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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 150623546-6098-01]**

**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:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes 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). If implemented, the AM Application Amendment would resolve 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 proposed rule would clarify 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:** 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 the proposed rule identified by "NOAA-NMFS-2015-0124" by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal:  
*http://www.regulations.gov*. 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 (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](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).

### **Background**

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) (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 equates to the number of days necessary to remove the overage in pounds and to therefore constrain landings to the ACL. Pursuant to 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 closures over from year to year, unless or until the closures are revised by subsequent Council action.

The AM Application Amendment would correct this inconsistency, between the authorizing FMPs and the regulatory language at §§ 622.12(a) and 622.491(b), by revising the applicable text within the four FMPs 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, any AM-based closure would only apply for the fishing year in which it was implemented. This approach is consistent with the intent of the Council and the regulations used by NMFS to apply AMs in the Caribbean EEZ. As this proposed change would only revise the language in the respective FMPs, no changes to the codified text would result from the AM Application Amendment.

*Additional Proposed Changes to Codified Text not part of the AM Application Amendment*

This proposed rule would also revise items in the codified text that are not part of the AM Application Amendment. Specifically, NMFS proposes to clarify 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 proposes to clarify 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 ACL Caribbean Amendment and to clarify 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 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 rule, NMFS proposes to clarify 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. No recreational ACL is specified for spiny lobster in Puerto Rico. 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 AM trigger for 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 would not change through this proposed 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.

If an AM is triggered by an ACL being exceeded based on the 3-year landings average, and NMFS determines that the exceedance was not due to enhanced data collection and monitoring efforts, NMFS files a notification with the Office of the Federal Register to reduce the length of the following fishing season for the applicable species or species groups that year by the amount necessary, to ensure landings do not again exceed the applicable ACL. The current regulations do not specifically state what restrictions on fishing occur during such a closure.

NMFS proposes to add § 622.12(b) to the regulatory text to

specify 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 would 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) would be 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 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) would be 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) would be added to clarify that, if the AM is triggered due to a 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 proposed rule, NMFS would revise § 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 proposes to change the "and" to "or" in the first sentence and to remove 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.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries has determined

that this proposed rule is consistent with the U.S. Caribbean FMPs, 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 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 implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to revise the language within U.S. Caribbean FMPs to make it consistent with current regulations concerning the application of AMs. Because it would produce no regulatory changes, the action would have no economic impact on the estimated 1,037 to 1,185 small businesses in the finfish (NAICS code 114111) and shellfish (NAICS code 114112) fishing industries of the U.S. Caribbean.

The rule would also include regulatory text to clarify the closure provisions for AMs, how the spiny lobster ACL is applied in the Puerto Rico management area, and the minimum size requirements for queen conch, all unrelated to the amendment.

Because those clarifications would not affect current fishing practices, or change the manner in which fisheries in the Caribbean EEZ are regulated, they would not have an economic impact on the above-mentioned small businesses.

Because this proposed rule, if implemented, would not have a significant direct adverse economic effect on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 622**

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

Dated: February 22, 2016.

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Samuel D. Rauch III,  
Deputy Assistant 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 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) to 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) 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) 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.

\* \* \* \* \*

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