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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 960919266-6336-02; 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: Final rule.

SUMMARY: NMFS issues this final rule to implement the Fishery
Management Plan for Queen Conch Resources of Puerto Rico and the U.S.
Virgin Islands (FMP). The FMP restricts 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.

EFFECTIVE DATE: January 13, 1997.

ADDRESSES: Requests for copies of the Final Regulatory Flexibility
Analysis (FRFA) should 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 (Council), 268 Munoz 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 Council under
the authority of the Magnuson-Stevens Fishery Conservation and
Management Act (Magnuson-Stevens Act).

Background information on the conch resources of the Caribbean EEZ
and the rationale for the management measures in the FMP were contained
in the preamble to the proposed rule (61 FR 50794, September 27, 1996)
and are not repeated here.

Public comments were invited on the FMP, the proposed rule, the

IRFA, and other supporting documents through November 12, 1996. NMFS approved the FMP on November 22, 1996.

Comments and Responses

Comments were received from the U.S. Fish and Wildlife Service

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(USFWS), the Environmental Protection Agency (EPA), and the Center for Marine Conservation (CMC). USFWS believes the FMP and associated documents outline the resource and proposed impacts adequately. The EPA concluded that it has no objection to the implementation of the FMP.

Comment: CMC supports the management measures but is concerned that these measures alone may not accomplish the goals of eliminating overfishing, ensuring a sustainable fishery, or restoring healthy conch populations. CMC urges NMFS to consider a prohibition of scuba harvest, the establishment of protected areas, and the development of management measures for other species in the management unit.

Response: NMFS believes that the FMP is a good first step in the restoration of queen conch populations in the U.S. Caribbean; however, NMFS agrees with CMC that more needs to be done in the very near future to further reduce fishing mortality. Although the prohibition on harvest by scuba diving was a preferred option, the Council heard testimony from conch fishermen during public hearings that most of their recent catches are from the EEZ. The Council was unwilling to impose such a major burden on the conch fishermen without additional information on catch histories and population trends. Puerto Rico is considering a number of marine reserves in State waters, and the Council is developing an amendment to its coral plan to establish a marine reserve off St. John, USVI. Additional protected areas, which will benefit conch populations, are expected to be established in the U.S. Caribbean as an alternative to more traditional fishery management measures. Most organisms sold as curios and used in handicrafts in Puerto Rico are imported, primarily from the Philippines. Commercial shell collecting does not appear to be a problem here as it is in other areas. However, the Council is prepared to address impacts of the collection of mollusk shells for the curio market if information becomes available indicating the need for action.

Classification

The Regional Administrator, Southeast Region, NMFS, determined that the FMP is necessary for the conservation and management of the conch resources of the Caribbean Sea and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Council prepared an FEIS for this FMP; a notice of availability for public comment was published on August 29, 1966 (61 FR 45395). According to the FEIS, the restrictions in the FMP would benefit the natural environment for the queen conch fishery.

The Council prepared an IRFA for the proposed rule as required under the Regulatory Flexibility Act. The IRFA concluded that the FMP's

proposed measures would, if approved and implemented, have a significant economic effect on a substantial number of small entities.

Copies of the IRFA are available from the Council (see ADDRESSES).

Following the public comment, NMFS prepared an FRFA. Copies of the FRFA are available from NMFS (see ADDRESSES). The following is a summary of the FRFA.

This final rule is necessary to rebuild the overfished queen conch resource in the U.S. EEZ around Puerto Rico and the USVI (Caribbean EEZ). Trends in queen conch landings since the early 1980s suggest declines in abundance of over 50 percent. This rule is designed to rebuild the overfished conch resources in the Caribbean EEZ by protecting spawning stocks and reducing fishing effort. This rule (1) requires that a Caribbean conch resource in or from the Caribbean EEZ be landed in its shell; (2) prohibits possession and sale of queen conch below a minimum size; (3) establishes daily recreational and commercial harvest limits for queen conch; (4) establishes a 3-month closed season regarding the harvest of queen conch; and (5) prohibits the use of hookah gear for harvesting queen conch.

The one substantive public comment received on the proposed rule suggested that the Council should propose additional actions to restore queen conch stocks, such as a prohibition of the use of scuba for harvesting conch. NMFS observes, however, that the Council did consider and assess options for additional management actions in its RIR/IRFA and in other analyses of the impacts of various management options (e.g., the FEIS). The Council concluded that the other options considered were likely to increase short-term, adverse economic impacts or were unnecessary at this time for achieving the FMP's objectives. In approving the FMP, NMFS agreed with the conclusions of the Council's analyses of regulatory impacts. Accordingly, this comment did not result in changes to the conclusions of the IRFA.

The FRFA indicates that this rule will result in significant economic impacts 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 Council's analyses indicate that at least 30 percent of all queen conch fishing trips will be affected by the rule. 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 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 because most quantitative data have not been collected for this previously unregulated fishery. Assuming fishermen do not compensate for the reduction in queen conch harvests through increased harvests of other species, estimated reductions in gross revenues per trip in Puerto Rico under a commercial trip limit of 150 queen conch will average \$12, a decline of about 7.5 percent. Average gross revenues per trip in the USVI will decline by \$5, a decline of less than 2 percent. Assuming most U.S. Caribbean commercial queen conch fishermen reside in Puerto Rico, the 5 percent criterion for significant effects will probably be met. Impacts on small entities from the 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.

In trying to minimize significant economic impacts on small entities, the Council and NMFS considered numerous management alternatives in selecting the preferred management measures regarding landing conch whole, size limits, harvest limits, closed season, and gear restrictions. In general, the approved FMP measures will create unavoidable short-term economic losses for the impacted small business entities. However, all these measures were proposed by the Council and approved by NMFS because they are considered the most appropriate means of rebuilding the overfished queen conch

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resource while maintaining an ongoing commercial fishery. The long-term biological and economic benefits of these measures are expected to exceed any short-term economic costs to the fishery. The Council considered a 5-year moratorium on harvesting queen conch, which would have had severe economic impacts. The Council chose, instead, to pursue an effort-reduction program with fewer economic impacts than the total closure. Regarding the measure requiring landing of whole conch, the FRFA indicates that 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 conch and other conch resources. In addition, there is no reliable correlation between the age of a queen conch and the weight of its meat. Regarding the size limits, recent scientific studies 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. Lower size limits are not expected to achieve this objective although they would likely have a reduced impact on small entities. Regarding harvest limits, the Council believes that the limit of 150 queen conch per day will restrict commercial fishermen to approximately current levels of harvest. An alternative considered by the Council was to establish a harvest limit of 75 queen conch per commercial fisherman. However, the Council decided, based on anticipated adverse economic impacts, to maintain current levels of harvest until data show that a reduction in the harvest limit is necessary. Regarding the closed season from July through September, impacts on small entities are expected to be minimal because fishermen will shift effort to other fisheries, such as spiny lobsters and reef fish, during this period. Regarding 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, potential 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 EEZ of the U.S. Caribbean. By allowing extended time on the ocean floor, hookah diving significantly increases harvesting time compared 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 Part 622

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

Dated: December 6, 1996.
Charles Karnella,
Acting Deputy Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 622 is 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 Sec. 622.1, table 1, an entry is added in alphabetical order to read as follows:

Sec. 622.1 Purpose and scope.

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Table 1.--FMPs Implemented Under Part 622

FMP title	Responsible fishery management council(s)	Geographical area
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FMP for Queen Conch Resources of Puerto Rico and the U.S. Islands.	CFMC.....	Caribbean.
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3. In Sec. 622.2, the definition for ``Caribbean conch resource" is added in alphabetical order to read as follows:

Sec. 622.2 Definitions and acronyms.

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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 flammaea*.
- (6) Green star shell, *Astrea tuber*.
- (7) Hawkwing conch, *Strombus raninus*.
- (8) Milk conch, *Strombus costatus*.
- (9) Queen conch, *Strombus gigus*.
- (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*.

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

Sec. 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 Sec. 622.37, paragraph (g) is added to read as follows:

Sec. 622.37 Minimum sizes.

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(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 $\frac{3}{8}$ 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 $\frac{3}{8}$ inch (9.5 mm) is not undersized.

6. In Sec. 622.38, paragraph (g) is added to read as follows:

Sec. 622.38 Landing fish intact.

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

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

Sec. 622.39 Bag and possession limits.

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(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 Sec. 622.44 for the commercial daily trip limit.

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(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 Sec. 622.41, paragraph (f) is added to read as follows:

Sec. 622.41 Species specific limitations.

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(f) 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 Sec. 622.44, paragraph (f) is added to read as follows:

Sec. 622.44 Commercial trip limits.

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(f) 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.

[FR Doc. 96-31588 Filed 12-12-96; 8:45 am]

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