

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 960919266-6266-01; I.D. 082096D]

RIN 0648-AD91

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands; Initial Regulations**

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

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

**SUMMARY:** NMFS issues this proposed rule to implement the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (FMP). The FMP would restrict the taking of queen conch in or from the exclusive economic zone (EEZ) around Puerto Rico and the U.S. Virgin Islands (USVI) in order to restore overfished stocks.

**DATES:** Written comments must be received on or before November 12, 1996.

**ADDRESSES:** Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the FMP, which includes a regulatory impact review (RIR)/initial regulatory flexibility analysis (IRFA) and a final environmental impact statement (FEIS), should be sent to the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918-2577.

**FOR FURTHER INFORMATION CONTACT:** Georgia Cranmore, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the Caribbean Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

**Background**

The FMP covers all conchs of the genus *Strombus* and other edible gastropods that have been recorded in landings from Puerto Rico and the USVI (U.S. Caribbean). Most of the FMP's management measures concern only the queen conch, *Strombus gigas*, which appears to be declining in abundance

throughout its range in the Atlantic and Caribbean. The status of other species included in the FMP is largely unknown. Accordingly, the restrictions proposed for these other species are limited to those necessary to ensure the effectiveness of management measures for queen conch.

Queen conch are harvested for food. The shells may be sold whole or made into jewelry. Queen conch is a staple of Caribbean cuisine. Traditionally, conch are taken by free-diving in inshore waters; however, overexploitation nearshore has led to an increase in commercial harvests by scuba divers in deeper waters.

Trends in queen conch landings since the early 1980s indicate decreased abundance throughout the U.S. Caribbean. In Puerto Rico, landings declined more than 400,000 lb (181,437 kg) in 1983 to 100,000 lb (45,359 kg) in 1992. More than 90 percent of current landings are by scuba diving. On St. Croix, USVI, landings declined more than 50 percent from 1982 to 1992. The conch fishery was closed in USVI waters off St. Thomas and St. John Islands from 1988-1992 due to overfishing.

Recently, the USVI established conch regulations that are designed to rebuild declining stocks; Puerto Rico is in the process of developing similar regulations. USVI conch regulations are compatible with the FMP's management measures. The absence of compatible regulations in Puerto Rican waters, however, may provide an opportunity for fishermen to circumvent Federal conservation measures. Fishermen could claim that conch harvested in the EEZ came from state waters. If the FMP is approved, Puerto Rico will be asked to implement compatible regulations as soon as possible.

**Management Measures**

The FMP would: (1) Require that a Caribbean conch resource be landed in its shell; (2) prohibit the possession or sale of queen conch less than 9 inches (22.9 cm) in total length and less than 3/8 inch (9.5 mm) in lip width at its widest point; (3) establish a recreational daily bag limit of 3 queen conch per person or, if more than 4 persons are aboard, 12 queen conch per boat; (4) establish a daily harvest limit of 150 queen conch per licensed commercial fisherman; (5) prohibit taking of queen conch from July 1 through September 30; and (6) prohibit the taking of queen conch by diving while using a device that provides a continuous air supply from the surface. The FMP is designed to rebuild the overfished queen conch

resources by protecting the spawning stock and reducing fishing effort.

**Landing Whole**

The FMP would require that a Caribbean conch resource be landed in the shell. This would allow enforcement personnel to identify the conch species and, thus, enforce the minimum size limit for queen conch. This provision is expected to reduce fishing effort by limiting the amount of queen conch that can be carried aboard a fishing vessel. Conch fishermen testified that they would prefer to land conch meat only; however, there is no readily available method of distinguishing between the meats of queen and other conch resources. In addition, there is no reliable correlation between the age of queen conch and the weight of queen conch meat.

**Size Limits**

The length of the shell and the width (thickness) of the shell's flared "lip" are used to assess the age and sexual maturity of queen conch. Recent studies, based on western Puerto Rico queen conch populations, indicate that protecting queen conch less than 9 inches (22.9 cm) in length and less than 3/8 inch (9.5 mm) in lip width is likely to increase the spawning stock biomass. Enforcement of the Council's proposed prohibition on sale of undersized queen conch would be facilitated by the fact that the Convention on International Trade in Endangered Species of Wild Fauna and Flora requires documentation to accompany most international trade in queen conch. See 50 CFR part 23. Thus, at least at the time of importation, it should be possible to distinguish between queen conch taken from the EEZ and adjoining state waters and queen conch harvested outside U.S. jurisdiction and imported into the U.S. Caribbean.

**Harvest Limits**

The Council is proposing to adopt the following queen conch harvest limits: 3 per person per day for recreational fishermen, not to exceed 12 per boat, and 150 per commercial fisherman per day. Although no statistics are available on the level of recreational fishing for queen conch in the U.S. Caribbean, the Council received anecdotal reports indicating that its proposed recreational bag limit would provide sufficient conch for traditional family needs. Current USVI regulations provide a less restrictive recreational limit. Puerto Rico is conducting a 1996 queen conch recreational fishing survey to provide more definitive estimates of recreational effort. The Council believes that the

limit of 150 queen conch per day will restrict commercial fishermen to approximately current levels of harvest. Commercial fishing licenses issued by Puerto Rico or the USVI, and available to all U.S. citizens, are required to exceed the recreational bag limit. The Council would reconsider this requirement for a commercial fishing license if the USVI or Puerto Rico significantly changes its licensing requirements.

#### Closed Season

Peak queen conch spawning season in the U.S. Caribbean is July through September. Queen conch aggregate in shallow waters during this season, increasing chances of overharvest. The FMP would prohibit all harvest of queen conch during this season to complement an identical measure in effect in the USVI. Puerto Rico is also expected to establish a spawning season closure.

#### Gear Restrictions

Overfishing of nearshore areas has led to an increased reliance on the harvest of queen conch in deeper waters by scuba and hookah diving. Increased access to deeper waters by these methods could result in the elimination of some of the last remaining sources of conch recruitment. Although the Council considered a prohibition on harvest of queen conch by scuba in the EEZ, adverse economic impacts of this alternative convinced the Council to recommend only a prohibition against devices that provide a continuous air supply from the surface, such as hookah; such devices are not often used in the U.S. Caribbean EEZ. By allowing extended time on the ocean floor, hookah diving significantly increases harvesting time compared to scuba and free-diving.

#### Additional Information

Additional background and rationale on the Caribbean conch resources and the management measures in this rule are contained in the FMP, the availability of which was announced in the Federal Register on August 29, 1996 (61 FR 45395).

#### 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 FMP and regulations. At this time NMFS has not determined that the FMP is consistent

with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an FEIS for this FMP that will be filed with the Environmental Protection Agency for public review and comment; a notice of its availability for public comment will be published in the Federal Register. According to the FEIS, the proposed management measures would benefit the natural environment for the queen conch fishery by limiting fishing effort. The dive fishery for queen conch is unlikely to impact habitat of conch or other organisms.

The Council prepared an IRFA, as part of the RIR, which concluded that the proposed measures in the FMP would have a significant economic impact on a substantial number of small entities. The commercial queen conch fishery is composed entirely of small businesses; although the exact number of small businesses is unknown, the RIR's analyses indicate that at least 30 percent of all queen conch fishing trips will be affected by the proposed rule.

There are no other Federal rules that would conflict with the proposed rule and no significant alternatives to the proposed management measures that would have accomplished the goals of the Magnuson Act.

The IRFA identified the following impacts on small entities. The requirement to land queen conch in the shell, rather than discarding the shell at sea, can reduce the ex-vessel value of a day's catch because vessel capacity may be exceeded in certain small vessels traditionally used in this fishery. The proposed size limit would increase the cost of fishing and reduce the amount of conch taken on some trips, at least in the short term. However, the Council was unable to quantify these potential changes in net benefits.

Assuming fishermen do not compensate for the proposed reduction in queen conch harvests through increased harvests of other species, estimated reductions in gross revenues per trip in Puerto Rico associated with the 150 commercial trip limit would average \$12, a decline of about 7.5 percent. Average gross revenues per trip

in the USVI would decline by \$5, a decline of less than 2 percent. Assuming most U.S. Caribbean commercial queen conch fishermen reside in Puerto Rico, and based on NMFS' Regulatory Flexibility Act criterion specifying that economic effects are significant if at least 20 percent of affected small entities would experience a reduction in annual gross revenues by more than 5 percent, the RIR/IRFA concludes that this rule will probably have significant economic impacts on small business entities.

Impacts on small entities of the proposed closed season, July-September, are expected to be minimal because fishermen will shift effort to other fisheries, such as lobsters and snappers, during the summer season. Revenues for USVI queen conch fishermen did not decline significantly when a seasonal closure went into effect in USVI waters. Prohibiting diving gear that provides a continuous air supply from the surface, such as hookah, is likely to have only a very minor impact on small entities. Although no data exist to document the extent of the use of hookah to take queen conch, it is thought to be insignificant relative to scuba and free-diving.

This action would not revise existing, or establish any new, reporting, recordkeeping, or other compliance requirements.

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

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 20, 1996.

N. Foster,

*Deputy Assistant Administrator for Fisheries, 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, 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 § 622.1, table 1, an entry is added in alphabetical order to read as follows:

#### **§ 622.1 Purpose and scope.**

\* \* \* \* \*

TABLE 1.—FMPs IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
FMP for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands .....	CFMC	Caribbean.

3. In § 622.2, the definition for “Caribbean conch resource” is added in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Caribbean conch resource* means one or more of the following species, or a part thereof:

- (1) Atlantic triton’s trumpet, *Charonia variegata*.
- (2) Cameo helmet, *Cassis madagascarensis*.
- (3) Caribbean helmet, *Cassis tuberosa*.
- (4) Caribbean vase, *Vasum muricatum*.
- (5) Flame helmet, *Cassis flammea*.
- (6) Green star shell, *Astrea tuber*.
- (7) Hawkwing conch, *Strombus raninus*.
- (8) Milk conch, *Strombus costatus*.
- (9) Queen conch, *Strombus gigas*.
- (10) Roostertail conch, *Strombus gallus*.
- (11) True tulip, *Fasciolaria tulipa*.
- (12) West Indian fighting conch, *Strombus pugilis*.
- (13) Whelk (West Indian top shell), *Cittarium pica*.

\* \* \* \* \*

4. In § 622.33, paragraph (c) is added to read as follows:

**§ 622.33 Caribbean EEZ seasonal and/or area closures.**

\* \* \* \* \*

(c) *Queen conch closure*. From July 1 through September 30, each year, no person may fish for queen conch in the Caribbean EEZ and no person may possess on board a fishing vessel a queen conch in or from the Caribbean EEZ.

5. In § 622.37, paragraph (g) is added to read as follows:

**§ 622.37 Minimum sizes.**

\* \* \* \* \*

(g) *Caribbean queen conch*—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 mm) in lip width at its widest point. 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.

6. In § 622.38, paragraph (f) is added to read as follows:

**§ 622.38 Landing fish intact.**

\* \* \* \* \*

(f) A Caribbean conch resource in or from the Caribbean EEZ must be maintained with meat and shell intact.

7. In § 622.39, paragraph (e) is added to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(e) *Caribbean queen conch*—(1) *Applicability*. Paragraph (a)(1) of this section notwithstanding, the bag limit of paragraph (e)(2) of this section does not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands. See § 622.44 for the commercial daily trip limit.

(2) *Bag limit*. The bag limit for queen conch in or from the Caribbean EEZ is 3 per person or, if more than 4 persons are aboard, 12 per boat.

8. In § 622.41, paragraph (e) is added to read as follows:

**§ 622.41 Species specific limitations.**

\* \* \* \* \*

(e) *Caribbean queen conch*. In the Caribbean EEZ, no person may harvest queen conch by diving while using a device that provides a continuous air supply from the surface.

9. In § 622.44, paragraph (e) is added to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* \* \*

(e) *Caribbean queen conch*. A person who fishes in the Caribbean EEZ and is not subject to the bag limit may not possess in or from the Caribbean EEZ more than 150 queen conch per day.

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**50 CFR Part 648**

[I.D. 091996C]

**New England Fishery Management Council; Meeting**

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

**ACTION:** Public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a 2-day public meeting on October 2 and 3, 1996, to consider actions affecting New England fisheries in the exclusive economic zone.

**DATES:** The meeting will be held on Wednesday, October 2, 1996, at 10 a.m., and on Thursday, October 3, 1996, at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the King’s Grant Inn, Route 128 and Trask Lane, Danvers, MA; telephone (508) 774–6800. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (617) 231–0422.

**FOR FURTHER INFORMATION CONTACT:**

Christopher B. Kellogg, Acting Executive Director, New England Fishery Management Council.

**SUPPLEMENTARY INFORMATION:** After introductions, the October 2 session will begin with a report by the Groundfish Committee. Issues to be considered include final action on Framework Adjustment 18 to the Northeast Multispecies Fishery Management Plan (FMP), which pertains to mid-water trawling in areas closed to groundfish fishing. Other discussion items include mobile gear night closures to protect spawning groundfish, a framework adjustment to modify the existing effort reduction measures for gillnet vessels, and an exemption for general category scallop permit holders who use small dredges and are unable to fish under the current groundfish regulations. During the Gear Conflict Committee report that will follow, the Council will discuss final action on Framework Adjustment 1, proposed to reduce gear-related disputes in the offshore waters of Southern New England. The October 2 session will conclude with a report by NMFS Chief of the Highly Migratory Species Management Division, Dr. William Hogarth, who will discuss a variety of issues related to swordfish, shark and tuna management. At that time, the Council plans to develop comments on an advanced notice of proposed rulemaking to adjust