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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-B111

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 13

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 13 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP), for review, approval, and implementation by NMFS. Amendment 13 would modify the applicable Federal regulations for the harvest of spiny lobster in the exclusive economic zone (EEZ) off Florida to be compatible with Florida regulations, and would re-establish a procedure for an enhanced cooperative management with Florida. The purpose of Amendment 13 is to more effectively manage and enforce the harvest of spiny lobster.

DATES: Written comments on Amendment 13 must be received on or before June 3, 2019.

ADDRESSES: You may submit comments on Amendment 13, identified by “NOAA-NMFS-2018-0088” by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0088, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- **Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public

viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 13 may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-13-modifications-spiny-lobster-gear-requirements-and-cooperative-management>. Amendment 13 includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: Susan.Gerhart@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The FMP being revised by Amendment 13 was prepared by the Councils and implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

In the Gulf and South Atlantic, spiny lobster are harvested primarily off the coast of Florida. The original FMP, implemented in 1982, largely complemented Florida’s management regime and provided protection for the fishery throughout its range in the Gulf and the South Atlantic (47 FR 29202; July 2, 1982). The FMP adopted many of the management measures implemented by Florida to achieve its conservation and management objectives and effectively coordinate management with Florida. However, it was difficult to keep Federal regulations consistent with changing state regulations because Florida can adjust its management measures more quickly than the Councils and NMFS can change Federal regulations. As a result,

NMFS and the Councils developed Amendment 2 to the FMP (54 FR 48059; November 20, 1989), which established a procedure to allow Florida to directly propose to NMFS its state spiny lobster regulations for subsequent implementation in the EEZ off Florida. That procedure was developed to provide a more timely regulatory mechanism to implement compatible regulations and a more formal process for state and Federal coordination.

In 2017, representatives from the Florida Fish and Wildlife Conservation Commission contacted the NMFS Southeast Regional Office requesting that Federal regulations be aligned with Florida state regulations concerning requirements for spiny lobster bulley net gear and for daily commercial possession limits of spiny lobster harvested by bulley net or diving. However, NMFS determined that the previously established cooperative management procedure for the spiny lobster protocol established in Amendment 2 was removed in Amendment 10 to the FMP (76 FR 75488; December 2, 2011). Consequently, there is no procedure to implement regulations proposed by Florida without a plan amendment or framework to the FMP developed by the Council. These more lengthy processes are inconsistent with promoting compatible regulations for the fishery off Florida.

Actions Contained in Amendment 13

Amendment 13 includes measures to modify the Federal regulations for the harvest of spiny lobster that apply in the EEZ off Florida to be compatible with Florida regulations concerning bulley net gear requirements and commercial daily possession limits when using bulley nets or diving. These changes include updating the incorporations by reference to the Florida regulations, as appropriate. Amendment 13 would also re-establish a procedure for an enhanced cooperative management system to provide the state of Florida with a mechanism to propose spiny lobster regulations directly to NMFS for implementation, without a full amendment or framework action to the FMP.

Florida Bulley Net Permit and Gear Marking Requirements and Prohibitions

In 2017, Florida implemented a bulley net permit, gear marking requirements, and gear prohibitions. There is limited information as to how much spiny lobster bulley netting effort occurs in the Federal waters off Florida. However, stakeholders have expressed concerns that spiny lobster bulley net vessels are

used to disguise unlawful activities and that there are growing conflicts between recreational bully netters and commercial bully netters. Amendment 13 proposes to align Federal and Florida regulations to address these concerns. In addition, consistency between Florida and Federal regulations is expected to improve enforcement and reduce potential confusion among fishers.

Amendment 13 would 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, and 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.

Commercial Spiny Lobster Bully Net and Diving Trip Limits

The Federal regulations do not include an express commercial daily vessel harvest and possession limit for spiny lobster harvested by bully net or diving. However, current Federal regulations require commercial spiny lobster harvesters in the EEZ off Florida to have the licenses and certificates specified to be a "commercial harvester," as defined in Florida's regulations as of 2008. The 2008 version of "commercial harvester" included a person holding the appropriate licenses and certificates for traps and dive gear.

Amendment 13 would incorporate by reference the most recent Florida regulations, which define a commercial harvester as a person who holds a valid saltwater products license with a

restricted species endorsement issued by the Florida Fish and Wildlife Conservation Commission (FWC) and (1) a valid crawfish license or trap number and lobster trap certificates, if traps are used to harvest spiny lobster; (2) a valid commercial dive permit if harvest is by diving; or (3) a valid bully net permit if harvest is by bully net. Under Florida's regulations, commercial harvesters are restricted to the commercial harvest limits when bully net gear or dive gear is used. Therefore, bully net and dive fishermen would be restricted to the state bag limit regardless where the spiny lobster are harvested. However, to make the requirements in the EEZ off Florida more clear, Amendment 13 would add an express commercial vessel limit of 250 spiny lobster per vessel per day for spiny lobster harvested by bully net off all Florida counties and harvested by diving off Broward, Dade, Monroe, Collier, and Lee Counties, Florida.

Establish an Enhanced Cooperative Management Procedure for Federal and Florida State Agencies

The procedure for the protocol, as last modified in Amendment 2 to the FMP, provided NMFS the flexibility to respond quickly to changes in the spiny lobster fishery by allowing Florida to propose its spiny lobster regulations directly to NMFS for implementation in the EEZ off Florida. The procedure was removed in 2012 when Amendment 10 to the FMP established a new framework procedure (76 FR 75488; December 2, 2011). Without the procedure, Florida cannot propose rules directly to NMFS, limiting the ability to implement consistent regulations in a timely manner.

Amendment 13 would re-establish a procedure for an enhanced cooperative

management system to provide Florida with a mechanism to propose regulations concerning spiny lobster directly to NMFS for implementation.

Proposed Rule for Amendment 13

A proposed rule that would implement Amendment 13 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Councils have submitted Amendment 13 for Secretarial review, approval, and implementation. Comments on Amendment 13 must be received by June 3, 2019. Comments received during the respective comment periods, whether specifically directed to Amendment 13 or the proposed rule, will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendment 13. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 13 or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 25, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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