

Council Staff Recommended 50 CFR 622 Regulations for Removal

On February 24, 2017 President Trump issued Executive Order 13777 as part of efforts to lower regulatory burdens on the American people by implementing and enforcing regulatory reform. The NMFS requested that each of the fishery management councils identify a process to review/evaluate existing regulations by the end of December 2017. Then each Council is to conduct the review/evaluation and provide recommendations on rules to be removed by the end of June 2018.

In a letter dated December 20, 2017 and signed by Council chair, Capt. Charlie Phillips, the SAFMC provided the following plan for evaluating regulations for removal:

- Continue to request public comments at the March and June 2018 Council meetings
- Each technical staff review the regulations for their FMPs – January/February 2018
- Coordinate with the SERO on potential regulations to remove – February 2018
- Bring draft list to Executive Finance Committee in March 2018
- Public Input during public comment session at March 5-9, 2018 Council meeting
- Council reviews and provides input at March 2018 meeting
- Have Advisory Panels (Species and Law Enforcement APs) and SSC/SEP review between March and June 2018 Council meetings; mail to APs not meeting in person
- Coordinate with SERO and NOAA GC between March and June 2018 Council meetings
- Bring revised list to Executive Finance Committee in June 2018
- Council reviews and approves list of regulations to be removed at June 11-15, 2018 meeting
- Council sends list of regulations to be removed to NMFS by June 22, 2018

To date Council staff have identified the following Code of Federal Regulations (CFR) as likely candidates for regulations for regulatory reform because they are viewed as being unneeded or outdated. They are listed in CFR order. Text to be removed is in strikethrough font. The reason given for the removal follows the CFR listing.

Regulations currently in place:

Subpart L – Golden Crab Fishery of the South Atlantic

§622.241 South Atlantic golden crab controlled access.

(a) *General.* In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial commercial vessel permits have been issued for the fishery. All permits in the fishery are issued on a fishing-year (calendar-year) basis. ~~No additional permits may be issued except for the northern zone as follows:~~

~~(1) The RA will issue up to two new vessel permits for the northern zone. Selection will be made from the list of historical participants in the South Atlantic golden crab fishery. Such list was used at the October 1995 meeting of the South Atlantic Fishery Management Council and was prioritized based on pounds of golden crab landed, without reference to a specific zone. Individuals on the list who originally received permits will be deleted from the list.~~

~~(2) The RA will offer in writing an opportunity to apply for a permit for the northern zone to the individuals highest on the list until two individuals accept and apply in a timely manner. An offer that is not accepted within 30 days after it is received will no longer be valid.~~

~~(3) An application for a permit from an individual who accepts the RA's offer must be received by the RA no later than 30 days after the date of the individual's acceptance. Application forms are available from the RA.~~

Reason for consideration for modification or removal: These regulations can be removed because they are outdated. The actions described here took place when the zones were set up and are not recurring, therefore they are unneeded.

Regulations the Council is considering removing in the future through the plan amendment process:

Subpart A—General Provisions

§622.4 Permits and fees—general.

~~(g) *Renewal*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* Unless specified otherwise, a vessel owner or dealer who has been issued a permit, license, or endorsement under this part must renew such permit, license, or endorsement on an annual basis. The RA will mail a vessel owner or dealer whose permit, license, or endorsement is expiring an application for renewal approximately 2 months prior to the expiration date. A vessel owner or dealer who does not receive a renewal application from the RA by 45 days prior to the expiration date of the permit, license, or endorsement must contact the RA and request a renewal application. The applicant must submit a completed renewal application form and all required supporting documents to the RA prior to the applicable deadline for renewal of the permit, license, or endorsement and at least 30 days prior to the date on which the applicant desires to have the permit made effective. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.~~

Reason for consideration for modification or removal: NMFS SERO is considering changes whereby permit, license, endorsement holders can download the appropriate renewal application form. This will save time and expense for both the permit, license, endorsement holder and the government.

Subpart I – Snapper-Grouper Fishery of the South Atlantic Region

§622.182 Gear-restricted areas

~~(c) *Powerhead prohibited area.* A powerhead may not be used in the EEZ off South Carolina to harvest South Atlantic snapper grouper. The possession of a mutilated South Atlantic snapper grouper in or from the EEZ off South Carolina, and a powerhead is *prima facie* evidence that such fish was harvested by a powerhead.~~

Reason for consideration for modification or removal: Powerheads are allowed in the EEZ off the other South Atlantic states. South Carolina has requested that the Council take action to remove prohibition off its coast to be consistent with regulations in the rest of South Atlantic federal waters.

§622.185 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. A fish not in compliance with its size limit, as specified in this section, in or from the South Atlantic EEZ, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section.

(a) *Snapper*—(1) [Reserved]

(2) *Vermilion snapper*—12 inches (30.5 cm), TL.

~~(3) *Blackfin, cubera, gray, queen, silk, and yellowtail snappers*—12 inches (30.5 cm), TL.~~

Reason for consideration for modification or removal: This is proposed for removal in the visioning amendments

Subpart J—Shrimp Fishery of the South Atlantic Region

§622.200 Permits.

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(b) *Operator permits.* (1) An operator of a vessel that has or is required to have a Commercial Vessel Permit for Rock Shrimp (Carolinas Zone) or a Commercial Vessel Permit for Rock Shrimp (South Atlantic EEZ) issued under this section is required to have an operator permit.

(2) A person required to have an operator permit under paragraph (b)(1) of this section must carry on board such permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(3) An owner of a vessel that is required to have a permitted operator under paragraph (b)(1) of this section must ensure that at least one person with a valid operator permit is aboard while the vessel is at sea or offloading.

(4) An owner of a vessel that is required to have a permitted operator under paragraph (b)(1) of this section and the operator of such vessel are responsible for ensuring that a person whose operator permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 is not aboard that vessel.

Reason for consideration for modification or removal: The Council is considering removing operator cards for charter vessels. They may also want to consider removing the requirement from the Rock Shrimp fishery, as well.

§622.210 Adjustment of management measures.

In accordance with the framework procedures of the FMP for the Shrimp Fishery of the South Atlantic Region, the RA may establish or modify the items specified in paragraph (a) of this section for South Atlantic shrimp.

- (a) Biomass levels, age-structured analyses, BRD certification criteria, BRD specifications, BRD testing protocol, certified BRDs, nets required to use BRDs, times and locations when the use of BRDs is required, definitions of essential fish habitat, and essential fish habitat HAPCs ~~or Coral HAPCs.~~

Reason for consideration for modification or removal: Given the need for significant public input and detailed analyses necessary to establish new Coral HAPCs, it is not likely they would be established by framework.

Need for consistency in shrimp transit provisions in the Northeast, South Atlantic, and Gulf of Mexico

Northeast

§648.2 Definitions.

Not available for immediate use means that the gear is not being used for fishing and is stowed in conformance with one of the following methods:

(1) *Nets*—(i) *Below-deck stowage*. (A) The net is stored below the main working deck from which it is deployed and retrieved;

(B) The net is fan-folded (flaked) and bound around its circumference.

(ii) *On-deck stowage*. (A) The net is fan-folded (flaked) and bound around its circumference;

(B) The net is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net.

(iii) *On-reel stowage*. (A) The net is on the net reel;

(B) The codend of the net is removed from the net and stored below deck; and

(C) The entire surface of the net is covered and securely bound by:

(1) Canvas of other similar opaque material; or

(2) A highly visible orange or yellow mesh material that is not capable of catching fish or being utilized as fishing gear. An example of highly visible orange or yellow mesh includes but is not limited to the orange fence material commonly used to enclose construction sites (5) *Other methods of stowage*. Any other method of stowage authorized in writing by the Regional Administrator and subsequently published in the FEDERAL REGISTER.

§648.14 Prohibitions.

(h)(2)(vi)(B) Transit the Closed Area II Scallop Rotational Area or the Closed Area II Extension Scallop Rotational Area, as defined §648.60(d) and (e), respectively, or the Elephant Trunk Flex Scallop Rotational Area, as defined in §648.60(b), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in §648.2.

§648.27 Frank R. Lautenberg Deep-Sea Coral Protection Area.

(d) *Transiting*. Vessels may transit the Broad and Discrete Deep-Sea Coral Zones defined in paragraphs (b) and (c) of this section, provided bottom-tending trawl nets are out of the water and stowed on the reel and any other fishing gear that is prohibited in these areas is onboard, out of the water, and not deployed. Fishing gear is not required to meet the definition of “not available for immediate use” in §648.2, when a vessel transits the Broad and Discrete Deep-Sea Coral Zones.

§648.61 EFH closed areas.

(b) *Transiting*. A vessel may transit the EFH Closure Areas as defined in paragraphs (a)(1) through (6) of this section, unless otherwise restricted, provided that its gear is stowed and not available for immediate use as defined in §648.2. A vessel may transit the CAII EFH closed area, as defined in paragraph (a)(5) of this section, provided there is a compelling safety reason to enter the area and all gear is stowed and not available for immediate use as defined in §648.2.

South Atlantic

§622.183 Area and seasonal closures.

(a)(1)(ii) For the purpose of paragraph (a)(1)(i) of this section, transit means direct, non-stop progression through the MPA. Fishing gear appropriately stowed means—

(B) A trawl or try net may remain on deck, but trawl doors must be disconnected from such net and must be secured.

(vii) (B) Trawl doors and nets must be out of the water, but the doors are not required to be on deck or secured on or below deck.

§622.206 Area and seasonal closures.

(a)(2)(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck while transiting the closed area. For the purpose of this paragraph, a vessel is in transit when it is on a direct and continuous course through a closed area.

§622.224 Area closures to protect South Atlantic corals.

(b)(1)(i)(C) Fish for or possess rock shrimp in or from the Oculina Bank HAPC, except a shrimp vessel with a valid commercial vessel permit for rock shrimp that possesses rock shrimp may transit through the Oculina Bank HAPC if fishing gear is appropriately stowed. For the purpose of this paragraph, transit means a direct and non-stop continuous course through the area, maintaining a minimum speed of five knots as determined by an operating VMS and a VMS minimum ping rate of 1 ping per 5 minutes; fishing gear appropriately stowed means that doors and nets are out of the water.

Gulf of Mexico

§622.34 Seasonal and area closures designed to protect Gulf reef fish.

(4) (ii) A trawl net may remain on deck, but trawl doors must be disconnected from the trawl gear and must be secured.

§622.50 Permits, permit moratorium, and endorsements.

(e) *Gulf shrimp transit provision.* A vessel that does not have a valid Gulf shrimp moratorium permit, as described in paragraphs (a) and (b) of this section, may possess Gulf shrimp when in transit in the Gulf EEZ provided that the shrimp fishing gear is appropriately stowed. For the purposes of this paragraph, transit means non-stop progression through the Gulf EEZ. Fishing gear appropriately stowed means trawl doors and nets must be out of the water and the bag straps must be removed from the net.

Reason for consideration for modification or removal: Shrimp fishermen frequently have permits in multiple jurisdictions. There is a lack of consistency between jurisdictions and within the regulations of each jurisdiction for transiting through no fishing areas with shrimp fishing gear on board. Parity among the jurisdictions would make regulations clearer and simpler to follow.

Subpart M—Dolphin and Wahoo Fishery Off the Atlantic States

§622.270 Permits.

(a) *Commercial vessel permits.* (1) For a person aboard a vessel to be eligible for exemption from the bag and possession limits for dolphin or wahoo in or from the Atlantic EEZ or to sell such dolphin or wahoo, a commercial vessel permit for Atlantic dolphin and wahoo must be issued to the vessel and must be on board, except as provided in paragraph (a)(2) of this section. ~~(See paragraph (c)(1) of this section for the requirements for operator permits in the Atlantic dolphin and wahoo fishery).~~

(2) The provisions of paragraph (a)(1) of this section notwithstanding, a fishing vessel, except a vessel operating as a charter vessel or headboat, that does not have a commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery, is exempt from the bag and possession limits for dolphin and wahoo and may sell dolphin and wahoo, subject to the trip and geographical limits specified in §622.278(a)(2). (A charter vessel/headboat permit is not a commercial vessel permit.)

(b) *Charter vessel/headboat permits.* (1) For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Atlantic dolphin or wahoo, in or from the Atlantic EEZ, a valid charter vessel/headboat permit for Atlantic dolphin and wahoo must have been issued to the vessel and must be on board. ~~(See paragraph (c)(1) of this section for the requirements for operator permits in the dolphin and wahoo fishery.)~~

(2) A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits. See the definitions of “Charter vessel” and “Headboat” in §622.2 for an explanation of when vessels are considered to be operating as a charter vessel or headboat, respectively.

~~(c) *Operator permits.* (1) An operator of a vessel that has or is required to have a charter vessel/headboat or commercial permit for Atlantic dolphin and wahoo issued under this section is required to have an operator permit.~~

~~(2) A person required to have an operator permit under paragraph (c)(1) of this section must carry on board such permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).~~

~~(3) An owner of a vessel that is required to have a permitted operator under paragraph (c)(1) of this section must ensure that at least one person with a valid operator permit is aboard while the vessel is at sea or offloading.~~

~~(4) An owner of a vessel that is required to have a permitted operator under paragraph (c)(1) of this section and the operator of such vessel are responsible for ensuring that a person whose operator permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 is not aboard that vessel.~~

(d) *Dealer permits and conditions—(1) Permits.* For a dealer to first receive Atlantic dolphin or wahoo harvested in or from the EEZ, a Gulf and South Atlantic dealer permit must be issued to the dealer.

(2) *State license and facility requirements.* To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(e) *Permit procedures.* See §622.4 for information regarding general permit procedures including, but not limited to application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

[78 FR 22952, Apr. 17, 2013, as amended at 79 FR 19496, Apr. 9, 2014]

Reason for consideration for modification or removal: Through the development of Dolphin Wahoo Amendment 10, the Council discussed removing the requirement for an operator permit in the Dolphin Wahoo fishery.

Subpart Q—Coastal Migratory Pelagic Resources (Gulf of Mexico, South Atlantic, and Mid-Atlantic)

§622.369 Description of zones.

~~(2) *Atlantic migratory group.* In the EEZ, the Atlantic migratory group is bounded by a line extending from the intersection point of New York, Connecticut, and Rhode Island (as described in §600.105(a) of this chapter) and a line extending due east of the Florida/Georgia border. See Table 3 of this section for the boundary coordinates. (See Figure 3 in Appendix G of this part for illustration.)~~

§622.375 Authorized and unauthorized gear.

~~(i) *Cobia in the Mid-Atlantic and South Atlantic EEZ—automatic reel, bandit gear, handline, rod and reel, pelagic longline, and spear (including powerheads).*~~

§622.380 Size limits.

~~(2) *In the Mid-Atlantic or South Atlantic.* (i) 33 inches (83.8), fork length, for cobia that are sold (commercial sector).~~

~~(ii) 36 inches (91.4 cm), fork length, for cobia that are not sold (recreational sector).~~

§622.382 Bag and possession limits.

~~(vi) *Atlantic migratory group cobia that are not sold (recreational sector)—1, not to exceed 6 fish per vessel per day.*~~

§622.384 Quotas.

(d) *Cobia*—

~~(2) *Atlantic migratory group*. The following quotas apply to persons who fish for cobia and sell their catch. For the 2014 and 2015 fishing years, the quota for the Atlantic migratory group of cobia is 60,000 lb (27,216 kg). The quota for the 2016 fishing year and subsequent fishing years is 50,000 lb (22,680 kg).~~

§622.385 Commercial trip limits.

~~(c) *Cobia*. (1) *Atlantic migratory group*. Until the commercial ACL specified in §622.384(d)(2) is reached, 2 fish per person, not to exceed 6 fish per vessel.~~

§622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

~~(f) *Atlantic migratory group cobia*. (1) The following ACLs and AMs apply to cobia that are sold (commercial sector):~~

~~(i) If the sum of the cobia landings that are sold, as estimated by the SRD, reach or are projected to reach the quota specified in §622.384(d)(2) (ACL), the AA will file a notification with the Office of the Federal Register to prohibit the sale and purchase of cobia for the remainder of the fishing year.~~

~~(ii) In addition to the measures specified in paragraph (f)(1)(i) of this section, if the sum of the cobia landings that are sold and not sold in or from the Atlantic migratory group, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, 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 applicable quota (ACL), as specified in paragraph (f)(1)(i) of this section, for that following year by the amount of any applicable sector-specific ACL overage in the prior fishing year.~~

~~(2) The following ACLs and AMs apply to cobia that are not sold (recreational sector). If recreational landings for cobia, as estimated by the SRD, exceed both the recreational ACL of 620,000 lb (281,227 kg), and the stock ACL, as specified paragraph (f)(3) of this section, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings, and, if necessary, the AA will file a notification with the Office of the Federal Register to reduce the recreational vessel limit, specified in §622.382(a)(1)(vi), to no less than 2 fish per vessel to ensure recreational landings achieve the recreational ACT, but do not exceed~~

~~the recreational ACL in that fishing year. Any recreational vessel limit reduction that is implemented as described in this paragraph is only applicable for the fishing year in which it is implemented. Additionally, if the reduction in the recreational vessel limit is determined by the AA to be insufficient to ensure that recreational landings will not exceed the recreational ACL, the AA will also reduce the length of the recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in that fishing year. The recreational vessel limit and the length of the recreational fishing season will not be reduced if NMFS determines, based on the best scientific information available, that a recreational vessel limit and fishing season reduction are unnecessary. The recreational ACT is 500,000 lb (226,796 kg).~~

~~(3) The stock ACL for Atlantic migratory group cobia is 670,000 lb (303,907 kg)~~

Reason for consideration for modification or removal: These regulations would be removed from the CFR if Atlantic migratory group cobia is removed from the Coastal Migratory Pelagics Fishery Management Plan under Amendment 31 which is currently under consideration by the South Atlantic Council.

Subpart R—Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

§622.411 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

~~For recreational and commercial spiny lobster landings combined, the ACL is 7.32 million lb (3.32 million kg), whole weight. The ACT is 6.59 million lb, (2.99 million kg) whole weight.~~

Reason for consideration for modification or removal: Due to its unique life cycle (external recruitment, long larval life stage), spiny lobster should be considered for exemption from the ACL requirements under the Magnuson-Stevens Act.