



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

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: Notice of availability; request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) has submitted 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 the 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) for review, approval, and implementation by NMFS. In combination, these amendments

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

DATES: Written comments must be received on or before [*insert date 60 days after date of publication in the **FEDERAL REGISTER***].

ADDRESSES: You may submit comments on the AM Application Amendment, identified by "NOAA-NMFS-2015-0124" 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-2015-0124, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to María del Mar López, 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).

Electronic copies of the AM Application Amendment, which includes an environmental assessment, a Regulatory Flexibility Act 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, or e-mail: *Maria.Lopez@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that

NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMPs being revised by the AM Application Amendment were prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The final rule implementing Amendment 2 to the Queen Conch FMP and Amendment 5 to the Reef Fish FMP (2010 Caribbean ACL Amendment) established annual catch limits (ACLs) and AMs for species and species groups that at the time were classified as undergoing overfishing (i.e., parrotfish, snapper, grouper, and 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, established ACLs and AMs for the remaining Council-managed species and species groups which were not undergoing overfishing at the time or for which the overfishing status was unknown (e.g., grunts, squirrelfish, jacks) (76 FR 82414, December 30, 2011). As described at § 622.12(a) for reef fish, spiny lobster, and corals and § 622.491(b) for queen conch, the current AMs 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. The extent to which fishing seasons are shortened equates to the number of days necessary to remove the overage in pounds and to therefore constrain landings to the ACL. Pursuant to the regulations at §§ 622.12(a) and 622.491(b), any such AM-based closures remain in effect only during the particular fishing year in which they are implemented. However, the AM closure language in the four authorizing FMPs states that any AM-based closure will remain in effect until modified by the Council, thereby carrying these AM-based closures over from year to year unless or until the closures are revised by subsequent Council action.

This inconsistent language between the FMPs and the implementing regulations may create confusion to fishers and the public about whether an AM-based closure for a specific species/species group will continue in subsequent years if an AM is triggered. The AM Application Amendment would correct the inconsistency between the authorizing FMPs and the regulatory language at §§ 622.12(a) and 622.491(b) by revising the text within the four FMPs describing how AMs are applied to be

consistent with the language in the regulations. Specifically, the phrase in the four authorizing FMPs that states "The needed changes will remain in effect until modified by the Council," which describes the duration of AMs, would be removed from the four FMPs. The result of this proposed change would be that under both the authorizing FMPs and AM-based closure regulatory language, an AM closure would only apply for the fishing year in which it was implemented. This approach is consistent with the intent of the Council and implementing regulations used by NMFS to apply AMs in the Caribbean EEZ. The current process used by NMFS and the Council to apply AMs in the Caribbean EEZ would not change as a result of this proposed amendment, thus this action would have no additional direct or indirect economic, social, or biological/ecological effects.

A proposed rule that would implement the measures outlined in the AM Application Amendment has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the AM Application Amendment and the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted the AM Application Amendment for Secretarial review, approval, and implementation. Comments received by [*insert date 60 days after date of publication in the **FEDERAL REGISTER***], will be considered by NMFS in its decision to approve, disapprove, or partially approve the AM Application Amendment. Comments received after that date will not be considered by NMFS in this decision. All relevant comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: January 29, 2016

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National Marine Fisheries Service.

[FR Doc. 2016-02092 Filed: 2/3/2016 8:45 am; Publication Date: 2/4/2016]