

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

[Docket No. 240124–0022]

RIN 0648–BM63

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Framework Amendment 2**

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

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

**SUMMARY:** NMFS proposes to implement management measures described in Framework Amendment 2 to the Fishery Management Plans for Puerto Rico, St. Croix, and St. Thomas and St. John (collectively, the island-based FMPs). If implemented, this proposed rule would modify annual catch limits (ACLs) for spiny lobster in the U.S. Caribbean exclusive economic zone (EEZ) off Puerto Rico, St. Croix, and St. Thomas and St. John. The purpose of this proposed rule is to update management reference points for spiny lobster, consistent with the best scientific information available to prevent overfishing and achieve optimum yield (OY).

**DATES:** Written comments must be received no later than March 1, 2024.

**ADDRESSES:** You may submit comments on the proposed rule, identified by “NOAA–NMFS–2023–0137” by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and type “NOAA–NMFS–2023–0137” in the Search box (copying and pasting the FDMS Docket Number directly from this document may not yield results). Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Sarah Stephenson, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public

viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

An electronic copy of Framework Amendment 2, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/generic-framework-amendment-2-updates-spiny-lobster-overfishing-limit-acceptable-biological>.

**FOR FURTHER INFORMATION CONTACT:** Sarah Stephenson, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: [sarah.stephenson@noaa.gov](mailto:sarah.stephenson@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Puerto Rico, St. Croix, and St. Thomas and St. John fisheries include spiny lobster, and are managed under the island-based FMPs. The island-based FMPs were prepared by the Caribbean Fishery Management Council (Council) and NMFS. NMFS implements the island-based FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**Background**

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that 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.

For Puerto Rico and the U.S. Virgin Islands (USVI), NMFS, with the advice of the Council, manages fisheries under the island-based FMPs. The island-based FMPs contain management measures applicable for Federal waters off the respective island group. Federal waters around Puerto Rico extend seaward from 9 nautical miles (nmi; 16.7 km) from shore to the offshore boundary of the EEZ. Federal waters around St. Croix, and St. Thomas and St. John extend seaward from 3 nmi (5.6 km) from shore to the offshore boundary of the EEZ.

For spiny lobster in the U.S. Caribbean EEZ, only commercial

landings data are collected. Because recreational landings data are not available, the ACLs for spiny lobster are based on commercial landings and apply to all harvest for the stock, whether commercial or recreational.

In 2019, the Southeast Data, Assessment, and Review (SEDAR) completed separate stock assessments for spiny lobster for the Puerto Rico, St. Croix, and St. Thomas and St. John management areas (SEDAR 57). The Council’s Scientific and Statistical Committee (SSC) reviewed SEDAR 57, determined it to be suitable for management advice, and provided catch level recommendations. In response to SEDAR 57 and the SSC’s advice, the Council prepared Framework Amendment 1 to the island-based FMPs to update the OFLs, ABCs, and ACLs, and accountability measures (AMs) for spiny lobster. Framework Amendment 1 set ACLs for spiny lobster based on recommendations from its SSC. NMFS published the final rule to implement Framework Amendment 1 on March 16, 2023 (88 FR 16194).

Subsequent to the implementation of Framework Amendment 1, the Council requested that the NMFS Southeast Fisheries Science Center (SEFSC) conduct an update to SEDAR 57 to provide overfishing limits (OFL) and acceptable biological catch (ABC) estimates for spiny lobster for each island group for 2024 to 2026. Update assessments occur between regular, more comprehensive SEDAR assessments to determine trends in stock condition and project future catch advice. The SEFSC presented results of the 2022 Update Assessment to SEDAR 57 (SEDAR 57 Update) to the Council’s SSC at its November–December 2022 meeting. The SSC accepted the SEDAR 57 Update and recommended both variable- and constant-catch OFLs and ABCs for spiny lobster under each FMP. The constant-catch values recommended by the SSC were equal to the average OFL or ABC values projected for 2024 to 2026 in the 2022 Update Assessment. The Council reviewed these recommendations in December 2022.

Consistent with the SEDAR 57 Update, and recommendations from the SSC, the Council developed Framework Amendment 2 to prevent overfishing of spiny lobster and achieve OY for each stock, consistent with the requirements of the Magnuson-Stevens Act. For each FMP, the Council recommended constant-catch ACLs for spiny lobster equal to 95 percent of the constant-catch ABCs recommended by the SSC, which reflects the Council’s management uncertainty buffer.

All weights described in this proposed rule are in round weight.

### Management Measures Contained in This Proposed Rule

This proposed rule would revise the ACLs for spiny lobster in the EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John.

For the Puerto Rico FMP, the ACL for spiny lobster would decrease from the current ACL of 366,965 lb (166,452 kg) to 357,629 lb (162,218 kg).

For the St. Croix FMP, the ACL for spiny lobster would increase from the current ACL of 120,830 lb (54,807 kg) to 137,254 lb (62,257 kg).

For the St. Thomas and St. John FMP, the ACL for spiny lobster would increase from the current ACL of 126,089 lb (57,193 kg) to 133,207 lb (60,422 kg).

NMFS notes that Puerto Rico commercial landings of spiny lobster in recent years have come close to or exceeded the ACL. Therefore, NMFS reduced the length of the 2021 and 2022 fishing seasons as required by the AMs specified in 622.440(c)(2) (87 FR 38008, June 27, 2022 and 86 FR 40787, July 29, 2021). Conversely, commercial landings of spiny lobster in St. Croix, and St. Thomas and St. John in recent years have been below the respective ACLs, and therefore no reduction in the length of their fishing seasons was required.

### Measures in Framework Amendment 2 Not Codified in This Proposed Rule

In addition to the revised ACLs described in this proposed rule, Framework Amendment 2 would revise the spiny lobster OFLs and ABCs for Puerto Rico, St. Croix, and St. Thomas and St. John.

For the Puerto Rico FMP, the OFL for spiny lobster would decrease from 438,001 lb (198,673 kg) to 426,858 lb (193,620 kg) and the ABC for spiny lobster would decrease from 386,279 lb (175,213 kg) to 376,452 lb (170,756 kg).

For the St. Croix FMP, the OFL for spiny lobster would increase from 144,219 lb (65,416 kg) to 163,823 lb (74,309 kg) and the ABC for spiny lobster would increase from 127,189 lb (57,691 kg) to 144,478 lb (65,534 kg).

For the St. Thomas and St. John FMP, the OFL for spiny lobster would increase from 150,497 lb (68,264 kg) to 158,993 lb (75,118 kg) and the ABC for spiny lobster would increase from 132,725 lb (60,203 kg) to 140,218 lb (63,602 kg).

### 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 the FMPs for Puerto Rico, St. Croix, and St. Thomas and St. John, 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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of this proposed rule, why it is being considered, and the purpose of this proposed rule are contained in the **SUPPLEMENTARY INFORMATION** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). The factual basis of this determination follows. The purpose of this proposed rule is to update the OFLs, ABCs, and ACLs for spiny lobster, consistent with the best scientific information available, with the objective to prevent overfishing and achieve OY. The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. No new reporting and record-keeping requirements are introduced by this proposed rule. All monetary estimates in the following analysis are in 2021 dollars.

The proposed action would directly affect both anglers (recreational fishers) and commercial fishing businesses that harvest spiny lobster in the U.S. Caribbean EEZ. Anglers, however, are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, privately owned, or leased vessels. Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this analysis.

Any business that operates a commercial fishing vessel that lands spiny lobster in Puerto Rico or the USVI must be licensed to do so by the respective territorial government. Each licensed fisher represents a unique commercial fishing business.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (North American Industry Classification System 11411) 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 its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide.

From 2017 through 2021, the commercial sector of the Puerto Rico fishery as a whole generated average annual direct revenues of about \$9.58 million. Therefore, all commercial fishing businesses in Puerto Rico are small. During the same 5 years, an annual average of 710 commercial fishers reported landings; however, not all small businesses reported operating in the EEZ and harvesting spiny lobster. From 2017 through 2021, an average of 64 (9.0 percent) of Puerto Rico's small businesses reported landings of spiny lobster from the EEZ annually. These 64 small businesses collectively accounted for about 6.6 percent of all spiny lobster commercial landings by weight and value.

From 2015 through 2019, which is the most recent revenue data available for the USVI, the commercial fishing sector collectively generated average annual direct revenues of \$4.39 million. Therefore, all commercial fishing businesses in the USVI (St. Croix, and St. Thomas and St. John) are small.

During the same 5-year period, an annual average of 59 small businesses reported landings in St. Croix. Not all of these 59 active commercial fishing businesses operated in the EEZ and harvested spiny lobster. From 2015 through 2019, an average of 11 (18.3 percent) of St. Croix's 59 active small businesses reported landings of spiny lobster from the EEZ. These 11 small businesses collectively accounted for 33.5 percent of all spiny lobster commercial landings in St. Croix by weight and 34.2 percent by value.

During the period from 2015 through 2019, an annual average of 67 small businesses reported landings in St. Thomas and St. John. Not all of these active businesses landed spiny lobster from the EEZ. During that time period, an annual average of 20 (30.1 percent) of St. Thomas and St. John's 67 active small businesses reported landings of spiny lobster from the EEZ. These 20 small businesses collectively accounted for 61.8 percent of all spiny lobster landings in St. Thomas and St. John by weight and 61.3 percent by value.

In summary, 64 small commercial fishing businesses in Puerto Rico, 11 in St. Croix, and 20 in St. Thomas and St. John would be directly affected by the proposed rule annually.

This proposed rule would decrease the spiny lobster ACL for Puerto Rico from 366,965 lb (166,452 kg) to 357,629 lb (162,218 kg). The average of the 3

most recent years of landings is compared to the ACL. In 2022, the 3 most recent years of landings were 2017 through 2019 and NMFS compared the average of those landings to the ACL and found the average to exceed the ACL at that time. In 2024, the most recent 3 years of landings are from 2019 through 2021. From 2019 through 2021, an annual average of 313,837 lb (142,354 kg) of spiny lobster was landed in Puerto Rico, and that annual average is less than the proposed ACL. More recently, from 2020 through 2022, the annual average was 228,522 lb (103,656 kg), and that average is less than the proposed ACL. Because those more recent averages are less than the proposed ACL, there is expected to be no economic impact on small commercial fishing businesses in Puerto Rico that harvest spiny lobster in the EEZ.

This proposed rule would increase the spiny lobster ACL for St. Croix from 120,830 lb (54,807 kg) to 137,254 lb (62,257 kg). From 2015 through 2019, 3-year averages of landings of spiny lobster in St. Croix have been much lower than the current and proposed ACLs every year. As such, the proposed rule is expected to have no economic impact on small businesses of St. Croix.

This proposed rule would increase the spiny lobster ACL for St. Thomas and St. John from 126,089 lb (57,193 kg) to 133,207 lb (60,422 kg). From 2015 through 2019, 3-year averages of landings of spiny lobster in St. Thomas

and St. John have been much lower than the current and proposed ACLs every year. As such, the proposed rule is expected to have no economic impact on small businesses of St. Thomas and St. John.

In summary, this proposed rule is expected to have no significant economic impact on a substantial number of small entities of Puerto Rico, St. Croix, and St. Thomas and St. John. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Caribbean, Fisheries, Fishing, Spiny lobster.

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

Dated: January 24, 2024.

**Samuel D. Rauch, III,**

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 as follows:

#### **PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, 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 § 622.440, revise paragraph (c)(1) to read as follows:

#### **§ 622.440 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

(c) \* \* \*. (1) The ACL is 357,629 lb (162,218 kg), round weight.

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■ 3. In § 622.480, revise paragraph (c)(1) to read as follows:

#### **§ 622.480 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

(c) \* \* \*. (1) The ACL is 137,254 lb (62,257 kg), round weight.

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■ 4. In § 622.515, revise paragraph (c)(1) to read as follows:

#### **§ 622.515 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

(c) \* \* \*. (1) The ACL is 133,207 lb (60,422 kg), round weight.

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[FR Doc. 2024-01716 Filed 1-30-24; 8:45 am]

**BILLING CODE 3510-22-P**