

including minority and low-income communities.

#### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 13, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, pertaining to the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 19, 2008.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

#### **PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

#### **Subpart J—District of Columbia**

■ 2. Section 52.477 is added to read as follows:

#### **§ 52.477 Control strategy: Particulate matter.**

*Determination of Attainment.* EPA has determined, as of January 12, 2009, the District of Columbia portion of the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS has attained the 1997 PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 1997 PM<sub>2.5</sub> NAAQS.

#### **Subpart V—Maryland**

■ 3. Section 52.1081 is added to read as follows:

#### **§ 52.1081 Control strategy: Particulate matter.**

*Determination of Attainment.* EPA has determined, as of January 12, 2009, the Maryland portion of the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS has attained the 1997 PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 1997 PM<sub>2.5</sub> NAAQS.

#### **Subpart VV—Virginia**

■ 4. Section 52.2429 is added to read as follows:

#### **§ 52.2429 Control strategy: Particulate matter.**

*Determination of Attainment.* EPA has determined, as of January 12, 2009, the Virginia portion of the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS has attained the 1997 PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as

the area continues to attain the 1997 PM<sub>2.5</sub> NAAQS.

[FR Doc. E8–31305 Filed 1–9–09; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 52 and 81**

[EPA–R10–OAR–2007–0915; FRL–8747–7]

### **Approval and Promulgation of State Implementation Plans: Oregon; Salem Carbon Monoxide Nonattainment Area; Designation of Areas for Air Quality Planning Purposes**

#### *Correction*

In rule document E8–30825 beginning on page 79655 in the issue of Tuesday, December 30, 2008, make the following corrections:

1. On page 79655, in the third column, in the **DATES** section, in the fourth line, “January 29, 2008” should read “January 29, 2009”.

#### **§ 81.338 [Corrected]**

2. On page 79661, in § 81.338, in the table “OREGON—CARBON MONOXIDE”, in the “Date” column, both instances of “3/2/08” should read “3/2/09”

[FR Doc. Z8–30825 Filed 1–9–09; 8:45 am]

BILLING CODE 1505–01–D

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

### **50 CFR Parts 622 and 640**

[Docket No. 070717349–81641–03]

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:** Final rule.

**SUMMARY:** NMFS issues this final rule to 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 final rule establishes 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 final rule prohibits 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 final rule is to enhance the conservation of the spiny lobster resource and improve effectiveness of law enforcement related to such conservation.

**DATES:** This final rule is effective February 11, 2009.

**ADDRESSES:** Copies of the Final Environmental Impact Statement (FEIS), Initial Regulatory Flexibility Analysis (IRFA), and the Record of Decision (ROD) may be obtained from Jason Rueter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308; e-mail [jason.rueter@noaa.gov](mailto:jason.rueter@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).

On October 15, 2008, NMFS published a notice of availability of Amendments 4 and 8 and requested public comments (73 FR 61015). On October 29, 2008, NMFS published the proposed rule to implement Amendments 4 and 8 and requested public comments (73 FR 64295). NMFS

approved Amendments 4 and 8 on December 22, 2008. The rationale for the measures in Amendments 4 and 8 is provided in the amendments and in the preamble to the proposed rule and is not repeated here.

#### Comments and Responses

NMFS received four comments on the proposed rule from two individuals, a conservation organization, and a governmental agency. Three of the comments supported all of the actions contained in the proposed rule. One comment opposed one aspect of the proposed rule. The opposing comment and NMFS' response are provided below.

*Comment 1:* One commenter opposed the wording of the prohibition of spiny lobster imports smaller than the proposed minimum size limits. The commenter believed the smaller 5-ounce (142-gram) tail weight minimum size limit applicable to the continental United States could undermine the effectiveness of the 6-ounce (170-gram) tail weight minimum size limit applicable to Puerto Rico and the U.S. Virgin Islands, i.e., that the smaller minimum size spiny lobster from the continental United States could legally be subsequently imported into Puerto Rico or the U.S. Virgin Islands.

*Response:* This rule defines "import" to mean 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 custom laws of the United States. This rule will prohibit any person from importing a spiny lobster, as defined by the rule, into Puerto Rico or the U.S. Virgin Islands that is less than the applicable 6-ounce (170-gram) tail weight minimum size limit. Thus, spiny lobster legally imported into the continental United States at a size less than a 6-ounce (170-gram) tail weight could not be legally imported into Puerto Rico or the U.S. Virgin Islands.

#### Classification

The Administrator, Southeast Region, NMFS, determined that Amendments 4 and 8 are necessary for the conservation and management of the spiny lobster fishery and are consistent with the Magnuson-Stevens Act, and other applicable laws.

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

NMFS prepared an FEIS for this amendment. A notice of availability for the FEIS was published on October 24, 2008 (73 FR 63470). A copy of the ROD

is available from NMFS (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

This rule will implement importation standards for spiny lobster, *Panulirus argus*. These standards 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.

The primary entities that are expected to be affected by this rule are businesses that import spiny lobster into the United States from countries: (1) Without legal minimum size standards or with legal minimum size standards that are less than those of this rule, (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/research/data.html](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, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Trinidad and Tobago, Turks and Caicos Islands, and Venezuela), and of these countries, only Costa Rica, Guatemala, Panama, and Trinidad and Tobago have no harvest-size standards for spiny lobster. Of the 13 countries with known harvest-size standards, 7 have legal size standards for spiny lobster that meet or exceed the 5-ounce (142-gram) minimum tail weight specified by the rule that will apply anywhere subject to U.S. jurisdiction, except Puerto Rico and the U.S. Virgin Islands where a more restrictive 6-ounce (170-gram) minimum tail weight will apply. These countries are: The Bahamas, Colombia, Dominican Republic, Honduras, Nicaragua, Turks and Caicos Islands, and Venezuela. Three countries, Belize, Brazil, and Mexico, have standards similar to the minimum tail weight in this rule and the imports from these countries are expected to be subject to little or no impact. Thus, the 5-ounce (142-gram) minimum tail weight specified by this rule could affect small businesses that import frozen spiny lobster from the following countries of origin into areas subject to U.S. jurisdiction, excluding Puerto Rico or the U.S. Virgin Islands: Costa Rica, Guatemala, Guyana, Haiti, Jamaica, Panama, and Trinidad and Tobago.

Among the 17 countries of origin that harvest spiny lobster, the following countries prohibit the harvest of berried (egg-bearing) lobsters: The Bahamas, Brazil, Belize, Colombia, Costa Rica, Dominican Republic, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, the Turks and Caicos Islands, and Venezuela. Hence, the prohibition against importation of berried lobsters will not affect legal imports from these countries. However, the prohibition against importation of berried lobsters could affect spiny lobster imports from Guatemala, Martinique and Trinidad and Tobago. Among the 17 countries of origin listed above, only 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.

Most imports of spiny lobster into the U.S. (excluding Puerto Rico and the U.S. Virgin Islands) are parts of or whole lobster with the meat attached to the exoskeleton. Hence, the prohibition against imports of meat without the exoskeleton attached is expected to affect a small minority of imports.

U.S. Customs data show there were no imports of rock lobster into the U.S. Virgin Islands from 2001 through 2007. Consequently, no small businesses that import spiny lobster into the U.S. Virgin Islands are expected to be affected by this 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. Furthermore, data suggest little to none of the spiny lobster imports into Puerto Rico include meat with the exoskeleton removed. Therefore, because of existing restrictions and the absence of or minimal spiny lobster meat imports, this rule is not expected to affect small businesses that import spiny lobster into Puerto Rico.

Despite existing regulations in the respective countries, the Western Central Atlantic Fishery Commission has reported that harvesting and trading of spiny lobster below the minimum legal size is a problem in Brazil, Nicaragua, Honduras, and the Bahamas. Frozen imports of rock lobster represent the large majority of rock lobster imports. Of the top four countries of origin of imported frozen rock lobster and other sea crawfish (HS 030611000) that harvest spiny lobster, approximately 32 percent of frozen rock lobster and other sea crawfish by value imported from 2002 through 2007 were from Brazil, followed by approximately 21 percent from the Bahamas, 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 (4 percent), Belize (3 percent), Mexico (3 percent), Jamaica (2 percent), Panama (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, 2002 through 2007, 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 size standards that will apply anywhere subject to the U.S. jurisdiction, except Puerto Rico or the U.S. Virgin Islands, this rule will 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.

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.

The information provided above supports a determination that this rule will not have a significant economic impact on a substantial number of small or large business entities. An Initial Regulatory Flexibility Act Analysis was prepared for the proposed rule, and the resultant analysis concluded the same finding of no significant economic impact. Public comment was solicited on this determination through the proposed rule. No challenge of this determination or other substantive issue was received through public comment

on the proposed rule and, thus, no changes were made in the rule. Accordingly, a final regulatory flexibility analysis was not required or prepared. Copies of the RIR and IRFA available (see **ADDRESSES**).

#### 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: January 6, 2009.

#### 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 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, NMFS, 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.

[FR Doc. E9-372 Filed 1-9-09; 8:45 am]

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