

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 0907151138-1235-03]

RIN 0648-AY03

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands; Queen Conch Management Measures**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements measures to address overfishing of Caribbean queen conch in the U.S. Caribbean. This rule extends the queen conch seasonal closure from 3 months to 5 months, and prohibits fishing for and possession of queen conch in or from the Caribbean exclusive economic zone (EEZ) east of 64°34' W. longitude, which includes Lang Bank east of St. Croix, U.S. Virgin Islands (USVI), when harvest and possession of queen conch is prohibited in St. Croix territorial waters as a result of a territorial quota closure. The intended effects of this final rule are to prevent additional fishing pressure on queen conch in the U.S. Caribbean, and to improve enforcement of regulations affecting the queen conch resource by improving compatibility among Federal and territorial regulations.

**DATES:** This rule is effective May 31, 2011.

**ADDRESSES:** Copies of the regulatory amendment, which includes an Environmental Assessment (EA), and the final regulatory flexibility analysis (FRFA) may be obtained from Britni Tokotch, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701 or may be downloaded from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Britni Tokotch, 727-824-5305.

**SUPPLEMENTARY INFORMATION:** The Caribbean queen conch fishery is managed under the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the USVI (FMP). The FMP was prepared by the Caribbean Fishery Management Council (Council), and is implemented through regulations at 50 CFR part 622 under the

authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

This final rule extends the current 3-month (July 1 through September 30) closure in Federal waters in the area east of 64°34' W. longitude, which includes Lang Bank east of St. Croix, USVI (Lang Bank), to a 5-month closure, from June 1 through October 31 each year. This final rule also implements a compatible queen conch harvest quota closure for Federal waters. Under this rule, when the USVI closes territorial waters off St. Croix to the harvest and possession of queen conch, NMFS will concurrently close the queen conch harvest in Lang Bank. NMFS will notify the public of the closure by filing a notice with the Office of the Federal Register. During the closure, fishing for or possession of Caribbean queen conch on board a fishing vessel, in or from Lang Bank is prohibited. Closure of Lang Bank is in effect until the next fishing season for territorial waters opens November 1, each year.

**Comments and Responses**

The following is a summary of the comments NMFS received on the proposed rule and the queen conch regulatory amendment, and NMFS' respective responses. During the comment period, NMFS received four comments on the proposed rule. The submissions included one letter from a Federal agency, which was in agreement with the actions in this proposed rule. The remaining submissions were unique letters from individuals, one of which is unrelated to the actions contained in the regulatory amendment and, therefore, is not addressed; the other two comments are addressed below.

*Comment 1:* One commenter questioned why a 4-month seasonal closure was not considered as an alternative to the existing 3-month closure and the proposed 5-month closure.

*Response:* The intent of the regulatory amendment and this proposed rule is to establish consistent regulations between the USVI and U.S. Federal waters. The USVI territorial government requested the Council and NMFS implement compatible regulations, including a compatible seasonal closure and a compatible quota closure, to simplify enforcement efforts. The lack of compatible regulations makes enforcement difficult, which inhibits resource protection. A 4-month closure was not considered because it would not be consistent with USVI regulations, and would not alleviate the concerns about enforcement that prompted this action.

*Comment 2:* One commenter expressed concern regarding Federal consistency with the 50,000-lb (28,680-kg) quota set by the USVI. Specifically, the commenter expressed concern regarding the possibility the USVI territorial government could increase the queen conch quota in the future.

*Response:* The queen conch regulatory amendment and this proposed rule do not address a Federal quota for queen conch. This proposed rule recognizes the quota already established by the USVI. The intent of this proposed rule is to establish consistency between Federal regulations and those already established by the USVI territorial government to prevent additional fishing pressure when the USVI quota is met and to enhance enforcement efforts.

In Amendment 2 to the Fishery Management Plan for Queen Resources of Puerto Rico and the USVI and Amendment 5 to the Reef Fish Fishery Management Plan of Puerto Rico and the USVI (2010 Caribbean ACL Amendment), the Council is considering actions that establish annual catch limits (ACLs) and accountability measures (AMs) to ensure the ACLs are not exceeded. The Council's preferred alternative is to set the ACL for queen conch at 50,000 lb (28,680 kg). Once the ACL is reached or projected to be reached, Lang Bank would be closed to the harvest and possession of queen conch. The 2010 Caribbean ACL Amendment is expected to be implemented in the near future. When this amendment is implemented, the ACLs and AMs will apply even if the USVI territorial government increases the territorial quota in the future.

**Classification**

The Regional Administrator, Southeast Region, NMFS, determined that the regulatory amendment is necessary for the conservation and management of the queen conch fishery and that it is 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 FRFA, as required by section 604 of the Regulatory Flexibility Act. The FRFA describes the economic impact this final rule is expected to have on small entities. A description of the action implemented through this final rule, the need for and objectives of this final rule, and the legal basis for this final rule are contained in the preamble of the proposed rule, and are not repeated here. A copy of this analysis is available from the Council

(see **ADDRESSES**). A summary of the analysis follows.

No significant issues associated with the economic analysis contained in the proposed rule were raised through public comment. A summary of the comments received is provided in the previous section of this preamble. No changes were made in this final rule as a result of these comments.

No duplicative, overlapping, or conflicting Federal rules have been identified. Additionally, this final rule would not establish any new reporting, recordkeeping, or other compliance requirements.

This final rule will directly apply to and may directly affect commercial fishermen and for-hire vessels in St. Croix that harvest queen conch. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including commercial fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the revenues threshold is \$7.0 million (NAICS code 713990, recreational industries).

All commercial fishermen who may be affected by this final rule are determined, for the purpose of this analysis, to be small entities. Federal permits are not required to fish in the U.S. Caribbean. The USVI, however, requires a commercial fishing permit to harvest marine species for commercial purposes. In 2008, there were 383 permitted fishermen in the USVI, of which 223 were in St. Croix and 160 were in St. Thomas and St. John. The ex-vessel value of total harvests by USVI fishermen in 2008 was approximately \$8.8 million, or approximately \$23,000 per fisherman. This estimate is substantially lower than the SBA small entity threshold. Comparable values for St. Croix fishermen are not available. However, if all revenues from marine species for the USVI are attributed to St. Croix fishermen, the appropriate average revenue per entity would be only approximately \$39,000. Even this value, as an extreme upper bound for average revenues for St. Croix fishermen, is significantly lower than the SBA threshold.

The number of for-hire dive operations in the USVI is unknown. However, 27 for-hire vessels were identified in the USVI in 2000.

Information on the economic profile of these vessels is not available. However, for-hire vessels have been determined to be small business entities in all Federal fishery-related regulatory actions to date in the Gulf of Mexico and South Atlantic. Therefore, all for-hire businesses that may be affected by this final rule are determined, for the purpose of this analysis, to be small business entities.

It is unknown whether this final rule will have any direct adverse economic effects on any small entities. Available queen conch harvest data do not distinguish between queen conch harvested from territorial waters and from Lang Bank. Incompatible Federal and St. Croix territorial water seasonal closures only began in 2008, and the first quota closure of St. Croix territorial waters occurred in 2009. It is unknown whether landings originating from Lang Bank continued after closure of the territorial waters in these years, or whether the territorial closure resulted in fishermen ceasing harvest activity in Lang Bank. If the territorial possession prohibition resulted in fishermen stopping all harvest activity, including activity that historically occurred in the Lang Bank, then this final rule will not have any direct effect on harvest activity or associated revenues from Lang Bank, because no such harvest activity would be expected to continue to occur. As a result, the only direct effect of this action on fishery participants will be the benefits of regulatory simplicity.

If, however, queen conch has traditionally continued to be harvested in Lang Bank during the period when the territorial waters closed, this final rule will result in a reduction in the revenues associated with these harvests. As previously stated, available data do not allow quantification of any harvests from Lang Bank that may be affected. In general, however, because queen conch are distributed in habitats where water depth is less than 100 fathoms (183 m), and the majority of the benthos at that depth around St. Croix is located in territorial waters, it is assumed that the majority of queen conch in the USVI are harvested from territorial waters. As a result, any reduction in harvests, and associated revenues, from Lang Bank that might occur as a result of compatible closures is expected to be minimal.

Because of the absence of location-specific harvest data and the inability to assess with certainty the economic effects of compatible quota and seasonal closures, public comment on the economic analysis was solicited in the proposed rule. No comments on the economic analysis were received and, as

a result, no information was provided to either confirm or refute the conclusion in the economic analysis that any reduction in revenues as a result of compatible closures would be minimal.

Only one alternative to the proposed rule was considered. This alternative, the no action alternative (status quo), would not implement compatible closures and would not achieve the Council's objectives. Therefore, NMFS did not adopt this alternative.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare an FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be distributed to interested parties in the Caribbean.

#### List of Subjects in 50 CFR Part 622

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

Dated: April 26, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is 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 § 622.32, paragraph (b)(1)(iv) is revised to read as follows:

##### § 622.32 Prohibited and limited harvest species.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) No person may fish for or possess on board a fishing vessel a Caribbean queen conch in or from the Caribbean EEZ, in the area east of 64°34' W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands, except during November 1 through May 31.

\* \* \* \* \*

- 3. In § 622.33, paragraph (d) is added to read as follows:

**§ 622.33 Caribbean EEZ seasonal and/or area closures.**

\* \* \* \* \*

(d) *Queen conch closure in the Caribbean EEZ.* (1) Pursuant to the procedures and criteria established in the FMP for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands, when the U.S. Virgin Islands closes territorial waters off St. Croix to the harvest and possession of queen conch, the Regional Administrator will concurrently close the Caribbean EEZ, in the area east of 64°34' W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands, by filing a notification of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the next fishing season for territorial waters opens November 1.

(2) During the closure, as specified in paragraph (d)(1) of this section, no person may fish for or possess on board a fishing vessel, a Caribbean queen conch, in or from the Caribbean EEZ, in the area east of 64°34' W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket Nos. 100610255–0257–01 and 040205043–4043–01]**

**RIN 0648–XA353**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Reef Fish Fishery; 2011 Accountability Measures for Greater Amberjack and Closure of the 2011 Gulf of Mexico Commercial Sector for Greater Amberjack**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for commercial and recreational greater amberjack in the Gulf of Mexico (Gulf) for the 2011 fishing year through this temporary final rule, announces the closure date for the 2011 commercial sector for greater amberjack of the Gulf reef fish fishery, and provides an estimated season length for the 2011 recreational greater amberjack sector of

the Gulf reef fish fishery. This rule reduces the 2011 commercial and recreational quotas for greater amberjack based on the 2010 quota overages. Additionally, NMFS has determined that the 2011 adjusted commercial quota for Gulf greater amberjack will have been reached by June 18, 2011. These actions are necessary to reduce overfishing of the Gulf greater amberjack resource.

**DATES:** This rule is effective April 29, 2011 through December 31, 2011, except for the greater amberjack commercial sector closure provision. The closure of the commercial sector for Gulf greater amberjack is effective 12:01 a.m., local time, June 18, 2011, until 12:01 a.m., local time, on January 1, 2012.

**ADDRESSES:** Copies of the final rule for Amendment 30A, the Final Supplemental Environmental Impact Statement (FSEIS) for Amendment 30A, and other supporting documentation may be obtained from Rich Malinowski, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727–824–5305.

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, telephone: 727–824–5305, e-mail [Rich.Malinowski@noaa.gov](mailto:Rich.Malinowski@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf is managed under the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). 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 622.

**Background**

The 2006 reauthorization of the Magnuson-Stevens Act implemented new requirements that annual catch limits (ACLs) and AMs be established to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and correct or mitigate overages of the ACL if they occur. Section 303(a)(15) of the Magnuson-Stevens Act mandates the establishment of ACLs at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

On July 3, 2008, NMFS issued a final rule (73 FR 38139) to implement Amendment 30A to the FMP (Amendment 30A). Amendment 30A established commercial and recreational quotas for Gulf greater amberjack and AMs that would go into effect if the commercial and recreational quotas for greater amberjack are exceeded. In

accordance with regulations at 50 CFR 622.49(a)(1)(i), when the applicable commercial quota is reached, or projected to be reached, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. If despite such closure, commercial landings exceed the quota, the AA will reduce the quota the year following an overage by the amount of the overage of the prior fishing year.

Amendment 30A also implemented AMs for the Gulf greater amberjack recreational sector of the reef fish fishery. As described at 50 CFR 622.40(a)(1)(ii), if recreational landings are met or projected to be met, the AA will close the recreational sector for the remainder of the fishing year. In addition, if recreational landings exceed the quota, the AA will reduce the length of the recreational fishing season the year following an overage by the amount necessary to recover the overage of the prior fishing year. Also, if necessary, the reduced fishing season may be adjusted during the fishing year to ensure the recreational harvest achieves, but does not exceed the intended harvest level.

**Management Measures Contained in This Temporary Rule**

In 2009, the commercial sector of greater amberjack was closed on November 7, when the commercial quota of 503,000 lb (228,157 kg) was determined to be reached. Finalized 2009 commercial landings data indicated the commercial quota was exceeded by 25.8 percent, or 129,928 lb (58,934 kg). The reduced 2010 commercial quota for Gulf greater amberjack was 373,072 lb (169,222 kg). NMFS closed the commercial sector for Gulf greater amberjack on October 28, 2010 (75 FR 64171), when NMFS projected that the 373,072 lb (169,222 kg) quota had been reached. Finalized 2010 commercial landings data indicate the commercial quota was exceeded by 50.7 percent, or 189,100 lb (85,774 kg). Therefore, the reduced 2011 commercial quota for Gulf greater amberjack is 313,900 lb (142,383 kg).

The NMFS Southeast Fisheries Science Center (SEFSC) estimates that 189,618 lb (86,009 kg) of greater amberjack were landed by the commercial sector during the months of January and February of 2011. Commercial harvest of greater amberjack is prohibited during the months of March through May each year to protect spawning aggregations. The fishing season for commercial greater amberjack re-opens on June 1, 2011 at which time the remaining 124,282 lb (56,373 kg) of