

Dated: January 22, 2018.  
**Onis "Trey" Glenn, III,**  
Regional Administrator, Region 4.  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 170630611-8032-01]

RIN 0648-BH01

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Regulatory Amendment 4

**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 Regulatory Amendment 4 to the Fishery Management Plan for Spiny Lobster in 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 proposed rule would increase the annual catch limit (ACL) for spiny lobster based on updated landings information and revised scientific recommendations. This proposed rule would also prohibit the use of traps for recreational harvest of spiny lobster in the South Atlantic exclusive economic zone (EEZ) off Georgia, South Carolina, and North Carolina. The purposes of this proposed rule and Regulatory Amendment 4 are to ensure catch levels for spiny lobster are based on the best scientific information available, to prevent overfishing, and to minimize potential negative effects of traps on habitat and protected species interactions in the South Atlantic EEZ.

**DATES:** Written comments must be received on or before March 4, 2018.

**ADDRESSES:** You may submit comments on the proposed rule identified by "NOAA-NMFS-2017-0125" by any of the following methods:

- **Electronic submissions:** Submit electronic comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/](http://www.regulations.gov/) #!docketDetail;D=NOAA-NMFS-2017-

0125, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit all written comments to Nikhil Mehta, 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 [www.regulations.gov](http://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).

Electronic copies of Regulatory Amendment 4, which includes an environmental assessment and a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_sa/spiny\\_lobster/A4\\_lobster\\_acl/a4\\_lobster\\_acl\\_index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/spiny_lobster/A4_lobster_acl/a4_lobster_acl_index.html).

#### FOR FURTHER INFORMATION CONTACT:

Nikhil Mehta, telephone: 727-824-5305, or email: [nikhil.mehta@noaa.gov](mailto:nikhil.mehta@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 part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C 1801 *et seq.*).

#### Background

In 2012, NMFS implemented Amendment 10 to the FMP, which included an overfishing limit (OFL), acceptable biological catch (ABC), ACL, annual catch target (ACT), accountability measure (AM), and status determination criteria for spiny lobster (76 FR 75488; December 2, 2011). The OFL and ABC were specified using Tier 3a of the Gulf Council's ABC Control Rule (control rule), as recommended by the Scientific and Statistical Committees (SSCs) of the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils). Applying the control rule, the SSCs recommended an OFL equal to the mean of the most recent 10 years of landings (fishing years 2000/2001

through 2009/2010) plus 2 standard deviations, and an ABC equal to the mean of the most recent 10 years of landings plus 1.5 standard deviations. This resulted in an OFL of 7.9 million lb (3.58 million kg) and an ABC of 7.32 million lb (3.32 million kg). The maximum sustainable yield (MSY) proxy and overfishing threshold (maximum fishing mortality threshold (MFMT)) were set equal to the OFL. The ACL was set equal to the ABC. The ACT, which equals the optimum yield (OY), was set at 90 percent of the ACL.

Since that time, the spiny lobster ACT has been exceeded three times, the ACL has been exceeded twice, and the OFL has been exceeded once. The AM established in Amendment 10 requires that the Councils convene a review panel if the spiny lobster ACT is exceeded, and the National Standard 1 guidelines state that if the ACL is exceeded more than once in a 4-year period, then the system of ACLs and AMs should be re-evaluated and modified, as necessary, to improve its performance and effectiveness (50 CFR 600.310(g)(7)). Therefore, The Councils convened a Spiny Lobster Review Panel (Review Panel) in February 2015, and again in March 2016, to assess whether action was needed to prevent the ACL from being exceeded. The Review Panel recommended that the catch levels for spiny lobster be based on the mean of landings during the fishing years 1991/1992 through 2015/2016, which is a longer time period than the 10-year period that was used to determine the current catch levels (fishing years 2000/2001 through 2009/2010). This is because the landings were historically low during the 2000/2001 through 2009/2010 time period used for the calculation of the current catch levels. The Review Panel determined that using the longer time period to calculate catch levels would better capture the dynamics of the fishery. Both SSCs agreed with the Review Panel and recommended using the longer time series of landings under Tier 3a of the control rule for setting the OFL and ABC. Using the longer time series of landings results in a revised OFL of 10.46 million lb (4.74 million kg) and a revised ABC of 9.60 million lb (4.35 million kg). Although the revised OFL and ABC are higher than the current OFL and ABC, using the longer time series is a more precautionary approach for calculating OFL and ABC than using the most recent 10 years of landings (2006/2007 through 2015/2016) because these landings have been historically high. The longer time series

incorporates periods of both low and high landings.

#### Management Measures Contained in This Proposed Rule

This proposed rule would modify the stock ACL and ACT for spiny lobster and prohibit the use of traps for the recreational harvest of spiny lobster in the South Atlantic EEZ.

##### *Stock ACL and ACT*

This proposed rule would revise the stock ACL and ACT based on the new ABC recommendation provided by the Councils' SSCs. As stated above, the current spiny lobster stock ACL is equal to the ABC, and the stock ACT is set at 90 percent of the ACL. This proposed rule would set the ACL equal to the ABC of 9.60 million lb (4.35 million kg), which is based on the mean landings from the years 1991/1992–2015/2016 plus 1.5 standard deviations. The ACT would be set at 8.64 million lb (3.92 million kg), which is 90 percent of the proposed ACL. As established in Amendment 10, the OY equals the ACT. NMFS does not expect the increase in the ACT and ACL to result in negative biological effects on the stock because current fishing effort is limited by the number of trap tags issued by the state of Florida, by commercial and recreational bag and possession limits in the EEZ in the South Atlantic and the Gulf EEZ, and by the duration of the fishing season, which varies depending on the area where spiny lobsters are harvested.

##### *Recreational Harvest of Spiny Lobster Using Traps in the South Atlantic EEZ*

Currently, the use of traps is not allowed for recreational harvest of spiny lobster in the EEZ off Florida, but traps may be used for recreational harvest of spiny lobster in the South Atlantic EEZ off the states of Georgia, South Carolina, and North Carolina. This proposed rule would prohibit the use of traps for recreational harvest of spiny lobster in all of the South Atlantic EEZ.

The public has expressed little interest in using traps for the recreational harvest of spiny lobster, which may be a result of the two lobsters per person per trip limit applicable to harvest from Federal waters of the South Atlantic. However, the Councils are concerned that using this gear may become more popular and result in potential negative impacts on essential fish habitat and an increase in the use of vertical lines that may interact with protected species, for example, by creating entanglement issues. Trap gear also has the potential to "ghost fish," which occurs when a

trap continues to fish after it is lost. Because spiny lobsters are larger in size in the EEZ off Georgia, South Carolina, and North Carolina than in the EEZ off Florida, current trap configuration may not be efficient in capturing spiny lobster in these areas, and recreational traps used in these areas may require larger mouths (entrances), which could result in greater bycatch of fish, crabs, and other invertebrates, including undersized spiny lobsters.

#### Measures in Regulatory Amendment 4 Not in Codified Through This Proposed Rule

As established in Amendment 10, the MSY proxy and MFMT are equal to the OFL, which was set at 7.9 million lb (3.58 million kg). Consistent with Amendment 10, Regulatory Amendment 4 would modify the MSY proxy and MFMT values, so that they are equal to the revised OFL of 10.46 million lb (4.74 million kg).

#### Corrections in This Proposed Rule Not Included in Regulatory Amendment 4

In addition to the measures associated with Regulatory Amendment 4, this proposed rule would also correct regulatory language that was mistakenly included in the final rule implementing Amendment 10. Amendment 10 modified the restrictions on the possession of undersized spiny lobsters for use as attractants in the commercial sector. Prior to Amendment 10, no more than fifty undersized spiny lobsters, or one per trap aboard the vessel, whichever was greater, could be retained on board for use as attractants. Amendment 10 changed this restriction to allow for no more than fifty per vessel plus one per trap aboard the vessel. This change was correctly included in the proposed rule to implement Amendment 10 (76 FR 59102; September 23, 2011), but was inadvertently changed in the final rule to include the additional phrase (from the prior language), "whichever is greater" (76 FR 75488; December 2, 2011). The final rule also inadvertently included this restriction twice in the applicable paragraph. To correct these mistakes, this proposed rule would change 50 CFR 622.407(c) to remove the phase "whichever is greater" and remove the first occurrence of the duplicative sentence. This proposed rule would also change the wording of the restriction slightly to more directly state that the total number of undersized spiny lobster allowed onboard a vessel is fifty plus one per trap. The restriction currently states: "No more than fifty undersized spiny lobsters, and one per trap aboard the vessel, may be retained

aboard for use as attractants." The proposed rule would change the "and" to "plus" so that the sentence reads: "No more than fifty undersized spiny lobsters plus one per trap aboard the vessel may be retained aboard for use as attractants."

#### 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 Regulatory Amendment 4, the FMP, 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 Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule and its purpose and need are contained in the **SUMMARY** section of the preamble.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is described below.

This proposed rule would directly affect commercial and recreational fishing for spiny lobster in the Gulf EEZ and the South Atlantic EEZ. Anglers (recreational fishers) are not considered small entities as that term is defined in 5 U.S.C. 601(6). Consequently, estimates of the number of anglers directly affected by the rule and the impacts on them are not provided here.

Any commercial fishing business that operates a fishing vessel that lands whole spiny lobster in the Gulf EEZ and/or the South Atlantic EEZ, except off Florida, must have a valid Federal spiny lobster permit that is specifically assigned to that vessel. In the EEZ off Florida, a commercial vessel must have either a valid Federal spiny lobster permit or all required Florida licenses and certificates to harvest the species. Any vessel that lands only the tail from a spiny lobster caught in the EEZ must have a Federal tailing permit on board in addition to either a valid Federal spiny lobster permit or all required Florida licenses and certificates. Both Federal permits are open access permits.

As of March 1, 2017, there were 185 Federal spiny lobster and 210 spiny lobster tailing permits issued to a total of 272 vessels. Approximately 45

percent of those vessels have both Federal permits. These 272 vessels make up the federally permitted spiny lobster fleet. Approximately 75 percent of the Federal permits are held by businesses in Florida, followed in turn by those in North Carolina with approximately 12 percent. Florida businesses account for all but one of the vessels with only a tailing permit. NMFS estimates a total of 198 businesses hold all of the Federal spiny lobster permits assigned to the above 272 vessels.

The individual businesses have from 1 to 11 vessels in the federally permitted spiny lobster fleet. Approximately 84 percent of the 198 businesses have only one vessel in the fleet, and collectively these businesses account for 61 percent of the 272 federally permitted vessels. Approximately 95 percent of the businesses have no more than 2 vessels, while 3 percent have 6 or more vessels and collectively make up approximately 18 percent of the 272 vessels.

Approximately 99 percent of commercial landings of spiny lobster occur in Florida. Hence, NMFS expects that almost all of the impacts of the rule will be on commercial fishing businesses located in Florida, and within Florida, approximately 91 percent of the state's landings are in Monroe County.

For purposes of the Regulatory Flexibility Act, 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 (NAICS 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. NMFS expects that most to all of the businesses that harvest spiny lobster in the EEZ (with or without a Federal permit) are small businesses, based on historical average annual revenues per vessel that are less than \$50,000.

Regulatory Amendment 4 would revise the MSY proxy and MFMT. Those revisions would have no direct impact on any small businesses, and any indirect impact is dependent on subsequent action.

This proposed rule would increase the ACL to 9.60 million lb (4.35 million kg), and ACT to 8.64 million lb (3.92 million kg), whole weight. There would be no impact on small businesses, however, because there is no Federal closure if landings reach or are projected to reach the ACL or ACT.

In conclusion, NMFS expects this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required, and none has been prepared.

No new reporting, record-keeping, or other compliance requirements are

introduced by this proposed rule. Accordingly, this proposed rule does not implicate the Paperwork Reduction Act.

#### List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Gulf, South Atlantic, Spiny lobster, Trap.

Dated: January 30, 2018.

**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 600 and 622 are proposed to be amended as follows:

#### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

- 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

#### Subpart R—Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

- 2. In § 600.725, in the table in paragraph (v), under heading “III. South Atlantic Fishery Management Council,” under entry 7, revise entry B pertaining to the “Recreational fishery” in the “Authorized gear types” column to read as follows:

##### § 600.725 General prohibitions.

\* \* \* \* \*

(v) \* \* \*

| Fishery   | Authorized gear types |   |   |   |   |   |   |   |
|---|-----------------------|---|---|---|---|---|---|---|
| *   | *                     | * | * | * | * | * | * | * |
| <b>III. South Atlantic Fishery Management Council</b> |                       |   |   |   |   |   |   |   |
| *   | *                     | * | * | * | * | * | * | * |
| 7. South Atlantic Spiny Lobster Fishery (FMP):        |                       |   |   |   |   |   |   |   |
| *   | *                     | * | * | * | * | * | * | * |
| B. Recreational fishery .....                         |                       |   |   |   |   |   |   |   |
| *   | *                     | * | * | * | * | * | * | * |
| B. Dip net, bully net, snare, hand harvest.           |                       |   |   |   |   |   |   |   |

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

- 3. The authority citation for part 622 continues to read as follows:

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

- 4. In § 622.404, add paragraph (d) to read as follows:

##### § 622.404 Prohibited gear and methods.

\* \* \* \* \*

(d) Except for black sea bass pots and golden crab traps as allowed in § 622.188 and § 622.248, respectively, the possession of all other traps is prohibited onboard a vessel in the South Atlantic EEZ when spiny lobster subject to the recreational bag and possession limits specified in § 622.408 is also onboard the vessel. The recreational

harvest of spiny lobster using a trap is prohibited in the South Atlantic EEZ.

- 5. In § 622.407, revise paragraph (c) to read as follows:

##### § 622.407 Minimum size limits and other harvest limitations.

\* \* \* \* \*

(c) *Undersized attractants.* A live spiny lobster under the minimum size limit specified in paragraph (a)(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. 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 plus one per trap aboard the vessel may be retained aboard for use as attractants.

\* \* \* \* \*

- 6. Revise § 622.411, to read as follows:

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

For recreational and commercial spiny lobster landings combined, the ACL is 9.60 million lb (4.35 million kg), whole weight. The ACT is 8.64 million lb, (3.92 million kg) whole weight.

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