

operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.

(c) *Emergency exception.* Using a hand-held mobile telephone is permissible by drivers of a CMV when necessary to communicate with law enforcement officials or other emergency services.

Issued on: November 22, 2011.

William Bronrott,

Deputy Administrator, Federal Motor Carrier Safety Administration.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 640

[Docket No. 100305126-1576-04]

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: Final rule.

SUMMARY: NMFS issues this final rule 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). This rule revises the lobster species contained within the fishery management unit; establishes an annual catch limit (ACL) for Caribbean spiny lobster; revises the Federal spiny lobster tail-separation permit requirements; revises the regulations specifying the condition of spiny lobster landed during a fishing trip; modifies the undersized attractant regulations; modifies the framework procedures and the protocol for cooperative management with Florida; and authorizes the removal of derelict traps in Federal waters off Florida through Florida's trap cleanup program. Additionally, this rule revises codified text to reflect updated contact

information for the state of Florida and regulatory references for the Florida Administrative Code. The intent of this final rule is to specify ACLs for spiny lobster while maintaining catch levels consistent with achieving optimum yield (OY) for the resource.

DATES: This rule is effective January 3, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 3, 2012.

ADDRESSES: Electronic copies of the amendment, which includes an environmental impact statement, a regulatory impact review, and the initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sf/pdfs/Spiny_Lobster_Amendment_10_August2011.pdf.

FOR FURTHER INFORMATION CONTACT:

Susan Gerhart, telephone: (727) 824-5305, or email:

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).

On September 2, 2011, NMFS published a notice of availability for Amendment 10 and requested public comment (76 FR 54227). On September 23, 2011, NMFS published a proposed rule for Amendment 10 and requested public comment (76 FR 59102). The proposed rule and Amendment 10 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

This final rule will remove all species from the FMP except the Caribbean spiny lobster (spiny lobster). The Councils and NMFS have determined the four other lobster species currently in the FMP are not in need of Federal management at this time. If landings or effort change for the lobster species being removed from the FMP and the Councils determine management at the Federal level is needed, these species could be added back into the FMP at a later date.

This rule will establish an ACL, an annual catch target (ACT) and an AM for spiny lobster. For the recreational and commercial spiny lobster sectors combined, the ACL is 7.32 million lb (3.32 million kg), whole weight. The combined ACT is 6.59 million lb, (2.99 million kg) whole weight. The ACT will

serve as the AM for the spiny lobster stock. 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.

This final rule revises the Federal spiny lobster tail-separation permit requirements to ensure permit issuance is limited to commercial fishermen. This rule requires 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.

This rule also requires lobster to be landed either all whole or all tailed during a single fishing trip to discourage selective tailing of potentially undersized lobsters and thereby aid the enforcement of the minimum size limit.

This rule revises Federal regulations specific to the use of undersized attractants to be consistent with current Florida regulations, which allow the retention of as many as 50 spiny lobsters less than the minimum size limit and one per trap.

To facilitate timely adjustments to harvest parameters and other management measures, this final rule revises the current framework procedures. This revision gives the Councils and NMFS greater flexibility to more promptly alter harvest parameters and other management measures as new scientific information becomes available.

An Endangered Species Act (ESA) biological opinion, completed on August 27, 2009, evaluated the impacts of the continued authorization of the spiny lobster fishery on ESA-listed species. The biological opinion required the consideration of alternatives to allow the public to remove trap-related marine debris in the exclusive economic zone (EEZ) off Florida. This rule authorizes 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.

Additionally, this rule includes new incorporations by reference and revises a number of references within the Federal regulations for spiny lobster. Specifically, this rule updates 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 at 50 CFR parts 622 and 640.

New material that is incorporated by reference includes Florida Administrative Code Rules 68B–55.002 (Retrieval of Trap Debris) and 68B–55.004 (Retrieval of Derelict and Traps Located in Areas Permanently Closed to Trapping). These additional revisions are unrelated to the actions contained in Amendment 10.

Comments and Responses

NMFS received nine public comment submissions on Amendment 10 and the proposed rule, including two comments from individuals, four copies of a form letter sent by individuals, and two comments from non-governmental organizations. A Federal agency also submitted a letter stating they had no comment on the rule. Comments related to the actions contained in the amendment or the proposed rule are summarized and responded to below.

Comment 1: New regulations on recreational lobster fishermen will not help protect lobster and corals because commercial fishing has a bigger impact on these resources than the recreational sector.

Response: The Magnuson-Stevens Act requires ACLs and AMs for most federally managed species. Both the commercial and recreational sectors must be accountable. This rule sets a single ACL and a single ACT that apply to both sectors. The ACT of 6.59 million lb (2.99 million kg) is higher than the recent 10-year average of landings for the commercial and recreational sectors combined, and has only been exceeded once in the past 10 years. Therefore, this ACT is not expected to be exceeded and AMs are not expected to be triggered, resulting in no change to how commercial or recreational lobster fishing is prosecuted.

Comment 2: The use of undersized attractants in the lobster commercial sector should be prohibited.

Response: Although the use of undersized lobsters as attractants results in increased confinement mortality, to prohibit their use may actually increase total bycatch because traps with alternate types of bait need to soak longer to achieve the same catch levels as traps with undersized attractants. Additionally, recent information shows the majority of recruits do not come from within the United States, suggesting that the use of undersized Caribbean spiny lobsters and other management measures for the Caribbean spiny lobster fishery would have negligible biological impacts on the lobster population within the United States. Based in part on these findings, it is unlikely that the continued use of undersized Caribbean spiny lobsters as

attractants would have significant adverse effects on the biological environment.

Comment 3: Actions to remove species from the FMP, set an ACL and AM, update the framework procedures, and give authority to Florida to clean up traps in the EEZ were supported.

Response: NMFS agrees these actions are necessary and appropriate.

Comment 4: Allocations between the lobster commercial and recreational sectors should be set with at least 26 percent of the stock allocated to the recreational sector.

Response: Allocations would be necessary if sector ACLs were set. However, the Councils chose to set a single stock ACL and ACT. The Councils chose not to designate sector allocations to minimize the administrative burden of tracking separate landings for each sector. Also, because the ACL will likely not be exceeded under the current fishery conditions, which will allow both sectors to harvest what they have in past years, thereby avoiding the need to specifically allocate the resource. The Councils may review the decision for sector allocations if landings increase in the future.

Comment 5: Federal tailing permits should be eliminated and lobster should be landed all whole.

Response: The ability to tail spiny lobsters is important to fishermen who do not have the storage capacity to hold large amounts of whole spiny lobster onboard over long trip durations. Tailing allows such fishermen to safely store more product in coolers without compromising quality, thus maximizing the profitability of each trip. A Federal spiny lobster tail-separation permit is required to possess spiny lobsters that have been tailed, and the trips must be 48 hours or longer in duration. The regulations implemented through this rule require permits designating the entity as a commercial fisher to obtain a tail-separation permit.

Comment 6: Do not finalize Amendment 10 until the supplemental environmental impact statement for Amendment 11 to the Spiny Lobster FMP is completed and impacts to *Acropora* are analyzed.

Response: Delaying implementation of Amendment 10 would produce no benefit to *Acropora*. The impacts of spiny lobster trapping on *Acropora* were analyzed in the biological opinion. The measures to protect *Acropora* will be addressed in Amendment 11, which is currently being developed and is expected to be implemented before the beginning of the next fishing season, which begins August 6, 2012.

Comment 7: Lobster traps should be prohibited in all areas with *Acropora*, cumulative impacts to *Acropora* should be analyzed, and the benefits to marine mammals and other imperiled species should be considered when establishing closed areas.

Response: The impacts of lobster trap fishing on protected species, including cumulative impacts, were analyzed in the 2009 biological opinion, which can be found in Appendix I of Amendment 10. Amendment 11 will address closing areas with *Acropora* to lobster fishing.

Comment 8: NMFS should analyze the decision to take four spiny lobster species off the federally managed list under the ESA. The four species should be designated as ecosystem component species.

Response: The decision to remove species from the FMP was analyzed in Amendment 10. These species were originally added to the FMP for data collection purposes; however, even after these species are removed from the FMP, if they are landed and sold to a Federally permitted dealer, landings data will still be recorded for these species. Designation of these species as ecosystem component species provides no additional protection to these stocks. Additionally, these species are not listed under the ESA, as stated in one comment letter.

Comment 9: NMFS should ensure that the state management of the lobster fishery does not violate the ESA by strongly encouraging Florida to pursue an ESA Section 10 incidental take permit and to develop a conservation plan for the state's spiny lobster fishery.

Response: NMFS encourages states to ensure protection of threatened and endangered species, and will request affected states to enact compatible regulations for the spiny lobster fishery in state waters.

Comment 10: The AM implemented through this rule will not hold the fishery within its ACL.

Response: The AM is to have an ACT that is 90 percent of the ACL. The Councils determined an ACT that is 10 percent lower than the ACL would provide an adequate buffer between the target level of harvest and the annual limit on harvest. An overage of the ACT would trigger the Councils to convene a review panel to assess whether or not corrective action is needed to prevent the ACL from being exceeded. It is unlikely the ACL would be exceeded based on recent landings by the fishery; however, the updated framework procedures contained within Amendment 10 will facilitate timely adjustments to potential management measures in the future. The ability to

expeditiously implement framework modifications for Caribbean spiny lobster would limit any negative biological impact that could result from an ACT overage.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 10 and the FMP subject to this rulemaking, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

NMFS prepared an IRFA for the proposed rule that described the economic impact of the rule. As described in the IRFA, only the action addressing the possession and landing of tailed lobsters in or from the EEZ was expected to have any adverse economic effect on small entities, specifically for-hire vessels. Although the economic effects of this action could not be quantified because of an absence of data, the analysis concluded that because the majority of for-hire vessels are not expected to engage in the practice of landing tailed lobsters, or depend on extended trips on which tailing may be the more practical alternative for a significant portion of their revenues, this action would not be expected to affect a substantial number of entities in the for-hire fleet. As a result, the IRFA concluded that the actions in this rule would not be expected to significantly reduce profits for a substantial number of small entities. Because of the absence of data, however, public comment was requested on this determination and a certification was not prepared. No comments were received regarding the determination. Therefore, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects

50 CFR Part 622

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

50 CFR Part 640

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

Dated: November 29, 2011.

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 § 622.2, 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, paragraph (b)(1)(iv) is revised to read as follows:

§ 622.6 Vessel and gear identification.

* * * * *

(b) * * *

(1) * * *

(iv) *Unmarked traps, pots, or buoys.*

An unmarked Caribbean spiny lobster trap, a fish trap, a golden crab trap, a sea bass pot, or a buoy deployed in the EEZ where such trap, pot, or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. 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 Florida Administrative Code Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.002: Retrieval of Trap Debris and Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.004: Retrieval of Derelict and Traps Located in Areas Permanently Closed to Trapping, both in effect as of October 15, 2007. 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. These materials are

incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. All material incorporated by reference is available for inspection at the NMFS, Office of Sustainable Fisheries, Office of the Regional Administrator, 1315 East-West Highway, Silver Spring, MD; and the National Archives and Records Administration (NARA), Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. For more information on the availability of this material at NARA, call (202) 741–6030 or go to <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>. Copies of the incorporated material may be obtained from the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: (850) 488–4676.

* * * * *

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

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

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

- 5. In § 640.1, 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. This part also governs importation of spiny lobster into any place subject to the jurisdiction of the United States.

* * * * *

- 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.

* * * * *

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 (incorporated by reference, see § 640.29).

* * * * *

(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 (incorporated by reference, see § 640.29).

(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 (incorporated by reference, see § 640.29).

* * * * *

(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, in effect as of October 15, 2007 (incorporated by reference, see § 640.29). 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 paragraphs (b)(3)(i) and (b)(3)(ii) are revised 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 (incorporated by reference, see § 640.29), apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. 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, in effect as of October 15, 2007 (incorporated by reference, see § 640.29). An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(ii) In the EEZ off the Gulf states, other than Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season, which is specified in paragraph (b)(1) of this section, beginning on August 1 and must be removed from the water after such season not later than April 5. A spiny lobster trap, buoy, or rope in the EEZ off the Gulf states, other

than Florida, during periods not authorized in this paragraph 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, paragraphs (a), (c), and (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.* A live spiny lobster under the minimum size limit specified in paragraph (b)(1) of this section that is harvested in the EEZ by a trap may be retained aboard the harvesting vessel for future use as an attractant in a trap provided it is held in a live well aboard the vessel. No more than fifty undersized spiny lobsters, and one per trap aboard the vessel, whichever is greater, may be retained aboard for use as attractants. The live well must provide a minimum of $\frac{3}{4}$ gallons (1.7 liters) of seawater per spiny lobster. An undersized spiny lobster so retained must be released to the water alive and unharmed immediately upon leaving the trap lines and prior to one hour after official sunset each day. 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 (incorporated by reference, see § 640.29).

* * * * *

■ 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 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.

■ 15. Add § 640.29 to read as follows:

§ 640.29 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. 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. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. All material incorporated by reference is available for inspection at the NMFS, Office of Sustainable Fisheries, Office of the Regional Administrator, 1315 East-West Highway, Silver Spring, MD; and the National Archives and Records Administration (NARA), Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. For more information on the availability of this material at NARA, call (202) 741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) Florida Administrative Code (F.A.C.): Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: (850) 488-4676; <http://laws.flrules.org>.

(1) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.002: Definitions, in effect as of July 1, 2008, IBR approved for § 640.4.

(2) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.005: Seasons, in effect as of June 1, 2004, IBR approved for § 640.20.

(3) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.006: Gear: Traps, Buoys, Identification Requirements, Prohibited Devices, in effect as of July 1, 2008, IBR approved for § 640.6 and § 640.22.

(4) F.A.C., Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.002: Retrieval of Trap Debris, in effect as of October 15, 2007, IBR approved for § 640.6 and § 640.20.

(5) F.A.C., Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.004: Retrieval of Derelict and Traps Located in Areas Permanently Closed to Trapping, in effect as of

October 15, 2007, IBR approved for § 640.6 and § 640.20.

(c) Florida Statute: Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: (850) 488-4676; <http://www.leg.state.fl.us/Statutes/index.cfm>.

(1) Florida Statutes, Chapter 379: Fish and Wildlife Conservation, Part VII: Nonrecreational Licenses, Section 379.367: Spiny lobster; regulation, 379.367, in effect as of June 1, 1994, IBR approved for § 640.6.

(2) [Reserved]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110520295–1659–02]

RIN 0648–BA64

Atlantic Highly Migratory Species; Vessel Monitoring Systems

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is finalizing requirements for fishermen to replace currently required Mobile Transmitting Unit (MTU) Vessel Monitoring System (VMS) units with Enhanced Mobile Transmitting Unit (E-MTU) VMS in Atlantic HMS fisheries. The key difference between MTU and E-MTU VMS units is that the E-MTU VMS units are capable of two-way communication. The purpose of this final action is to facilitate enhanced communication with HMS vessels at sea, provide HMS fishery participants with an additional means of sending and receiving information at sea, ensure that HMS VMS units are consistent with the current VMS technology and type approval requirements that apply to newly installed units, and to provide NMFS enforcement with additional information describing gear onboard and target species. This rule affects all HMS pelagic longline (PLL), bottom longline (BLL), and shark gillnet fishermen who are currently required to have VMS onboard their vessels.

DATES: This final rule is effective on January 1, 2012. *Implementation dates:* As of January 1, 2012, vessel owners