

8/22/02

REGULATORY AMENDMENT 3

TO THE

SPINY LOBSTER FISHERY MANAGEMENT PLAN

FOR THE

GULF OF MEXICO AND SOUTH ATLANTIC

**(Includes Environmental Assessment,
and Regulatory Impact Review)**

OCTOBER 2002

**Gulf of Mexico Fishery Management Council
3018 U.S. Highway 301 North, Suite 1000
Tampa, Florida 33619
813-228-2815 Phone
1-888-833-1844 Toll Free
1-813-225-7015 Fax
gulfcouncil@gulfcouncil.org
www.gulfcouncil.org**

**South Atlantic Council
Southpark Building, Suite 306
1 Southpark Circle
Charleston, South Carolina 29407-4699
803-571-4366**

This is a publication of the Gulf of Mexico and South Atlantic Fishery Management Councils pursuant to National Oceanic and Atmospheric Administration Award Numbers NA17FC2203 and NA17FC2202, respectively.

TABLE OF CONTENTS

1.	<u>INTRODUCTION</u>	1
2.	<u>HISTORY OF MANAGEMENT</u>	1
3.	<u>PROBLEMS REQUIRING PLAN AMENDMENT</u>	2
4.	<u>PURPOSE AND NEED FOR ACTION</u>	3
5.	<u>DESCRIPTION OF THE FISHERY</u>	4
6.	<u>PROVISIONS OF THE FMP</u>	6
	A. <u>Problems and Issues in the Fishery</u>	6
	B. <u>Management Objectives</u>	7
	C. <u>Optimum Yield (OY)</u>	7
	D. <u>Protocol and Procedure for an Enhanced Cooperative Management System</u>	8
7.	<u>PROPOSED MANAGEMENT ACTION</u>	10
8.	<u>REGULATORY IMPACT REVIEW (RIR)</u>	12
	8.1 <u>Introduction</u>	12
	8.2 <u>Problems and Objectives</u>	13
	8.3 <u>Background</u>	13
	8.4 <u>Description of the Fishery and Estimate of the Economic Benefits and Costs to Persons Directly Affected</u>	13
	8.4.1 <u>An Estimate of Persons Directly Affected by the Proposed Amendment</u>	13
	8.4.2 <u>Possession of Undersized Lobster</u>	14
	8.5 <u>Private and Public Costs of Management</u>	14
	8.6 <u>Summary of Impacts and Determination of a Major Rule</u>	15
9.	<u>INITIAL REGULATORY FLEXIBILITY ANALYSES</u>	15
10.	<u>ENVIRONMENTAL ASSESSMENT</u>	16
11.	<u>OTHER APPLICABLE LAW</u>	19
12.	<u>PUBLIC REVIEW</u>	20
13.	<u>LIST OF PREPARERS & AFFECTED AGENCIES</u>	20
14.	<u>REFERENCES CITED AND SUBMITTED FOR THE RECORD</u>	21
15.	<u>TABLES</u>	23

16.	<u>FIGURES</u>	27
-----	----------------	----

APPENDIX A

1. INTRODUCTION

The Regional Administrator (RA) of National Marine Fisheries Service (NMFS) is hereby submitting for final approval and implementation this regulatory amendment he has tentatively approved under the framework procedure authorized by the Protocol and Procedure of the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP). The regulatory amendment proposes to increase the number of undersize lobster that are allowed to be transported in aerated live wells aboard commercial vessels. Such action would result in federal rule being consistent with the state rule recently implemented by the Florida Fish and Wildlife Conservation Commission (FFWCC).

2. HISTORY OF MANAGEMENT

The FMP was implemented on July 2, 1982 (47 FR 29203). The FMP largely extended Florida's rules regulating the fishery to the EEZ throughout the range of the fishery, i.e. North Carolina to Texas. The management measures included: specifying minimum size limit and closed season, requiring degradable panels, prohibiting use of spears or hooks, limited attractant to 200 per vessel, required attractants to be held in shaded box, required trap number and color code be displayed, created special recreational 2-day season before commercial season, prohibited possession of egg-bearing lobster, and required reporting of landings.

Amendment 1 was implemented on July 15, 1987 (52 FR 22659) with certain rules deferred and implemented on May 16, 1988 (53 FR 17196) and on July 30, 1990 (55 FR 26448). This amendment updated the FMP rules to be more compatible with that of Florida (State). The management measures included: limiting attractants to 100 per vessel, requiring live wells, requiring a commercial vessel permit, provided for a recreational permit, limited recreational fishermen to possession of 6 lobsters, modified the special 2-day recreational season before commercial season, modified the duration of the closed commercial season, provided a 10-day trap retrieval period, prohibited possession of egg-bearing spiny lobster, specified the minimum size limit for tails, provided for a tail separation permit, and prohibited possession of egg-bearing slipper lobster.

Amendment 2 was approved on October 27, 1989 (54 FR 48059) and provided a regulatory amendment procedure for instituting future compatible State and federal rules without amending the FMP.

Amendment 3 was implemented on March 25, 1991 (56 FR 12357) and contained provisions for adding a scientifically measurable definition of overfishing, an action plan to prevent overfishing, should it occur, as required by the Magnuson Act National Standards (50 CFR Part 602), and the requirement for collection of fees for the administrative cost of issuing permits. The FMP, as amended, provides for management of the fishery throughout its range from North Carolina through Texas. However, the commercial fishery and, to a very large extent, the recreational fishery, occur off South Florida and principally off Monroe County in the Florida Keys (96 percent of landings in 1984).

Regulatory Amendment 1 (5/92) addressed: (1) extension of the Florida spiny lobster trap certificate system for reducing the number of traps in the commercial fishery to the EEZ off Florida; (2) revision of the FMP commercial permitting requirements; (3) limitation of the number of live undersize lobster used as attractants for baiting traps; (4) specification of gear allowed for commercial fishing in the EEZ off Florida; (5) specification of the possession limit of spiny lobsters by persons diving at night; (6) requirement of lobsters harvested by divers be measured without removing from the water; and (7) specification of uniform trap and buoy numbers for the EEZ off Florida. All of these changes were implemented through the framework procedure of the FMP as established by Amendment 2.

Regulatory Amendment 2 (3/93) addressed: (1) a change in the days for the special recreational season in the EEZ off Florida; (2) a prohibition on night-time harvest off Monroe County, Florida, during that season; (3) specifies allowable gear during that season; and (4) provides for different bag limits during that season off the Florida Keys and the EEZ off other areas of Florida.

Amendment 4, prepared by the SAFMC, was implemented on September 15, 1995 (60 FR 41828). It provided a bag limit of 2 lobster per day for all fishermen in waters off SAFMC states north of the Florida/Georgia border.

Amendments 5 and 6, prepared by the SAFMC, were generic amendments for describing Essential Fish Habitat (EFH Amendment) and for compliance with the Sustainable Fisheries Act (SFA Amendment), respectively. These amendments addressed those issues for all of the SAFMC's FMPs.

Generic Amendment addressing EFH for the FMPs of the Gulf of Mexico (partially approved 2/99). The amendment described the distribution and relative abundance of juvenile and adult spiny lobster for offshore, nearshore, and estuarine habitats of the Gulf.

Generic SFA Amendment for the FMPs of the Gulf of Mexico (partially disapproved 11/99). The amendment had proposed revision to maximum sustainable yield (MSY), optimum yield (OY), maximum fishing mortality threshold (MFMT), and maximum stock size threshold (MSST) for spiny lobster. MSY, OY, and MFMT were disapproved because they were based on transitional spawning stock biomass per recruit (SSB/Rs). The amendment updated the description of the spiny lobster fisheries and provided fishing community assessment information for Monroe County, Florida.

Amendment 7 was implemented under a generic amendment that created two no-use marine reserves. Tortugas South (60 square nautical miles) was sited in the GMFMC EEZ to encompass a spawning aggregation site for mutton snapper. Tortugas North (120 square nautical miles) included part of the fishery jurisdiction of the FKNMS, Dry Tortugas National Monument, GMFMC, and the state of Florida, and was cooperatively implemented by these agencies. The GMFMC rule was effective August 19, 2002.

3. PROBLEMS REQUIRING PLAN AMENDMENT

The industry, through Monroe County Commercial Fishermen, Inc., and through public hearings, expressed concern because the current state and federal rules limiting possession of undersize lobsters aboard vessels does not allow enough undersize lobster to properly bait the traps by using the live lobsters as attractants. These rules provided that vessels transporting undersize lobsters in live wells were limited to 50 lobsters, or one lobster per trap on board, whichever is greatest. The industry maintained that typically to be effective they use two lobsters as attractants in each trap, and the current possession limit frequently prohibited that.

The industry in the early 1990s was so overcapitalized in terms of traps (about 800,000) that the use of undersize lobsters as attractants was judged to have an adverse impact by reducing recruitment to the fishery and thus landings. Prior to the requirement for live wells¹, the mortality of undersize lobster ranged between 20-50%. The live wells significantly reduced the mortality associated with using undersized lobsters as attractants. The lobster trap certificate or trap reduction program (LTC) implemented by the state and Councils in the 1992/1993 season has significantly reduced the number of certificates to fish a trap to about 522,000 prior to the 2002/2003 season (Joe O'Hop, FMRI, Personal Communication). That action significantly reduced the number of undersize lobster used as attractants, and thereby reduced overall mortality. Currently the mortality associated with confining undersized lobster to traps is estimated to be about 10% for each 4-week period. The trap certificate or reduction program likely will continue to reduce the number of traps. The maximum economic yield from the fishery would be achieved within a range of 131,000 to 361,000 traps. Some gain in total landings would be achieved for trap numbers up to 400,000, at which point additional traps would not result in additional yield. Therefore, the final level of the reduction will be negotiated between the industry and the FFWCC.

The FFWCC held two workshops to explore with the public alternatives for reducing these problems. The alternatives discussed at public workshops for vessel possession limits of undersized lobster included:

1. Status Quo: 50 lobster or 1 per trap aboard, whichever is greater
2. 100 lobster or 2 per trap aboard, whichever is greater
3. Bond system for 50-200 extra lobster:
 - \$500 for 50 extra for total of 150
 - \$1,000 for an additional 50 extras for a total of 200
 - \$1,500 for an additional 50 extras for total of 250

The FFWCC staff suggested a balance between the objective of achieving gain in efficiency from use of attractants and the potential for loss in yield, by suggesting an alternative for increasing the vessel possession limit at the lower end of the number of attractants considered at the public workshops.

The FFWCC, based on input from these workshops and from their staff, reduced the alternatives to a set of proposed options. Public hearings before the FMFC were held on these options and the final set of options before approving the following option: **increasing the number of**

¹ _____

undersize lobster that may be possessed on the water to 50 and one for each trap aboard, provided the live well capacity specifications are met.

This amended rule was approved by the FFWCC in May, 2002 and took effect in August, 2002.

The FFWCC has submitted these rules and associated administrative record to the Regional Administrator (RA) of the National Marine Fisheries Service (NMFS) and the Gulf and South Atlantic Councils (Councils) for implementation under the framework procedure of the FMP (see Section 6.D). Under this procedure the RA has authority, with the concurrence of the Councils, to implement the state rules in the EEZ by regulatory amendment provided they are consistent with the protocol and procedure. The RA has preliminarily determined, as provided in the protocol, that the proposed rules are consistent with the objectives of the FMP, the National Standards, the Magnuson Act, and other applicable law. The Councils have submitted the proposed rules and administrative record to their advisory panels (APs) and scientific and statistical committees (SSCs) and have concluded the proposed rules are consistent with the Magnuson Act and the FMP objectives.

4. PURPOSE AND NEED FOR ACTION

The purpose of Regulatory Amendment 3 is to conform federal rules on spiny lobster, that apply to the EEZ off Florida, with recently adopted state rules, using the Protocol and Procedure for an Enhanced Cooperative Management System contained in the Fishery Management Plan (FMP) for Spiny Lobster of the Gulf of Mexico and South Atlantic (See Amendment Section 6.D). Consistent state and Federal rules off Florida are needed to fully implement and enforce Florida's management measures. Amendment Section 3, "Problems Requiring Plan Amendment", contains additional information relevant to the need for action in this case.

Compatible state and federal rules are needed to make enforcement effective. Under the Protocol of Section 6-D, NMFS and the Councils have agreed that the FFWCC has the lead in managing this fishery; therefore, it is incumbent on them to implement compatible rules.

5. DESCRIPTION OF THE FISHERY

The commercial spiny lobster fishery in Florida was primarily dependent on the use of bully nets during the early part of the century, but since the 1950's wooden slat traps have primarily been used. The number of traps in the fishery increased progressively throughout the 1960's and was estimated to be approximately 250,000 by the early 1970's. Annual lobster landings also steadily increased over the same time period and were approximately 5 million pounds on the Florida west coast and 3 to 6 million pounds on the Florida east coast² in the early 1970's. After the closure of the Bahamian waters to U.S. fishers in 1975, the number of traps in Florida rapidly increased to approximately 500,000 by the mid 1970's, continued to steadily increase through the 1980's, and reached a high of approximately 980,000 by 1991, and then declined (Table 5, Appendix A). However, landings did not keep pace with the increased number of traps; annual

² _____

landings over the same time period were cyclically stable, fluctuating from 4.3 to 7.9 million pounds (Table 1, Appendix A).

During the early 1980's, biologists from Florida Department of Environmental Protection (DEP) identified problems associated with the increased number of traps in the fishery (Lyons, 1986). Spiny lobster fishers in Florida are legally allowed to place live sublegal lobsters (locally called "shorts") into their traps to serve as attractants. This practice is nearly universal among trap fishers in the Florida Keys. Although research by the DEP confirmed that the practice enhances the effectiveness of traps (Heatwole, et al., 1988), their research also revealed that the lobsters used as attractants experienced high mortality rates (see Lyons & Kennedy, 1981; Kennedy, 1982; Hunt et al., 1986).

In response to i) reports that the number of traps was causing congestion and conflict on the water, ii) research that revealed high mortality rates among sublegal lobsters confined in traps as attractants, iii) the declining yield per trap, and iv) public concerns over pollution from trap debris caused by the rapidly increasing number of traps in the spiny lobster fishery, the Florida Legislature established the Lobster Trap Certificate Program (LTC) (Florida Statute 370.142). The primary goal of this program was to stabilize the fishery by reducing the total number of traps with the expectation that overall lobster landings would be maintained or increased. The councils implemented the LTC into the EEZ off Florida in 1992 through Regulatory Amendment 1 (GMFMC/SAFMC 1992). The LTC requires that all lobster traps display a numbered tag that corresponds to a trap certificate issued by the FFWCC; traps without such tags are illegal gear. A total of 704,019³ trap certificates were issued to fishermen for the 1993/1994 season. The number of active certificates were used as the estimate of the number of traps fished each season. As directed by the FFWCC, the number of tags issued to each fisherman was then reduced by 10% in each of the two following seasons. By the 1995/1996 season, these two reductions had been made and the number of active certificates in the fishery was 582,985. The FFWCC suspended the trap reduction process for the 1996/1997 season, then modified the process so that the number of certificates would be reduced every other fishing season, and scheduled the next reduction for the 1998/1999 fishing season. The distribution of previously unissued trap tags via a lottery and the payment of overdue license fees on some inactive certificates during the two non-reduction years increased the number of active certificates in the fishery to 597,656 during the 1997/1998 fishing season. The scheduled 10% reduction of certificates prior to the 1998/1999 season reduced the number of active certificates to 535,692. In accordance with the modified reduction schedule, no reduction of certificates was implemented prior to the fishing season (1999/2000). The current number of active certificates is 522,140 (Joe O'Hop, FMRI, Personal Communication).

The number of individuals owning lobster trap tags has decreased from 2,071 during the 1993/1994 season to 1,007 at the beginning of 1999/2000 season. The largest proportional decrease in the number of trap certificate owners was accounted for by people who owned 100 or fewer certificates and who were presumably not full-time lobster fishers. During the 1993/1994 season, 1,399 people owned 100 or fewer certificates but only by the 1999/2000 season only 587 did - a 58% decrease. Although these certificate owners still make up 53% of all certificate owners, they own only 1.7% of the total number of active certificates. In contrast, the number of

3

people who own more than 100 certificates has declined only 23% over the same time period. At the beginning of the 1999/2000 fishing season, 369 people each owned 500 or more certificates (Figure 3).

Since the implementation of the LTC, there has been a noticeable shift in the distribution of trap certificates owned by individuals within the Florida Keys. The percentage of the total number of active certificates owned by those residing in the Upper Keys (Key Largo through Islamorada) has increased from 7.9% during the 1993/1994 fishing season to 14.1% by the 1999/2000 season, whereas the percentage owned by individuals residing in the Lower Keys (Big Pine Key through Rockland Key) and Key West (including Stock Island) has decreased from 36.4% to 31.2% over the same time period. The geographic distribution of trap-caught landings, however, did not follow the same trend. The percentage of the total lobster landings in the Upper Keys remained constant, whereas that percentage increased slightly from 39.8% to 41.7% in the Lower Keys and Key West.

A more detailed description of the commercial fishery is included in Appendix A of this Amendment (Vondruska 1998). This includes information on participants, landings, economics, markets, and exports/imports. This description points out the portion of landings that occur the first two months (August and September) has increased to about 50% of annual landings and by end of December to about 90% of annual landings (Figures 9 and 10, Appendix A). This means that many of the fishermen cease participating before the end of the season. Many of the same fishermen participate in mackerel, stone crab, and snapper/grouper fisheries during the year. Because of this the number of traps deployed in the fishery is significantly reduced after December. The market information indicates that in recent years imports of spiny lobster are about 10 times greater than domestic landings.

The recreational fishery for lobster in Florida has had very stable landings over the period 1988-1998 with annual landings ranging between 1.1 to 1.5 million lobster (Table 1, Muller et al., 1999). In terms of pounds landed, the recreational catch has averaged around 20% of total landings for the fishery (Figure 9, Hunt et al., 1999). There are no estimates available for landings in other states as a recreational landing is a too rare event to be monitored by the MRFSS.

6. PROVISIONS OF THE FMP

The following provisions of the FMP, as amended, are presented as background to discussions in this amendment.

A. Problems and Issues in the Fishery

Problems identified in the original FMP are as follows:

1. The number of undersize lobster taken or sold illegally continues to be a problem.

2. Whereas the present practice involving the use of undersize lobster as attractants is causing significant mortality to undersize lobsters and subsequent loss in yield to the fishery, there is controversy over the methods to reduce the mortality of undersize lobster used as attractants in traps.
3. There is an excessive number of traps in the fishery.
4. Incompatible federal and State regulations hinder effective management and enforcement, and delay in implementing federal rules compatible with those of the State exacerbates this problem.
5. Abandonment of traps creates some ghost fishing mortality that also represents loss in yield to the fishery.
6. The major user groups of the resource are not adequately defined to ensure fair and equitable treatment. The existing Florida permit system is not sufficient in identifying major user groups resulting in an inability to properly assess the impacts of alternative management measures on the users of the resource. While tagging studies indicate that the recreational harvest is likely to be about ten percent of the commercial harvest, additional data on the recreational harvest is needed. Existing data sources will need to be supplemented, especially as future allocations of the resource are considered. Note: This problem has been resolved by licensing of recreational fishermen and by survey of their catch.
7. The increasing recreational harvest, especially in the special season, may be impacting the resource and needs to be evaluated as to amount of harvest and impacts on handling and undersize lobster mortality.

Current Comments on Original Problems

1. Although it is believed that the sale of undersize lobster has significantly declined over the years, there is no definitive information available to substantiate this.
2. The mortality of undersize lobster was substantially reduced by the requirement for use of live wells in transporting the lobster. The LTC has significantly reduced the number of traps and will continue to do so, thereby reducing the number of undersize lobster used as attractants and subjected to the handling, exposure, and confinement associated with that use. The FFWCC, in the administrative record submitted, with the proposed rule, estimated that such mortality has declined to about 10% for confinement over a 4-week period.
3. The number of traps permitted to be fished has been significantly reduced (see 2 above) from about 800,000 to 522,000 and may continue to be reduced under the LTC.
4. The use of this procedure for implementing rules reduces this problem.

5. Judging from comments in the summaries of the workshops submitted as part of the administrative record for this Amendment, loss of traps is still a significant problem. Cooperative action by industry is apparently taken following each season to collect and land these derelict traps.
6. As previously noted in Regulatory Amendment 2, this problem has been solved.
7. As pointed out in the discussion in Section 5 the recreational landings have essentially been stable for the period 1988-1998, and constituted an average of about 20% of the annual poundage landed over that period.

B. Management Objectives

Management objectives currently identified in the FMP, as amended, are as follows:

1. Protect long-run yields and prevent depletion of lobster stocks.
2. Increase yield by weight from the fishery.
3. Reduce user group and gear conflicts in the fishery.
4. Acquire the necessary information to manage the fishery.
5. Promote efficiency in the fishery.
6. Provide for a more flexible management system that minimizes regulatory delay to assure more effective, cooperative State and federal management of the fishery.

Relation of the Proposed Action to Plan Management Objectives

The proposed action to increase the number of undersize lobster that may be possessed aboard the vessel for baiting traps contributes to achieving management objectives 2, 5, and 6. Because the use of undersize lobster as attractants increases catch 2.4 times greater than cowhide, a common bait in the fishery (Ehrhardt et al., 1991), it should contribute to achieving objectives (2) increasing yield by weight from the fishery and to (5) promoting efficiency in the fishery. The FMRI staff concluded that the proposed rule change will not result in a net increase of sublegal sized lobsters in traps. The only effect they envisioned was that the rule change would allow fishers moving traps to more quickly bait their traps than is presently possible. The proposed action is being implemented under a more flexible management system as proposed under management objective (6).

C. Optimum Yield (OY)

OY is all spiny lobster with carapace or tail lengths equal to or larger than the minimum legal lengths⁴ that are harvested legally under the provisions of the FMP. OY is estimated at 9.5 million pounds.

D. Protocol and Procedure for an Enhanced Cooperative Management System

Under this regulatory amendment procedure each proposed rule or set of rules must be adopted by the State through their hearing process and be submitted to NMFS and the councils along with socioeconomic analyses, hearing summaries, and other supporting information. The Councils and NMFS must concur that the proposed rule is consistent with the FMP objectives and other federal law. NMFS, the Councils' staffs and FFWCC⁵ staff will prepare the regulatory amendment and supporting documentation. This documentation will include an EA and RIR which examine in detail the environmental, social and economic impacts of each proposed rule and the alternatives to the rule. The rules implemented will be subject to approval by NMFS after review of public comment submitted directly to NMFS during the comment period on the proposed rule.

PROTOCOL:

The Councils, FFWCC and NMFS hereby adopt the following protocol which describes the roles of the federal and State governments:

1. The Councils and NMFS acknowledge that the fishery is a State fishery (which extends into the EEZ) in terms of current participants in the directed fishery, major nursery, fishing, and landing areas, historical regulation of the fishery, and is a fishery requiring cooperative State/federal efforts for effective management through a FMP.
2. The Councils and NMFS acknowledge that the State is managing and will continue to manage the resource to protect and increase the long-term yields and prevent depletion of the lobster stocks and that the State Administrative Procedure Act and rule implementation procedures, and provide ample and fair opportunity for all persons to participate in the rulemaking procedure.
3. FFWCC acknowledges that rules proposed for implementation under this amendment must be consistent with the management objectives of the FMP, the National Standards, the Magnuson Act and other applicable federal law. Federal rules will be implemented in accordance with regulatory amendment procedures.
4. The Councils and NMFS agree that for any of the rules defined within this amendment that the State may propose the rule directly to NMFS, concurrently informing the Councils of the nature of the rule and that NMFS will implement the rule within the EEZ provided it is consistent under the protocol number 3. If either of the Councils informs NMFS of their concern over the rule's inconsistency with protocol number 3, NMFS will

4

5

not implement the rule until the Councils, FFWCC, and NMFS or their representatives meet and resolve⁶ the issue.

5. The State will have the responsibility for collecting and developing the information upon which to base the fishing rules, with assistance, as needed by NMFS and cooperatively share the responsibility for enforcement with federal agencies.
6. FFWCC will provide to NMFS, and to the Council written explanations of its decisions related to each of the rules (including a statement of the problem that the rulemaking addresses, how the rule will solve the problem, and how interested parties were involved in the rulemaking), summaries of public comments, biological, economic and social analyses of the impacts of the proposed rule and alternatives, and such other information that is relevant.
7. The rules will apply to the EEZ for the management area (N.C. to Texas) unless the Regional Administrator, NMFS, determines they may adversely impact other state and federal fisheries. In that event, the RA may limit the application of the rule, as necessary, to address the problem.
8. The NMFS agrees that its staff will prepare the proposed federal rule. The Councils agree that their staffs with assistance by the staffs of FFWCC and NMFS will prepare the EA/RIR and other documents required in support of the rule.

PROCEDURE:

1. This procedure will function under and be governed by the protocols for cooperative management agreed upon by the FFWCC, the Councils, and NMFS.
2. Based on the best available scientific information, the State of Florida's Fish and Wildlife Conservation Commission (FFWCC) will develop alternative proposed rules and socioeconomic 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 Governor and Cabinet, the FFWCC will advise the Councils and the Regional Administrator (RA) of NMFS, 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), FFWCC must complete these actions on or before February 1. The Councils will submit the rule and supporting analyses to the SSCs who will advise the RD, 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 he preliminarily determines that the rule is consistent with the objectives of the FMP, the

6

National Standards, and other applicable law, he will notify the Councils and FFWCC of his intent to implement the rule in the EEZ. If, in the judgment of the RA, the rule or its supporting record are not consistent with these statutory criteria or the FMP objectives, he will immediately notify the Council and the FFWCC of the deficiencies in the rule or supporting record. The FFWCC may submit additional information or analyses to correct the deficiencies in the record.

4. When in the judgment of either of the Councils the rule is not consistent with the Magnuson Act or the objectives of the FMP, they will inform the RA and FFWCC. In this case the RA will not proceed with implementation of the rule until this issue has been resolved.⁷
5. When the RA has preliminarily concluded the rule is acceptable, he will draft and publish the proposed rule for implementation by regulatory amendment. Based on State analyses of impacts, the Councils' staffs, with assistance from FFWCC, will prepare the supporting documentation [EA/RIR, etc.] that accompany the proposed rule. The effective date of rules promulgated under this procedure will be the starting date of the next fishing season following approval of the regulatory amendment unless otherwise agreed upon by FFWCC, the Councils, and the RD. A reasonable period for public comment on the proposed rule shall be provided.

After reviewing public comment if the RA has concluded the rule is not consistent with the FMP objectives, the National Standards, other applicable law, or the provisions of this procedure, he will notify the Councils and FFWCC of the fact and/or the need for proceeding with implementation by FMP amendment. If the supporting record is still deficient, he will delay taking action until the record has been supplemented by FFWCC and/or Councils' staffs. If the RA has concluded the rule is consistent, he will publish the final rule.

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.
- c. Specification of gear and vessel identification requirements.
- 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.

7. PROPOSED MANAGEMENT ACTION

Proposed Alternative: The holder of a valid crawfish license or trap number, lobster trap certificate and state saltwater products license issued by the FFWCC may harvest and possess, while in the EEZ off Florida, undersized lobster not exceeding 50 per boat and 1 per trap aboard each boat, if used exclusively for luring, decoying or otherwise attracting noncaptive lobster into traps.

Discussion: Industry has requested that the Commission increase the number of undersized lobsters that may be possessed on the water from 50 or one per trap onboard the vessel, whichever is greater, to 50 and one per trap onboard the vessel. This would allow harvesters who are moving traps to carry more undersized lobsters on board.

Undersized lobsters, or "shorts", have traditionally been used in the spiny lobster fishery to attract other lobsters into traps. The Caribbean spiny lobster is highly gregarious, and therefore, will enter traps containing other lobsters at a higher rate than empty traps or traps baited with food. Although the use of shorts enhances the catch in traps, there are certain lethal effects (starvation, predation, exposure) and sublethal effects (growth impairment) associated with their use. These sources of mortality can serve to reduce recruitment of lobsters to the fishery, and thus reduces future landings.

In 1984, the National Marine Fisheries Service estimated that the overall yield-per-recruit losses to the fishery due to short mortality ranged from 20-50%. In 1987, live wells were required for shorts to reduce exposure-related mortality during vessel transport (Chapter 68B-24.003(3), Florida Administrative Code, outlines the specification for live wells and requires a capacity of at least _ gallon of seawater per lobster). Even though live wells have reduced exposure-related mortality of shorts, which benefits the fishery, there remains a mortality rate (10.3% over a four-week period) related to confinement of shorts in traps.

There are two opposing points to consider regarding the issue of allowing more shorts to be possessed aboard harvesting vessels. Research indicates that there is some loss of future yield to the fishery resulting from holding and using shorts. On the other hand, there are gains in fishing efficiency by using shorts to attract other lobsters into traps. Staff feels that the relative importance of shorts as an issue of lost yield has lessened because the number of traps in the fishery has decreased, and because the survival of shorts has increased due to the required use of live wells. Therefore, FFWCC recommended increasing the number of shorts that may be possessed on the water to 50 shorts and one short per trap, provided that the appropriate live well capacity specifications are met.

The federal rule regarding shorts is presently the same as Florida's, and allows 50 shorts or one per trap aboard the vessel, whichever is greater. There is an agreement with the Federal Councils that Florida may take the lead in managing spiny lobster. If the state wants to change the regulations for both state and federal waters, the rule must first be amended. We then must propose the same change directly to the National Marine Fisheries Service, while informing the Councils of our proposal and giving them the opportunity to comment on the rule change. However, the federal rules cannot be changed before the 2002-03 harvesting season, therefore, state and federal rules will be incompatible until this proposed rule is implemented.

Other Alternatives for Vessel Possession Limits of Undersized Lobster considered and Not Selected:

Alternative 1: Status Quo: 50 lobster or 1 per trap aboard, whichever is greater

Alternative 2: 100 lobster or 2 per trap aboard, whichever is greater

Alternative 3: 150 lobster or 2 per trap aboard, whichever is greater

Alternative 4: Bond system for 50 to 200 extra lobster:

- a. \$500* for 50 extra for total of 150
- b. \$1,000* for an additional 50 extra for a total of 200
- c. \$1,500* for an additional 50 extra for total of 250

***Proposed annual fee**

Discussion: Alternatives 2, 3, and 4 were suggested by letter or at the public workshops by Monroe County Commercial Fishermen, Inc. (MCCF). MCCF represents a large portion of the commercial spiny lobster fishermen fishing from the Keys. All of these alternatives represent higher vessel possession limits than the Proposed Alternative and the Status Quo alternative.

In reaching a decision on a preferred alternative the FFWCC considered the recommendations of its staff and the staff of Florida Marine Research Institute (FMRI) which was as follows:

Sublegal-sized lobsters have traditionally been placed within lobster traps in the Florida spiny lobster fishery to serve as attractants and the practice is nearly universal among trap fishers in the Florida Keys. Our research during the 1980's confirmed that the practice enhances the effectiveness of lobster traps beyond that of empty traps or traps baited with food. However, our research also revealed that sublegal-sized lobsters experienced high mortality rates due to confinement in traps and exposure to air. Beginning in 1987, live wells were required aboard commercial lobster fishing vessels transporting sublegal-sized lobsters to reduce exposure-related mortality (Florida Statute 68B-24.003(3)). Such live wells are required to provide a minimum of 3/4 gallon of seawater per lobster. We speculate that the unprecedented four consecutive fishing seasons in which lobster landings exceeded 7 million lbs (1994/95 through the 1997/98 seasons) were in part associated with the reduction in exposure-related mortality resulting from the use of live wells. However, we estimate that there remains a mortality rate of sublegal-sized lobsters

associated with their confinement within traps resulting from starvation and predation that is approximately 10% over a four-week long period.

Because confinement mortality continues to affect lobsters used as attractants within traps, the important issue regarding the proposed rule change is whether or not it will effect the number of lobsters confined within traps fishery-wide. We have observed an increase in the numbers of sublegal-sized lobsters in traps as the total number of traps in the fishery has been progressively reduced. Consequently, we estimate that the total number of sublegal-sized lobsters confined in traps within the fishery has remained constant since the implementation of the trap reduction program in the early 1990's. The only effect we envision from this rule change is that it will allow fishers that are moving traps from one fishing spot to another to more quickly bait their traps with sublegal-sized lobsters than is presently possible. It is our opinion, based upon our previous research and experience with the fishery, that the rule change will not result in a net increase in the number of sublegal-sized lobsters confined in traps.

8. REGULATORY IMPACT REVIEW (RIR)

8.1 Introduction

The Executive Order 12291 (E.O. 12291) requires a Regulatory Impact Review (RIR) for all regulatory actions that are of public interest. The RIR does three things: (1) it provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action, (2) it provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem, and (3) it ensures that the regulatory agency systematically and comprehensively considers all available alternatives to enhance the public welfare in the most efficient and cost effective way.

The RIR also serves as the basis for determining whether any proposed regulations are "major" under criteria provided in E.O. 12291 and whether the proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Act of 1980 (RFA).

Ideally, the expected net present values of the yield streams over time associated with the different alternatives would be compared in evaluating impacts. Unfortunately, estimates of the yield streams and their associated probabilities are not available for most of the proposed measures (Table 1). Nevertheless, the changes which are expected to result from this action are quantified to the extent possible. In cases where quantification is not feasible, a qualitative approach is undertaken with the intent of determining at least the direction of the expected effects.

8.2 Problems and Objectives

The problems and objectives are described in Section 6 and are part of the RIR by reference. In those instances where expanded discussion of the problems and/or objectives is required in the

context of the various management measures, the expanded language is included in the appropriate "Regulatory Analysis" section in the balance of the RIR.

8.3 Background

The primary purpose of the proposed rule is to increase the number of sublegal undersized lobster that can be possessed aboard a vessel in the EEZ off Florida when that vessel is moving and redeploying traps to another area. In the absence of traps aboard a vessel, e.g., when a vessel is running a trap line, pulling and immediately redeploying each trap, the possession limit is unchanged, i.e., no more than 50 undersized lobsters per vessel. The effect of the proposed rule is to allow possession of one additional undersized lobster for each trap aboard.

The proposed action of this regulatory amendment is to implement the proposed rule in the EEZ off Florida so that the federal rule is consistent with the existing rule adopted by the FFWCC for Florida waters.

8.4 Description of the Fishery and Estimate of the Economic Benefits and Costs to Persons Directly Affected

The study by Vondruska (1998) in Appendix A of this amendment includes the latest economic evaluation of the Florida commercial fishery that is available. It presents historic trends in landings; inputs and productivity; exvessel price and value; fishing activities and participants; domestic market trends; and exports and imports through 1997. Also Section 5. Description of the Fishery provides additional information on the fishery, including the recreational component (Figure 1) and greater detail on the trap reduction or trap certificate program (LTC) (Figures 2 and 3). Current information on landings, exvessel price per pound, and value are presented in Tables 3 through 6.

8.4.1 An Estimate of Persons Directly Affected by the Proposed Amendment

By the beginning of the 2001/2003 season the number of trap certificates that allow fishing of one trap has declined from 750,327 (1993/1994 season) to 522,140 (Joe O'Hop, FMRI, Personal Communication).

The number of individuals owning lobster trap tags has decreased from 2,071 during the 1993/1994 season to 1,007 at the beginning of 1999/2000 season. The largest proportional decrease in the number of trap certificate owners was accounted for by people who owned 100 or fewer certificates and who were presumably not full-time lobster fishers. During the 1993/1994 season, 1,399 people owned 100 or fewer certificates but by the 1999/2000 season only 587 did - a 58% decrease. Although these certificate owners still make up 53% of all certificate owners, they own only 1.7% of the total number of active certificates. In contrast, the number of people who own more than 100 certificates has declined only 23% over the same time period. At the beginning of the 1999/2000 fishing season, 369 people each owned 500 or more certificates (Figure 3).

Since the implementation of the LTC, there has been a noticeable shift in the distribution of trap certificates owned by individuals within the Florida Keys. The percentage of the total number of active certificates owned by those residing in the Upper Keys (Key Largo through Islamorada) has increased from 7.9% during the 1993/1994 fishing season to 14.1% by the 1999/2000 season, whereas the percentage owned by individuals residing in the Lower Keys (Big Pine Key through Rockland Key) and Key West (including Stock Island) has decreased from 36.4% to 31.2% over the same time period. The geographic distribution of trap-caught landings, however, did not follow the same trend. The percentage of the total lobster landings in the Upper Keys remained constant, whereas that percentage increased slightly from 39.8% to 41.7% in the Lower Keys and Key West.

8.4.2 Possession of Undersized Lobster

The proposed management measure would change the current federal vessel possession limit for undersize lobster from 50 lobster or 1 per trap aboard, whichever is greater to 50 lobster and 1 per trap aboard. Implementation of the measure would make the federal rule compatible with the existing state rule.

The proposed action would make the fishery slightly more efficient because the use of undersized lobster as attractants is about two time more effective than other baits. However, this increased efficiency must be contrasted against the potential for loss of yield from the fishery resulting in an estimated mortality of attractants of about 10% of those confined over a 4-week period. Neither the potential gain or potential loss can be quantified in terms of revenue with the existing data. In fact, the scientific personnel of the FMRI concluded the only significant change would likely be that fishermen moving traps would be able to more quickly bait their traps. They felt the measure would not significantly change the number of attractants confined to each trap since the number had increased naturally in recent years because the Lobster Trap Certificate Program (LTC) has increased the number of lobster in the fishery.

It should also be recognized that currently 50% of the annual landings are taken within the first 2 months (August and September) and 90% of the annual landings are taken by the end of December. This means many fishermen cease participating in the fishery before the end of the season (March 31). This suggests the cumulative confinement period for attractants is significantly reduced by the removal of traps by fishermen who are leaving the fishery to participate in more productive fisheries.

8.5 Private and Public Costs of Management

The preparation, implementation, enforcement and monitoring of this or any Federal action involves the expenditure of public and private resources which can be expressed as costs associated with the regulations. Costs associated with this specific action include:

Councils costs of document
preparation \$ 2,500

NMFS administrative costs of document

preparation, meetings and review \$ 1,100

TOTAL \$ 3,600

The Councils and NMFS costs of document preparation are based on staff time, printing and any other relevant items where funds were expended directly for this specific action. The direction of change in the costs of law enforcement should be positive.

8.6

Summary of Impacts and Determination of a Major Rule

Pursuant to E.O. 12291, a regulation is considered a "major rule" if it is likely to result in: a) an annual effect on the economy of \$100 million or more; b) a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The extent to which recreational fishermen will cease to participate in the special recreational season or fishery is unknown. The shift of the season to mid-week may result in some persons being unable to participate due to inability to obtain time off from work or to bear that opportunity cost. Generally, it is anticipated that the measures will simply redistribute that fishing effort over a larger portion of the state. This anticipated effect cannot be measured until the measures are implemented. Although some of the redistribution may have already occurred when the FFWCC implemented rules in 1992 compatible with these federal proposed measures, no survey was conducted to assess this. In view of the foregoing discussion, it is concluded that these measures, if enacted, would not constitute a "major rule" under any of the above-mentioned criteria.

9. INITIAL REGULATORY FLEXIBILITY ANALYSES

Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to relieve small businesses, small organizations, and small governmental entities from burdensome regulations and record keeping requirements. Since small businesses will be affected by the regulations to be promulgated under FMPs and plan amendments, this document also serves as the Initial Regulatory Flexibility Analysis (IRFA). In addition to analyses conducted for the Regulatory Impact Review (RIR), the IRFA provides an estimate of the number of small businesses affected, a description of the small businesses affected, and a discussion of the nature and size of the impacts.

Determination of Significant Economic Impact on a Substantial Number of Small Entities

In general, a "substantial number" of small entities is more than 20 percent of those small entities engaged in the fishery (NMFS, 1992). Since the proposed action will affect practically all the current participants, the "substantial number" criterion will be met.

Economic impacts on small business entities are considered to be "significant" if the proposed action would result in any of the following: a) reduction in annual gross revenues by more than 5 percent; b) increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; c) compliance costs as a percent of sales for small entities are at least 10 percent higher than compliance costs as a percent of sales for large entities; d) capital costs of compliance represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or e) as a rule of thumb, 2 percent of small business entities being forced to cease business operations (NMFS, 1992).

Explanation of Why the Action is Being Considered: Refer to Section 3 and Section 4 of this document.

Objectives and Legal Basis for the Rule: Refer to Section 6-B, C, and D of this document: Management Objectives, Optimum Yield and Protocol and Procedure in this amendment.

Identification of Alternatives: Refer to Section 7 of this document - Proposed Management Actions.

Cost Analysis: Refer to Section 8.4 - Analysis of Impacts of Management Measures and Section 8.5 - Public and Private Costs of Management.

Competitive Effects Analysis: The industry is composed of small businesses, and therefore there are no disproportional small vs. large business effects.

Identification of Overlapping Regulations: The proposed set of regulations does not create overlapping regulations with any state regulations or other Federal laws. On the contrary, the proposed regulations are intended to achieve harmony with regulations in the state of Florida.

Conclusion

The foregoing information and pertinent portions of the RIR are deemed to satisfy the analysis required under the RFA.

10. ENVIRONMENTAL ASSESSMENT

Purpose of and Need for Action

The purpose of Regulatory Amendment 3 is to conform Federal rules on spiny lobster, that apply to the EEZ off Florida, with recently adopted state rules, using the Protocol and Procedure for an Enhanced Cooperative Management System contained in the Fishery Management Plan (FMP) for Spiny Lobster of the Gulf of Mexico and South Atlantic (See Section 6.D). Consistent state and Federal rules off Florida are needed to fully implement and enforce Florida's management measures. Amendment Section 4, "Problems Requiring Plan Amendment", contains additional information relevant to the need for action in this case.

Alternatives Including the Proposed Action

(A) Implement Florida's rules in the EEZ. **(PROPOSED ACTION)**

The proposed action is to implement Florida's new rules, regarding the vessel possession limit of undersized spiny lobster. The Florida Fish and Wildlife Conservation Commission (FFWCC) has requested the NMFS and the Councils to implement the following provisions of Title 68 B-24, Florida Administrative Code, in the EEZ:

Other Alternatives: The Florida Fish and Wildlife Conservation Commission considered a broad range of other alternatives to address the vessel possession limit of undersized lobster. These are detailed in Amendment Sections 4 and 7, Problems Requiring Plan Amendment and Proposed Management Actions, respectively. Commercial interests in Monroe County asked the FFWCC to modify the vessel possession limit of undersized lobster.

(B) Decline to implement Florida's rules in the EEZ and maintain the status quo.
(NO ACTION ALTERNATIVE)

The No Action Alternative would maintain the status quo of federal regulations regarding the possession limit for undersized lobster aboard vessels. In the absence of any action, the EEZ off Florida would continue to have a possession limit of 50 undersized lobsters per vessel or 1 per trap aboard, whichever is greatest.

This alternative would not change the effects of current regulations, as detailed in the following section ("Affected Environment"). However, the no action alternative would affect Florida's ability to enforce its rules and may result in increased resource violations involving lobsters and other marine resources. Failure to agree on consistent regulations on resources in the area may adversely affect future agreements with Florida on the form and content of fishing regulations within the Florida EEZ and may be contrary to the FMP's Management.

Affected Environment

In addition to the commercial and recreational lobster fishery, the environment in the Florida Keys supports an important assemblage of reef-building corals and associated reef species, mangrove islands and lagoons, and sea grass beds. The coral reef community has been recognized as a national treasure by designation in 1990 as the Florida Keys National Marine Sanctuary. Tourism is the primary component of the area's economy and it is heavily dependent on recreational divers, many who are interested in non-consumptive uses of the area.

The history of lobster management activities and the provisions of the current FMP are outlined in Sections 2 and 6, respectively. The fishery is described in Section 5 and Appendix A and consists of two major components. **These documents describe the human and administrative environments and are not repeated here.** The commercial fishery uses principally wooden slat traps and lands about 75% of the landings (Figure 1). Little commercial fishing effort for spiny lobster occurs north of Monroe County on the west coast of Florida. The majority of lobsters caught outside Monroe County come from waters off Dade and Broward Counties. Commercial trapping is sharply curtailed north of Broward County. Limited diving effort, primarily recreational, occurs as far north as the West Palm Beach area.

The other major component is the recreational fishery which has very stable landings for the period 1988/1989 season through 1999/2000 season at about 1.1 to 1.3 million lobster annually (Muller et al 2000). These landings are about 25% of the total annual landings by weight (Figure 1).

The physical and biological environments were initially described by the Spiny Lobster FMP (1981) and the coral reef component by the FMP for Coral and Coral Reefs (GMFMC/SAFMC 1982). This was updated by Amendment 1 (1981) and especially by Amendment 2 (1989). These included discussion of the epipelagic zone that the planktonic larvae are exposed to for the first 5 to 6 months of life. The importance of the benthic red algae, seagrasses, and sponges to the earliest benthic stages were discussed. The importance of shelter or refuges provided by benthic organisms (coral heads, sea urchins) to juvenile lobster were discussed. The importance of crevices, outcroppings, ledges, and other discontinuities of hard substrates to adults was pointed out. These amendments discussed the current condition of the habitats, habitat threats, and information needs.

The Generic Amendment addressing EFH for the FMPs of the Gulf of Mexico (GMFMC 1988) described the EFH of spiny lobster in the Gulf and the distribution and relative abundance of juvenile and adult spiny lobster for offshore, nearshore, and estuarine habitats of the Gulf. In addition, it identified adverse impacts from fishing and non-fishing activity, with recommendations to minimize these impacts. It also discussed prey dependence of the various life stages. The amendment also proposes that a new amendment be completed for updating EFH every 5 years.

The Generic Amendment/SEIS addressing the establishment of the Tortugas Marine Reserves⁸ (GMFMC 2001) describes the ecosystem and affected environment of the lower Florida Keys in great detail. It includes discussion of the geology; physical oceanography and recruitment pathways; benthic habitats; fish communities and fisheries; seabirds; endangered and threatened species; and the human environment. The detailed information on water currents for the first time provides evidence that planktonic larvae released in the Keys may remain long enough to settle out as benthic juveniles.

Environmental Consequences

Issue: Increase possession limit of undersized lobster

Issue: Failure to implement Florida's rule in the EEZ

Recognizing that this is almost entirely a Florida fishery, the intent of Regulatory Amendment 1 was to create a cooperative state/federal management system. Failure to adopt the state's rule would probably compromise Florida's ability to enforce its laws regarding the possession limit for undersized lobster aboard vessels. The direct effect of this alternative would be to maintain two different possession limits for undersize lobster aboard vessels, one applying to state waters and a second season applying to the EEZ adjoining Florida waters. Inconsistent regulations are contrary to the intent of Management Objective 6 of the FMP. Alternatively, failure to implement Florida's rule would leave the 50 undersize lobster limit in place during the season outside Florida's fishing jurisdiction.

Effect on Endangered Species and Marine Mammals

8

A Section 7 consultation, under the authority of the Endangered Species Act, was held on this proposed regulatory amendment. The conclusion was that neither the fishery nor the proposed actions is likely to jeopardize the continued existence of threatened or endangered seas turtles or marine mammals.

Irreversible and Irretrievable Commitments of Resources

Other than the costs of administering and enforcing these rules, there are no irreversible or irretrievable commitments of resources involved in this decision.

Relationship between Short-term Uses and Long-term Productivity

In the short-term, Florida's rules and their implementation in the EEZ off Florida could cause

Finding of No Significant Environmental Impact

The proposed amendment is not a major action having significant impact on the quality of the marine or human environment of the Gulf of Mexico. The proposed actions create a greater degree of cost efficiency in enforcement and regulations of the fishery and alleviate problems related to impacts on the fishery resources, environment and social structure of the Florida Keys. The proposed actions should not result in impacts significantly different in context or intensity from those described in the Environmental Impact Statements of the FMP and Amendment 7, and the Environmental Assessments published with the regulations implementing Amendments 1, 2, 3, and 4.

Having reviewed the environmental assessment and available information relative to the proposed actions, I have determined that there will be no significant environmental impact resulting from the proposed actions. Accordingly, the preparation of a formal environmental impact statement on these issues is not required for this amendment by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

Approved: _____

Assistant Administrator for Fisheries

Date

11. OTHER APPLICABLE LAW

Impacts on Other Fisheries

Data available to the Council indicate this amendment will have no initial impact on other fisheries.

Habitat Concerns

Habitats and related concerns were described in the FMP and updated Amendments 1, 2, 4, 6, and 7; and the GMFMC Generic EFH Amendment. (See discussion under Affected Environment.)

Vessel Safety Considerations

There are no fishery conditions, management measures, or regulations contained in this amendment that would result in the loss of harvesting opportunity because of crew and vessel safety effects of adverse weather or ocean conditions. The Councils have concluded that the proposed management measure does not directly or indirectly pose a hazard to crew or vessel safety under adverse weather or ocean conditions. Therefore, there are no procedures for making management adjustments in the amendment due to vessel safety problems because no person will be precluded from a fair or equitable harvesting opportunity by the management measures set forth.

Coastal Zone Consistency

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all federal activities which directly affect the coastal zone be consistent with approved State coastal zone management programs to the maximum extent practicable. The proposed changes in federal regulations governing spiny lobster in the EEZ of the Gulf of Mexico and South Atlantic will make no changes in federal regulations that are inconsistent with either existing or proposed state regulations.

This amendment is consistent with the Coastal Zone Management programs of the state of Florida (which is the only state affected) to the maximum extent possible. This determination has been submitted to the responsible state agencies under Section 307 of the Coastal Zone Management Act.

Paperwork Reduction Act

The purpose of the Paperwork Reduction Act is to control paperwork requirements imposed on the public by the federal government. The authority to manage information collection and record keeping requirements is vested with the Director of the Office of Management and Budget. This authority encompasses establishment of guidelines and policies, approval of information collection requests, and reduction of paperwork burdens and duplications.

The Councils propose, through this amendment, to establish no additional permit or data collection programs.

Federalism

No federalism issues have been identified relative to the actions proposed in this amendment and associated regulations. The affected state has been closely involved in developing the proposed management measures and the principal State official responsible for fisheries management has not expressed federalism related opposition to adoption of this amendment. Therefore, preparation of a federalism assessment under Executive Order 12612 is not necessary.

12. PUBLIC REVIEW

13. LIST OF PREPARERS & AFFECTED AGENCIES

Affected Agencies:

Gulf of Mexico Fishery Management Council
The Commons at Rivergate
Gulf of Mexico Fishery Management Council
3018 U.S. Highway 301 North, Suite 1000
Tampa, Florida 33619
813-228-2815

South Atlantic Fishery Management Council
Southpark Building
1 Southpark Circle
Charleston, South Carolina 29407-4699
843-571-4366

Florida Fish and Wildlife Conservation Commission
Farris Bryant Building
620 South Meridian Street
Tallahassee, Florida 32300-1600
904-487-0554

National Marine Fisheries Service
9721 Executive Center Drive North
St. Petersburg, Florida 33702
727-570-5301

List of Preparers:

Gulf Council:
Wayne Swingle - Biologist

South Atlantic Council:
Gregg Waugh - Biologist

Vishwanie Maharaj - Economist

Florida Fish & Wildlife Conservation Commission:

- Economist
- Biologist

National Marine Fisheries Service (SERO):

Heather Blough - NEPA Specialist

14. REFERENCES CITED AND SUBMITTED FOR THE RECORD

Ehrhardt, N.M., C. Legault and C.S. Pike III. 1991. Evaluation of the use of sub-legal lobsters (shorts) as attractants (bait) in the Florida spiny lobster fishery. Spec. Rpt. to the Lobster Trust Fund. Div. Of Mar. Biology and Fisheries. Univ. of Miami, Miami, FL 108 p.

Gulf of Mexico and South Atlantic Fishery Management Councils. March 1982. Fishery Management Plan, Environmental Impact Statement and Regulatory Impact Review for Spiny Lobster in the Gulf of Mexico and South Atlantic. Tampa, Florida.

Ibid. February 1987. Amendment 1. Tampa, Florida.

Ibid. April 1982. Fishery Management Plan and Final Environmental Impact Statement for Coral and Coral Reefs. 332 p.

Ibid. July 1989. Amendment 2. Tampa, Florida.

Ibid. November 1990. Amendment 3. Tampa, Florida.

Ibid. May 1992. Regulatory Amendment 1. Tampa, Florida.

Ibid. March 1993. Regulatory Amendment 1. Tampa, Florida.

Ibid. December 1994. Amendment 4. Charleston, South Carolina.

Gulf of Mexico Fishery Management Council. 1998. Generic Amendment for Addressing Essential Fish Habitat Requirements in the Following Fishery Management Plans: Shrimp, Red Drum, Reef Fish, Coastal Migratory Pelagics, Stone Crab, Spiny Lobster, and Coral and Coral Reefs. 238 p. plus tables and figures.

Gulf of Mexico Fishery Management Council. 2001. Generic Amendment/SEIS Addressing the Establishment of the Tortugas Marine Reserves. 188 p.

Heatwole, D.W., J.H. Hunt, and F.S. Kennedy, Jr. (1988). Catch efficiencies of live lobster decoys a

Hunt, J.H. and W.G. Lyons and F.S. Kennedy (1986). Effects of exposure and confinement on spiny lot

- Hunt, J.H., W.C. Sharp, T.R. Matthews, R.G. Muller, R.D. Bertelsen and C.Cox, 1999. Status of spiny
- Kennedy, F.S. (1982). Catch rates of lobster traps baited with shorts, with notes on the effects of confin
- Lyons, W.G. (1986) Problems and perspectives regarding recruitment of spiny lobsters, Panulirus argus, to the south Florida fishery. Canadian Journal of Fisheries and Aquatic Sciences 43: 2099-2106.
- Lyons, W.G. and Kennedy F.S., Jr. (1981) Effects of harvest techniques on sub-legal spiny lobsters :
- Muller, R.G., W.C. Sharp, T.R. Matthews, R. Bertlesen and J.H. Hunt, 1999. The 1999 update of the stc
- Muller, R.G., W.C. Sharp, T.R. Matthews, R. Bertlesen and J.H. Hunt, 2000. The 2000 update of the stc
- Vondruska, J. 1998. Florida's spiny lobster fisheries. NMFS SERO-ECON-98-23. 17 p. plus Tables and Figures.

15. TABLES

TABLE 1

DESCRIPTION OF MANAGEMENT MEASURES

Management Item	Proposed Measures	Rejected Measures
Possession of Undersized Lobsters Aboard Boats	Properly licensed persons may possess in the EEZ undersized lobsters not to exceed 50 per boat and 1 per trap aboard each boat	<ul style="list-style-type: none"> •Status Quo- 50 lobsters <u>or</u> 1 per trap aboard, whichever is greater •100 lobster or 2 per trap aboard, whichever is greater •150 lobster or 2 per trap aboard, whichever is greater •Bond system for 50 to 200 extra lobsters: <ul style="list-style-type: none"> a. \$500 for 50 extra for total of 150 b. \$1000 for an additional 50 extra for a total of 200 c. \$1500 for an additional 50 extra for a total of 250

TABLE 2

SUMMARY OF EFFECTS OF THE PROPOSED MEASURES

Management Measures	Impacts of Proposed Management Measures
Possession of Undersized Lobsters Aboard Boats	An unquantifiable positive effect on fishing efficiency (objective 5) would occur that is anticipated to more than offset any adverse effect, if any, on total annual yield from the fishery.

TABLE 3

August 12, 2002 (3:07pm)
Florida monthly landings of spiny lobster
(Thousands of pounds, round weight)
(Data for 2001 is not complete)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1977	341	203	260	66	106	107	151	1185	991	1477	858	599	6344
1978	349	208	190	36	81	133	152	987	813	1212	862	579	5602
1979	495	414	266	23	9	15	134	1544	1383	1404	1299	840	7828
1980	564	382	301	35	3	8	145	1727	961	1054	1027	489	6695
1981	408	234	208	15	5	4	138	1560	820	1054	868	580	5894
1982	293	217	237	13	.	.	235	1601	1222	1256	923	500	6497
1983	300	225	138	23	.	.	61	1130	800	648	648	344	4317
1984	295	166	217	37	.	1	217	1563	1155	1116	997	486	6252
1985	369	176	198	2	.	.	203	1437	1236	824	630	665	5739
1986	381	226	159	18	3	3	173	1097	702	1017	586	642	5007
1987	592	314	235	1	0	1	182	1455	965	1258	696	385	6083
1988	186	181	119	1	0	2	1	1850	1685	1062	676	546	6309
1989	320	203	217	0	1	2	1	2033	1656	1494	1140	609	7675
1990	340	202	346	1	1	1	1	1648	1220	1121	765	342	5987
1991	273	279	343	3	0	1	1	2120	1440	1286	753	525	7023
1992	294	202	221	2	1	0	0	607	1094	1111	553	401	4486
1993	254	242	247	4	0	0	0	1438	1073	869	753	499	5379
1994	295	170	216	4	1	0	0	2080	1512	1460	841	526	7104
1995	391	213	188	0	0	0	.	2225	1464	1263	843	437	7024
1996	403	239	148	2	.	0	0	2317	1678	1600	933	548	7869
1997	323	141	190	16	.	0	.	1963	1402	1383	1021	668	7108
1998	590	349	264	0	1	.	0	1421	959	1095	759	391	5829
1999	287	270	259	1	0	2	.	2530	1847	1055	863	415	7530
2000	318	268	305	4	0	0	0	1807	1287	921	472	362	5745
2001	309	188	207	0	0	0	2	1014	761	471	288	152	3390
2002	151	93	94	.	.	.	.	.	.	.	.	.	339

TABLE 4

Florida ex-vessel prices of spiny lobster by year and month
(Ex-vessel, cents/pound, round weight)
(Data for 2001 is not complete)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1977	340	342	344	329	328	373	336	334	326	325	329	323
1978	332	330	336	319	326	371	361	392	449	487	482	1962
1979	466	456	431	407	436	443	410	401	391	387	387	390
1980	394	415	417	410	418	417	432	437	438	441	437	443
1981	446	457	461	445	461	233	492	498	509	514	517	509
1982	522	537	535	258	.	.	522	487	486	489	484	485
1983	496	497	502	478	.	.	467	489	508	509	517	511
1984	540	532	524	450	.	250	526	523	519	514	503	495
1985	514	512	518	502	.	.	507	493	502	512	515	521
1986	534	524	521	562	701	722	508	513	528	558	555	570
1987	605	623	612	722	361	361	637	722	777	772	769	762
1988	616	616	761	782	307	608	900	590	592	571	585	597
1989	593	614	624	778	773	779	517	596	608	602	602	1784
1990	617	620	630	678	678	678	514	624	745	747	742	785
1991	750	840	808	800	791	779	749	734	733	741	773	706
1992	829	818	731	636	104	339	784	735	725	796	748	710
1993	720	738	740	489	667	240	334	683	696	670	656	759
1994	732	724	735	736	299	231	375	819	840	935	950	878
1995	927	894	899	926	445	888	.	870	863	884	928	928
1996	908	899	901	451	.	375	300	777	752	743	744	746
1997	745	744	790	402	.	425	.	798	828	832	833	848
1998	855	859	864	298	825	.	450	764	704	718	727	761
1999	794	828	828	386	500	500	.	796	831	965	990	989

2000	967	954	959	974	544	492	500	930	994	1008	994	970
2001	980	948	989	617	300	975	436	961	1009	1029	1007	987
2002	968	975	940	.	.	.	.	.	.	.	.	.

TABLE 5
Florida landings of spiny lobster by year
(Data for 2001 is not complete)

Year	thousand pounds	thousand dollars	cents/pound
1977	6344	10425	164
1978	5602	19726	352
1979	7828	15192	194
1980	6695	14083	210
1981	5894	14530	247
1982	6497	15566	240
1983	4317	10747	249
1984	6252	15682	251
1985	5739	13903	242
1986	5007	13233	264
1987	6083	21956	361
1988	6309	17404	276
1989	7675	22520	293
1990	5987	20314	339
1991	7023	27547	392
1992	4486	17243	384
1993	5379	18019	335
1994	7104	30343	427
1995	7024	31307	446
1996	7869	29848	379
1997	7108	29099	409
1998	5829	21942	376
1999	7530	32549	432
2000	5745	28054	488
2001	3390	16920	499
2002	339	1661	490

TABLE 6
Florida landings of spiny lobster by year
(Data for 2001 is not complete)

Year	thousand pounds	thousand dollars	cents/pound	1999 cents/pound
1977	6344	10425	164	316
1978	5602	19726	352	617
1979	7828	15192	194	304
1980	6695	14083	210	290
1981	5894	14530	247	314
1982	6497	15566	240	300
1983	4317	10747	249	307
1984	6252	15682	251	304
1985	5739	13903	242	296
1986	5007	13233	264	332
1987	6083	21956	361	438
1988	6309	17404	276	321
1989	7675	22520	293	328
1990	5987	20314	339	360
1991	7023	27547	392	423
1992	4486	17243	384	410
1993	5379	18019	335	354
1994	7104	30343	427	443
1995	7024	31307	446	447
1996	7869	29848	379	372
1997	7108	29099	409	403
1998	5829	21942	376	381
1999	7530	32549	432	427
2000	5745	28054	488	459
2001	3390	16920	499	470
2002	339	1661	490	.

16. FIGURES

FIGURE 1. Combined Florida Spiny Lobster Landings 1991/1992 - 1999/2000

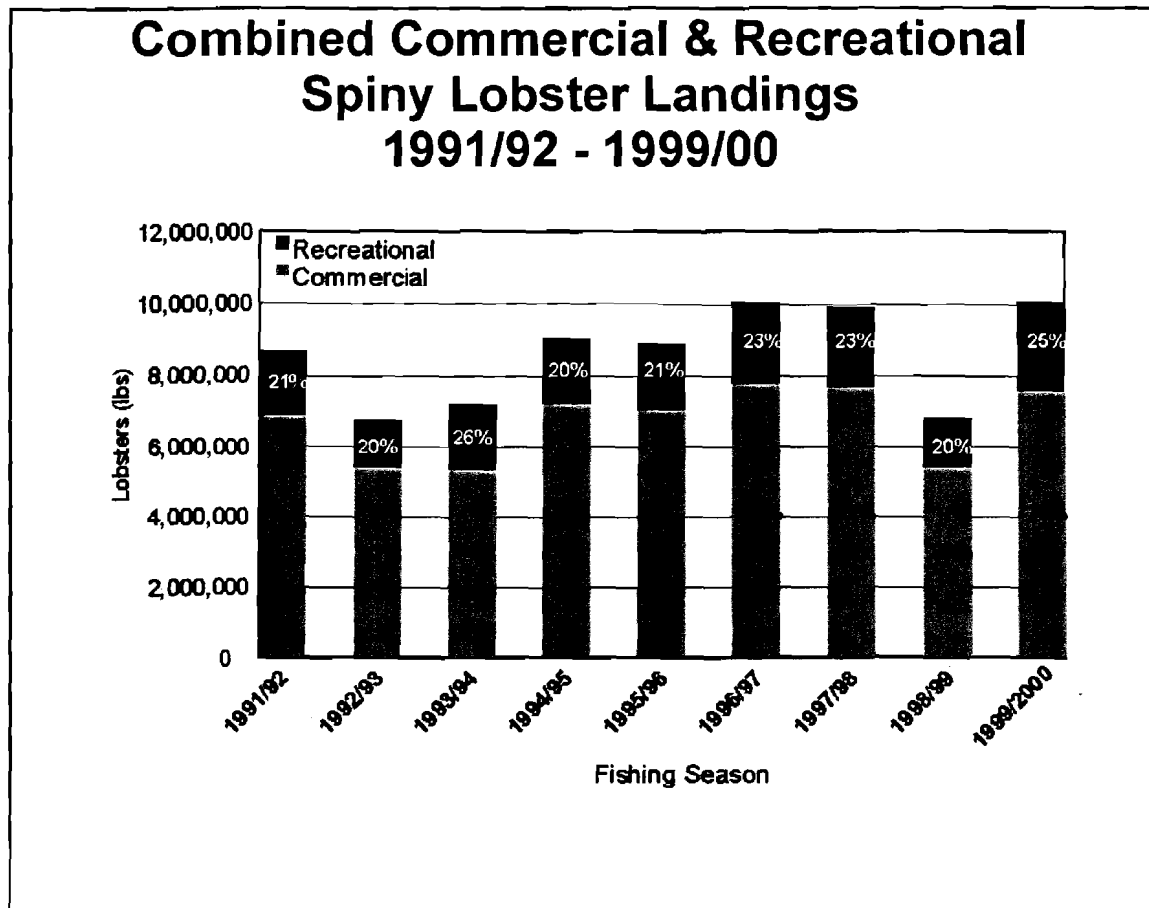
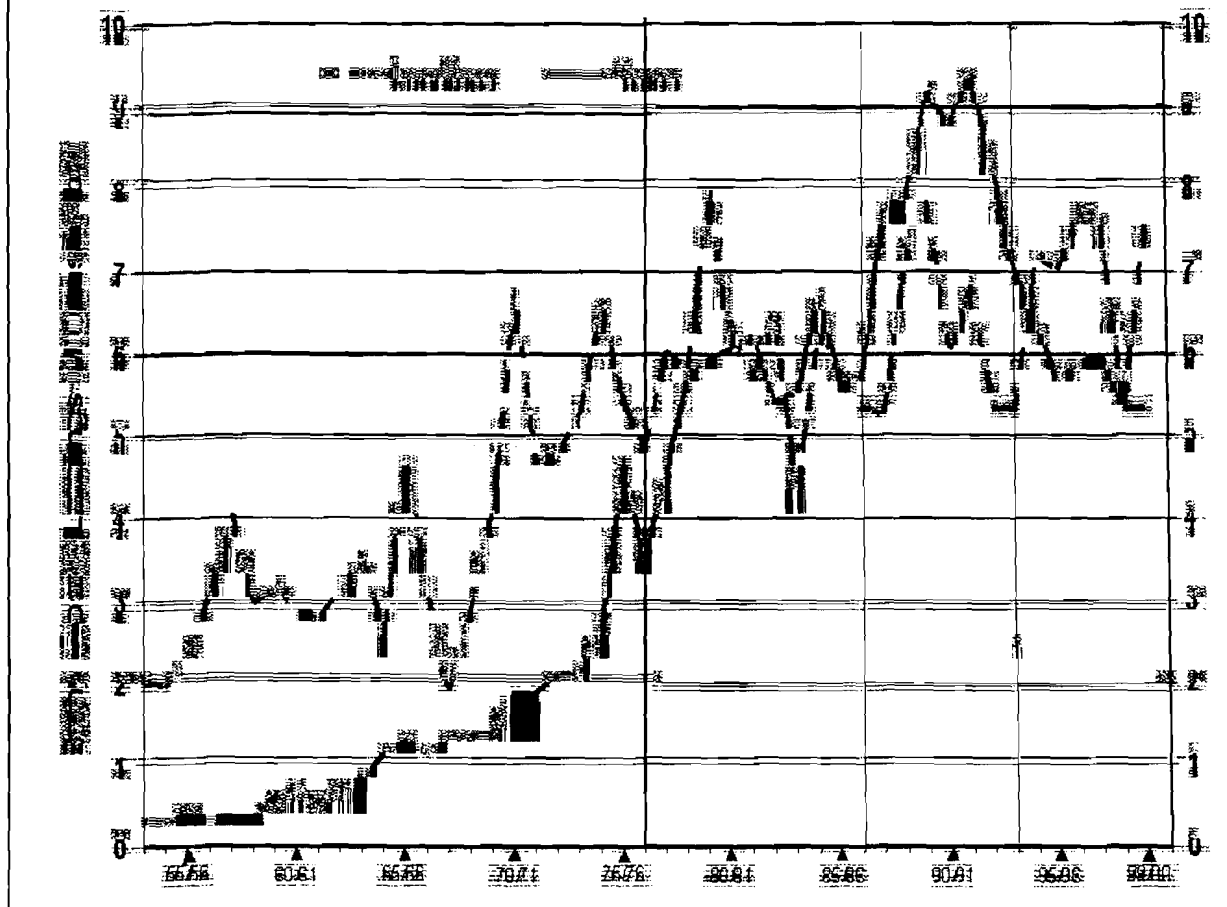


FIGURE 2. Evolution of the Spiny Lobster Fishery 1953/1954 - 1999/2000

Evolution of the Spiny Lobster Fishery 1960/64 - 1999/00



• Denotes endo of Bahamian fishery.

_ Denotes mandatory live well use in the fishery.

_ Denotes beginning of the Trap Reduction Program.