

# Spiny Lobster Amendment 13

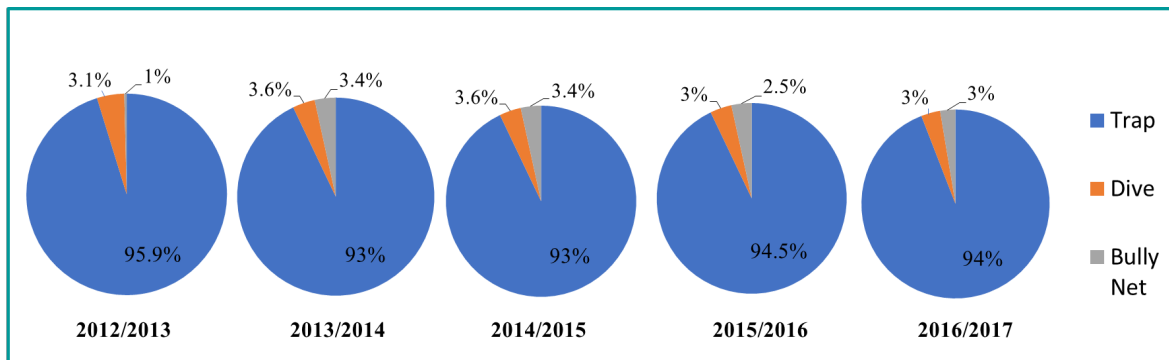


## Law Enforcement Advisory Panel Summary

## Background

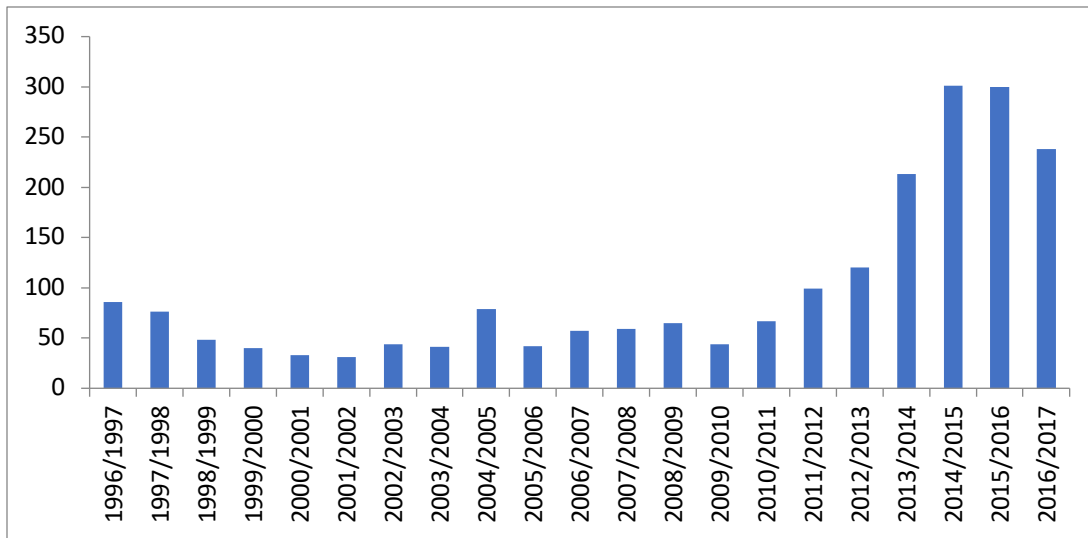
### Bully Netting in Federal Waters

A bully net is a type of gear for harvesting spiny lobster that generally consists of a mesh net with a long handle. This type of gear is typically used in shallow waters at night when spiny lobster move away from structure. The bully net gear type pre-dates the use of spiny lobster traps and currently comprises 3% of spiny lobster landings (**Figure 1.1.1**); participation has steadily increased in recent years (**Figure 1.1.2**) with landings using this gear type increasing from 1% to 3.4% of total landings in one year. Additionally, bully net harvest of spiny lobster peaks early in the season and accounts for a larger portion of the catch during this time. Currently there is little information indicating bully net harvest landings occur in federal waters. The proposed actions in this document would simplify the regulations for both anglers and law enforcement by maintaining consistency in all waters off Florida.



**Figure 1.1.1.** Proportion of commercial lobster landings by gear type.

Source: Florida Trip Ticket records; October 2, 2017.



**Figure 1.1.2.** Number of commercial bully net participants by fishing season.  
Source: Florida Trip Ticket records; October 2, 2017.

Constituents expressed concerns to Florida Fish and Wildlife Conservation Commission (FWC) about increased participation in the open-access bully net component of the spiny lobster fishery along with growing conflicts between recreational bully netters, commercial bully netters, and other members of the public such as waterfront homeowners. Based on input from the public and its staff, FWC approved the following regulations related to bully nets:

1. Update the definition of “commercial harvester” as used in Chapter 68B-24, FAC, to include harvesters with a commercial bully net endorsement.
2. Create an open-access bully net endorsement that would be required in conjunction with the harvester’s saltwater products license and restricted species and crawfish endorsements for commercial harvest of spiny lobster with a bully net.
3. Require any vessel used for commercial harvest of spiny lobster with a commercial bully net to be marked with the harvester’s bully net endorsement number in reflective paint and prohibit trap pullers aboard commercial bully net vessels.
4. Prohibit the simultaneous possession of a bully net and any underwater breathing apparatus, as defined in 68B-4.002, FAC, aboard a vessel being used to harvest or transport spiny lobster for commercial purposes.

In addition to bully net regulations, there are several other inconsistencies between State of Florida regulations and those in the EEZ off Florida, including: bag limits, degradable panels in traps, and the definition of artificial habitat.

### **Spiny Lobster Protocol and Procedure for an Enhanced Cooperative Management System**

The original Spiny Lobster FMP, implemented in July 1982 (GMFMC and SAFMC 1982), largely complemented Florida’s management regime and provided protection for the fishery throughout its range. To achieve its conservation and management objectives and to effectively coordinate management with Florida, the Spiny Lobster FMP adopted many of the management

measures employed by Florida. However, certain Florida lobster regulations were not initially adopted by the Councils. These incompatibilities occurred primarily because Florida’s system could adjust management measures more quickly than the federal system.

In 1992, Amendment 2 was implemented (GMFMC and SAFMC 1989) which allowed FWC to propose Florida regulations for implementation in the exclusive economic zone (EEZ) through NMFS by the procedure. This procedure was based on the premise that more timely regulatory mechanisms were needed at the federal level and that a more formal mechanism was needed for state and federal coordination. Any regulations proposed under the procedure were required to be consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), objectives of the Spiny Lobster FMP, and other applicable federal law.

In 2017, FWC contacted the NMFS Southeast Regional Office (SERO) requesting that federal regulations be aligned with Florida regulations for commercial harvest of spiny lobster using bully nets. However, NMFS determined that the previous cooperative management procedure for the spiny lobster protocol established in Amendment 2 was inadvertently removed in 2012 with Spiny Lobster Amendment 10; therefore, FWC could not propose rules directly to NMFS for implementation. The protocol still exists but there currently is not a way to implement Florida proposed regulations without Council action.

## Expected amendment timing

	Process Step	Date
✓	South Atlantic and Gulf Councils direct staff to begin work on amendment to address bully-net issues and reestablish the protocol and procedure.	June 2017
✓	Gulf Council reviews draft options paper.	October 2017
✓	South Atlantic Council reviews draft options paper.	December 2017
✓	South Atlantic scoping webinars.	January 2018
✓	Gulf Council reviews new draft options paper and approves actions/alternatives to be analyzed.	January 2018
✓	South Atlantic Council reviews new draft options paper and approves actions/alternatives to be analyzed.	March 2018
	South Atlantic Council reviews public hearing draft of Spiny Lobster Amendment 13, selects preferred alternatives.	June 2018
	Gulf Council reviews public hearing draft Spiny Lobster Amendment 13, selects preferred alternatives.	June 2018
	Public hearings.	July 2018
	Gulf Council reviews public input, makes changes if necessary and approves final document.	August 2018
	South Atlantic Council reviews public input, makes changes if necessary, and approves final document.	September 2018

# Purpose and need statement

## **Purpose for Actions**

The purpose of this action is to align federal regulations for spiny lobster that apply to the exclusive economic zone off Florida with Florida state regulations, re-establish the procedure for an enhanced cooperative management system, and update management measures to aid law enforcement.

## **Need for Actions**

The need for this action is to effectively manage and enforce the harvest of spiny lobster to prevent overfishing while achieving optimum yield.

# Proposed Actions and Alternatives

## Action 1 – Require a Florida State bully net permit, marking requirements, and gear prohibitions for bully net gear in the exclusive economic zone (EEZ) off Florida

### Action Alternatives:

**Alternative 1:** No Action. Do not require a Florida state commercial bully net permit for bully net gear or regulations related to bully nets for spiny lobster commercial harvesters in the EEZ off Florida in the Gulf of Mexico (Gulf) and the South Atlantic.

**Alternative 2:** Align federal regulations to be consistent with Florida regulations for spiny lobster commercial harvesters *using bully net gear* by implementing the following:

- Require commercial bully net vessels in the EEZ off Florida to have a bully net permit from Florida.
- Require that the vessel be marked with the harvester's Florida bully net permit number using reflective paint or other reflective material.
- Prohibit commercial bully net vessels from having trap pullers onboard.
- Prohibit the simultaneous possession of a bully net and any underwater breathing apparatus (not including dive masks or snorkels) onboard a vessel used to harvest or transport spiny lobster for commercial purposes.

### Discussion:

- In federal waters, no regulations impose prohibitions on the use of bully net gear. Permits and vessel markings are not required, nor are additional gear types prohibited on bully net vessels.
- **Alternative 2** would make regulations in the EEZ off Florida in the Gulf of Mexico and South Atlantic consistent with the changes made by the State of Florida in its regulations.

### How this might aid law enforcement:

- Public testimony includes statements related to possible illegal use of commercial gear such as:
  - Trap robbing from federal waters at night.
  - Diving for lobster without a commercial dive permit.
  - Working traps without trap certificates/trap tags.
  - Working traps at night.
- Consistency between federal and Florida state regulations under **Alternative 2** would prevent the bully net fishery from being used as a cover for illegal activity, aid law enforcement in identifying the perpetrators at night and curb illegal use of commercial gear.
- Consistency in regulations between federal and state waters reduces confusion among the fishers and can be expected to aid in compliance.

## **Action 2: Commercial spiny lobster bully net and dive gear trip limits in the EEZ off Florida**

### **Action Alternatives:**

**Alternative 1.** No Action. Do not establish a commercial daily vessel harvest and possession limit for spiny lobster harvested by bully net or dive gear in the EEZ off Florida.

**Alternative 2.** Establish a commercial daily vessel harvest and possession limit of 250 per day/vessel for spiny lobsters harvested by bully net in or from the entire EEZ off Florida.

**Alternative 3.** Establish a commercial daily vessel harvest and possession limit of 250 per day/vessel for spiny lobsters harvested by diving in or from only the EEZ off Broward, Dade, Monroe, Collier, and Lee Counties, Florida.

Note: In Action 2, both Alternative 2 and Alternative 3 could be selected as preferred.

### **Discussion:**

- Commercial spiny lobster harvested by dive gear is currently restricted by a daily vessel harvest and possession limit of 250 per day in state waters off Broward, Dade, Monroe, Collier, and Lee Counties, Florida.
- Commercial spiny lobster harvested by bully net is restricted by having a daily vessel harvest and possession limit of 250 per day in all Florida state waters.
- Currently there is not a commercial daily vessel harvest and possession limit for spiny lobster harvested by bully net or dive gear in the EEZ.
  - Florida commercial spiny lobster bully net and dive fishermen are restricted to the limit regardless of what waters the spiny lobster are harvested in as a condition of their state permit and license requirements.
- **Alternative 2** would establish a commercial daily vessel harvest and possession limit of 250 per day for spiny lobsters harvested by bully net in or from the EEZ off Florida.
- **Alternative 3** would establish a commercial daily vessel harvest and possession limit of 250 per day for spiny lobsters harvested by diving in or from the EEZ off Broward, Dade, Monroe, Collier, and Lee Counties, Florida, only.

### How this might aid law enforcement:

- **Alternatives 2 and 3** would ease understanding of regulations and enforcement issues by aligning state and federal regulations.

## Action 3: Specification of degradable panels in spiny lobster traps in the EEZ off Florida

### Action Alternatives:

**Alternative 1.** No Action. In the EEZ off Florida, a spiny lobster trap constructed of material other than wood must have a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap. Such panel must be located in the upper half of the sides or on top of the trap, so that, when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

**Alternative 2.** In the EEZ off Florida, a spiny lobster trap constructed of material other than wood is required to have a degradable panel no smaller than 6 inches by 4 inches or no smaller than the dimensions of the throat or entrance of the trap, whichever is larger, and shall be constructed of cypress or untreated pine slats no thicker than  $\frac{3}{4}$  in (0.6 cm). This degradable panel must be located on the top horizontal section of the trap.

### Discussion

Degradable panel requirements in Florida state waters are more specific than those in federal waters and there are several inconsistencies between the two sets of regulations:

#### *Current Regulations in Federal Waters:*

- **Material:** must be constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap.
- **Size:** when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.
- **Location:** located in the upper half of the sides or on top of the trap.

#### *Current Regulations in Florida State Waters:*

- **Material:** must be constructed of cypress or untreated pine slats no thicker than  $\frac{3}{4}$  in (0.6 cm).
- **Size:** no smaller than 6 inches by 4 inches or no smaller than the dimensions of the throat or entrance of the trap, whichever is larger.
- **Location:** located on the top horizontal section of the trap.

**Alternative 2** would modify federal regulations for degradable panels in spiny lobster traps and update the panel material, size and location requirements to match those in Florida state waters. This would create consistency in trap construction requirements related to degradable panels in spiny lobster traps constructed of materials other than wood.

#### How this might aid law enforcement:

- **Alternative 2** would ease understanding of regulations and enforcement issues by aligning state and federal regulations.

## Action 4: Harvesting restrictions near artificial habitat in the EEZ off Florida

### Action Alternatives:

**Alternative 1.** No Action. Federal regulations have no formal definition developed for artificial habitat and there are no restrictions for harvest and possession of spiny lobster in the EEZ off an artificial habitat as defined by Florida Administrative Code (FAC).

**Alternative 2.** No person shall harvest any spiny lobster from artificial habitat in the EEZ off Florida. The harvest and possession in the water of spiny lobster in excess of the recreational bag limit is hereby prohibited within 10 yards of artificial habitat as is consistent with FAC. For spiny lobster, “artificial habitat” means any material placed in the waters of the state that is reasonably suited to providing cover and habitat for spiny lobster. Such material may be constructed of, but is not limited to, wood, metal, fiberglass, concrete, or plastic, or any combination thereof, and may be fabricated for this specific purpose or for some other purpose. The term does not include fishing gear allowed by rule of the Florida Fish and Wildlife Conservation Commission (FWC), legally permitted structures, or artificial reef sites constructed pursuant to permits issued by the United States Army Corps of Engineers or by the state regulatory agency.

### Discussion:

Florida definition of artificial habitat: *“Artificial habitat’ means any material placed in the waters of the state that is reasonably suited to providing cover and habitat for spiny lobster. Such material may be constructed of, but is not limited to, wood, metal, fiberglass, concrete, or plastic, or any combination thereof, and may be fabricated for this specific purpose or for some other purpose. The term does not include fishing gear allowed by rule of the Commission, legally permitted structures, or artificial reef sites constructed pursuant to permits issued by the United States Army Corps of Engineers or by the Florida Department of Environmental Protection.”*

- Artificial habitat for lobsters, commonly referred to as ‘casitas,’ are structures placed on the seafloor by dive fishermen to aggregate lobsters. Though placement of artificial habitat is considered illegal dumping, approximately 1,000-1,500 artificial habitats were placed in the lower keys during the late 1990’s and early 2000s.
- Specifically prohibiting harvest from within 10 yards of artificial habitat (**Alternative 2**) maintains consistency with Florida’s regulations, and eases the burden on law enforcement in federal waters off Florida. **Alternative 2** would establish a prohibition on harvesting spiny lobster from artificial habitats as defined in the Florida Administrative Code in EEZ waters off Florida. Definition would apply only to spiny lobster.

#### How this might aid law enforcement:

- **Alternative 2** would ease understanding of regulations and enforcement issues by aligning state and federal regulations.

**\*\*Note:** The South Atlantic Council is interested in hearing from the LEAP on the enforceability of **Alternative 2**.



## **Action 5: Establish an enhanced cooperative management procedure for federal and Florida state agencies for the management of spiny lobster**

### **Action Alternatives:**

**Alternative 1:** No Action. Do not establish an enhanced cooperative management procedure for the management of spiny lobster. The Councils must develop an amendment to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (Spiny Lobster FMP) to establish new federal regulations consistent with new Florida regulations.

**Alternative 2.** Establish an enhanced cooperative management procedure that allows Florida to request changes to the spiny lobster federal regulations through NMFS rulemaking. Following is the proposed language (adapted from Amendment 2 to the Spiny Lobster FMP) for the procedure to be added to the existing protocol (established in Amendment 10 to the Spiny Lobster FMP):

#### **Proposed Language for Enhanced Cooperative Management Procedure Joint Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico (Gulf) and South Atlantic Procedure for Enhanced Cooperative Management:**

*\*\*NOTE: Council staff is working with FWC and NOAA GC to ensure this language is consistent with NEPA and APA guidelines and reflects the federal rulemaking timeline.\*\**

1. This procedure will function under and be governed by the protocols for cooperative management agreed upon by the Florida Fish and Wildlife Conservation Commission (FWC), the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and the National Marine Fisheries Service (NMFS).
2. Based on the best available scientific information, FWC will develop alternative proposed rules and analyses on the effects of these alternatives, hold public hearings (as required by Florida's Administrative Procedure Act), and at a final hearing select each preferred alternative rule for implementation. After approval of the rule or rules by the Commissioners, FWC will advise the Councils and NMFS Southeast Regional Administrator (RA) of the recommended rule(s) and proposed implementation date and will provide to the RA and to the Councils the analyses of the effects and impacts of the recommended and alternative rules and summaries of public comment. For rules to be implemented by the start of the fishing season (currently August 6), FWC must complete these actions on or before February 1. The Councils will submit the rule and supporting analyses to the Scientific and Statistical Committees (SSC) who will advise the RA, through the Councils, of the scientific validity of the analyses. The Councils will also submit the rule and supporting analyses to the advisory panels for comment.

3. The RA will review the recommended rule, analyses, and public record, and if the RA preliminarily determines that the rule is consistent with the objectives of the Spiny Lobster FMP, the National Standards, and other applicable law, the RA will notify the Councils and FWC of his intent to implement the rule in federal waters. If in the judgment of the RA, the rule or its supporting record are not consistent with these statutory criteria or the Spiny Lobster FMP objectives, the RA will immediately notify the Councils and FWC of the deficiencies in the rule or supporting record. FWC may submit additional information or analyses to correct the deficiencies in the record.
4. When, in the judgment of either of the Councils, the FWC rule is not consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) or the objectives of the FMP, they will inform the RA and FWC. In this case, the RA will not proceed with implementation of the rule until this issue has been resolved.
5. When the RA has preliminarily concluded the rule is acceptable, the RA will draft and publish a proposed rule for implementation. Based on Florida state analyses of impacts, the Councils' or NMFS' staffs, with assistance from FWC, will prepare the supporting documentation (environmental assessment, regulatory impact review, etc.) that accompany the proposed rule.

After reviewing public comment on the proposed rule, if the RA has concluded the rule is not consistent with the Spiny Lobster FMP objectives, the national standards, other applicable law, or the provisions of this procedure, the RA will notify the Councils and FWC of that fact and/or the need for proceeding with implementation by Spiny Lobster FMP amendment. If the supporting record is still deficient, the RA will delay taking action until the record has been supplemented by FWC and/or Councils' staffs. If the RA has concluded the rule is consistent, the RA will publish the final rule in the Federal Register. The effective date of rules promulgated under this procedure will be the starting date of the next fishing season following publication of the final rule, unless otherwise agreed upon by FWC, the Councils, and the RA.

6. PART A (GEAR RESTRICTIONS) Appropriate rules or regulatory changes that can be implemented under this part include:
  - a. Limiting the number of traps that may be fished by each vessel.
  - b. Describing the construction characteristics of traps, including requiring escape gaps and their specifications/measurements.
  - c. Specification of gear and vessel identification requirements including placement and materials to be used.
  - d. Specification of gear that may be utilized or prohibited in directed fishery and specification of bycatch levels that may be taken as incidental catch in non-directed fisheries.

e. Changes to soak or removal periods and requirements for traps.

PART B (HARVEST RESTRICTIONS) Appropriate rules or regulatory changes that can be implemented under this part include:

- a. Recreational bag and possession limits.
- b. Changes in fishing seasons.
- c. Limitations on use, possession, and handling of undersized lobsters.
- d. Changes in minimum legal size.
- e. Changes to permit requirements.

### **Discussion:**

- For spiny lobster, the State of Florida has been historically allowed to recommend regulations directly to NMFS; however, the procedure governing this process was removed from the Spiny Lobster FMP when the cooperative protocol was updated in Amendment 10.
- **Alternative 1** would keep the current process, which requires that any changes for federal spiny lobster regulations be developed through Council action.
- **Alternative 2** would re-establish a procedure allowing Florida to propose federal regulations directly to NMFS under the existing cooperative protocol.
  - The recommended regulations and analyses must be based on the best available science and be consistent with Spiny Lobster FMP objectives, the national standards, and any other applicable law.

How this might aid law enforcement:

- **Alternative 2** is expected to help expedite making federal regulations consistent with Florida regulations for the EEZ off Florida.