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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 160810719-7353-02]**

**RIN 0648-BG29**

**Amendments to the Reef Fish, Spiny Lobster, 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 regulations to implement measures described in Amendment 8 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 7 to the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI (Spiny Lobster FMP), and Amendment 6 to the FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI (Coral FMP), as prepared and submitted by the Caribbean Fishery Management Council (Council). This final rule refers to these amendments, in combination, as the Accountability Measure (AM) Timing Amendment. This final rule to implement the AM Timing Amendment

modifies the date for the implementation of AM-based closures for all species and species groups managed by the Council under the subject FMPs. The purpose of the AM Timing Amendment and this final rule is to minimize, to the extent practicable, the adverse socio-economic impacts of AM-based closures, while constraining catch levels to the applicable annual catch limits (ACLs) and preventing overfishing.

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

**ADDRESSES:** Electronic copies of the AM Timing Amendment, which includes an environmental assessment (EA), 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](mailto:maria.lopez@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In the U.S. Caribbean exclusive economic zone (EEZ), the reef fish, spiny lobster, and corals and reef associated plants and invertebrates (corals) 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) (16 U.S.C. 1801 *et seq.*).

On January 5, 2017, NMFS published a notice of availability for the AM Timing Amendment and requested public comment (82 FR 1308). On February 10, 2017, NMFS published a proposed rule for the AM Timing Amendment and requested public comment (82 FR 10324). The proposed rule and the AM Timing Amendment outline the rationale for the actions contained in this final rule. A summary of the management measures described in the AM Timing Amendment and implemented by this final rule is provided below.

**Management Measure Contained in This Final Rule**

This final rule modifies the date for implementation of an AM-based closure in the event of an ACL overage for a species or species group managed by the Council in Puerto Rico, St. Thomas/St. John, and St. Croix under the Reef Fish, Coral, and Spiny Lobster FMPs. AM-based closures occur in the year following any overage triggering implementation of the AM. Specifically, an AM-based closure will be implemented from September 30 of the closure year backward, toward the beginning of the fishing year, for the number of days necessary to achieve the reduction in landings required to ensure landings do not exceed the applicable ACL. If the length of the required fishing season reduction exceeds the period of January 1 through

September 30, any additional fishing season reduction required will be applied from October 1 forward, toward the end of the fishing year (December 31). This final rule to implement the AM Timing Amendment is expected to minimize adverse socio-economic effects from the implementation of AMs, while still helping to ensure that AM-based closures constrain harvest to the ACL and prevent overfishing.

The FMP for the Queen Conch Resources of Puerto Rico and the USVI is not included in the AM Timing Amendment because queen conch harvest is managed with an in-season closure when the ACL is reached or projected to be reached, rather than a post-season reduction in the fishing year.

**Additional Action Contained in the AM Timing Amendment but not Codified Through this Final Rule**

In addition to the measure discussed above, the AM Timing Amendment requires that the Council revisit the practice of using September 30 as the end date for AM-based closures no longer than 2 years from the implementation of the AM Timing Amendment and no longer than every 2 years thereafter. Any formal review associated with revisiting the selected date would allow NMFS and the Council to specifically consider new information. Thus, any corresponding revisions would be expected to result in additional positive social and economic effects.

## **Comments and Responses**

NMFS received a total of two comment submissions on the proposed rule and the AM Timing Amendment; one from a group of individuals and one from a Federal agency. The Federal agency stated that it had no comment on the proposed rule or the AM Timing Amendment. The other comment as well as NMFS' response, is summarized below.

*Comment 1:* NMFS violated the Administrative Procedure Act (APA) by failing to collect or disclose data supporting that the rule would provide economic benefit to Caribbean fishermen and that it did not consider potential negative impact on the financial health of tourist industries. NMFS also failed to properly consider ecological factors in the AM Timing Amendment.

*Response:* NMFS disagrees. The Council and NMFS analyzed impacts to both the economic and ecological environments in the AM Timing Amendment Environmental Assessment (EA). The EA analyzed the effects of implementing the AM Timing Amendment on the human environment, including the impacts of the proposed action on the socio-economic, administrative, physical, biological, and ecological environments (including impacts to species listed under the Marine Mammal Protection Act and the Endangered Species Act (ESA)). The data used in the AM Timing Amendment to analyze alternatives modifying the timing of AM-

based closures in the AM Timing Amendment are described in the EA and have been determined by the NMFS Southeast Fisheries Science Center to be the best scientific information available. The Council and NMFS used these data to consider and analyze the expected direct and indirect socio-economic effects of the proposed action on the fishing industries in the U.S. Caribbean, and considered the tourism industries that would be reasonably expected to be affected by the proposed actions in the AM Timing Amendment. For example, the Council and NMFS considered whether each alternative would be likely to lead to a closure during periods of peak tourism. The economic analysis in the EA determined that no significant impact on the socio-economic environment will result from the the AM Timing Amendment.

The EA also evaluated the impacts of the AM Timing Amendment on the biological and ecological environment and protected species. As discussed in the EA, the implementation of the AM Timing Amendment will minimally affect current fishing operations or activities; therefore, the Council and NMFS concluded that additional impacts on the ecological environment are not expected. The modification of the date of implementation of AM-based closures is not expected to adversely affect ESA-listed species or critical habitat beyond those effects

previously considered in the subject FMPs and ESA Section 7 consultations.

The public has had multiple opportunities to participate in the development of the AM Timing Amendment and to provide comments. The public had the opportunity to comment on the AM Timing Amendment and draft EA at public hearings in November 2015 and August 2016, and during public testimony at the June 2016 and August 2016 Council meetings, in advance of final approval by the Council. Following the Council's approval of the AM Timing Amendment, NMFS provided the opportunity for public comment on the amendment through a 60-day public comment period on the notice of availability (82 FR 1308, January 5, 2017), and through a 30-day comment period on the proposed rule (82 FR 10326, February 10, 2017), consistent with the Magnuson-Stevens Act and APA public notice and comment requirements.

#### **Classification**

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with the AM Timing 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 rule would not have a significant adverse 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. A public comment relating to socio-economic implications and potential impacts on small businesses is addressed in the **Comments and Responses** section of this final rule. No changes to this final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

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

Accountability measures, Annual catch limits, Caribbean, Fisheries, Fishing.

Dated: May 4, 2017.

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Alan D. Risenhoover,  
Acting 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, revise paragraph (a) introductory text to read as follows:

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

(a) If landings from a Caribbean island management area, as specified in Appendix E to this part, except for landings of queen conch (see § 622.491(b)), or landings from the Caribbean EEZ for tilefish and aquarium trade species, are estimated by the SRD to have exceeded the applicable ACL, as specified in paragraph (a)(1) of this section for Puerto Rico management area species or species groups, paragraph (a)(2) of this section for St. Croix management area species or species groups, paragraph (a)(3) of this section for St. Thomas/St. John management area species or species groups, or paragraph (a)(4) of this section for the Caribbean EEZ, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups that year by the amount necessary to ensure landings do not exceed the applicable ACL. As described in the respective FMPs, for each species or species group in this paragraph, any required fishing season reduction will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied from October 1 forward, toward the end of the fishing year. If NMFS determines the ACL for a particular

species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMPs. With the exceptions of Caribbean queen conch in the Puerto Rico and St. Thomas/St. John management areas, goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on the combined Caribbean EEZ and territorial landings for each management area. The ACLs specified in paragraphs (a) (1), (a) (2), (a) (3), and (a) (4) of this section are given in round weight.

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