

# Amendment 13

## to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and the South Atlantic



Photo credit: Ben Gutzler

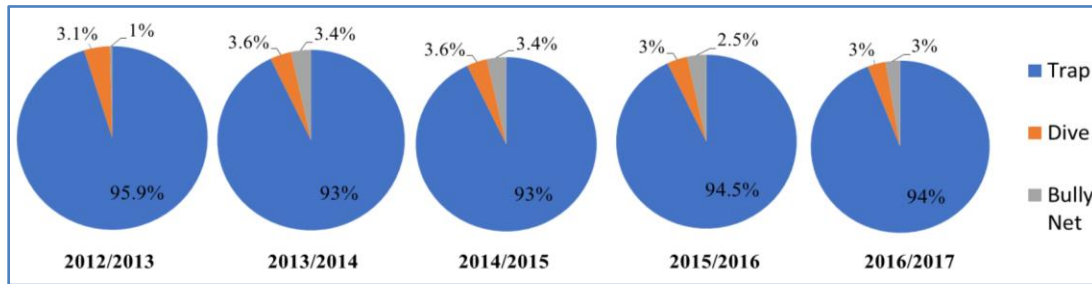
### (Gear Requirements and Cooperative Management)

### Decision Document

## 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. Participation in the bully net fishery has steadily increased in recent years with landings using this gear type increasing from 1% to 3.4% of total landings in one year (**Figure 1**). Currently, there is little information indicating bully net harvest landings occur in federal waters. 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. In response, FWC developed and implemented a permit program for the commercial bully net fishery that would allow for them to better quantify participation, while continuing to allow entry into the fishery, and address other industry and stakeholder concerns. The new regulations took effect May 1, 2017.



**Figure 1.** Proportion of commercial lobster landings by gear type.  
 Source: Florida Trip Ticket records; October 2, 2017.

**Commercial Bully Net and Diving Trip Limits**

Florida requires spiny lobster harvested commercially by diving off Broward, Dade, Monroe, Collier, and Lee Counties, Florida to be restricted to a 250-lobster possession limit per vessel per day and spiny lobsters harvested commercially by bully net off all counties in Florida to be restricted to a 250-lobster possession limit per vessel per day. A commercial harvester is defined as a person who holds a valid crawfish license or trap number, lobster trap certificates if traps are used to harvest spiny lobster, a valid commercial dive permit if harvest is by diving, or a valid bully net permit if harvest is by bully net, and a valid saltwater products license with a restricted species endorsement issued by the Fish and Wildlife Conservation Commission.

Federal regulations have incorporated by reference Florida’s regulations defining a commercial harvester since July 2008 and need to be updated to reference regulations put in place or revised since the initial incorporation in 2008. Since Florida’s regulations limit a commercial harvester to the possession limits stated above, regardless of what waters the spiny lobsters are harvested in, commercial fishermen are already restricted to these possession limits in the EEZ off Florida. However, current federal regulations do not explicitly state these commercial possession limits, only point the reader to sections which incorporate by reference Florida’s regulations. This has led to some confusion on whether the possession limit applies to federal waters off Florida.

**Spiny Lobster Enhanced Cooperative Management System**

In 1992, Amendment 2 to the Spiny Lobster FMP was implemented (GMFMC and SAFMC 1989) which allowed FWC to propose Florida regulations for implementation in the EEZ through National Marine Fisheries Service (NMFS) rulemaking. This procedure was based on the premise that timelier regulatory mechanisms were need 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. However, NMFS determined that the previous cooperative management procedure for the spiny lobster protocol established in Amendment 2 was inadvertently removed in 2012 with the implementation of Spiny Lobster Amendment 10; therefore, FWC cannot propose rules directly to NMFS for implementation. Instead, any changes proposed by FWC for federal regulations must go through the Council process of either a framework action or full amendment to the Spiny Lobster FMP.

## Actions in this amendment

**Action 1:** Florida state bully net permit, marking requirements, and gear prohibitions for bully net gear in the exclusive economic zone (EEZ) off Florida.

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

**Action 3:** Establish an enhanced cooperative management procedure for federal and Florida state agencies for the management of spiny lobster.

## Objectives for this meeting

- Review Spiny Lobster Amendment 13.
- Vote whether to recommend sending Spiny Lobster Amendment 13 to the U.S. Secretary of Commerce for approval.

## Expected amendment timing

	Process Step	Date
✓	South Atlantic and Gulf Councils direct staff to begin work on amendment to address bully-nets and reestablish the 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 and Gulf Councils review public hearing draft of Spiny Lobster Amendment 13, selects preferred alternatives.	June 2018
✓	Gulf Council reviews public input, makes changes if necessary and considers approval of final document.	August 2018
	Public Hearings	September 2018
	South Atlantic Council reviews public input, makes changes if necessary, and considers approval of final document.*	September 2018

\*Any changes made to the document during the September 2018 meeting will need to be reviewed and approved by the Gulf Council before the document can be submitted for formal review.

# 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.

## Committee Action

- REVIEW PURPOSE AND NEED STATEMENT AND MODIFY AS NECESSARY
- OTHER?

## Proposed Actions and Alternatives

### **Action 1: Florida state bully net permit, marking requirements, and gear prohibitions for bully net gear in the exclusive economic zone (EEZ) off Florida**

**Alternative 1:** No Action. A Florida state commercial bully net permit is not required 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.

**Preferred 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:**

- Under **Alternative 1**, (No Action), a Florida state commercial bully net permit is not required for bully net gear and there are no regulations specific to bully nets for spiny lobster harvesters in the EEZ off Florida in the Gulf and the South Atlantic. Permits and vessel markings specific to fishing with a bully net are not required, nor are additional gear types prohibited on bully net vessels.
- **Preferred Alternative 2** would make regulations in the EEZ off Florida in the Gulf and South Atlantic consistent with the changes made by the Florida in its regulations.
  - No new federal permit will be created under **Preferred Alternative 2**, and NMFS will require the same regulations as the Florida to harvest spiny lobster using bully nets in the EEZ off Florida.
  - Consistency between federal and Florida regulations under is expected to improve enforcement. Public testimony includes statements such as possible illegal diving for lobster without a commercial dive permit, illegal trap robbing/working traps without trap certificates/trap tags, or illegally working traps at night. Vessel markings with reflective paint would aid law enforcement to identify the bully netters at night and would help reduce the potential for individuals to use the bully net fishery as cover for illegal lobster harvest at night.
  - Consistency in regulations between federal and state waters reduces confusion among the fishers and is expected to aid in compliance with regulations.

**Committee Action:**

- REVIEW ALTERNATIVES UNDER ACTION 1, MODIFY AS NECESSARY
- OTHER?

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

**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.

**Preferred 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.

**Preferred 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 the EEZ off only Broward, Dade, Monroe, Collier, and Lee Counties, Florida.

### **Discussion:**

- Under **Alternative 1 (No Action)**, there is not a commercial daily vessel harvest and possession limit for spiny lobster harvested by bully net or dive gear in the EEZ listed in federal regulations.
  - Federal regulation state in the EEZ off Florida, commercial spiny lobster harvesters must have the licenses and certificates specified to be a “commercial harvester,” as defined in Florida’s regulations and Florida’s regulations state that commercial harvesters are restricted to the state commercial harvest limits regardless of where the spiny are harvested.
  - There is little information available on how much, if any, bully net harvest occurs in federal waters. Landings records indicate dive harvest is regularly conducted in state and federal waters.
    - Note: In federal regulations the definition of “commercial harvester” matches Florida regulations as of 2008, which include a person holding the appropriate licenses and certificates for traps and dive gear. Under **Action 1/Preferred Alternative 2** the definition will be updated to match Florida’s current regulations which include a person with a valid bully net permit in the definition of commercial harvester.
- **Preferred Alternative 2** would modify federal regulations and list 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. This alternative would simplify the regulations for both anglers and law enforcement by explicitly stating that the possession limit applies to the EEZ off Florida.
- **Preferred Alternative 3** would modify federal regulations and list 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. Similar to **Alternative 2**, **Alternative 3** would make regulations clearer and lessen potential enforcement issues.

**Committee Action:**

- REVIEW ALTERNATIVES UNDER ACTION 2, MODIFY AS NECESSARY
- OTHER?



### **Action 3: Establish an enhanced cooperative management procedure for federal and Florida state agencies for the management of spiny lobster**

**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.

**Preferred 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 Protocol and Procedure  
Joint Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico (Gulf  
and South Atlantic Procedure for Enhanced Cooperative Management:**

1. The Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and the National Marine Fisheries Service (NMFS) acknowledge that the spiny lobster fishery is largely a Florida (State) fishery, which extends into the exclusive economic zone (EEZ), in terms of current participants in the directed fishery, major nursery, fishing, landing areas, and historical regulation of the fishery. As such, this fishery requires cooperative state/federal efforts for effective management through the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and the South Atlantic (Spiny Lobster FMP).
2. The Councils and NMFS acknowledge that the State, through the FWC, which has exclusive authority established by the Florida Constitution to regulate the state's marine life, is managing and will continue to manage the resource to protect and increase the long-term yields and prevent depletion of lobster stocks and that the FWC's due process procedures and rule implementation procedures provide ample and fair opportunity for all persons to participate in the rulemaking process.
3. The FWC acknowledges that regulations proposed for implementation under any fishery management plan amendment, regulatory or otherwise, must be consistent with the management objectives of the Spiny Lobster FMP, the National Standards, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) including the national standards, and all other applicable law. Federal rules will be implemented in accordance with the federal Administrative Procedure Act.
4. The Councils and NMFS agree that the State may propose the following regulatory changes directly to NMFS:

**A. GEAR RESTRICTIONS:**

- a. Limits on the number of traps that may be fished by each vessel.
- b. Requirements for 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 the 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.

**B. HARVEST RESTRICTIONS:**

- a. Changes to 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.

5. The State will have the responsibility for collecting and developing the information upon which to base the fishing regulations, with assistance as needed by NMFS, and will cooperatively share the responsibility for enforcement with federal agencies.
6. FWC will develop alternative proposed regulations 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 regulations by the FWC Commissioners, FWC will advise the Councils and NMFS' Southeast Regional Administrator (RA) of the recommended regulations 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 regulations and summaries of public comment. The Councils may submit the proposed regulations and supporting analyses to the Scientific and Statistical Committees (SSC) for review of the scientific analyses. The Councils may also submit the proposed regulations and supporting analyses to the advisory panels for comment.
7. The RA will review the proposed regulations, analyses, and public record, and will notify the Councils and FWC if the RA preliminarily determines that the regulations are consistent with this Protocol and Procedure, the objectives of the Spiny Lobster FMP, the Magnuson-Stevens Act and other applicable law. If the Councils agree with the RA's preliminary determination, the Councils will deem the proposed regulations as necessary and appropriate, and the RA will proceed with implementation of the proposed regulations as specified in Paragraph 9. If the Councils do not agree with the RA's preliminary determination, the RA will not proceed with implementation of the proposed regulations until this issue has been resolved. If in the judgment of the RA, the proposed regulations or the supporting record are not consistent with this Protocol and Procedure or the Spiny Lobster FMP objectives or the applicable law, the RA will immediately notify the Councils and FWC of the deficiencies in the regulations or supporting record.

FWC may submit, for the RA's review, additional information or analyses to correct the deficiencies in the record.

8. When the RA has preliminarily concluded the proposed regulations are acceptable and the Councils have deemed the proposed regulations as necessary and appropriate, the RA will draft and publish a proposed rule for public comment. After reviewing the public comments, the RA may, in consultation with the Councils, make appropriate revisions to the proposed regulations prior to publishing a final rule. 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.
9. NMFS and the Councils agree that their staffs will prepare the proposed and final rules and, based on Florida's analyses of any impacts, the associated National Environmental Policy Act documentation, and other documents required to support the rule.

### **Discussion:**

- For spiny lobster, 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. Therefore, these regulations cannot be implemented for the federal segment of the fishery without a Council framework action or plan amendment. **Alternative 1 (No Action)** would keep the current process, which requires that any changes for federal spiny lobster regulations be developed through Council action.
- **Preferred Alternative 2** would re-establish a procedure allowing Florida to propose federal regulations directly to NMFS and combine the procedure under the existing cooperative protocol to remove redundancies. The recommended regulations and corresponding analyses must be based on the best available science and be consistent with Spiny Lobster FMP objectives, the Magnuson-Stevens Act, and any other applicable law. **Preferred Alternative 2** is expected to help expedite making federal regulations consistent with Florida regulations for the EEZ off Florida.

### **Committee Action:**

- REVIEW ALTERNATIVES UNDER ACTION 3, MODIFY AS NECESSARY
- APPROVE SPINY LOBSTER AMENDMENT 13 FOR FORMAL REVIEW
- OTHER?

**DRAFT MOTION:** APPROVE SPINY LOBSTER AMENDMENT 13 FOR FORMAL SECRETARIAL REVIEW AND DEEM THE CODIFIED TEXT AS NECESSARY AND APPROPRIATE. GIVE STAFF EDITORIAL LICENSE TO MAKE ANY NECESSARY EDITORIAL CHANGES TO THE DOCUMENT/CODIFIED TEXT AND GIVE THE COUNCIL CHAIR AUTHORITY TO APPROVE THE REVISIONS AND RE-DEEM THE CODIFIED TEXT.