel in the management area who is in compliance with the stone crab trap limitation program and vessel and gear marking requirements implemented by the FFWCC is exempt from the requirements of this section.

(a) *Vessel identification.* An owner or operator of a vessel for which a valid

Federal commercial vessel permit for stone crab has been issued must—

(1) *Display the vessel's official number.* (i) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in height for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) long or less.

(2) *Display the color code assigned by the RA.* (i) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In the form of a circle permanently affixed to or painted on the vessel.

(iii) At least 18 inches (45.7 cm) in diameter for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in diameter for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in diameter for vessels 25 ft (7.6 m) long or less.

(3) Keep the official number and the color code clearly legible and in good repair and ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number or the color code from an enforcement vessel or aircraft.

(b) *Gear identification.* (1) *Traps.* A stone crab trap used by or possessed on board a vessel with a Federal commercial vessel permit for stone crab must have a valid annual trap tag issued by the RA attached.

(2) *Trap buoys.* A buoy must be attached to each stone crab trap or at each end of a string of traps. Each buoy must display the official number and the color code assigned by the RA so as to be easily distinguished, located, and identified.

(3) *Presumption of trap ownership.* A stone crab trap will be presumed to be the property of the most recently documented owner. This presumption will not apply to traps that are lost if the owner reports the loss within 15 days to the RA.

(4) *Unmarked traps or buoys.* An unmarked stone crab trap or a buoy deployed in the EEZ where such trap or buoy is required to be marked is illegal and may be disposed of in any

appropriate manner by the Assistant Administrator or an authorized officer.

6. In § 654.7, paragraphs (a) and (g) are revised and paragraphs (o) and (p) are added to read as follows:

§ 654.7 Prohibitions.

* * * * *

(a) Falsify or fail to display and maintain vessel and gear identification, as required by § 654.6.

* * * * *

(g) Use or possess in the management area a stone crab trap that does not comply with the trap construction requirements as specified in § 654.22(a).

* * * * *

(o) Except for a person who is in compliance with the FFWCC stone crab trap limitation program, possess or use a stone crab trap, possess more than 1 gallon (4.5 L) of stone crab claws, or sell stone crab claws in or from the management area without a commercial vessel permit as specified in § 654.4(a).

(p) Falsify information on an application for a commercial vessel permit or submitted in support of such application as specified in § 654.4(a)(1) or (2).

7. Section 654.8 is revised to read as follows:

§ 654.8 Facilitation of enforcement.

See § 600.730 of this chapter.

8. Section 654.9 is revised to read as follows:

§ 654.9 Penalties.

See § 600.735 of this chapter.

§§ 654.20, 654.25, 654.26, 654.27 [Amended]

9. In 50 CFR part 654 remove the words "Regional Director" and add in their place, the words, "Regional Administrator" in the following places:

- (a) Section 654.20(b)(2)(i);
- (b) Section 654.25(b);
- (c) Section 654.26; and
- (d) Section 654.27.

§§ 654.1, 654.2, 654.7 [Amended]

10. In 50 CFR part 654 remove the words "Magnuson Act" and add in their place, the words, "Magnuson-Stevens Act" in the following places:

- (a) Section 654.1(a);
- (b) Section 654.2 introductory text; and
- (c) Section 654.7(n).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000504124-0124-01; I.D. 011900B]

RIN 0648-AK11

Fisheries off the West Coast and in the Western Pacific; Prohibition on the Use of Set Net Fishing Gear; Withdrawal of Proposed Rule

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

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS withdraws the May 19, 2000, proposed rule to prohibit the use of set net (gillnet and trammel nets) fishing gear to take groundfish species in portions of the U.S. exclusive economic zone (EEZ) (also known as the fishery management area) adjacent to State waters at four areas off California. Groundfish fisheries in the fishery management area are managed under the Fishery Management Plan for Groundfish Fisheries off the West Coast (Groundfish FMP). The proposed rule is being withdrawn because it is not necessary and appropriate for the conservation and management of groundfish fisheries under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Groundfish FMP.

DATES: This proposed rule is withdrawn June 25, 2002.

FOR FURTHER INFORMATION CONTACT: Svein Fougnier, Sustainable Fisheries Division, Southwest Region, NMFS, 562-980-4040.

SUPPLEMENTARY INFORMATION: A proposed rule was published on May 19, 2000 (65 FR 31871), that would have prohibited the use of set net (gillnet and trammel nets) fishing gear to take groundfish species in portions of the EEZ (also known as the fishery management area) adjacent to state waters at 4 locations off California. The history of the action and the rationale for the proposed rule were provided in the preamble to the proposed rule and will not be repeated here.

Upon reviewing the history of this action, the comments received on the proposed rule, and the legal and management issues involved, NMFS has concluded that the proposed rule should be withdrawn. Only one of the