



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130402313-3499-01]

RIN 0648-BD15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands;
Regulatory Amendment 2

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 Regulatory Amendment 2 to the Fishery Management Plan (FMP) for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (USVI) (Regulatory Amendment 2), as prepared by the Caribbean Fishery Management Council (Council). If implemented, this rule would revise the commercial trip limit for queen conch in the Caribbean exclusive economic zone (EEZ) to be compatible with the trip limit in USVI territorial waters. The purpose of this proposed rule is to improve the compatibility of Federal and USVI territorial regulations for queen conch in order to facilitate enforcement efforts while ensuring the long-term

health of the queen conch resource.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by "NOAA-NMFS-2013-0068," by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0068, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Maria del Mar Lopez, 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 without change. All personal identifying information (e.g., name, address, etc.), 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).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Regulatory Amendment 2, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA) and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at:

<http://sero.nmfs.noaa.gov/index.html>.

FOR FURTHER INFORMATION CONTACT: Maria del Mar Lopez, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail:

Maria.Lopez@noaa.gov.

SUPPLEMENTARY INFORMATION: The Caribbean queen conch fishery is managed under the FMP. The FMP was prepared by the Council, and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The queen conch is currently classified as an overfished species, and it is managed under a 15-year rebuilding plan. Harvest and possession of queen conch in the U.S. Caribbean EEZ is limited to the area east of 64°34' W. longitude which includes Lang Bank to the east of St. Croix, USVI, and only from November 1 through May 31 each year. The USVI has expressed interest in having Federal regulations modified to make them

compatible with the territorial regulations to facilitate enforcement efforts, enhance compliance by fishers, and allow for more efficient management of the queen conch resource in the U.S. Caribbean.

Regulatory Amendment 1 to the FMP, implemented in 2011 (76 FR 23907, April 29, 2011), established a compatible seasonal closure with the USVI (from June 1 through October 31, each year), and a compatible queen conch harvest quota closure for Federal waters. The quota or annual catch limit (ACL) consists of an annual harvest of 50,000 lb (22,680 kg) for combined Federal and St. Croix waters. When that ACL is reached and the USVI closes territorial waters off St. Croix to the harvest and possession of queen conch, NMFS will concurrently close the Caribbean EEZ in the area east of 64°34' W. longitude. The EEZ closure will remain in effect until the next fishing season for territorial and Federal waters opens on November 1.

Current commercial trip limits and recreational bag limits for the harvest of queen conch in Federal waters are not compatible with USVI regulations. The current trip limit in Federal waters allows a licensed commercial fisherman to harvest up to 150 queen conch per day, but does not establish a harvest limit per vessel. USVI regulations allow the harvest of 200 queen conch per vessel per day regardless of the number of

licensed fishermen on board. The daily recreational bag limit in Federal waters allows 3 queen conch per person and a maximum of 12 queen conch per vessel. In contrast, the USVI daily recreational bag limit consists of 6 queen conch per person and a maximum of 24 per vessel.

At its March 2013 meeting, the Council voted to establish a daily commercial trip limit of 200 queen conch per vessel and to leave the recreational bag limit unchanged. As the Federal recreational bag limit is less than the territorial limit, increasing the recreational bag limit would only slightly facilitate law enforcement efforts, but may negatively impact the continued health of the queen conch resource.

Provisions Contained in This Proposed Rule

If implemented, this rule would revise the commercial trip limit to 200 queen conch per vessel per day instead of the current 150 queen conch per licensed commercial fisher per day.

Other Changes Contained in this Proposed Rule

This rule would also change the language in the codified text specifying the queen conch fishing season. This revision is intended to correct a mistake that occurred in prior rule-making (Regulatory Amendment 1), in which the sentence was restructured and a distinction was inadvertently removed. This rule would revise the codified text to its previous form.

Fishing for queen conch is only allowed from November 1 through May 31, and only in the area east of 64°34' W. longitude which includes Lang Bank east of St. Croix, USVI. In the rest of the Caribbean EEZ, there is a prohibition on the harvest and possession of queen conch. Changing the text to its previous form reflects the original and current intent of the Council.

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 regulatory amendment, 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.

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 in the preamble. A copy of the full analysis is available from NMFS (see ADDRESSES). A summary of the IRFA follows.

The purpose of this proposed rule is to revise the

commercial trip limit for queen conch in the Caribbean EEZ. This rule would also implement an administrative change to the regulations regarding the queen conch season. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This proposed rule would not establish any changes to current reporting, record-keeping, or other compliance requirements.

This rule, if adopted, would be expected to directly affect commercial fishermen in St. Croix, U.S. Virgin Islands, who harvest queen conch. Queen conch harvest in the EEZ in the U.S. Caribbean is restricted to the Lang Bank area off St. Croix and all queen conch harvest from this area is believed to be landed in St. Croix because of the prohibitive travel distances that would be required to land in other locations. As a result, the assessment of the number of commercial entities expected to be affected by this rule is based on St. Croix commercial trip ticket data.

The USVI fishing year for all species is July 1 through June 30. Over the 2009/2010 through 2011/2012 fishing years, an average of 40 fishermen (range of 30-48) per fishing year recorded landings of queen conch in St. Croix. The average total revenue per fishing year from the harvest of all marine

species (queen conch and all other species) by these fishermen was approximately \$2.6 million (nominal or un-inflated dollars), or approximately \$64,000 per fisherman (\$2.6 million/40). These estimates include all fishermen with recorded queen conch landings in St. Croix, regardless of where the queen conch were harvested (EEZ or territorial waters). Precise comparable estimates for fishermen who harvested queen conch in the EEZ are not available because the area of harvest was not provided on all trip tickets (area fished was not reported on trip tickets that accounted for approximately 11 percent of the average queen conch harvest per fishing year). However, an average of 17 fishermen (range of 9-23) per fishing year reported queen conch harvests from the EEZ. The average total revenue from the harvest of all marine species by these fishermen during this period was approximately \$1.0 million (nominal or un-inflated dollars), or approximately \$60,000 per fishermen (\$1.0 million/17).

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual

receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Both average revenue estimates, approximately \$64,000 for all fishermen with commercial queen conch landings and approximately \$60,000 for fishermen who reported harvesting queen conch from the EEZ, are significantly lower than the SBA threshold. As a result, all commercial fishermen expected to be affected by this proposed rule are determined, for the purpose of this assessment, to be small business entities.

This rule, if adopted, would increase the number of queen conch that could be harvested per vessel per trip if one licensed commercial fisherman is on board the vessel and decrease the allowable harvest if multiple licensed commercial fishermen are on board. However, 2 percent or fewer of the trips that harvest queen conch are believed to carry multiple licensed commercial fishermen and no licensed commercial fishermen are known to exclusively fish with other licensed commercial fishermen on board. As a result, the effects of increasing the allowable queen conch harvest per vessel per trip on trips with a single licensed commercial fisherman on board would be expected to account for the majority of the impacts.

The net direct economic effects of this proposed rule cannot be quantified with available data. Increasing the number

of queen conch that could be harvested per vessel per trip would be expected to increase the average daily harvest and associated revenue per trip for trips on which queen conch are harvested. Total operating costs could be reduced if fishermen take fewer trips to harvest the queen conch ACL. An increase in the revenue per trip and a decrease in operating costs would result in an increase in profit to affected small entities.

The queen conch commercial ACL in St. Croix is 50,000 lb (22,680 kg) and queen conch harvest and possession in the EEZ is prohibited when the St. Croix ACL is reached. As a result, the total average annual revenue to all commercial fishermen from queen conch harvest would not be expected to be affected by this proposed rule other than as a result of a possible reduction in average price if increased harvest rates result in a derby fishery and depress prices. However, of the estimated average 40 fishermen who harvest queen conch per year, only an estimated average of 17 fishermen per year harvest queen conch in the EEZ. Additionally, closure of the fishery due to the ACL being reached has only occurred once since the 2008/2009 fishing year and because approximately two-thirds of the total queen conch harvest in St. Croix comes from territorial waters, any increased harvest rate accruing in response to the proposed increase in the trip limit in the EEZ may not significantly

reduce the length of the open season and, thus, have minimal to no effect on queen conch prices. Therefore, increasing the daily average harvest rate, which may occur as a result of the proposed increase in the trip limit, may have only a small effect on increasing the likelihood of the fishery closing due to the ACL being reached and/or reducing the average price for queen conch.

In addition to the effects described in the previous paragraph, fishing for, and revenue from, other species may increase as a result of this proposed rule, if adopted, if fishermen are able to take fewer trips to harvest the queen conch ACL and increase fishing effort for other species. However, any increase in revenue from other species would be an indirect effect of the proposed action and, therefore, outside the scope of the IRFA.

This rule, if adopted, would also change the language in the codified text specifying the queen conch fishing season. This change would correct an inadvertent change to the text that occurred in a prior rulemaking, as discussed in the preamble. The proposed revision better reflects the original and current intent of the Council. Queen conch fishing in the Caribbean EEZ has been consistent with the season specified by the proposed change and, therefore, this proposed change would not be

expected to result in any economic effects on any small entities.

In summary, the average fisherman expected to be directly affected by this proposed rule would be expected to experience an increase in revenue and profit. However, neither the amount nor the significance of these increases can be determined with available data.

Although the significance of the expected change in profit to the small entities expected to be directly affected by this proposed rule cannot be determined, the proposed rule would be expected to increase the revenue and profit of the average small entity that would be expected to be affected. Because the expected effect of this proposed rule would be positive and not adverse, the issue of significant alternatives to minimize the adverse effects is not relevant.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Queen Conch, St. Croix, Virgin Islands.

Dated: June 4, 2013.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is 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 § 622.491, paragraph (a) is revised to read as follows:

§ 622.491 Seasonal and area closures.

(a) No person may fish for or possess on board a fishing vessel a Caribbean queen conch in or from the Caribbean EEZ,

except from November 1 through May 31 in the area east of 64°34' W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands.

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3. In § 622.495, paragraph (a) is revised and paragraph (b) is added to read as follows:

§ 622.495 Commercial trip limit.

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(a) Applicability. The trip limit of paragraph (b) of this section applies to a vessel that has at least one person on board with a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands. If no person on board the vessel has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands, the bag limit specified in § 622.494(b) applies.

(b) Trip limit. The trip limit for queen conch in or from the Caribbean EEZ is 200 queen conch.

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