

“Rules and Regulations” section of this **Federal Register**.

Dated: September 17, 2008.

**Richard E. Greene,**

*Regional Administrator, EPA Region 6.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 622 and 640

[Docket No. 070717349-7570-02]

RIN 0648-AV61

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments to the Spiny Lobster Fishery Management Plans for the Caribbean and Gulf of Mexico and South Atlantic

**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 that would implement Amendment 4 to the Fishery Management Plan for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (Caribbean FMP) prepared by the Caribbean Fishery Management Council (Caribbean Council) and Amendment 8 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (Gulf and South Atlantic FMP) prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Gulf and South Atlantic Councils). This proposed rule would establish two minimum size restrictions for importation of spiny lobster into the United States -one applicable to spiny lobster imported into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that applies to Puerto Rico and the U.S. Virgin Islands. In addition, this proposed rule would prohibit importation of egg-bearing spiny lobsters and importation of spiny lobster tail meat that is not in whole tail form with the exoskeleton attached. The intended effect of this proposed rule is to enhance the conservation of the spiny lobster resource and improve effectiveness of law enforcement related to such conservation.

**DATES:** Written comments must be received on or before December 15, 2008.

**ADDRESSES:** You may submit comments on the proposed rule, identified by 0648-AV61, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Jason Rueter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Jason Rueter.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the combined Amendments 4 and 8, which include a draft environmental impact statement (DEIS), an initial regulatory flexibility analysis (IRFA), a regulatory impact review (RIR), and a social impact assessment/fishery impact statement may be obtained from Jason Rueter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701 or may be downloaded from the Southeast Regional Office website at <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Jason Rueter, telephone 727-824-5305; fax 727-824-5308; e-mail [jason.rueter@noaa.gov](mailto:jason.rueter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The spiny lobster fishery of the Caribbean is managed under the Caribbean FMP prepared by the Caribbean Council and is implemented through regulations at 50 CFR part 622. The spiny lobster fishery of the Gulf of Mexico and South Atlantic is managed under the Gulf and South Atlantic FMP prepared by the Gulf and South Atlantic Councils and is implemented through regulations at 50 CFR part 640. Both regulations are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

## Background

Fisheries for spiny lobster (*Panulirus argus*) exist throughout its range in the Caribbean and tropical western Atlantic. Foreign and U.S. scientists and fisheries managers concur that the spiny lobster stock is fully exploited or over-exploited in much of its range.

Spiny lobster have a long (approximately 1-year) planktonic larval phase during which the larvae can be widely distributed by ocean currents over large geographic areas. Spiny lobster resources off Florida and the U.S. Caribbean are dependent, in part, on recruitment of larvae from areas in the Caribbean basin, outside the U.S. EEZ. Large quantities of spiny lobster are being harvested outside the U.S. exclusive economic zone (EEZ) at a size less than the respective continental U.S. and U.S. Caribbean minimum size limits, which are designed to prohibit harvest prior to the average size at sexual maturity. Much of this harvest outside the U.S. EEZ also involves spiny lobster less than the minimum size limits of the various foreign countries where such harvest occurs; however, enforcement has not been effective in curtailing this illegal activity.

Large-scale harvest of sexually immature, i.e. undersized, spiny lobster outside the U.S. EEZ adversely impacts the reproductive capacity of the spiny lobster resources and subsequent recruitment throughout the Caribbean and Florida. A reduction of fishing effort on undersized, sexually immature spiny lobster and a more comprehensive and effective enforcement mechanism would increase spawning stock biomass and increase potential yield from the fisheries. Representatives of the spiny lobster seafood industry have recognized that large-scale harvest of undersized spiny lobster adversely affect the spiny lobster resource throughout large portions of its range including areas subject to U.S. jurisdiction and have asked respective governments to address the illegal harvest and exportation of undersized spiny lobster tails to the United States.

The United States is a major importer of spiny lobster -importing over 194 million lb (88 million kg) over the past 10 years. The United States imports over 90 percent of the spiny lobster harvested in South and Central America and other Caribbean countries. The major exporters to the United States are the Bahamas, Brazil, Honduras, and Nicaragua.

There are two main issues associated with addressing the importation of undersized spiny lobster. First is the importation of spiny lobster that are

below the domestic size limits, and concurrently the mean size at sexual maturity, that were legally harvested in another nation's waters. Second is the importation of spiny lobster below the domestic size limits, that were illegally harvested in violation of harvest restrictions in other nations. This second activity is already illegal, as the Lacey Act prohibits the importation of spiny lobster harvested in violation of the laws of another nation.

Establishing minimum sizes for imports would address both of these issues. Prohibiting the importation of spiny lobster smaller than the domestic size limits will severely limit, if not eliminate, the market for legally and illegally harvested undersized spiny lobster. This is expected to serve as an incentive for countries that do not currently have such measures to implement consistent size limits to protect juvenile spiny lobster.

This proposed rule would also establish measures to enhance protection of egg-bearing spiny lobster and to enhance enforcement of the size requirements.

#### **Measures Contained in This Proposed Rule**

##### *Minimum Size Limits for Importation of Spiny Lobster*

This proposed rule would prohibit the importation of undersized, sexually immature spiny lobster into the United States by establishing minimum tail-weight requirements. Spiny lobster are rarely, if ever, imported as whole animals, but instead are imported as frozen tails. It is estimated over 99 percent of spiny lobster product enters the U.S. in frozen-tail form. It is standard industry practice for spiny lobster destined for importation into the United States to be marketed, sorted, shipped, stored, and sold based on tail-weight categories. In addition, U.S. Customs' entry documents and the seafood industry's sales, storage and bills of lading documents typically include the tail weights (in ounces), making this measurement an effective enforcement tool to track undersized lobster, even after it enters a U.S. port.

This proposed rule would establish two minimum size limits that would apply to importation of spiny lobster into the United States—one that would apply any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that would apply to Puerto Rico and the U.S. Virgin Islands. First, this proposed rule would prohibit any person from importing spiny lobster

with less than 5 ounces (142 grams) tail weight (5 ounces (142 grams) is defined as a tail that weighs 4.2–5.4 ounces (119–153 grams)) into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands. If the documentation accompanying an imported spiny lobster (including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices) indicates that the product does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster would have the burden to prove that such spiny lobster actually does satisfy the minimum tail-weight requirement or that such spiny lobster has a tail length of 5.5 inches (13.97 cm) or greater or that such spiny lobster has or had a carapace length of greater than 3.0 inches (7.62 cm). If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster would have the burden to prove that such spiny lobster has a tail length of 5.5 inches (13.97 cm) or greater or that such spiny lobster has or had a carapace length of greater than 3.0 inches (7.62 cm). If the burden is satisfied, such spiny lobster would be considered to be in compliance with the minimum 5-ounce (142-gram) tail-weight requirement.

Second, the proposed rule would also prohibit any person from importing into Puerto Rico or the U.S. Virgin Islands any spiny lobster of less than 6.0 ounces (170 grams) tail weight (6 ounces (170 grams) is defined as a tail that weighs 5.9–6.4 ounces (167–181 grams)). If the documentation accompanying an imported spiny lobster (including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices) indicates that the product does not satisfy the minimum tail-weight, the person importing such spiny lobster would have the burden to prove that such spiny lobster actually does satisfy the minimum tail-weight requirement or that such spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster would have the burden to prove that such spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the burden is satisfied such spiny

lobster would be considered to be in compliance with the minimum 6-ounce (170-gram) tail-weight requirement.

These proposed minimum tail-weight requirements correspond to the existing minimum size limits applicable to the U.S. fisheries in the continental United States and in Puerto Rico and the U.S. Virgin Islands, respectively.

##### *Other Import Restrictions*

This proposed rule would also prohibit importation of spiny lobster tail meat in other than whole tail form with the exoskeleton attached and would prohibit importation of egg-bearing spiny lobster or those from which eggs or the abdominal appendages to which eggs attach (swimmerets or pleopods) have been removed or stripped. Prohibiting importation of tail meat in other than whole tail form is necessary for effective enforcement of the tail-weight (or tail-length) requirement. Because the vast majority of tail meat is imported in whole tail form, any associated adverse economic impacts are expected to be minimal and would be offset by conservation benefits. The prohibitions related to egg-bearing spiny lobster would provide further protection for sexually mature female spiny lobster and would enhance the reproductive capacity of the resource.

##### **Availability of Amendments 4 and 8**

Additional background and rationale for the measures discussed above are contained in Amendments 4 and 8. The availability of Amendments 4 and 8 was announced in the **Federal Register** on October 15, 2008 (73 FR 61015). Written comments on Amendments 4 and 8 must be received by 5 p.m., eastern time, on December 15, 2008. All comments received on Amendments 4 and 8 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

##### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendments 4 and 8, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a DEIS for this amendment. A notice of availability for the DEIS was published on June 27, 2008 (73 FR 36503).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would implement importation standards for spiny lobster, *Panulirus argus*.

The purpose of the proposed rule is to implement importation standards that will increase law enforcement's ability to effectively prevent the importation of undersized spiny lobster, spiny lobster with eggs or from which eggs have been removed, and spiny lobster tail meat in any form other than a whole tail with the exoskeleton attached.

No duplicate, overlapping or conflicting Federal rules have been identified.

The primary entities that are expected to be affected would be businesses that import spiny lobster into the United States from countries: (1) with legal minimum size standards that are less than those proposed or without such standards, and (2) without legal prohibitions against harvesting female lobsters with eggs, detaching their eggs and/or removing pleopods (swimmerets), or (3) without prohibitions on marketing spiny lobster tail meat in a form other than a whole tail with the exoskeleton attached.

Businesses that import spiny lobster are expected to be within the following industries: Fish and Seafood Merchant Wholesalers (NAICS 424460), Fish and Seafood Markets (NAICS 445220), Fish and Frozen Seafood Processing (NAICS 311712), Packaged Frozen Food Merchant Wholesalers (NAICS 424420), and Supermarkets and Other Grocery, Except Convenience, Stores (NAICS 445110). The Small Business Administration (SBA) has established that a business in one of these industries is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has no more than 100 employees (NAICS 424460 and 424420), 500 employees (NAICS 311712), \$6.5 million in annual receipts (NAICS 445220) or \$25 million in annual receipts (NAICS 445110). According to Firm Size Data ([www.sba.gov/advo/](http://www.sba.gov/advo/)

[research/data.html](#)), in 2005 there were: 2,243 firms in NAICS 424460 and at least 1,935 of those firms were small businesses; 2,761 firms in NAICS 424420 and at least 2,113 of them were small businesses; 504 firms in NAICS 311712 and 482 of them were small businesses; 43,686 firms in NAICS 445110 and at least 35,511 of them were small businesses; and 2,118 firms in NAICS 445220 and at least 2,008 were small businesses.

The U.S. is the largest importer of spiny lobster. From 2002 through 2007, U.S. rock lobster imports, which includes spiny lobster, originated from 17 countries that harvest spiny lobster (Brazil, Bahamas, Belize, Colombia, Costa Rica, Dominican Republic, Guatemala, Haiti, Honduras, Jamaica, Martinique, Mexico, Nicaragua, Panama, Trinidad and Tobago, Turks and Caicos Islands, and Venezuela), and of these countries, only Costa Rica, Guatemala, and Trinidad and Tobago have no harvest-size standards for spiny lobster. Additionally, a preliminary review of Panama fishing laws has not shown such a standard. Of the 13 countries with known harvest-size standards, 7 have legal size standards for spiny lobster that meet or exceed the proposed 5-ounce (142-gram) minimum tail weight that would apply anywhere subject to the jurisdiction of the United States (excluding Puerto Rico and the U.S. Virgin Islands where a more restrictive 6-ounce (170-gram) minimum tail weight would apply). These 7 countries are: The Bahamas, Colombia, Dominican Republic, Honduras, Turks and Caicos Islands, Nicaragua, and Venezuela. Thus, the 5-ounce (142-gram) minimum tail weight proposed by this rule would affect small businesses that import frozen spiny lobster from the following countries of origin into anywhere subject to the jurisdiction of the U.S., excluding Puerto Rico or the U.S. Virgin Islands: The Bahamas, Belize, Brazil, Colombia, Jamaica, Martinique, Mexico, Nicaragua, Panama, and Trinidad and Tobago.

Many of the 17 countries of origin that harvest spiny lobster also prohibit harvest of berried (egg-bearing) lobsters and removal of pleopods. The Bahamas, Brazil, Belize, Colombia, Costa Rica, Dominican Republic, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Turks and Caicos Islands, and Venezuela prohibit taking of berried lobsters. Hence, the prohibition against importation of berried lobsters would not affect these countries. However, the prohibition against importation of berried lobsters could affect spiny lobster imports from Guatemala, Martinique and Trinidad and Tobago.

The Bahamas and Belize have laws that prohibit the removal of pleopods. Consequently, the prohibition against importation of spiny lobster with their pleopods removed may affect imports from Brazil, Colombia, Costa Rica, Dominican Republic, Guatemala, Haiti, Honduras, Jamaica, Martinique, Mexico, Nicaragua, Panama, Trinidad and Tobago, Turks and Caicos Islands, and Venezuela.

U.S. Customs data show there were no imports of rock lobster into the U.S. Virgin Islands from 2001 through 2007. Consequently, it is expected that there are no small businesses that import spiny lobster into the U.S. Virgin Islands and would be affected by this proposed rule. The same data show imports of rock lobster into Puerto Rico originated from The Bahamas, Dominican Republic and Honduras, which have legal size standards less than the minimum legal standards of Puerto Rico and the U.S. Virgin Islands. Both Puerto Rico and the U.S. Virgin Islands, however, prohibit the possession of spiny lobster with a carapace less than 3.5 inches (8.89 cm), which, in turn, prohibits the importation of lobsters that do not meet their size standard. Puerto Rico also prohibits possession of berried lobsters. Therefore, the proposed prohibition against importation of berried lobsters should not affect small businesses that import spiny lobster into Puerto Rico. Furthermore, preliminary evidence suggests little to none of the spiny lobster imports into Puerto Rico include meat with the exoskeleton removed.

This proposed rule would also prohibit importation of spiny lobster with their pleopods removed. Most imports of spiny lobster are parts of or whole lobster with the meat attached to the exoskeleton. Hence, this particular prohibition is expected to affect a small minority of imports.

The Western Central Atlantic Fishery Commission has reported that harvesting and trading of spiny lobster below the minimum legal size is a serious problem, especially in Brazil. It has also been reported to be a problem in Nicaragua, Honduras and the Bahamas. From 2002 through 2007, of the top four countries of origin of imported frozen rock lobster and other sea crawfish (HS 030611000) that harvest spiny lobster, about 32 percent of frozen rock lobster and other sea crawfish by value were imported from Brazil, followed by about 21 percent from the Bahamas, about 18 percent from Honduras, and 16 percent from Nicaragua, for a total of about 86 percent of the frozen rock lobster imports from countries that harvest spiny lobster. The

remaining countries of origin are Colombia (about 4 percent), Belize (about 3 percent), Mexico (about 3 percent), Jamaica (about 2 percent), Panama (about 1 percent), and Dominican Republic, Turks and Caicos Islands, Haiti, Costa Rica, Guatemala, Venezuela, Trinidad and Tobago, and Martinique, all under one percent.

During the same period, U.S. imports of non-frozen rock lobster and other sea crawfish (HS 030621000) from countries of origin that also harvest spiny lobster were Costa Rica, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Turks and Caicos Islands, and Venezuela. Because Honduras, Nicaragua, Turks and Caicos Islands, and Venezuela have minimum size standards that are equivalent to the proposed size standards that would apply anywhere subject to the United States, except Puerto Rico or the U.S. Virgin Islands, this proposed rule would affect small businesses that import non-frozen spiny lobster from the following countries of origin: Costa Rica, Guatemala, Jamaica, and Mexico. About 93 percent of the non-frozen rock lobster imports by value from countries of origin that harvest spiny lobster are from Mexico, and increasingly these imports from Mexico have been live lobsters. Collectively, the imports of non-frozen rock lobster from these four countries of origin (Costa Rica, Guatemala, Jamaica, and Mexico) represent about 94 percent of the non-frozen imports by value for countries that harvest spiny lobster.

Frozen imports of rock lobster represent the large majority of rock lobster imports. During the period from 2002 through 2007, of the top four countries of origin that harvest spiny lobster, about 32 percent of frozen rock lobster and other sea crawfish were imported from Brazil, followed by about 21 percent from the Bahamas, about 18 percent from Honduras, and 16 percent from Nicaragua, for a total of about 86 percent of the rock lobster imports from these countries.

Customs data from January 22, 2004, through December 31, 2007, for frozen rock lobster imports from the top four countries of origin (Brazil, Bahamas, Honduras, and Nicaragua), indicate 98 businesses imported frozen rock lobster from these 4 countries. Thirteen of these businesses are foreign-based, and at least 3 are subsidiaries of much larger companies. Of the remaining 82 businesses, 45 of them imported frozen rock lobster in 1 year, followed by 17 businesses in 2 years, 10 in 3 years, and 10 in 4 years. The number of small businesses in any 1 year that imported frozen rock lobster from one or more of these countries ranged from 47 to 32

from 2004 through 2007, with an average of 38 annually. Therefore, 86 percent of the annual imports of frozen rock lobster from countries that harvest spiny lobster are brought in by an average of 38 small businesses. This is indicative that this proposed rule would not have an adverse impact on a substantial number of small or large businesses.

**List of Subjects**

*50 CFR Part 622*

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

*50 CFR Part 640*

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

Dated: October 23, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 622 and 640 are proposed to be amended as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.1, a sentence is added to the end of paragraph (b) to read as follows:

**§ 622.1 Purpose and scope.**

\* \* \* \* \*

(b) \* \* \* This part also governs importation of Caribbean spiny lobster into Puerto Rico or the U.S. Virgin Islands.

\* \* \* \* \*

3. In § 622.2, the definition of “Import” is added in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Import* means, for the purpose of §§ 622.1(b) and 622.50 only,—

(1) To land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, Puerto Rico or the U.S. Virgin Islands, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; but

(2) Does not include any activity described in paragraph (1) of this definition with respect to fish caught in

the U.S. exclusive economic zone by a vessel of the United States.

\* \* \* \* \*

4. In § 622.3, paragraph (a) is revised and paragraph (f) is added to read as follows:

**§ 622.3 Relation to other laws and regulations.**

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) through (f) of this section.

\* \* \* \* \*

(f) Regulations pertaining to additional prohibitions on importation of spiny lobster into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands are set forth in part 640 of this chapter.

5. In § 622.7, paragraph (ii) is added to read as follows:

**§ 622.7 Prohibitions.**

\* \* \* \* \*

(ii) Fail to comply with the Caribbean spiny lobster import prohibitions, as specified in § 622.50.

6. Section 622.50 is added to subpart C to read as follows:

**§ 622.50 Caribbean spiny lobster import prohibitions.**

(a) *Minimum size limits for imported spiny lobster.* There are two minimum size limits that apply to importation of spiny lobster into the United States -one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that applies to Puerto Rico and the U.S. Virgin Islands.

(1) No person may import a Caribbean spiny lobster with less than a 6-ounce (170-gram) tail weight into Puerto Rico or the U.S. Virgin Islands. For the purposes of paragraph (a) of this section, a 6-ounce (170-gram) tail weight is defined as a tail that weighs 5.9–6.4 ounces (167–181 grams). If the documentation accompanying an imported Caribbean spiny lobster (including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices) indicates that the product does not satisfy the minimum tail-weight, the person importing such Caribbean spiny lobster has the burden to prove that such Caribbean spiny lobster actually does satisfy the minimum tail-weight requirement or that such Caribbean spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such Caribbean spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the imported product itself

does not satisfy the minimum tail-weight requirement, the person importing such Caribbean spiny lobster has the burden to prove that such Caribbean spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such Caribbean spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the burden is satisfied such Caribbean spiny lobster will be considered to be in compliance with the minimum 6-ounce (170-gram) tail-weight requirement.

(2) See § 640.27 of this chapter regarding the minimum size limit that applies to spiny lobster imported into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands.

(b) *Additional Caribbean spiny lobster import prohibitions*—(1) *Prohibition related to tail meat*. No person may import into any place subject to the jurisdiction of the United States Caribbean spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) *Prohibitions related to egg-bearing spiny lobster*. No person may import into any place subject to the jurisdiction of the United States Caribbean spiny lobster with eggs attached or Caribbean spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods (swimmerets) are the first five pairs of abdominal appendages.

## PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

7. The authority citation for part 640 continues to read as follows:

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

8. Section 640.1 is revised to read as follows:

### § 640.1 Purpose and scope.

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

(b) This part governs conservation and management of spiny lobster and slipper (Spanish) lobster in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico. This part also governs importation of spiny lobster into any place subject to the jurisdiction of the United States.

(c) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobster, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from the requirements of this part 640, except for § 640.27 with which such an owner or operator must comply, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

9. In § 640.2, the definition for “Regional Director” is removed, the definition for “Spiny lobster” is revised, and definitions for “Import” and “Regional Administrator” are added in alphabetical order to read as follows:

### § 640.2 Definitions.

\* \* \* \* \*

*Import* means—

(1) To land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; but

(2) Does not include any activity described in paragraph (1) of this definition with respect to fish caught in the U.S. exclusive economic zone by a vessel of the United States.

\* \* \* \* \*

*Regional Administrator (RA)*, for the purposes of this part, means the Administrator, Southeast Region, NMFIS, 263 13th Avenue South, St. Petersburg, FL 33701, or a designee.

\* \* \* \* \*

*Spiny lobster* means the species *Panulirus argus*, or a part thereof.

\* \* \* \* \*

10. In § 640.3, paragraph (a) is revised, and paragraph (c) is added to read as follows:

### § 640.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) and (c) of this section.

\* \* \* \* \*

(c) Regulations pertaining to additional prohibitions on importation of spiny lobster into Puerto Rico or the U.S. Virgin Islands are set forth in part 622 of this chapter.

11. In § 640.7, introductory text is revised, and paragraph (w) is added to read as follows:

### § 640.7 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it

is unlawful for any person to do any of the following:

\* \* \* \* \*

(w) Fail to comply with the spiny lobster import prohibitions, as specified in § 640.27.

12. Section 640.8 is revised to read as follows:

### § 640.8 Facilitation of enforcement.

See § 600.730 of this chapter.

13. Section 640.9 is revised to read as follows:

### § 640.9 Penalties.

See § 600.735 of this chapter.

14. Section 640.27 is added to subpart B to read as follows:

### § 640.27 Spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster*. There are two minimum size limits that apply to importation of spiny lobster into the United States—one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that applies to Puerto Rico and the U.S. Virgin Islands.

(1) No person may import a spiny lobster with less than a 5-ounce (142-gram) tail weight into any place subject to the jurisdiction of the United States excluding Puerto Rico and the U.S. Virgin Islands. For the purposes of paragraph (a) of this section, a 5-ounce (142-gram) tail weight is defined as a tail that weighs 4.2–5.4 ounces (119–153 grams). If the documentation accompanying an imported spiny lobster (including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices) indicates that the product does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster actually does satisfy the minimum tail-weight requirement or that such spiny lobster has a tail length of 5.5 inches (13.97 cm) or greater or that such spiny lobster has or had a carapace length of greater than 3.0 inches (7.62 cm). If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster has a tail length of 5.5 inches (13.97 cm) or greater or that such spiny lobster has or had a carapace length of greater than 3.0 inches (7.62 cm). If the burden is satisfied, such spiny lobster will be considered to be in compliance with the minimum 5-ounce (142-gram) tail-weight requirement.

(2) See § 622.50 of this chapter regarding a more restrictive minimum

size limit that applies to spiny lobster imported into Puerto Rico or the U.S. Virgin Islands.

(b) Additional spiny lobster import prohibitions - (1) Prohibition related to tail meat. No person may import into any place subject to the jurisdiction of the United States spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) Prohibitions related to egg-bearing spiny lobster. No person may import into any place subject to the jurisdiction of the United States spiny lobster with eggs attached or spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods (swimmerets) are the first five pairs of abdominal appendages.

#### **PART 640—[AMENDED]**

15. In addition to the amendments set forth above, in 50 CFR part 640, remove the words “Magnuson Act” and “Regional Director” and add in their places the words “Magnuson-Stevens Act” and “Regional Administrator”, respectively, wherever they occur.

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