

Based upon our review of these infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in the Albuquerque-Bernalillo County, New Mexico or New Mexico SIP, the EPA finds that New Mexico and Albuquerque-Bernalillo County have the infrastructure in place to address required elements of CAA sections 110(a)(1) and (2) to ensure that the 2015 O<sub>3</sub> NAAQS are implemented throughout the State of New Mexico, including Albuquerque-Bernalillo County.

We are also proposing to approve the submitted revisions to the New Mexico SIP that provide modifications to the NMAC and update the federally approved New Mexico SIP accordingly. The approved SIP revision will repeal the TSP NMAAQs from section 109 of 20.2.3 NMAC, as the EPA found that such a revision will not adversely affect the attainment of applicable CAA requirements.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 10, 2019.

**David Gray,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 2019-07582 Filed 4-17-19; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 180713631-9275-01]

RIN 0648-BI11

### 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:** Proposed rule; request for comments.

**SUMMARY:** The Gulf of Mexico (Gulf Council) and South Atlantic Fishery Management Councils (South Atlantic Council) (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. The purpose of Amendment 13 and this proposed rule is to align Federal regulations for spiny lobster that apply to the EEZ off Florida with Florida state regulations, re-establish a procedure for an enhanced cooperative management system, and update the regulations to aid law enforcement and the public.

**DATES:** Written comments must be received on or before May 20, 2019.

**ADDRESSES:** You may submit comments on the proposed rule 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](http://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](http://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](mailto:Susan.Gerhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS and the Councils manage the spiny lobster fishery under the FMP. The Councils prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*).

### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems. To further attain this goal, the Magnuson-Stevens Act requires fishery managers to consider, among other things, efficiency in the utilization of fishery resources.

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 measures and provided protection for the fishery throughout its range in the Gulf and the South Atlantic (47 FR 29202; July 2, 1982). 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 bully net gear and for daily commercial possession limits of spiny lobster harvested by bully net or diving. However, NMFS determined that the

cooperative management procedure that accompanied 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 under the existing protocol without a plan amendment or framework to the FMP developed by the Councils. These more lengthy processes are inconsistent with promoting compatible regulations for the fishery off Florida.

### Management Measures Contained in This Proposed Rule

This proposed rule would implement 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 bully net gear requirements and commercial daily possession limits when using bully nets or diving. This rule would also clarify outdated language in the spiny lobster Federal regulations and update the incorporations by reference to the Florida regulations. In addition, Amendment 13 would re-establish a procedure for an enhanced cooperative management system to provide Florida a mechanism to propose spiny lobster regulations directly to NMFS for implementation, without the need to seek a full amendment or framework action to the FMP.

#### *Florida Bully Net Permit and Gear Marking Requirements and Prohibitions*

In 2017, Florida implemented a bully net permit, gear marking requirements, and gear prohibitions. There is limited information as to how much spiny lobster bully netting effort occurs in the Federal waters off Florida. However, stakeholders have expressed concerns that spiny lobster bully net vessels are used to disguise unlawful activities, and that there are growing conflicts between recreational bully netters and commercial bully netters. This proposed rule would align Federal and Florida bully net regulations to address these concerns. In addition, consistency between Florida and Federal regulations is expected to improve enforcement and reduce potential confusion among fishers.

The proposed rule 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.

This proposed rule 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 fishers would be restricted to the state bag limit regardless of where the spiny lobster are harvested. However, to make the requirements in the EEZ off Florida more clear, this proposed rule would modify Federal regulations to specifically state that the commercial vessel limit for spiny lobster harvested by bully net off all Florida counties, and harvested by diving off Broward, Dade, Monroe, Collier, and Lee Counties, Florida, is 250 spiny lobster per vessel per day.

#### *Clarifications and Updates to Regulatory Language*

This proposed rule would also revise and clarify language in the spiny lobster Federal regulations. The rule would update the phone numbers and websites referenced in 50 CFR 622.413, and correct a typographic mistake in 50 CFR 622.415 by changing "foreign" to "foreign." Last, this rule would remove the phrase "during times other than the authorized fishing season" from 50 CFR 622.402(c)(1), to clarify that unmarked

traps are illegal gear, regardless of the time of year, and may be removed in accordance with Florida regulations.

#### **Incorporation by Reference**

The proposed rule would update the incorporation by reference in 50 CFR 622.400(a)(1)(i) which provides the definition of commercial harvester.

The proposed rule would also update the incorporation by reference of the Florida Administrative Code in 50 CFR 622.402(a)(1) and (2) to reflect the effective dates of the current Florida regulations, which mandate that vessel owners and/or operators who harvest spiny lobster by traps in the EEZ off Florida comply with Florida vessel and gear identification requirements. The proposed rule designates a new incorporation by reference which specifies vessel identification requirements for commercial spiny lobster harvesters who use bully nets to the paragraph added at 50 CFR 622.402(a)(3). It would similarly update the incorporation by reference of the Florida Administrative Code in 50 CFR 622.403(b)(3)(i) and 622.405(b)(2)(i) to reflect the effective dates of the current Florida regulations and address derelict spiny lobster traps as well as the requirements for lawful spiny lobster trap pulling, respectively. The proposed rule would add new incorporation by reference of the Florida Administrative Code, in 50 CFR 622.404(e) and 622.404(f), which address the alignment of management measures with Florida's regulations, including prohibiting the simultaneous possession of a bully net and any underwater breathing apparatus, and prohibiting the possession of trap pullers, respectively, as discussed above.

The Florida regulations are available at <http://www.flrules.org> and the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399 (telephone: 850-487-0554).

#### **Measures in Amendment 13 Not Codified Through This Proposed Rule**

In addition to the measures proposed in this rule, Amendment 13 would re-establish a procedure that is similar to the procedure established in Amendment 2, and combine it with the existing cooperative management protocol. The procedure established in Amendment 2 was removed in 2012 when Amendment 10 to the FMP established a new framework procedure. Without such a procedure, Florida cannot propose rules directly to NMFS, which, therefore, limits NMFS' ability to implement consistent Federal regulations in a timely manner.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 13, the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would apply to all commercial vessels that fish for or harvest spiny lobster in Federal waters off Florida. In the EEZ off Florida, anyone who possesses, sells, trades, or barter or attempts to sell, trade, or barter spiny lobster must have the appropriate licenses, permit, and certificates necessary to be a "commercial harvester," as defined in the Florida Administrative Code. In the 2017/2018 fishing season, Florida issued 1,539 commercial spiny lobster licenses; this includes 261 commercial dive permits, and 445 commercial bully net permits. Data from the years of 2012 through 2016 were used in Amendment 13, and these data provided the basis for the Councils' decisions. Although this proposed rule would apply to all commercial spiny lobster license holders in Florida, it is expected that those with reported landings of spiny lobster would be the most likely to be affected. On average from 2012 through 2016, there were 788 individual vessels identified that harvested spiny lobster in Florida each year. During this time, these vessels earned an average annual revenue of approximately \$74,400 (2017 dollars), and spiny lobster accounted for 69 percent of this revenue. It is important to note that some commercial fishing businesses own (or lease) and operate more than one vessel. On average, from 2012 through 2016, there were 770 commercial fishing businesses identified with reported landings of spiny lobster in Florida. During this time, these businesses earned an average annual revenue of approximately

\$82,000 (2017 dollars), and spiny lobster accounted for 67 percent of this revenue. The maximum annual revenue from all species reported by a single one of these commercial fishing businesses from 2012 through 2016 was approximately \$1.88 million (2017 dollars).

For RFA purposes only, the NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard. No other small entities that would be directly affected by this proposed rule have been identified.

This proposed rule would align Federal regulations to be more consistent with Florida regulations for spiny lobster harvesters. It would require that commercial bully net harvesters in the EEZ off Florida have a Florida bully net permit and properly mark their vessel with their bully net permit number using reflective paint or other reflective material. In addition, the proposed rule would prohibit commercial bully net vessels from having trap pullers on board. It would also prohibit the simultaneous possession of a bully net and underwater breathing apparatus (not including dive masks or snorkels) onboard a vessel used to harvest or transport spiny lobster for commercial purposes. These requirements would not be expected to alter the commercial harvest of spiny lobster and, therefore, no changes to ex-vessel revenue would be anticipated. The requirements would impose additional costs on bully net fishery participants if these participants only use the bully net gear in Federal waters; however, NMFS assumes there are few, if any, participants that fit this description. Because commercial spiny lobster harvesters fishing in the EEZ off Florida are already required to have both a Florida saltwater product license and spiny lobster license, and there is no additional cost for a bully net permit, this proposed rule would not be expected to increase permitting costs. The labor and supply costs associated with purchasing reflective paint or other reflective material and applying it to the

vessel hull would be expected to be minimal, as well. Finally, the gear prohibitions would reduce the flexibility of commercial vessels to switch between bully nets and other gear while fishing for spiny lobster in Federal waters. However, commercial vessels must already comply with Florida gear regulations in order to transit through Florida state waters while in possession of spiny lobster. Overall, bully net gear is not useful for harvesting spiny lobster at depths typically found in the EEZ, and it is highly likely that fishery participants would also use the gear in state waters off Florida, and thus would already need to comply with state regulations. In summary, any direct negative economic effects associated with the proposed bully net permitting requirements, vessel marking requirements, or gear prohibitions would be negligible.

This proposed rule would also establish a commercial daily vessel harvest and possession limit of 250 per day per vessel for spiny lobsters harvested by bully net in or from the entire EEZ off Florida. This limit would be consistent with the harvest and possession limit for bully nets in Florida state waters. As discussed earlier, it is not likely that bully net gear is used to harvest spiny lobster in the EEZ off Florida, and most commercial bully netters would already be subject to state regulations. As such, the proposed harvest and possession limit would not be expected to alter the commercial harvest of spiny lobster, nor would it result in direct economic effects on any small entities.

This proposed rule would similarly establish a commercial daily vessel harvest and possession limit of 250 per day per vessel for spiny lobsters harvested by diving in or from the EEZ only off Broward, Dade, Monroe, Collier, and Lee Counties, Florida. This limit would be consistent with the harvest and possession limit for commercial dive gear in Florida state waters off of those counties. Under existing Federal regulations, vessels that harvest spiny lobster in the EEZ off Florida using dive gear must have a Florida commercial spiny lobster dive permit; thus, they are already subject to the state limit. Therefore, the proposed harvest and possession limit would not be expected to alter the commercial harvest of spiny lobster, nor would it result in direct economic effects on any small entities.

Finally, this proposed rule would establish an enhanced cooperative management procedure that allows Florida to request changes to the spiny

lobster Federal regulations through NMFS rulemaking, and combine the procedure with the existing protocol as specified in Amendment 10 to the FMP. This would be expected to streamline the regulatory process and result in a more timely implementation of regulatory changes requested by Florida; however, it is an administrative change only, and, as such, it would not have any direct economic effects on any small entities.

The information provided above supports a determination that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities. Because this rule, if implemented, is not expected to have a significant adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or record-keeping requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule.

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

List of Subjects in 50 CFR Part 622

Bully nets, Fisheries, Fishing, Florida, Gear, Gulf, Incorporation by reference, South Atlantic, Spiny lobster.

Dated: April 4, 2019.

Samuel D. Rauch, III, Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.400, revise paragraph (a)(1)(i) to read as follows:

§ 622.400 Permits and fees.

(a) \* \* \* (1) \* \* \* (i) EEZ off Florida and spiny lobster landed in Florida. For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in § 622.408(b)(1) for such spiny lobster,

such person must have the licenses and certificates specified to be a "commercial harvester," as defined in Rule 68B-24.002(4), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

\* \* \* \* \*

3. In § 622.402, revise paragraphs (a) and (c)(1) to read as follows:

§ 622.402 Vessel and gear identification.

(a) EEZ off Florida. (1) An owner or operator of a vessel that is used to harvest spiny lobster by traps in the EEZ off Florida must comply with the vessel and gear identification requirements specified in Rule 68B-24.006(3), (4), and (5), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

(2) An owner or operator of a vessel that is used to harvest spiny lobster by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters in Rule 68B-24.006(6), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

(3) An owner or operator of a vessel that is used to harvest spiny lobster by bully net in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by bully net in Florida's waters in Rule 68B-24.006(7), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

\* \* \* \* \*

(c) \* \* \*

(1) EEZ off Florida. Such trap or buoy, and any connecting lines will be considered derelict and may be disposed of in accordance with Rules 68B-55.002 and 68B-55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 622.413). An owner of such trap or buoy remains subject to appropriate civil penalties.

\* \* \* \* \*

4. In § 622.403, revise paragraph (b)(3)(i) to read as follows:

§ 622.403 Seasons.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \* (i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 68B-24.005(3), (4), and (5), Florida Administrative Code, in effect as of November 1, 2018 (incorporated by reference, see § 622.413), apply in their entirety to the

possession of spiny lobster traps in the EEZ off Florida. A spiny lobster trap, buoy, or rope in the EEZ off Florida, during periods not authorized will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code, in effect as of October 15, 2007 (incorporated by reference, see § 622.413). An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

\* \* \* \* \*

■ 5. In § 622.404, add paragraphs (e) and (f) to read as follows:

**§ 622.404 Prohibited gear and methods.**

\* \* \* \* \*

(e) In the EEZ off Florida, 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 is prohibited in accordance with Rule 68B–24.007(5), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413). For the purpose of this paragraph, an “underwater breathing apparatus” is any apparatus, whether self-contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water is able to obtain or reuse air or any other gas or gasses for breathing without returning to the surface of the water.

(f) In the EEZ off Florida, vessels that are or are required to be marked with or have identification associated with a bully net permit for the harvest of spiny lobster are prohibited from having trap pullers aboard, in accordance with Rule 68B–24.006(8), the Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

■ 6. In § 622.405, revise paragraph (b)(2)(i) to read as follows:

**§ 622.405 Trap construction specifications and tending restrictions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) For traps in the EEZ off Florida, by the Division of Law Enforcement, Florida Fish and Wildlife Conservation Commission, in accordance with the procedures in Rule 68B–24.006(9), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see § 622.413).

\* \* \* \* \*

■ 7. Revise § 622.408(b) to read as follows:

**§ 622.408 Bag/possession limits.**

(a) \* \* \*

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* Except as specified in paragraphs (b)(3) and (b)(4) of this section, during the commercial and recreational fishing season specified in § 622.403(b)(1), the daily bag or possession limit of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, is six per person.

(2) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 622.403(b)(2), the daily bag or possession limit of spiny lobster—

(i) In or from the EEZ off the Gulf states, other than Florida, is six per person;

(ii) In or from the EEZ off Florida other than off Monroe County, Florida, is twelve per person; and

(iii) In or from the EEZ off Monroe County, Florida, is six per person.

(3) *Exemption from the bag/possession limit.* During the commercial and recreational fishing season specified in § 622.403(b)(1), a person is exempt from the bag and possession limit specified in paragraph (b)(1) of this section, provided—

(i) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(ii) The vessel from which the person is operating has on board the required licenses, certificates, or permits, as specified in § 622.400(a)(1).

(4) *Harvest by net or trawl.* During the commercial and recreational fishing season specified in § 622.403(b)(1), aboard a vessel with the required licenses, certificates, or permits specified in § 622.400(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (b)(4), the term “net or trawl” does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(5) *Harvest by diving.* (i) The commercial daily harvest and

possession limit of spiny lobster harvested by diving in or from the EEZ off Broward, Miami-Dade, Monroe, Collier, and Lee Counties, Florida, is 250 spiny lobster per vessel.

(ii) *Diving at night.* The provisions of paragraph (b)(3) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (b)(1) of this section, whether or not a Federal vessel permit specified in § 622.400(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(6) *Harvest by bully nets in the EEZ off Florida.* The commercial daily harvest and possession limit of spiny lobster harvested by bully net in the EEZ off Florida is 250 spiny lobsters per vessel.

\* \* \* \* \*

■ 8. Revise § 622.412 introductory text to read as follows:

**§ 622.412 Adjustment of management measures.**

In accordance with the framework procedures of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the RA may establish or modify the following items:

\* \* \* \* \*

■ 9. Amend § 622.413 by:

■ a. Revising paragraph (b) introductory text;

■ b. Revising paragraphs (b)(2) through (b)(4);

■ c. Redesignating paragraphs (b)(5) through (7) as (b)(6) through (8);

■ d. Adding new paragraph (b)(5); and

■ e. Revising paragraph (c) introductory text.

The revisions and addition read as follows:

**§ 622.413 Incorporation by reference (IBR).**

\* \* \* \* \*

(b) Florida Administrative Code (F.A.C.): Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850–487–0554; <http://www.flrules.org>.

\* \* \* \* \*

(2) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.002: Definitions, in effect as of May 1, 2017, IBR approved for § 622.400(a).

(3) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.005: Seasons, in effect as of November 1, 2018, IBR approved for § 622.403(b).

(4) F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.006: Gear: Traps, Buoys, Identification Requirements, Prohibited Devices, in effect as of May 1, 2017, IBR approved for § 622.402(a), § 622.404(f), and § 622.405(b).

(5) F.A.C., Chapter 68B-24: Spiny lobster (crawfish) and slipper lobster, Rule 68B-24.007: Other Prohibitions, in effect as of May 1, 2017, IBR approved for § 622.404(e).

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(c) Florida Statute: Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850-487-0554; <http://www.leg.state.fl.us/statutes/>.

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■ 10. Amend § 622.415 by revising paragraph (a) and reserving paragraph (b) to read as follows:

**§ 622.415 Limited exemption regarding harvest in waters of a foreign nation.**

(a) An owner or operator of a vessel that has legally harvested spiny lobsters

in the waters of a foreign nation and possesses spiny lobster, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from the requirements of this subpart, except for § 622.409 with which such an owner or operator must comply, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

(b) [Reserved]

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