



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 150623546-6395-02]

RIN 0648-BF18

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Amendments to the Reef Fish, Spiny Lobster, Queen Conch, and
Corals and Reef Associated Plants and Invertebrates Fishery
Management Plans of Puerto Rico and the U.S. Virgin Islands**

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures described in Amendment 7 to the Fishery Management Plan (FMP) for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (USVI) (Reef Fish FMP), Amendment 6 to the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI (Spiny Lobster FMP), Amendment 5 to the FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI (Coral FMP), and Amendment 4 to the FMP for the Queen Conch Resources of Puerto Rico and the USVI (Queen Conch FMP), as prepared by the Caribbean Fishery Management Council (Council). In

combination, these amendments represent the Application of Accountability Measures (AM) Amendment (AM Application Amendment). The AM Application Amendment resolves an existing inconsistency between language in the FMPs and the regulations implementing the application of AMs in the U.S. Caribbean exclusive economic zone (EEZ). The purpose of the AM Application Amendment is to ensure the authorizing FMPs are consistent with the regulations governing AMs in the Caribbean EEZ.

Additionally, this final rule clarifies the AM closure provisions, the application of the spiny lobster ACL in the Puerto Rico management area of the Caribbean EEZ, and the minimum size limit for queen conch in the Caribbean EEZ.

DATES: This final rule is effective [*insert date 30 days after date of publication in the* **FEDERAL REGISTER**].

ADDRESSES: Electronic copies of the AM Application Amendment, which includes an environmental assessment, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/index.html.

FOR FURTHER INFORMATION CONTACT: María del Mar López, telephone: 727-824-5305; e-mail: maria.lopez@noaa.gov.

SUPPLEMENTARY INFORMATION: In the Caribbean EEZ, the reef fish,

spiny lobster, queen conch, and corals and reef associated plants and invertebrates fisheries are managed under their respective FMPs. The FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On February 4, 2016, NMFS published a notice of availability for the AM Application Amendment and requested public comment (81 FR 5978). On February 26, 2016, NMFS published a proposed rule for the AM Application Amendment and regulatory clarifications not contained in the amendment and requested public comment (81 FR 9800). The proposed rule and the AM Application Amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by the AM Application Amendment and this final rule is provided below.

The final rule implementing Amendment 2 to the Queen Conch FMP and Amendment 5 to the Reef Fish FMP (2010 Caribbean Annual Catch Limit (ACL) Amendment) established ACLs and AMs for species/species groups that were at the time experiencing overfishing (i.e., parrotfish, snapper, grouper, queen conch) (76 FR 82404, December 30, 2011). The final rule implementing Amendment 3 to the Queen Conch FMP, Amendment 6 to the Reef Fish

FMP, Amendment 5 to the Spiny Lobster FMP, and Amendment 3 to the Coral FMP (2011 Caribbean ACL Amendment) established ACLs and AMs for the remaining Council-managed species/species groups which were not undergoing overfishing at the time or for which the overfishing status was unknown (e.g., grunts, squirrelfish, jacks, spiny lobster) (76 FR 82414, December 30, 2011). As described at § 622.12(a) for reef fish, spiny lobster, and corals and at § 622.491(b) for queen conch, the current AM regulations in the Caribbean EEZ require NMFS to shorten the length of the fishing season for a species/species group in the year following a determination that the applicable 3-year landings average exceeded the respective ACL, unless NMFS determines that the exceedance is due to enhanced data collection and monitoring efforts. The extent to which fishing seasons are shortened in the year following an ACL overage equates to the number of days necessary to account for the overage and to constrain landings to the ACL. Pursuant to regulations at §§ 622.12(a) and 622.491(b), any such AM-based closures apply only during the fishing year for which they are implemented. However, the AM closure language in the four FMPs states that any AM-based closure "will remain in effect until modified by the Council," thereby carrying these closures over from year to year, unless or until the closures are revised by

subsequent Council action.

The AM Application Amendment corrects this inconsistency, between the language in the FMPs and the regulatory language at §§ 622.12(a) and 622.491(b), by revising the language within the four FMPs to be consistent with the language in the regulations. Specifically, the phrase in the four FMPs that states "The needed changes will remain in effect until modified by the Council," which describes the duration of AMs, will be removed from the four FMPs. The result of this change is that under both the FMPs and the AM-based closure regulatory language, any AM-based closure would only apply for the fishing year for which it was implemented. The Council determined that this approach is consistent with their intent and is consistent with the regulations used by NMFS to apply AMs in the Caribbean EEZ. As this change only revises the language in the respective FMPs, no changes to the codified text are necessary.

Additional Changes to Codified Text not part of the AM

Application Amendment

This final rule also revises items in the codified text that are not part of the AM Application Amendment. Specifically, NMFS clarifies the closure provisions when an ACL has been exceeded and an AM is implemented, based on the Council's intent as expressed in the 2010 and 2011 Caribbean ACL Amendments (76

FR 82404, December 30, 2011, and 76 FR 82414, December 30, 2011). NMFS also clarifies the application of the spiny lobster ACL for the Puerto Rico management area of the EEZ to be consistent with the Council's intent expressed in the 2011 Caribbean ACL Amendment and clarifies the minimum size requirements for queen conch.

The 2010 and 2011 Caribbean ACL Amendments established AMs and ACLs and allocated those ACLs among three Caribbean island management areas, *i.e.*, the Puerto Rico, St. Croix, and St. Thomas/St. John management areas of the EEZ, as specified in Appendix E to part 622, except for the ACLs for tilefish and aquarium trade species, which are specified for the Caribbean EEZ as a whole. The ACLs for species/species groups in the Puerto Rico management area, except for spiny lobster, are further allocated between the commercial and recreational sectors, and AMs apply to each of these sectors separately. Through this final rule, NMFS clarifies that the spiny lobster ACL for the Puerto Rico management area is applied as a single ACL for both the commercial and recreational sectors, consistent with the intent of the Council in the 2011 Caribbean ACL Amendment (76 FR 82414, December 30, 2011). The current regulations, as described in § 622.12(a)(1)(i)(R), specify only a commercial ACL for spiny lobster in the Puerto Rico management

area and do not specify a recreational ACL. The intent of the Council in the 2011 Caribbean ACL Amendment was to manage the spiny lobster commercial and recreational sectors for the Puerto Rico management area under the same ACL, derived from commercial landings. The Council intended that this single ACL would be the trigger to apply the AM to both sectors for spiny lobster in the Puerto Rico management area. NMFS proposes to add paragraph § 622.12(a)(1)(iii) to the regulatory text to specify that the spiny lobster ACL applies to both sectors in the Puerto Rico management area. The actual ACL value will not change through this final rule.

The ACLs for species/species groups in the St. Croix and St. Thomas/St. John management areas are not allocated between sectors, and if AMs are triggered, they are applied to both the commercial and recreational sector.

The current Caribbean AM and closure regulations do not specifically state what restrictions on fishing occur during an AM-based closure. Through this final rule, NMFS adds to the regulatory text at § 622.12(b) that, if AMs are triggered as a result of an ACL overage and NMFS reduces the length of the fishing season for a species or species group, certain closure provisions will apply to species with Caribbean-wide ACLs, Caribbean reef fish species, and Caribbean spiny lobster.

For Caribbean reef fish species in the Puerto Rico management area, § 622.12(b)(1)(i) through (iii) are added to specify what restrictions apply during a commercial closure, recreational closure, or a closure of both sectors. In the event that the commercial fishing season is reduced for a species or species group due to a Puerto Rico commercial ACL overage, all harvest or possession of the indicated species or species group in or from the Puerto Rico management area would be limited to the bag and possession limits specified in § 622.437, and the sale or purchase of the indicated species or species group in or from the Puerto Rico management area would be prohibited during the closure. If the recreational fishing season is reduced for a species or species group due to a Puerto Rico recreational ACL overage, the bag and possession limits for the indicated species or species group would be zero during the closure. If both the commercial and recreational sectors for a species or species group in the Puerto Rico management area are closed, such species or species groups in or from the Puerto Rico management area may not be harvested, possessed, purchased, or sold and the bag and possession limits for such species or species groups would be zero.

For Caribbean reef fish species and spiny lobster in the St. Croix and St. Thomas/St. John island management areas, and

species or species groups with Caribbean-wide ACLs, § 622.12(b)(2) is added to specify that, if AMs are triggered as a result of an ACL overage and the fishing season is reduced for a species or species group, such species or species groups in or from the applicable management area of the Caribbean EEZ may not be harvested, possessed, purchased, or sold, and the bag and possession limits for such species in or from the applicable management area of the Caribbean EEZ would be zero.

For Caribbean spiny lobster in the Puerto Rico management area, § 622.12(b)(1)(iv) is added to clarify that, if the AM is triggered due to a Puerto Rico spiny lobster ACL overage, the commercial and recreational fishing seasons are reduced. During such a closure, spiny lobster in or from the Puerto Rico management area may not be harvested, possessed, purchased, or sold, and the bag and possession limits for spiny lobster in or from the Puerto Rico management area would be zero.

Additionally, through this final rule, NMFS revises § 622.492(a) to clarify the minimum size limit for a Caribbean queen conch. Currently, § 622.492(a) states that the minimum size limit is "9 inches (22.9 cm) in length, that is, from the tip of the spire to the distal end of the shell, and 3/8 inch (9.5 cm) in lip width at its widest point." However, this provision goes on to state that "A queen conch with a length of

at least 9 inches (22.9 cm) or a lip width of at least 3/8 inch (9.5 mm) is not undersized." The use of "and" in the first sentence and "or" in the second sentence of this provision has caused confusion among the public about whether both of these measurements are required to meet the minimum size limit for queen conch. Therefore, NMFS changes the "and" to "or" in the first sentence and removes the second sentence in paragraph (a) of § 622.492. The purpose of this change is to clarify that only one of the measurement descriptions must be met to fulfill the minimum size limit for Caribbean queen conch, consistent with the original intent of the Council in the Queen Conch FMP.

Comments and Responses

NMFS received three total comments on the AM Application Amendment and the proposed rule. One comment expressed overall support for the actions in the amendment and the rule. A Federal agency stated that they had no comment on the amendment or the proposed rule. One comment was not related to the actions in the amendment or the proposed rule. Therefore, no changes were made to this final rule based on public comment.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with the AM Application Amendment, the FMPs, the Magnuson-Stevens Act, and

other applicable law.

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

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding this certification or on the economic impacts of the rule more generally, and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none was prepared.

List of Subjects in 50 CFR Part 622

Accountability measures, Caribbean, Fisheries, Fishing,
Queen conch.

Dated: May 5, 2016.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended 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 § 622.12, remove paragraph (a)(1)(i)(R) and add paragraphs (a)(1)(iii) and (b).

The additions read as follows:

§ 622.12 Annual catch limits (ACLs) and accountability measures (AMs) for Caribbean island management areas/Caribbean EEZ.

* * * * *

(a) * * *

(1) * * *

(iii) *Spiny lobster*. The following ACL applies to landings of spiny lobster throughout the Puerto Rico management area--
327,920 lb (148,742 kg).

* * * * *

(b) *Closure provisions--*(1) *Restrictions applicable after a Puerto Rico closure.* (i) *Restrictions applicable after a Puerto Rico commercial closure, except for spiny lobster.* During the closure period announced in the notification filed pursuant to paragraph (a)(1)(i) of this section, the commercial sector for species or species groups included in the notification is closed and such species or species groups in or from the Puerto Rico management area may not be purchased or sold. Harvest or possession of such species or species groups in or from the Puerto Rico management area is limited to the recreational bag and possession limits unless the recreational sector for the species or species group is closed and the restrictions specified in paragraph (b)(1)(iii) of this section apply.

(ii) *Restrictions applicable after a Puerto Rico*

recreational closure, except for spiny lobster. During the closure period announced in the notification filed pursuant to paragraph (a)(1)(ii) of this section, the recreational sector for species or species groups included in the notification is closed and the recreational bag and possession limits for such species or species groups in or from the Puerto Rico management area are zero. If the seasons for both the commercial and recreational sectors for such species or species groups are closed, the restrictions specified in paragraph (b)(1)(iii) of this section apply.

(iii) *Restrictions applicable when both Puerto Rico commercial and Puerto Rico recreational sectors are closed, except for spiny lobster.* If the seasons for both the commercial and recreational sectors for a species or species group are closed, such species or species groups in or from the Puerto Rico management area may not be harvested, possessed, purchased, or sold, and the bag and possession limits for such species or species groups in or from the Puerto Rico management area are zero.

(iv) *Restrictions applicable after a spiny lobster closure in Puerto Rico.* During the closure period announced in the notification filed pursuant to paragraph (a)(1)(iii) of this section, both the commercial and recreational sectors are

closed. Spiny lobster in or from the Puerto Rico management area may not be harvested, possessed, purchased, or sold, and the bag and possession limits for spiny lobster in or from the Puerto Rico management area are zero.

(2) *Restrictions applicable after a St. Croix, St. Thomas/St. John, or Caribbean EEZ closure.* During the closure period announced in the notification filed pursuant to paragraph (a) (2), (3), or (4) of this section, such species or species groups in or from the applicable management area of the Caribbean EEZ may not be harvested, possessed, purchased, or sold, and the bag and possession limits for such species or species groups in or from the applicable management area of the Caribbean EEZ are zero.

3. In § 622.492, paragraph (a) is revised to read as follows:

§ 622.492 Minimum size limit.

(a) The minimum size limit for Caribbean queen conch is either 9 inches (22.9 cm) in length, that is, from the tip of the spire to the distal end of the shell, or 3/8 inch (9.5 mm) in lip width at its widest point.

* * * * *