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SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Gulf Council) and the South Atlantic Fishery Management Council (South Atlantic Council) and is implemented through regulations at 50 CFR part 640 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 4

The FMP currently provides for a commercial and recreational fishing season throughout the Gulf of Mexico and South Atlantic of August 6 through March 31, except for a 2-day special recreational season in July. During the August 6 through March 31 season, there are no bag or possession limits in the commercial fishery and recreational fishermen are limited to six spiny lobster per person per day. In the EEZ off the southern Atlantic states, other than Florida, Amendment 4 would (1) allow the take of spiny lobster year-round, and (2) establish a daily bag or possession limit of two spiny lobster per person in both the recreational and commercial fisheries. The purpose of Amendment 4 is to allow fishermen in the EEZ north of Florida to harvest the resource during the warm-weather months when the season currently is closed.

Commercial and recreational landings of spiny lobster outside Florida are negligible. According to the NMFS Accumulated Landings Database, no landings from spiny lobster traps have been reported from North Carolina or South Carolina since 1990. Since 1990, only 78.0 lb (35.4 kg) were reported landed from traps in Georgia. Commercial spiny lobster divers in North Carolina took an estimated 288.0 lb (130.6 kg) in 1992 and, in 1993, the only reported harvest by commercial divers north of Florida was 1,334 lb (605 kg) landed in South Carolina.

According to NMFS' 1991 Marine Recreational Fisheries Statistics Survey, no spiny lobster recreational trips were reported in South Carolina and Georgia during a survey of southeastern states other than Florida. However, another study conducted by NMFS in 1993 attempted specifically to characterize the directed and incidental take of spiny lobster by sport divers in offshore waters of the southeastern states. This study involved a telephone survey of dive shops and clubs and indicated that a small number of spiny lobster were harvested by recreational divers in North Carolina, South Carolina, and Georgia.

According to testimony of North Carolina recreational fishermen before the South Atlantic Council, the fishery takes place about 30 nautical miles (55.6 km) offshore in at least 100 ft (30.5 m) of water. A typical dive trip at these depths lasts about 30 minutes. Lobsters harvested ranged from 2 to 16 lb (0.9 to 7.3 kg). Divers believe that the spawning season off North Carolina does not begin until July, due to the colder water temperatures. They reported seeing egg-bearing lobsters as late as September and early October. Amendment 4 would not change the current prohibition on taking egg-bearing female lobsters.

The Gulf Council and the South Atlantic Council (Councils) have concluded that a year-round daily harvest limit of two spiny lobster per person north of Florida will allow recreational fishermen to catch spiny lobster during the months when the weather is favorable. There is scientific debate regarding the biological status and population dynamics of spiny lobsters in waters north of Florida, including the issue of recruitment and the fate of larvae from the adult population in this area. However, based on the best available scientific information, the Councils believe that allowing a limited year-round harvest in the subject area will have no adverse biological impacts on the lobster resource.

The Councils have concluded that the proposed action is consistent with the FMP's objective to protect long-run yields and prevent depletion of lobster stocks, because lowering the daily recreational limit from six to two and establishing a commercial harvest limit would prevent significant increases in fishing mortality. If Amendment 4 is implemented, the South Atlantic Council would monitor the level of spiny lobster harvests north of Florida and lower the daily limit, if necessary.

Additional background and rationale for the measures discussed above are contained in Amendment 4, the availability of which was announced in the **Federal Register** on March 27, 1995, (60 FR 15743).

Additional Measures Proposed by NMFS

Pursuant to the FMP's framework procedure for implementing specified gear and harvest restrictions, certain portions of Florida's management scheme were incorporated by reference into these Federal regulations on November 30, 1992 (57 FR 56516) and October 21, 1994 (59 FR 53118). A full description of the Florida measures was contained in the preamble to the proposed rule incorporating those

measures (57 FR 32956, July 24, 1992). At the time these State statutes and regulations were incorporated, specific reference to the incorporation was not mentioned in the regulatory text. To ensure that the incorporation by reference meets procedural specifications for the Office of the Federal Register, NMFS adds appropriate language to sections 640.4(a)(1), 640.6(a), 640.20(c), and 640.22(b)(3), with references to the State statutes and regulations as recodified in 1994.

NMFS proposes a technical amendment to section 640.22 to correct and conform current regulations to the original FMP, which prohibited the use by divers, not by hook-and-line fishermen, of gear containing hooks. (See section 12.4.1, *Measures Proposed for Adoption*, Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, March 1982, pages 12-20). Gear such as spears, and spear-like devices with a hook on the end, were originally prohibited because divers using such gear were unable to accurately gauge the size of lobsters prior to mortally puncturing them. Such lobsters frequently turn out to be undersized. However, the language of the prohibition in the current regulations precludes harvest or retention of a spiny lobster taken unintentionally in a hook-and-line fishery for other species.

The technical amendment will allow fishermen using hook-and-line gear to retain lobsters incidentally harvested with such gear. According to the administrative record, the occurrence of spiny lobster harvest by hook-and-line fishermen is quite rare and occurs primarily aboard headboats operating north of Florida. The record further shows that lobsters harvested in that area are much larger than the current minimum size limit. Therefore, allowing retention of spiny lobsters harvested by hook-and-line fishermen should not increase the mortality of undersized lobsters. However, to enhance enforceability of the intended prohibition, that is, the prohibition on intentional hooking of spiny lobsters with prohibited gear, a spiny lobster that is taken by hook and line could not be retained aboard a vessel that has prohibited gear aboard.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a council within 15 days of receipt of an amendment and regulations. At this time, NMFS has not determined that Amendment 4 is consistent with the