

a loan modification or workout, the repayment period for loans awarded under this subpart is the repayment period established in the loan modification or workout. The revised terms must meet all other regulatory, statutory, and other requirements.

(c) *Interest rates.* Loan recipients will be charged interest for the loans awarded under this subpart. Interest will be accrued starting from the date of drawdown on the loan amounts that have been drawn down and not yet repaid by the loan recipient. The interest rate will be determined based on the date of award.

(d) *Failure to pay.* Loan recipients that fail to make loan payments consistent with the repayment schedule or loan modification or workout approved by CMS will be subject to any and all remedies available to CMS under law to collect the debt.

(e) *Deeming of CO-OP qualified health plans.* Health plans offered by a loan recipient may be deemed certified as a CO-OP qualified health plan to participate in the Exchanges for up to 10 years following the life of any loan awarded to the loan recipient under this subpart, consistent with section 1301(a)(2) of the Affordable Care Act. An Exchange must recognize a health plan offered by a loan recipient as an eligible participant of the Exchange if it is deemed certified by CMS or an entity designated by CMS. To be deemed as certified to participate in the Exchanges, the loan recipient must comply with the standards for CO-OP qualified health plans set forth pursuant to section 1311(c) of the Affordable Care Act, all State-specific standards established by an Exchange for qualified health plans operating in that Exchange, and the standards of the CO-OP program as set forth in this subpart. If a loan recipient is deemed to be certified or loses its deemed status and is no longer deemed as certified to participate in the Exchanges, CMS or an entity designated by CMS will provide notice to the Exchanges in which the loan recipient offers CO-OP qualified health plans.

(f) *Conversions.* The loan recipient shall not convert or sell to a for-profit or non-consumer operated entity at any time after receiving a loan under this subpart. The loan recipient shall not undertake any transaction that would result in the CO-OP implementing a governance structure that does not meet the standards in this subpart.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 2011.

**Marilyn Tavenner,**

*Principal Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.*

Approved: July 15, 2011.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 654

[Docket No. 110707375-1374-01]

RIN 0648-BB07

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Stone Crab Fishery of the Gulf of Mexico; Removal of Regulations

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

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

**SUMMARY:** NMFS proposes to repeal the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) and remove its implementing regulations, as requested by the Gulf of Mexico Fishery Management Council (Council). The stone crab fishery takes place primarily in state waters (off the coast of Florida) and Florida's Fish and Wildlife Conservation Commission (FWC) is extending its management into Federal waters. Repealing the Federal regulations would eliminate duplication of management efforts, reduce costs, and align with the President's Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure Federal regulations are more effective and less burdensome in achieving regulatory objectives. The intended effect of this action is to enhance the effectiveness and efficiency of managing the stone crab fishery in the Gulf of Mexico (Gulf).

**DATES:** Written comments must be received on or before August 19, 2011.

**ADDRESSES:** You may submit comments on the proposed rule identified by NOAA-NMFS-2011-0140 by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-rulemaking portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2011-0140" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA-NMFS-2011-0140" in the keyword search and click on "search." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of documents supporting this proposed rule, which include an environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, telephone: 727-824-5305 or *e-mail:* [Susan.Gerhart@noaa.gov](mailto:Susan.Gerhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The stone crab fishery of the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 654 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

#### Background

The commercial stone crab fishery is limited primarily to the coastal waters off the State of Florida, with a small amount of landings occurring off of Louisiana and Texas. Florida has actively managed the Florida stone crab fishery since 1929.

The Federal FMP, implemented in 1979, applies only to Federal Gulf waters adjacent to Florida waters. It was originally implemented to reduce gear

conflicts between stone crab and shrimp fishermen in central and southwest Florida. The objectives of the FMP include: Providing for orderly conduct of the stone crab fishery to reduce conflict between stone crab fishermen and other fishermen in the management area (primarily shrimp fishermen with vessels registered in states other than Florida); establishing an effective statistical reporting system for monitoring the stone crab fishery; attaining full utilization of the stone crab resource in the management area; and promoting uniformity of the regulations throughout the management area. The FMP, as amended, adopted Florida's rules for stone crab in the exclusive economic zone (EEZ). By adopting Florida's rules, the Council and NMFS accommodated Florida's leading role in regulating this fishery.

The Council and NMFS have worked closely with Florida's FWC to adopt compatible management measures through the Federal FMP, including a framework to allow the Regional Administrator to resolve gear conflicts, implementing a limited access system, and recognizing FWC's licenses, trap certificates, and trap tags for use in the EEZ in lieu of Federal permits. Under the Federal FMP, there is also a Federal stone crab trap limitation program which requires issuance of a commercial vessel permit, a trap certificate, and annual trap tags. To date, NMFS has not issued any permits under the Federal trap limitation program. All trap limitation permits have been issued by the FWC.

The FMP for the Shrimp Fishery in the Gulf (Gulf Shrimp FMP) established areas closed to shrimp fishing to prevent gear conflicts with the stone crab fishery. These closed areas include shrimp/crab separation zones and a southwest Florida seasonal trawl closure. Although Federal regulations would no longer prevent stone crab trap deployment in certain zones, the state of Florida has the authority to enact these same regulations for all current participants in the fishery, much as they have done for Zone II, which lies entirely in state waters.

### Repealing the Federal Stone Crab FMP

In the absence of Federal management, states have the opportunity to extend their authority to regulate a fishery in Federal waters, as authorized under the Magnuson-Stevens Act (16 U.S.C. 1856(a)(3)). In a letter to the Council dated August 13, 2010, the FWC stated its interest in taking management responsibilities for stone crab in the EEZ. At its April 2011 meeting, the FWC voted to begin

rulemaking to extend its authority to regulate stone crab in Federal waters. The FWC already has the lead in several stone crab management actions including monitoring landings, implementing the trap limitation program and conducting stock assessments.

At its October 2010 meeting, the Council voted to repeal the Federal stone crab FMP. The Magnuson-Stevens Act (16 U.S.C. 1854(h)) requires a favorable vote by 75 percent of all voting members. The Council voted 14 in favor of this measure, 0 against, and 3 not present, thus meeting the threshold to repeal the FMP. If implemented, this action would allow the FWC to extend state regulations for stone crab into Federal waters for vessels registered to the State of Florida or vessels returning to a port in the state of Florida. Vessels registered to states other than Florida, who intend to fish for stone crab in Florida waters or in the EEZ off Florida and intend to land their vessels out-of-state, could be of concern. However, because the highest abundance of stone crabs is in south Florida, it is unlikely this concern will be realized. A vessel from outside of Florida would need to travel a long distance to reach the fishing grounds, thereby making fuel costs a larger factor. Furthermore, most stone crab fishermen deploy and service traps in multiple trips, and store traps on shore between trips, which would only be convenient for Florida fishermen. To date, no out-of-state vessel owner has applied for a Federal stone crab permit or trap tag for fishing in the EEZ. Therefore, interest in doing so at this time seems unlikely. Stone crab fishermen off Louisiana and Texas land a small amount of stone crab from their state waters. Although their state governments have not done so already, Louisiana and Texas also have the authority to extend management of stone crab into Federal waters off their states and could propose such an action in the future.

Repealing the Federal FMP is unlikely to have a significant effect on the status of the stone crab resource or on the conduct of the fishery. NMFS recognizes Florida's authority under section 306(a)(3) of the Magnuson-Stevens Act (16 U.S.C. 1856(a)(3)) to regulate vessels registered under its laws when such vessels harvest stone crab in the EEZ. These regulations are essentially the same as the current Federal regulations, so no practical changes to the biological or social and economic environment are expected. If fishing practices outside Florida's authority should constitute an emergency situation that jeopardizes

effective management of the stone crab fishery in the EEZ, NMFS would consider issuing emergency regulations, as authorized by section 305(c)(1) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)(1)).

Repealing the Federal FMP would also minimize costs and avoid unnecessary duplication of management efforts, consistent with National Standard 7 of the Magnuson-Stevens Act. This action also seeks to align with the President's Executive Order 13563. On January 18, 2011, President Obama signed Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure Federal regulations are more effective and less burdensome in achieving regulatory objectives. Federal agencies are tasked to periodically review their existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. In this case, NMFS has determined that repealing the Federal stone crab FMP will not deter the continued effective management of stone crab, but will eliminate the burden of two agencies carrying out the same management objective.

For the reasons summarized above, NMFS proposes to repeal the FMP and to remove its implementing regulations.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with 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 that this proposed rule, if adopted, 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 promote management of the stone crab fishery in the most efficient manner, while maintaining conservation of the resource and the ecosystem. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

If implemented, this rule would directly affect commercial fishing vessels that harvest stone crab in the Gulf of Mexico. For the period 2004–2009, an average of 987 vessels per year recorded commercial stone crab landings in Florida. The total average

annual ex-vessel revenue from all stone crab harvests from these vessels during this period was approximately \$25.56 million (2008 dollars). The average annual total revenue per vessel from stone crab during this period was approximately \$29,000 (2008 dollars).

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including shellfish harvesters. A business involved in shellfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114112, shellfish fishing) for all its affiliated operations worldwide. Based on the average revenue estimate provided above, all commercial fishing vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

This proposed rule would not establish any new reporting, recordkeeping, or other compliance

requirements. No duplicative, overlapping, or conflicting Federal rules have been identified.

If implemented, this rule would result in continued normal fishing practices, harvests, prices, and revenues. This action would not change the economic performance of the fishery, because current Federal regulations mirror Florida regulations and Florida has voted to extend its jurisdiction and these nearly identical regulations into Federal waters off Florida. Although Florida would only be able to extend its jurisdiction to vessels registered in Florida, or regulate fishermen who land stone crab in Florida, it is not expected that any fishermen would attempt to harvest stone crab in Federal waters off Florida for landing in other states in the foreseeable future. As a result, the stone crab fishery would continue to be a Florida fishery; be properly managed by Florida; the health of the resource appropriately protected; and the economic benefits associated with the fishery maintained. In summary, no economic impacts are expected to result

from the proposed action. Therefore, this proposed rule, if implemented, would not have a significant direct adverse economic effect on the profits of a substantial number of small entities.

Because this proposed rule, if implemented, is not expected to have any direct adverse economic impact 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 654**

Fisheries, Fishing, Incorporation by reference.

Dated: July 14, 2011.

#### **John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, under the authority of 16 U.S.C. 1801 *et seq.*, part 654 is proposed to be removed.

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