

0250)—Oregon Title V Operating Permits.

• OAR 340–228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content, Mercury Rules (0672 Emission Caps, 0673 Monitoring Requirements for the Hg Emission Standards, 0676 Heat Input Determinations 0674, 0676 Coal Sampling and Analysis, and 0678 Hg Mass Emissions Measurement Prior to Any Control Devices 0678).

• OAR 340–228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content Federal Acid Rain Program (0300).

• OAR 340–230—Incinerator Regulations.

• OAR 340–234–0010—Standards for Wood Products Industries—EPA is not acting on references to total reduced sulfur from smelt dissolving tanks, sewers, drains, categorically insignificant activities, and wastewater treatment facilities in the revised definition of other sources.

#### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 15, 2011.

**Michelle L. Pirzadeh,**

*Acting, Regional Administrator, Region 10.*

[FR Doc. 2011–24525 Filed 9–22–11; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 622 and 640

[Docket No. 100305126–1558–03]

RIN 0648–AY72

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 10

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 10 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP), as prepared and submitted by the Gulf of Mexico and South Atlantic Fishery Management

Councils (Councils). If implemented, this rule would revise the lobster species contained within the fishery management unit, establish an annual catch limit (ACL) for spiny lobster, revise the Federal spiny lobster tail-separation permitting requirements, revise the regulations specifying the condition of spiny lobster landed during a fishing trip, modify the undersized attractant regulations, modify the framework procedures, and incorporate the state of Florida's derelict trap removal program into the Federal regulations that apply to the exclusive economic zone (EEZ) off Florida. Additionally, this rule would revise codified text to reflect updated contact information for the state of Florida and regulatory references for the Florida Administrative Code. The intent of this proposed rule is to specify ACLs for spiny lobster while maintaining catch levels consistent with achieving optimum yield (OY) for the resource.

**DATES:** Written comments must be received on or before October 24, 2011.

**ADDRESSES:** You may submit comments on the proposed rule identified by NOAA–NMFS–2011–0106 by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*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.

To submit comments through the Federal e-rulemaking portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA–NMFS–2011–0106" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA–NMFS–2011–0106" in the keyword search and click on "search." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of documents supporting this proposed rule, which include a draft environmental impact statement and an initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, telephone: 727-824-5305, or e-mail: [Susan.Gerhart@noaa.gov](mailto:Susan.Gerhart@noaa.gov).

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

### Background

The 2006 revisions to the Magnuson-Stevens Act require that in 2011, for FMPs for fisheries determined by the Secretary to not be subject to overfishing, ACLs must be established at a level that prevents overfishing and helps to achieve OY within a fishery. The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from Federally managed stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

### Management Measures Contained in This Proposed Rule

This rule would remove four species from the FMP; establish an ACL and an ACT for spiny lobster; revise the requirements for the Federal spiny lobster tail-separation permit; revise the regulations specifying the condition of lobster landed during a fishing trip; modify the regulations with respect to the use of undersized attractants; modify the framework procedures; and incorporate the state of Florida's derelict trap removal program into the Federal regulations that apply to the EEZ off of Florida. Additionally, this rule would revise codified text throughout the spiny lobster regulations to update relevant contact information and regulatory references.

### Removal of Species From the Fishery Management Unit

Five species of lobster are currently within the FMP: the Caribbean spiny lobster (*Panulirus argus*), the smoothtail spiny lobster (*Panulirus laeviscaus*), the spotted spiny lobster (*Panulirus guttatus*), the Spanish slipper lobster (*Scyllarides aequinoctialis*), and the ridged slipper lobster (*Scyllarides nodifer*). At present, only the Caribbean spiny lobster and the ridged slipper lobster have associated regulatory text; the other species are in the fishery management unit for data collection purposes only. This rule would remove all species from the FMP except the Caribbean spiny lobster (spiny lobster). The Councils and NMFS have determined these other lobster species are not in need of Federal management at this time. Although these species are targeted in some areas, landings are relatively low. Furthermore, individual states have the option to extend their regulations into Federal waters for these other lobster species. Also, most landings of these other species are off Florida, and Florida regulations concerning the taking of egg-bearing females, or stripping or removing eggs, are more conservative than Federal regulations for most of these species. Therefore, if Florida were to extend its regulations into Federal waters, these species could receive greater protection than under current management. If landings or effort changed for the other lobster species and the Councils determined management at the Federal level was needed, these species could be added back into the FMP at a later date.

### Spiny Lobster ACL and Accountability Measure

In 2006, the Magnuson-Stevens Act was re-authorized and included a number of changes to improve the conservation of managed fishery resources. Included in these changes are requirements that fishery management councils establish both a mechanism for specifying ACLs at a level such that overfishing does not occur in a fishery and accountability measures (AMs) to help ensure that ACLs are not exceeded and to mitigate any ACL overages that may occur. Guidance also requires fishery management councils to establish a control rule to determine allowable biological catch (ABC).

The Councils accepted the ABC control rule developed by the Gulf Council's Scientific and Statistical Committee (SSC), which set the ABC for spiny lobster at 7.32 million lb (3.32 million kg). The Councils chose not to set sector allocations and set a stock

ACL equal to the ABC. Therefore, the spiny lobster stock ACL is proposed to be set at 7.32 million lb (3.32 million kg). An ACT was set at 90 percent of the ACL, which is 6.59 million lb (2.99 million kg). If the ACT is exceeded in any year, the Councils will convene a scientific panel to review the ACL and ACT, and determine if additional AMs are needed. The ACT is proposed to serve as the AM for the spiny lobster stock. Landings have not exceeded the ACT level since the 2000/2001 fishing year. Therefore, it is unlikely the ACT would be exceeded under the current ACT preferred alternative based on landings history. However, the updated framework procedure contained within this amendment would facilitate timely adjustments of the ACT or ACL if necessary.

### Revisions to Federal Spiny Lobster Tail-Separation Permit Requirements

Spiny Lobster Amendment 1 (July 15, 1987, 52 FR 22659) initially implemented the Federal spiny lobster tail-separation permit. The original intent of the Councils was to confine holders of this permit to the commercial sector. However, the current requirements for obtaining the Federal spiny lobster tail-separation permit do not restrict the permit to commercial fishermen, which is contrary to the Councils' original intent. This rule would require applicants for a Federal spiny lobster tail-separation permit to possess either (1) A Federal spiny lobster permit or (2) a valid Florida Restricted Species Endorsement and a valid Crawfish Endorsement associated with a valid Florida Saltwater Products License.

### Condition of Spiny Lobster Landed During a Fishing Trip

Under certain situations and with possession of a valid Federal tail-separation permit, Caribbean spiny lobster tails may be separated from the body onboard a fishing vessel. This tail-separation provision can create difficulties for law enforcement personnel in determining if the lobster were originally of legal size. This rule would require lobster to be landed either all whole or all tailed during a single fishing trip. Requiring lobsters to be landed all whole or all tailed would discourage selective tailing of potentially undersized lobsters and thereby aid the enforcement of the minimum size limit.

### Use of Undersized Attractants

Federal regulations allow as many as 50 spiny lobsters less than the minimum size limit or one per trap, whichever is

greater, to be retained aboard a vessel to attract other lobsters for harvest. Currently, Federal regulations are not consistent with Florida regulations, which allow the retention of as many as 50 spiny lobsters less than the minimum size limit and one per trap. This rule would change the Federal regulations specific to the use of undersized attractants to be consistent with current Florida regulations. Additionally, although approximately 10 percent mortality is associated with the use of undersized attractants, traps using non-lobster bait or no bait at all take up to two to three times longer to harvest the same amount of lobsters as traps that use undersized attractants. This increase in effort may increase the bycatch and bycatch mortality of other species. Therefore, the use of undersized attractants that are consistent with Florida regulations provides both enforcement and biological benefits.

#### *Modification of Generic Framework Procedures*

To facilitate timely adjustments to harvest parameters and other management measures, the Councils have added the ability to adjust ACLs and AMs, and establish and adjust target catch levels, including ACTs, to the current framework procedures. These adjustments or additions may be accomplished through a regulatory amendment which is less time intensive than an FMP amendment. By including ACLs, AMs, and ACTs in the framework procedure for specifying total allowable catch, the Councils and NMFS would have the flexibility to more promptly alter those harvest parameters as new scientific information becomes available. The proposed addition of other management options into the framework procedures would also add flexibility and the ability to more timely respond to certain future Council decisions through the framework procedures.

#### *Removal of Derelict Spiny Lobster Traps in the EEZ Off Florida*

On August 27, 2009, an Endangered Species Act (ESA) biological opinion evaluating the impacts of the continued authorization of the spiny lobster fishery on ESA-listed species was completed. The opinion contained specific terms and conditions required to implement the prescribed reasonable and prudent measures, including consideration of alternatives to allow the public to remove trap-related marine debris in the EEZ off Florida. This proposed rule would authorize the removal of traps in Federal waters off Florida through Florida's trap cleanup

program, as provided in existing Florida regulations. Florida's trap cleanup program includes provisions for public participation.

#### *Revisions To Update Contact Information and Regulatory Reference Text*

This rule proposes to revise a number of references within the regulations for spiny lobster. Specifically, this proposed rule would update the spiny lobster regulations with the contact information for the state of Florida administrative offices and the relevant references within the Florida statutes and administrative code that are contained within the Federal regulations in 50 CFR parts 622 and 640. These additional revisions are unrelated to the actions contained in Amendment 10.

#### *Actions in Amendment 10 That Are Not Contained in This Rulemaking*

Amendment 10 also contains non-regulatory actions to revise the definitions of management thresholds. Definitions of maximum sustainable yield (MSY), optimum yield (OY), overfishing, and overfished were set for Caribbean spiny lobster in Amendment 6 to the FMP. Currently, the Councils have different definitions for each reference point. Amendment 10 would set a single definition for each biological reference point that would be used by both Councils and allow for a more consistent management of spiny lobster.

Currently, no allocations are set between the commercial and recreational sectors for spiny lobster. The Councils considered setting such allocations, but instead chose to not sector allocations and therefore allow for a stock ACL, stock ACT, and AM that affects both sectors.

The Councils considered alternatives to meet requirements from the 2009 biological opinion to establish lobster closed areas and lobster gear trap line marking requirements to protect threatened and endangered species; however, they chose to take no action at this time to allow time for additional stakeholder input. The Councils intend to develop Amendment 11 to the Spiny Lobster FMP to implement these measures prior to the beginning of the next spiny lobster commercial fishing season that begins on August 6, 2012.

#### **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 Amendment 10 and the FMP subject to this rulemaking, 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 an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this 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. No duplicative, overlapping, or conflicting Federal rules have been identified.

The rule would affect all fishing in the EEZ that is managed under the FMP for Spiny Lobster in the Gulf and South Atlantic. Landings of spiny lobster occur predominantly in the Florida Keys (Monroe County) and elsewhere in south Florida. Relatively small (mostly confidential) amounts have been reported for other Gulf and South Atlantic states since 1977. Fishing for spiny lobster in Florida is managed cooperatively by the Councils and the state of Florida, which collects the data used to analyze the activity. Including fishing in Federal and state waters, the numbers of commercial vessels, commercial trips, and Florida spiny lobster trap landings, traps with commercial landings of spiny lobster in Florida have all declined substantially since the implementation of Florida's Trap Certificate Program in the early 1990's, and productivity (CPUE) has increased.

Businesses directly affected by the proposed rule include those engaged in commercial shellfish harvesting (NAICS code 114112) and for-hire fishing (NAICS code 713990), and they meet the respective Small Business Administration (SBA) criteria for being small businesses. Commercial and for-hire fishing vessels that fish for spiny lobster in state and Federal waters off Florida must meet applicable Florida permitting requirements. An estimated 781 vessels landed spiny lobster commercially in Florida, on average, in the last 5 years. This includes 274 vessels (1,977 trips) with landings from the EEZ off Florida, where an estimated 35 vessels (130 trips) landed both tailed and whole lobsters on the same trips.

On average, these 35 vessels have fewer, but longer trips, higher trip landings, haul more traps per trip, and they fish at greater depths. Another 23 vessels landed slipper lobster in Florida during that time. While the number of for-hire vessels that fish for spiny lobster in the EEZ off Florida is not known, it is likely that less than the 1,330 vessels that currently have the necessary Florida permits and licenses engage in for-hire fishing for spiny lobster in state and Federal waters. None of these for-hire vessels are believed to have State commercial fishing permits/licenses. The for-hire vessels target other species as well, because annual recreational landings of spiny lobster occur predominantly in late July through the first week of September.

The majority of the actions in this proposed rule are either administrative in nature or would be expected to accommodate status quo harvests or fishing behavior. The possible exception to this determination is the proposed action relative to the possession and landing of tailed lobsters in or from the EEZ. Available data do not allow the quantification of the number of vessels that may be affected by this proposed action. Approximately 35 vessels with commercial landings from the EEZ landed both tailed and whole lobsters on the same trips. The effect on these vessels of the requirement to land either all tailed or all whole lobsters on one trip is not known. The proposed action may be a problem for for-hire vessels with a limited holding capacity. It is believed that some for-hire vessels may have been tailing lobsters during trips. The solution for these vessels may simply be the purchase of additional ice chests to store harvested lobster. However, while this proposed action may be limiting for some for-hire vessels, this would not be expected to be a problem, on average, for the for-hire fleet because the majority of vessels would not be expected to engage in the practice of landing tailed lobsters, or depend on this type of business for a significant portion of their revenues. As a result, the actions in this rule would not be expected to significantly reduce profits for a substantial number of small entities. Public comment, however, is requested on this determination because of the absence of data related to the potential effects of the proposed action on the possession and landing of tailed lobsters from the EEZ.

Alternatives were considered regarding species other than Caribbean spiny lobster (spiny lobster) in the FMP, and the proposed action would remove the other four lobster species from the FMP. None of the alternatives would be

expected have an economic impact on small entities because these species addressed are either not currently managed or are not significantly harvested. One alternative, the no-action alternative, would not meet the requirements of the Magnuson-Stevens Act because three species would have remained in the FMP for data collection purposes only without the specification of ACLs and AMs (which is no longer allowed under the Magnuson-Stevens Act). The other alternatives were not selected as preferred alternatives because the Councils determined that these species no longer required management at the Federal level because protection at the state level was adequate.

Among the alternatives considered for the action to set ACLs, the proposed action specifies a single (stock) ACL, whereby  $ACL = OY = ABC$ . The no-action alternative would not meet Magnuson-Stevens Act requirements. The remaining alternatives to the proposed action would specify higher or lower ACLs, with each alternative specifying either a single ACL for the entire fishery or sector specific ACLs, one ACL for the commercial sector, and another ACL for the recreational sector. Alternatives that would have resulted in sector ACLs were not selected because the adoption of sector ACLs would have been inconsistent with the decision to not adopt allocation ratios for the sectors. Among the alternatives that would establish stock ACLs, the proposed action would be expected to result in the greatest economic benefits because it would allow the greatest total harvest and support more recreational trips and commercial revenues without compromising the health of the resource or jeopardizing future economic benefits.

Several alternatives, including the no-action alternative, were considered for the action to set ACTs. The proposed action specifies an ACT which is less than the ACL. Although an ACT is not a required component of an FMP and the absence of an ACT would allow a harvest up to the level of the ACL, the no-action alternative was not selected because the Councils decided that an ACT was appropriate for this stock due to the uncertainty associated with harvest monitoring, particularly recreational landings. Similar to the action to specify the ACL, the remaining five alternatives to the proposed action would specify different ACTs, with each alternative specifying either a single ACT for the entire fishery or sector specific ACTs, one ACT for the commercial sector, and another ACT for the recreational sector. The alternatives

that would have resulted in sector ACTs were not adopted because the adoption of sector ACTs would have been inconsistent with the decision to not select allocation ratios or ACLs for the sectors. Among the alternatives that would not establish sector ACTs, other than the no-action alternative, the proposed action would be expected to result in the greatest economic benefits because it would allow the greatest total harvest and support more recreational trips and commercial revenues.

Several alternatives, including the no-action alternative, were considered for the action to establish AMs. The no-action alternative would not meet the Magnuson-Stevens Act requirement to establish AMs. The proposed action would establish the ACT as the AM for the spiny lobster stock. With the exception of the no-action alternative and an option to establish combined sector AMs, the alternatives to the proposed action would be inconsistent with the adoption of other actions in this proposed rule. Absent sector allocations, ACLs, and ACTs, the adoption of sector AMs would be inappropriate. Further, adjustment of sector seasons is not practical in the absence of sector ACLs or ACTs. The option that would establish combined sector AMs was not adopted because the Councils felt the proposed action would provide an adequate buffer between the target level of harvest and the annual limit on harvest.

Among the alternatives, including the no-action alternative, considered to establish the framework procedure, the proposed action incorporates two of the alternatives, updating the current protocol for cooperative management and revising the current regulatory amendment procedures by adopting the base framework procedure. The no-action alternative was not selected because the current protocol is out of date with respect to terminology and relevant agency names and authorities, and the framework procedures are not consistent with current assessment and management methods. The proposed action would facilitate implementation of changes in management measures required under the Magnuson-Stevens Act, such as changes in ACLs, ACTs, and AMs. Two of the remaining alternatives to the proposed action were not selected because they could result in a delay in the implementation of necessary changes to the FMP. Such delays would be expected to impede the effective and efficient management of the stock. The final alternative to the proposed action was not adopted because it would have given the Councils and NMFS too much

discretion to change management outside of the plan amendment process.

Five alternatives, including the no-action alternative, were considered for the action to revise the regulations regarding undersized spiny lobsters. The proposed action would allow undersized spiny lobster not exceeding 50 per vessel and 1 per trap aboard each vessel if used in the EEZ exclusively for luring, decoying, or otherwise attracting non-captive spiny lobsters into the trap. The proposed action would be expected to result in an unquantifiable increase in economic benefits to spiny lobster fishermen relative to the status quo. The other alternatives, including the no-action alternative, were not selected because they would not be consistent with Florida regulations and would result in greater restrictions on the possession of undersized spiny lobsters used as attractants. As a result, each of these alternatives would be expected to result in lower economic benefits than the proposed action.

Four alternatives, including the no-action alternative, were considered for the action to modify tailing requirements. Two of the alternatives are included in the proposed action, which would require that all lobsters from the EEZ be landed either all whole or all tailed on a single trip, and require that vessels applying for a Federal tailing permit must have either the requisite Florida permits/licenses for commercial fishing for lobster or a Federal spiny lobster permit. The no-action alternative was not selected because the Federal tailing permit was originally intended to allow tailing by commercial fishermen on long trips but, instead, current regulatory language has allowed recreational fishermen to obtain the permit, contrary to the Councils' original intent. The remaining alternative to the proposed action would prohibit any Federal lobster tail-separation permits and was not selected because it would be expected to result in greater economic losses than the proposed action.

Six alternatives, including the no-action alternative, were considered for the action to designate authority to remove derelict spiny lobster traps in the EEZ off Florida. The no-action alternative was not selected because it would not allow the removal of derelict traps, and would not, therefore, be consistent with the Council's objective to limit the amount of derelict spiny lobster gear in the EEZ off Florida. This proposed rule would authorize the removal of traps in Federal waters off Florida through Florida's trap cleanup program, as provided in existing Florida regulations, and would be expected to

have the least economic impact on small entities, based on public comment provided by commercial fishermen. The other alternatives to the proposed action would allow the public to remove derelict traps, or portions thereof, during different portions of the closed season. Assuming such authority only resulted in the removal of derelict traps, and not licensed and appropriate lobster traps, none of the alternatives to the proposed action, other than the no-action alternative, would be expected to adversely affect ongoing activity in the commercial sector during the commercial open season because, by definition, the removed traps would no longer be part of an active business operation. The no-action alternative would also not be expected to affect ongoing commercial activity because derelict trap removal by the public would not be allowed. The proposed action was selected by the Councils to allow the traps to be removed through an existing, coordinated, and well-managed Florida program.

Additional actions and alternatives were considered in the amendment but are not included in this proposed rule because they would either establish management reference points or the preferred action would not result in any regulatory change. These actions and alternatives are discussed in the following paragraphs.

Alternative definitions for maximum sustainable yield, the overfishing threshold, and the overfished threshold and other biological parameters for spiny lobster were considered. The respective alternatives proposed by the Councils are intended to bring the FMP into compliance with requirements of the Magnuson-Stevens Act, and are based on SSC recommendations. Defining these biological parameters for a species does not alter the current harvest or use of the resource. Therefore, no economic impact on small entities would be expected to result from the specification of these management parameters.

Among the alternatives considered by the Councils to establish sector allocations, the no-action alternative was adopted as the proposed action. The other alternatives would specify allocations that would have varying effects determined by the combination of alternatives used to specify allocations, ABC, ACL, OY, and ACT. The result is that some single (stock) or paired-set (sector) ACLs were greater than or less than the respective status-quo landings. Any scenario where allowable landings would be reduced would be expected to result in a reduction in economic benefits to the

respective affected sector. The Councils concluded that it was best to manage the spiny lobster fishery without allocations between the recreational and commercial sectors because no mechanism currently exists to track recreational landings and the commercial trip ticket data are not compiled with sufficient speed to support in-season quota monitoring.

Among the alternatives to specify an ABC control rule, the proposed action specifies the Gulf Council's SSC recommended ABC Control Rule. The no-action alternative and two other alternatives (for which the ABC exceeded that recommended by the SSC) would not meet Magnuson-Stevens Act guidance that an ABC control rule be used to set the ABC and that the SSC recommend the ABC to the Council. Each of the other alternatives to the proposed action would specify a lower ABC. Because specifying an ABC control rule is an administrative action, no direct economic effects on any small entities would be expected to result from any of these alternatives. The proposed action was adopted because it would be consistent with decisions made for other species managed by the Councils and would provide a statistically based method of setting ABC, even if a new stock assessment changed the status of the stock. Further, the remaining alternatives, other than the no action alternative, were not adopted because they would not allow for changes to the ABC based on subsequent stock assessments.

Including the no-action alternative, four alternatives were considered for the action to limit spiny lobster fishing to certain areas in the EEZ off Florida to protect threatened staghorn and elkhorn corals. Each of the alternatives to the proposed action would increase the restrictions on where spiny lobster fishing could occur relative to the status quo. As a result, each of these alternatives would be expected to result in adverse economic effects to spiny lobster fishermen relative to the status quo. The no action alternative was adopted as the proposed action in order to allow more public input before taking additional action and this action will be re-addressed in a subsequent amendment to the FMP.

Three alternatives, including the no-action alternative, were considered for the action to require gear markings on all lobster trap lines used in the EEZ off Florida. Each of the alternatives to the proposed action would impose new gear marking requirements and, as a result, each of these alternatives would be expected to result in adverse economic effects to spiny lobster fishermen

relative to the status quo. The no action alternative was adopted as the proposed action in order to allow for more public input before taking additional action and this action will be re-addressed in a subsequent amendment to the FMP.

#### 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: September 20, 2011.

#### John Oliver,

Deputy Assistant Administrator for Operations, 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 § 622.2, the definition for “Caribbean spiny lobster” is removed and the definition for “Caribbean spiny lobster or spiny lobster” is added in alphabetical order to read as follows.

#### § 622.2 Definitions and acronyms.

\* \* \* \* \*

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

\* \* \* \* \*

3. In § 622.6, a sentence is added to the end of paragraph (b)(1)(iv) to read as follows:

#### § 622.6 Vessel and gear identification.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) \* \* \* In the EEZ off Florida, during times other than the authorized fishing season, a Caribbean spiny lobster trap, buoy, or any connecting lines will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code.

\* \* \* \* \*

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

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

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

5. In § 640.1, the first sentence of paragraph (b) is revised to read as follows:

#### § 640.1 Purpose and scope.

\* \* \* \* \*

(b) This part governs the conservation and management of Caribbean spiny lobster (spiny 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.

\* \* \*

\* \* \* \* \*

6. In § 640.2, the definitions for “slipper (Spanish) lobster” and “spiny lobster” are removed and the definition for “Caribbean spiny lobster or spiny lobster” is added in alphabetical order to read as follows:

#### § 640.2 Definitions and acronyms.

\* \* \* \* \*

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

\* \* \* \* \*

7. In § 640.4, paragraphs (a)(1)(i) and (a)(2) are revised to read as follows:

#### § 640.4 Permits and fees.

(a) \* \* \*

(1) \* \* \*

(i) *EEZ off Florida and spiny lobster landed in Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, such person must have the licenses and certificates specified to be a “commercial harvester,” as defined in Rule 68B–24.002, Florida Administrative Code, in effect as of July 1, 2008. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850–488–4676. Copies may be inspected at the Office of the Regional Administrator; the Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

\* \* \* \* \*

(2) *Tail-separation permits.* For a person to possess aboard a fishing vessel

a separated spiny lobster tail in or from the EEZ as defined in § 640.1 (b), a valid Federal tail-separation permit must be issued to the vessel and must be on board. Permitting prerequisites for the tail-separation permit are either a valid Federal vessel permit for spiny lobster or a valid Florida Saltwater Products License with a valid Florida Restricted Species Endorsement and a valid Crawfish Endorsement.

\* \* \* \* \*

8. In § 640.6, paragraphs (a) and (c) are revised to read as follows:

#### § 640.6 Vessel and gear identification.

(a) *EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobster by traps in the EEZ off Florida must comply with the vessel and gear identification requirements specified in sections 379.367(2)(a)1. and 379.367(3), Florida Statutes, in effect as of July 1, 2009, and in Rule 68B–24.006(3), (4), and (5), Florida Administrative Code, in effect as of July 1, 2008.

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida’s waters in Rule 68B–24.006(6), Florida Administrative Code, in effect as of July 1, 2008.

(3) The incorporation by reference in paragraphs (a)(1) and (a)(2) of this section of sections 379.367(2)(a)1. and 379.367(3), Florida Statutes, Rule 68B–24.006(3), (4), and (5), and (6) Florida Administrative Code, was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850–488–4676. Copies may be inspected at the Office of the Regional Administrator; the Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

\* \* \* \* \*

(c) *Unmarked traps and buoys.* An unmarked spiny lobster trap or buoy in the EEZ is illegal gear.

(1) *EEZ off Florida.* Such trap or buoy, and any connecting lines, during times other than the authorized fishing season, will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code. An owner of such trap or buoy remains subject to appropriate civil penalties.

(2) *EEZ other than off Florida.* Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties.

9. In § 640.7, paragraph (g) is revised to read as follows:

**§ 640.7 Prohibitions.**

\* \* \* \* \*

(g) Fail to return immediately to the water a berried spiny lobster; strip eggs from or otherwise molest a berried spiny lobster; or possess a spiny lobster, or part thereof, from which eggs, swimmerettes, or pleopods have been removed or stripped; as specified in § 640.21(a).

\* \* \* \* \*

10. In § 640.20, paragraph (b)(3)(iii) is removed, and paragraph (b)(3)(i) is revised and two sentences are added at the end of paragraph (b)(3)(ii) to read as follows:

**§ 640.20 Seasons.**

\* \* \* \* \*

- (b) \* \* \*
- (3) \* \* \*

(i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 68B-24.005(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994, apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850-488-4676. Copies may be inspected at the Office of the Regional Administrator; the Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A spiny lobster trap, buoy, or rope in the EEZ off Florida, during periods not authorized in this paragraph will be considered derelict and may be disposed of in accordance with Rules 68B-55.002 and 68B-55.004 of the Florida Administrative Code. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(ii) \* \* \* A spiny lobster trap, buoy, or rope in the EEZ off the Gulf states, other than Florida, during periods not

authorized in this paragraph (b)(3) will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

\* \* \* \* \*

11. In § 640.21, paragraph (a), the second sentence of paragraph (c), and paragraph (d) are revised to read as follows:

**§ 640.21 Harvest limitations.**

(a) *Berried lobsters.* A berried (egg-bearing) spiny lobster in or from the EEZ must be returned immediately to the water unharmed. If found in a trap in the EEZ, a berried spiny lobster may not be retained in the trap. A berried spiny lobster in or from the EEZ may not be stripped of its eggs or otherwise molested. The possession of a spiny lobster, or part thereof, in or from the EEZ from which eggs, swimmerettes, or pleopods have been removed or stripped is prohibited.

\* \* \* \* \*

(c) *Undersized attractants.* \* \* \* No more than fifty undersized spiny lobsters and one per trap aboard the vessel, may be retained aboard for use as attractants. \* \* \*

(d) *Tail separation.* (1) The possession aboard a fishing vessel of a separated spiny lobster tail in or from the EEZ as defined in § 640.1 (b), is authorized only when the possession is incidental to fishing exclusively in the EEZ on a trip of 48 hours or more and a valid Federal tail-separation permit, and either a valid Federal vessel permit for spiny lobster or a valid Florida Saltwater Products License with a valid Florida Restricted Species Endorsement and a valid Crawfish Endorsement, as specified in § 640.4(a)(2), has been issued to and are on board the vessel.

(2) Spiny lobster must be landed either all whole or all tailed on a single fishing trip.

12. In § 640.22, paragraphs (a)(3) and (b)(3)(i) are revised to read as follows:

**§ 640.22 Gear and diving restrictions.**

(a) \* \* \*

(3) Poisons and explosives may not be used to take a spiny lobster in the EEZ as defined in § 640.1 (b). For the purposes of this paragraph (a)(3), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) For traps in the EEZ off Florida, by the Division of Law Enforcement, Florida Fish and Wildlife Conservation Commission, in accordance with the procedures in Rule 68B-24.006(7), Florida Administrative Code, in effect as of July 1, 2008. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850-488-4676. Copies may be inspected at the Office of the Regional Administrator; the Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

\* \* \* \* \*

13. Section 640.25 is revised to read as follows:

**§ 640.25 Adjustment of management measures.**

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the Regional Administrator may establish or modify the following items: reporting and monitoring requirements, permitting requirements, bag and possession limits, size limits, vessel trip limits, closed seasons, closed areas, reopening of sectors that have been prematurely closed, annual catch limits (ACLs), annual catch targets (ACTs), quotas, accountability measures (AMs), maximum sustainable yield (or proxy), optimum yield, total allowable catch (TAC), management parameters such as overfished and overfishing definitions, gear restrictions, gear markings and identification, vessel identification requirements, allowable biological catch (ABC) and ABC control rule, rebuilding plans, and restrictions relative to conditions of harvested fish (such as tailing lobster, undersized attractants, and use as bait).

14. Add § 640.28 to subpart B to read as follows:

**§ 640.28 Annual catch limits (ACLs) and accountability measures (AMs).**

For recreational and commercial spiny lobster landings combined, the ACL is 7.32 million lb (3.32 million kg), whole weight. The ACT is 6.59 million lb, (2.99 million kg) whole weight.

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