

**REGULATORY AMENDMENT 2**

**TO THE**

**SPINY LOBSTER FISHERY MANAGEMENT PLAN**

**FOR THE**

**GULF OF MEXICO AND SOUTH ATLANTIC**

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

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## **1. HISTORY OF MANAGEMENT**

The Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP) was implemented on July 26, 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 FMP has been amended three times. Amendment 1 was implemented on July 15, 1987 (52 FR 22659) with certain rules deferred and implemented on May 11, 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). 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).

The FMP (1981), Amendment 1 (1987), and Amendment 2 (1989) adequately describe the fishery, changes in the fishery and utilization patterns, and the condition of the stock. In summary, this information indicates that (1) the fishery is heavily overcapitalized with excess fishing capacity (traps) well beyond that needed to harvest the resource; (2) although landings have been stable and no recruitment overfishing is occurring, growth overfishing is occurring partially as a result of mortality of sublegal lobster from fishing practices; (3) the fishery landings are dependent on recruitment of small lobster each year, i.e. no multiple age class structure; (4) source of larval recruitment to the fishery has not been resolved, i.e., pan-Caribbean or Gulf or local or a combination of sources; and (5) a trap effort reduction system has been developed by industry and the State of Florida. (state)

Regulatory Amendment 1 (May 1992) to the FMP, implemented December 30, 1992, established the trap certificate program for reducing effort into the EEZ off Florida. It also reduced the number of undersize lobster that could be held aboard a vessel for use of attractants to no more than fifty or one per trap on board. It specified allowable gear that could be used to harvest spiny lobster in the EEZ off Florida to use of traps (no larger than 3x2x2 feet), bully or hoop nets, or by diving using gear that does not spear, pierce, or puncture lobster. It limited fishermen diving at night to the recreational bag limit, required divers to measure lobster while in the water, and specified uniform trap and buoy numbers.

## **2. PROBLEMS REQUIRING PLAN AMENDMENT**

This regulatory amendment addresses: (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.

The special recreational season was originally set (Amendment 1) to occur on the weekend just prior to the date (August 1) that commercial fishermen placed their traps in the water and before the fishing season opened (August 6). This season was set to avoid conflicts between recreational and commercial fishermen upon opening of the season. This special two-day season has become a highly popular event over the years with ever increasing numbers of participants. In 1991 approximately 50 thousand fishermen participated during the two-day season, with 33,000 participating in the Florida Keys (Monroe County) (Bertelsen and Hunt 1991).

This great number of participants during the two-day period while contributing significantly to the economy of Monroe County created extensive problems that lead to a general consensus by the county commission and Key West Chamber of Commerce that the season should be abolished or otherwise modified to spread out recreational participation over a longer period (Note: the regular fishing season is from August 6 through March 31). Problems encountered included: (1) enormous harvester-related traffic congestion and associated safety problems, both on and off the water; (2) inability of law enforcement to function effectively in the face of overwhelming effort; and (3) high incidence of resource violations for lobster and other marine species, including unintentional damage to coral.

Public testimony and correspondence has shown the special recreational season to be a volatile issue. Residents, businesses, and commercial interests in Monroe County would prefer that the season be modified, if not outright abolished; recreational harvesters and dive operators are strongly in favor of retaining the season.

The job of law enforcement agencies is hampered by the enormous numbers of participants in the area during this two day period. Violations cited by enforcement officers include no dive flags displayed, anchoring in coral, taking of undersized lobsters, exceeding the bag limit, use of prohibited gear, and other marine species and resource violations. There have also been reports of other incidents of a life threatening nature, such as snorkeling/diving in heavily traveled boat routes, poor seamanship, conflicts between harvesters, and congested traffic on the water as well as on land. Significant damage can and does occur to both marine and terrestrial environments.

Public testimony taken in areas other than Monroe County indicate that the two day special recreational season "as is" does not pose the same problems as in the Keys. It would appear that the majority of sport season participants travel to Monroe County; therefore, the congestion, enforcement, and other associated problems are not a statewide occurrence. However, reef damage does occur in shallower reef areas as a result of boat anchors, and the practice of overturning coral heads in an effort to catch lobsters.

The Florida Marine Fisheries Commission (FMFC) held four workshops to explore with the public alternatives for reducing these problems which included the following options:

1. Retain special recreational season as is.
2. Abolish special recreational season.
3. Modify special recreational season:
  - a. Move to the middle of the week.
  - b. Move to the end of regular season.
  - c. Lower recreational bag limit, and allow 365 day harvest.
4. Prohibit the use of SCUBA gear for lobster harvest during the special recreational season.
5. Limit entry by lottery.
6. Establish a tag program.
7. Establish a buffer zone around bridges, causeways, docks, and residential waterways.
8. Establish a vessel bag limit.
9. Set Monroe County aside as a special circumstance, and apply certain regulations that would not apply to the special recreational season in the rest of the state.
  - a. Establish snorkeling as only allowable harvesting technique.
  - b. Move special recreational season to the middle of the week.
  - c. Establish buffer zones around bridges, causeways, docks, and residential waterways.

The FMFC directed staff to expand two of the nine options originally presented in Miami. The first option was to consider a year-round recreational harvesting season (3c) on the hypothesis that a 365 day access period would lessen the "frenzied" harvesting behavior demonstrated during the sport season and opening month of the regular season. The second option was to develop a separate management plan for the special recreational season in Monroe County (9) on the basis that this area is where the majority of the recreational harvesting takes place.

The FMFC, based on input from these workshops, reduced the alternatives to a set of proposed options. Public hearing before the FMFC were held on these options and the final set of options was submitted to the Florida Governor and Cabinet who also held a public hearing before approving the following options:

- Moved the season to occur on the last consecutive Wednesday and Thursday in July of each year;
- Limited harvesting methods to diving and the use of bully nets; and
- Relaxed the rules outside of Monroe County during the two-day period in order to attract some of the effort away from the Florida Keys:

Monroe County: No more than six lobsters may be harvested or possessed per person on the first day; on the second day, no more than 6 lobsters may be harvested or possessed on the water and no more than 12 lobsters may be possessed per person on shore; night diving for lobster is prohibited;

All other areas of Florida: No more than 12 lobsters may be harvested or possessed per person on the first day; on the second day, no more than 12 lobsters may be harvested or possessed on the water and no more than 24 lobsters may be possessed per person on shore.

These amendments were approved by the Commission on April 2, 1992, approved by the Governor and Cabinet on June 2, 1992, and took effect on July 1, 1992. This time change effectively creates a different state sport season than federal season.

The FMFC has submitted these rules and associated administrative record to the Regional Director of NMFS (RD) and the Gulf and South Atlantic Councils (Councils) for implementation under the framework procedure of the FMP (see Section 3.D). Under this procedure the RD 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 RD has preliminarily determined that the proposed rules are consistent with the objectives of the FMP, the National Standards of 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.

### **3. 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 currently identified in the 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.

**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.

**C. Optimum Yield (OY)**

OY is all spiny lobster with carapace or tail lengths equal to or larger than the minimum legal lengths<sup>1</sup> 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 FMFC 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 regulatory amendment.

**PROTOCOL:**

The Councils, FMFC 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, including final approval of the rules by Governor and Cabinet provide ample and fair opportunity for all persons to participate in the rulemaking procedure.

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<sup>1</sup>Current minimum legal size specified in the regulations is 3.0 inches carapace length (or 5.5 inches tail length if harvested under tailing permit provisions).



3. FMFC 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 not implement the rule until the Councils, FMFC, and NMFS or their representatives meet and resolve<sup>2</sup> 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. FMFC 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 Director, NMFS, determines they may adversely impact other state and federal fisheries. In that event, the RD 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 FMFC 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 FMFC, the Councils, and NMFS.
2. Based on the best available scientific information, the State of Florida's Marine Fisheries Commission (FMFC) 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

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<sup>2</sup>The issue will not be resolved until the Councils have withdrawn their objections.

select each preferred alternative rule for recommendation to the Florida Governor and Cabinet for implementation. After approval of the rule or rules by the Governor and Cabinet, the FMFC will advise the Councils and Regional Director (RD), NMFS of the recommended rule(s) and proposed implementation date and will provide to the RD 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 1), FMFC 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 RD 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 National Standards, and other applicable law, he will notify the Councils and FMFC of his intent to implement the rule in the EEZ. If in the judgment of the RD, 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 FMFC of the deficiencies in the rule or supporting record. The FMFC 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 RD and FMFC. In this case the RD will not proceed with implementation of the rule until this issue has been resolved.<sup>3</sup>
5. When the RD 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 FMFC, 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 FMFC, the Councils, and the RD. A reasonable period for public comment on the proposed rule shall be provided.

After reviewing public comment if the RD 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 FMFC 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 FMFC and/or Councils' staffs. If the RD has concluded the rule is consistent, he will publish the final rule.

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<sup>3</sup>The issue will not be resolved until the Councils have withdrawn their objections.

## 6.PART A (GEAR RESTRICTIONS)

Appropriate rules or regulatory changes that can be implemented under this part include:

- a.Limiting the number of traps that may be fished by each vessel.
- b.Describing the construction characteristics of traps, including requiring escape gaps.
- 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.

## 7.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.

## **4. PROPOSED MANAGEMENT ACTIONS**

### **SPECIAL RECREATIONAL SEASON OFF FLORIDA**

#### **(1)Date of Season**

**Preferred Option: The special recreational season will occur on the last consecutive Wednesday and Thursday in July each year in the EEZ off Florida<sup>4</sup>**

**Discussion/Rationale:** The FMFC was petitioned by the City of Key West officials and the Monroe County Board of County Commissioners to end the special recreational season because of the effects on the season on support infrastructure. Specific testimony was heard about hospital emergency room services, the lack of sufficient law enforcement personnel and the number of persons who simply camp by the side of the road during the season. State officials (Division of Law Enforcement and Division of Recreation and Parks, FDNR) also supported changes in the season due to concerns about the ability to manage the number of people due to concomitant resource related damage to benthic habitats due to the gold-rush mentality of the sport season. This proposed option and

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<sup>4</sup>EEZ to its seaward limit beginning in the Atlantic Ocean south of 30° 42' 45.6" N. latitude at the Georgia/Florida state boundary and circumventing the Florida peninsula into the Gulf of Mexico with its western terminus delineated by 87° 31' 06" W. longitude at the Alabama/Florida state boundary.

other proposed options will address objectives 1,3 and 5 (see Section 3B). By shifting the season to mid-week rather than a weekend it is anticipated that participation levels will be somewhat reduced over current levels, since participants would be required to take leave or time off or to fish on weekends during the regular season. Florida modified its rule for state jurisdiction to include these dates in the 1992 season. However, since the season for the EEZ remained on the weekend, two special seasons existed and the FMFC was unable to assess whether the rule significantly reduced participation levels.

If this proposed option along with the other options are successful in reducing participation levels in the Florida Keys it will result in a more orderly and easily regulated fishery. This would both alleviate the congestion problems on shore that are of concern to residents, local governments, and businessmen, and would benefit the resource by enhancing enforcement of resource regulations.

Likely economic benefits to the local economy from the date change will not be significantly altered but will be distributed over other periods of the year. Social benefits are anticipated to accrue to residents of Monroe County.

The special recreational season will remain unchanged in the EEZ off states other than Florida, i.e., the weekend just prior to August 1.

**Rejected Option: Status quo-retain the current dates for the special recreational season in the EEZ off Florida.**

Discussion/Rationale: This option was rejected because of the problems cited under Section 2. The FMFC has already implemented rules consistent with the preferred option and retention of status quo would be inconsistent with FMP objective 6.

**(2)Restrictions on Fishing**

**Preferred Option 1: Fishing during the special recreational season in the EEZ off Florida is limited to diving and use of bully nets<sup>5</sup> or hoopnets<sup>6</sup>.**

Discussion/Rationale: Option 1 is meant to address a problem created by the trap certificate legislation. One aspect of the legislation was to allow the use of recreational traps. Heretofore the only traps allowed in the fishery were commercial and commercial traps

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<sup>5</sup>Bully nets means a circular frame attached at right angles to the end of a pole and supporting a conical bag of webbing. The webbing is usually held up by means of a cord which is released when the net is dropped over a lobster.

<sup>6</sup>Hoop net means a frame, circular or otherwise, supporting a shallow bag of webbing and suspended by a line and bridles. The net is baited and lowered to the ocean bottom, to be raised rapidly at a later time to prevent the escape of lobster.

could only be used for harvest during the regular season. Without this change in regulation recreational harvesters would be able to use traps during the special recreational season. This would exacerbate user conflicts and create enforcement problems.

These restrictions on allowable gear during the special recreational season are proposed to help alleviate the problems encountered in enforcement of regulations for spiny lobster. They will reduce the likelihood of illegal harvest and injury to lobsters. During the regular season (August 6 through March 31) recreational fishermen may utilize traps to harvest the bag limit; however, traps may not be placed in the water before August 1. Persons diving may not use gear that spears, pierces or punctures lobster. Typically, they use nooses, dip nets or mops.

**Preferred Option 2: Persons fishing in the EEZ off Monroe County, Florida<sup>7</sup> during the special recreational season are prohibited from harvesting spiny lobster by diving at night<sup>8</sup>.**

Discussion/Rationale: This proposed option is limited to the fishery only in the Florida Keys because of the much higher participation levels in that area in relation to the remainder of the state (i.e., 66 percent of the fishermen). Allowing only daylight harvest during this season would serve to enhance enforcement, reduce illegal harvest, and decrease safety and conflict concerns associated with night activity on the water. The FMFC judged that for other areas of the state that these were not serious problems. The proposed action would certainly enhance vessel and crew safety in the EEZ and makes the Florida rule more easily enforced.

**Rejected Option: Status quo-fishing by diving at night is not prohibited in the EEZ off Monroe County and other allowable gear can be used in the EEZ off Florida.**

Discussion/Rationale: This option would seriously affect the ability of Florida marine police to enforce the state rules. It is also inconsistent with FMP objectives 3 and 6.

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<sup>7</sup>EEZ to its seaward limit beginning in the Atlantic Ocean south of 25° 20.4'N latitude at the Dade/Monroe County boundary and circumventing the Florida peninsula into the Gulf of Mexico with its northern terminus at 25° 48.0'N latitude.

<sup>8</sup>One hour after official sunset to one hour before official sunrise.

### **(3) Bag and Possession Limits During the Special Recreational Season**

**Preferred Option:** During the special recreational season persons fishing in the EEZ off Florida are limited to possession of no more than 12 lobster per person daily, except that persons fishing the EEZ off Monroe County, Florida<sup>9</sup> are limited to possession of no more than 6 lobster per person.

**Discussion/Rationale:** The intent of allowing a higher bag limit for areas outside the Florida Keys is to reduce the negative impacts of the special recreational season on the marine and human environments of Monroe County where the large influx of harvesters impacts these environments. The bag limit of 12 lobster is principally a social enticement to fishermen to fish in other areas in anticipation of catching and retaining twice as many lobsters at the beginning of each new fishing season. Most fishermen are unlikely to catch that many as daily catch rates varied between 2.0 and 3.0 lobster per person for areas outside the Keys during the two-day season (Bertelsen and Hunt 1991). Daily catch rate for the Keys was 4.8 lobsters per person.

The information about recreation harvesters is limited, however, recent surveys combined with testimony given the FMFC indicates that many recreational harvesters spend the entire period from the start of the sport season through the first week of the regular season in Monroe County. Others are not able to do so because of school or work; the bag limit increase was an inducement to such persons who also live in the south Florida area to remain in their home counties during sport season.

**Rejected Option:** **Status quo - no change.**

**Discussion/Rationale:** This option would result in the federal rules being inconsistent with those of the state, and thereby be inconsistent with FMP objective 6. The option would not assist in shifting effort from Monroe County to other areas of Florida, and thereby be inconsistent with FMP objective 3.

## **5. REGULATORY IMPACT REVIEW (RIR)**

### **5.1 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

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<sup>9</sup>EEZ to its seaward limit beginning in the Atlantic Ocean south of 25° 20.4'N. latitude at the Dade/Monroe County boundary and circumventing the Florida peninsula into the Gulf of Mexico with its northern terminus at 25° 48.0'N. latitude at the Monroe/Collier County border.

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).

This RIR analyzes the probable impacts that the proposed alternatives for the amendment would have on the directed recreational spiny lobster fishery.

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.

## **5.2 Problems and Objectives**

The problems and objectives are described in previous sections 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.

## **5.3 Background**

The primary purpose of these proposed rule amendments is to change the annual dates for the two-day spiny lobster special recreational season and specify restrictions on harvest during that season. The effect of the change will be to reduce the negative impacts of the season on the marine environment, particularly in Monroe County, where the annual influx of recreational harvesters places undue pressure on the reef system serving as habitat for the spiny lobster. Moving the season from a weekend to the last Wednesday and Thursday of each July should serve to reduce recreational participation and its negative impacts. During this season, methods of harvest are limited to diving and bully or hoop netting, diving at night for spiny lobster is prohibited in the EEZ off Monroe County. Other amendments are intended to clarify the bag and possession limit applicable during the season.

## **5.4 Description of the Fishery and Estimate of the Economic Benefits and Costs to Persons Directly Affected**

A review of the historical information about recreational participation in the lobster fishery shows the dearth of information (GMFMC/SAFMC 1982; Rockland 1988). The latest NMFS stock assessment (December 1991) continues to use the ten percent of catch figure, derived from a 1980 aerial and windshield survey. Estimates based on recent survey results suggest that the recreational catch may account for up to forty-one percent of the total harvest (Bertelsen and Hunt 1991).

One source of recreational catch information was derived from commercial permits. A review of these permits indicates that between 1975 and 1986 the number of permits increased twofold from 1,800 to 4,100 (FMFC 1990; GMFMC/SAFMC 1982 and 1987). There are several explanations for the increased permits: (1) the entry of Cuban fishermen (Nelson, 1990), (2) the desire to exceed recreational bag limits through payment of a modest fee, (3) in reaction to a legislatively enacted limit on permits, and (4) business reasons whereby individuals hold multiple permits. Recreational harvesters include persons who purchased a commercial permit to exceed the bag limit. The implementation of the restricted species endorsement (RSE) for lobster means those harvesters will no longer be able to do so. Persons who have few or no reported landings will nevertheless receive ten trap tags pursuant to the trap reduction legislation. There are estimated to be 1,653 license holders who will receive the ten trap limit which implies these are largely recreational harvesters.

Little work had been done, until the 1991/1992 season, to quantify the value of the recreational fishery. However, the advent of the state recreational fishing license with the lobster stamp provided a means to survey people in order to estimate the number of participants, their catch and expenditures for lodging and boat use.

#### **5.4.1 An Estimate of Persons Directly Affected by the Proposed Amendments**

The recreational fishing license provided the first opportunity to identify persons who purchased a lobster stamp in order to harvest spiny lobster. One hundred and twenty thousand stamps were sold during the 1990/1991 fiscal year and this information was used to conduct two sample surveys: the first directed to persons who participated in the special recreational season and the second directed to persons who participated during the regular season (Bertelsen and Hunt 1991). One quarter of the fishermen were novices, with less than three years experience. Over one-third of the fishermen were highly experienced, having fished for more than a dozen years. Overall the recreational lobster fisherman was well educated (two-thirds having completed college), white, and was between the late 20's and early 40's in age. Fifty thousand persons purchased lobster stamps in July and so were assumed to have participated in the special recreational season. Thirty-three thousand of those people participated in Monroe County. In addition to the persons who purchased the recreational stamp, roughly 1,700 persons also participate but currently hold a commercial license. These persons were surveyed on their participation during January 1991 (FMFC 1990).

#### **5.4.2 Seasons**



This measure would change the special recreational season dates in the EEZ off Florida and prohibit diving for harvest at night during the season in Monroe County. The time would be shifted to the last successive Wednesday and Thursday in July of each year. The measure is the result of requests from government and industry representatives in Monroe County who are concerned about the growth of participation in the special recreational season with the concomitant effects on marine habitats and support services. The FMFC decided on a series of compromise measures short of an outright elimination of the special recreational season in Monroe County.

The costs and benefits of the measure cannot be quantified without knowing a number of facts such as an estimate of the actual recreational fishing participation and potential reduction in such participation. However, one information available relates to the number of participants and their expenditures connected with recreational fishing. In 1991 an estimated 50,000 persons participated in the special recreational season with 33,000 going to Monroe County (Bertelsen and Hunt 1991). Based on average daily expenditures of nonresidents spending at least one night, the expenditures for shore fishing average, \$66.44, for private boat fishing, \$92.07, and for rental boat fishing, \$124.99. The trip expenditures for resident rental boat fishing average, \$62.55 (Rockland 1988). It is very likely that participation during the special season and associated fishing related expenditures will be reduced. However, it also likely that fishing participation and associated expenditures displaced during the special season will be redistributed to the regular season. Spreading out use of lodging and support services may allow for more users to be accommodated and may allow more orderly use of existing facilities. This could conceivably mean greater revenues over the span of the entire season. Thus, although this information gives us some general estimate of the relative size of regional economic activities associated with recreational spiny lobster fishing, it is not sufficient to determine the changes in such activities as a result of the proposed measure when both the special and regular seasons are taken into account. More importantly, it does not provide us with needed information to determine the direction of the proposed measure's net economic effects on society, i.e., in terms of changes in consumer and producer surpluses. Relative to this latter, the following qualitative discussion is undertaken.

Consumer surplus is basically the difference between the benefits a consumer receives and what he pays. The proposed measure will likely reduce consumer surplus in a number of ways by adversely affecting several groups of fishing participants. First, there are those harvesters who cannot afford to participate during the weekdays due to constraints of work or school. Persons who purchased or leased accommodations that will now not be useful to them will experience costs, persons who participated during weekends will now experience greater opportunity costs to leave during weekdays to participate. Persons who obtained bag limits or avoided congestion through night diving will experience reduced CPUE and higher congestion related costs: safety, travel costs, etc. On the other hand, consumer surplus of other participants may increase under the proposed special season. Many harvesters vacation to include the entire period from the start of the special recreational season through the first week of the regular season; such persons will actually benefit from the season change since

there will be a shorter interval between seasons. Consumer benefits from recreation are known to be driven by the quality of the experience. Because crowding was a factor under the special season and to the extent that this is reduced under the proposed measure, it is possible that consumer surpluses of those who fish during the special season could be increased by the proposed change. However, the FMFC received little or no testimony from participants concerning a diminished experience from crowding. Rather, it was the persons providing support services and residents who objected to the crowding.

Another component of changes in net benefit is the producer side. This counts lodging, support services, such as charters, boat rentals, restaurants, etc. Net benefits from the producer side, or producer surplus, may be roughly equated to net profits. The support sector's objection to crowding may mean that businesses were not able to make efficient use of the increased volume of business over the short period of time. It is possible that businesses did not even realize large profits (producer surplus) during the special season because although business volume was large, the additional labor and other variable costs to handle that increase in volume may have exceeded the additional revenues. Producer surplus would likely increase if effort displaced during the special season were spread out over the longer regular season.

#### **5.4.3 Gear/Fishing Restrictions/Bag Limits**

These measures would prohibit using any gear for harvest other than a bully net, a hoop net or by diving during the special recreational season, prohibit diving at night, and modify bag limits. The cumulative benefit of the measure will be to reduce congestion and increase public safety in these areas.

The proposed gear measures will apply to all recreational lobster harvesters statewide, therefore, the proposed measures will not provide a competitive advantage to any class or group.

The proposed measures will have no effect on the open market for employment. Unemployment rates for Monroe County were approximately one-half that of the state during 1988-1990 period (i.e., 2.6 percent - 3.3 percent). As indicated in the previous discussion on producer revenue and benefits (5.4.2) employment in Monroe County could be reduced from changes to the special season, but more likely will not be affected as revenues likely will just be shifted to the regular season. The gear and fishing restrictions proposed, including bag limits, are unlikely to have appreciable effects on revenue, benefits, or employment. Over 61 percent of fishermen surveyed indicated an unwillingness to pay more than \$2.00 annually to be able to exceed the bag limit of 6 lobster (John Hunt, FDNR, Pers. Comm.).

### **5.5 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:

Council costs of document preparation .....	\$ 2,500
NMFS administrative costs of document preparation, meetings and review .....	\$ 1,100
TOTAL .....	\$ 3,600

The Council 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.

### 5.6 Summary of Impacts and Determination of a Major Rule

Table 2 presents a summary of regulatory impacts. Notice that only the proposed measures are presented in the table. Since the only rejected measure under each management item is the status quo, any positive impacts due to the proposed alternative may be considered as forgone benefits under the status quo. Also any negative impact of the proposed alternative may be regarded as non-existent under the status quo.

Overall, the proposed set of management measures can be expected to result in benefits to the resources and thus to the fisherman and society. Some of the revenues accruing to the dive boat industry, motel and hotel firms, restaurants and other businesses in the Florida Keys (Monroe County) will be dissipated during the special recreational season. The extent to which these represent forgone revenues or whether the revenues will be redistributed over other parts of the regular season is unknown. If the measures are successful in reducing recreational participation in the Keys during the special season, the economy of Monroe County may forgo revenues of an unknown amount. Whether these revenues lost will be redistributed in toto or in part to other local economies in the state is unknown.

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

FMFC 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.

## **6. 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). It has been estimated that about 50,000 persons participated in the special recreational season with 33,000 going to Monroe County (Bertelsen and Hunt, 1991). Also it has been estimated that in the Gulf coast of Florida there are 628 charter boats with 223 operating in the Keys and 66 party boats with 16 operating in the Keys (Holland and Milon, 1989). The Small Business Administration (SBA) defines a small business in the commercial fishing activity as a firm with receipts of up to \$2.0 million annually. The SBA also defines a small business in the charter boat activity as a firm with receipts up to \$3.5 million per year. Practically all current participants of the recreational spiny lobster fishery readily fall within such definition of small business. 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).

The changes in the special season dates in the EEZ off Florida, the prohibition on night diving during the special recreational season and possibly the differential bag limits are anticipated

to discourage persons from participating in the special recreational season in Monroe County. This in turn may reduce the expenditures for support services such as dive shops, party and private rental boats, hotels, restaurants, gas stations, etc. The economic effects will be greatest in the Middle Keys. However, it is likely that forgone earnings in the special season may be shifted to the regular season, and in this situation there is a possibility that total revenues to the support industries would increase. Thus, annual gross revenues to these industries may not be reduced. None of the proposed measures is expected to increase compliance or production costs; there are also no capital investments that may be required of the support industries to comply with the proposed rules. Although there are businesses that may be adversely impacted by the ban on night diving, they are not expected to totally cease business operation. It is therefore, concluded that the proposed measures, taken individually or collectively, would not effect a significant impact on a substantial number of small entities.

Explanation of Why the Action is Being Considered: Refer to Section 2 and Section 3-A of this document.

Objectives and Legal Basis for the Rule: Refer to Section 3-B, C, and D of this document: Management Objective, Optimum Yield and Protocol and Procedure in this amendment.

Identification of Alternatives: Refer to Section 4 of this document - Proposed Management Actions.

Cost Analysis: Refer to this document's Section 5.4 - Analysis of Impacts of Management Measures and Section 5.5 - 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.

## **7. ENVIRONMENTAL ASSESSMENT**

### **Purpose of and Need for Action**

The purpose of Regulatory Amendment 2 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 South Atlantic and Gulf of Mexico (Section 3-D). Consistent state and Federal rules off Florida are needed to fully implement and enforce Florida's management measures regarding a special 2-day recreational season for spiny lobster. Florida's rules are designed to reduce effort in the Florida Keys and mitigate increasing socio-economic and environmental damages resulting from the annual influx of sport divers. Amendment Section 2, "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 2-day special recreational season for spiny lobster. The Florida Marine Fisheries Commission (FMFC) has requested the NMFS and the Councils to implement the following provisions of Rule Chapter 46-24, Florida Administrative Code, in the EEZ:

(1) Move the 2-day special recreational season from the last weekend to the last Wednesday and Thursday of July.

This rule change was designed to reduce recreational effort by eliminating some potential participants in the 2-day season. Based on public testimony, the FMFC concluded that a move from the weekend (status quo) to mid-week would solve some of the problems of overcrowding and resource disturbance, especially in the Florida Keys. Although the results of a recreational mail surveys have not yet been analyzed, aerial surveys during the 1992 season, and anecdotal information, appear to indicate that the State's rules were successful.

(2) Increase the bag limit in all areas of Florida, except Monroe County, during the 2-day season.

To reduce the negative impacts of the 2-day season on the marine environment and reduce overcrowding in the Florida Keys, the FMFC attempted to make lobstering more attractive outside the Keys. Florida's rule doubles the bag limit to 12 lobster per day (for the 2-day season only), outside Monroe County, but maintains the 6-lobster bag limit within Monroe County. The 1992 aerial survey suggested higher effort in south Dade County compared to north Monroe County during the 2-day season (Hunt, FDNR, Pers. Comm.); however, actual harvest levels have not yet been estimated. Testimony at Florida's public hearings appeared to support the view that most recreational harvesters outside Monroe County had difficulty filling a 6-lobster bag limit, as did the 1991 survey of fishermen (Bertelson and Hunt, 1991).

(3) Limit harvest methods during the 2-day season to diving, bully or hoop nets.

This rule change was designed to prohibit trap fishing during the 2-day season and to maintain prohibitions on harvesting methods that may puncture or crush lobster. Elimination of traps is designed to decrease congestion and increase safety of both people and marine resources, including coral. Methods that damage lobsters might prevent escapement and survival of undersized lobsters inadvertently taken by special recreational fishermen.

(4) Night diving for lobster is prohibited during the 2-day season in the Florida Keys (Monroe County).

Allowing only daylight harvest during the 2-day season is designed to aid enforcement efforts, reduce illegal harvest over the bag limit, and decrease safety and conflict concerns associated with night activities on the water.

Other Alternatives: The Florida Marine Fisheries Commission considered a broad range of other alternatives to address the harvester-related congestion and safety problems associated with the 2-day special recreational season for lobster in the Florida Keys. These are detailed in Amendment Section 2, "Problems Requiring Plan Amendment" and further evaluated in the administrative record of Florida's rulemaking. Residents, businesses, and commercial interests in Monroe County asked the FMFC to modify or abolish the 2-day season. Recreational harvesters and dive operators from inside and outside Monroe County were strongly in favor of retaining the special recreational season.

(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 2-day special recreational season. In the absence of any action, the EEZ off Florida would continue to have a 2-day special recreational season on the last weekend of July while the special recreational season in adjoining state waters would occur the previous Wednesday and Thursday (i.e., a 4-day special recreational season), the bag limit would remain at 6 lobsters outside the Florida Keys, and traps and night diving would be permitted in the EEZ off Florida during the 2-day season.

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, including corals. 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 Keys National Marine Sanctuary and may be contrary to the FMP's Management Objective 6: "Provide for a more flexible management system that minimizes regulatory delay to assure more effective, cooperative State and federal management of the fishery." Failure to implement Florida's increased bag limits during the 2-day season (outside Monroe County) may benefit lobster resources to the extent that harvesters are likely to take this limit.

## 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 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 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 Amendment Sections 1 and 3. The FMP (1981), Amendment 1 (1987), and Amendment 2 (1989) describe the fishery, changes in utilization patterns, and status of the stocks. In summary: (1) the fishery is heavily overcapitalized with excess fishing capacity (traps); (2) although landings have been stable and no recruitment overfishing is occurring, growth overfishing is occurring due, in part, to fishing mortality of undersized lobsters; (3) landings are dependent on recruitment of small lobster each year, i.e., no multiple age class structure; (4) source of larval recruitment has not been resolved, i.e., pan-Caribbean or Gulf or local or a combination of sources; and (5) a trap effort reduction system has been implemented by industry, the State of Florida, and Councils. FMP Amendment 1 (1987) and Regulatory Amendment 1 (1992) contain a complete description of this fishery. Domestic commercial and recreational fisheries for spiny lobster are limited primarily to southeastern Florida and the Florida Keys. The greatest productivity of spiny lobster comes from Monroe County. Traps are the principle gear in the commercial fishery but considerable quantities are also taken by hand by recreational and commercial divers. Divers usually use SCUBA in the channels under the Overseas Highway and in shallow habitats between the Keys and the offshore reef break. Significant commercial diving occurs in Florida Bay south of the Everglades National Park and into the Gulf of Mexico. A small amount of recreational catch is taken with lights and bully nets at night on shallow flats and bays.

Little 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 harvest by diving is not common in Dade County. 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 commercial and recreational fishing season in the EEZ begins on August 6 and ends on March 31. Currently, a 2-day special recreational season is scheduled for the last full weekend in July. Landings ranged from 4.5 million pounds (MP) in 1983 to 7.8 MP in 1989. The number of traps used in the fishery increased from 74,000 in 1960 to 675,000 in 1984. The current estimate of the number of traps in use is 650,000-850,000 (1991). In 1989, the average number of traps per vessel was 1,368.



Productivity in terms of pounds landed per trap per year has remained relatively stable during the 1980s, but pounds per vessel increased due to an increase in the number of traps fished per vessel. Direct users of the resource are concentrated in south Florida. The commercial sector is estimated at about 1,300 individuals. Monroe County and the Miami area accounted for about 75% of the commercial license holders and 75% of the lobster landings.

The fishery has a relatively large recreational component, which accounts for about 41% of total landings during the first month of the 1991-92 regular season and about 29% of the 1990-91 total commercial harvest. The 1991 harvest of lobsters during the 2-day special season was an estimated 403,000 lobsters (about 435,240 lbs). The Florida Keys accounted for 78% (315,795 lobsters). A smaller but significant recreational harvest occurred along the Florida east coast (82,930 or 21%). Catch rates (lobsters caught per day) in the Florida Keys were more than twice those of other areas in Florida.

### **Environmental Consequences**

Issue: Increase in bag limits.

According to a mail survey of recreational lobster fishermen conducted by Florida Department of Natural Resources (Bertelsen and Hunt 1991), the size of groups diving for lobsters during the 2-day season averages 4.1 (Palm Beach to the Florida Keys), but the catch rate per group (measured as lobsters caught per day) was 19.6 in the Florida Keys and only 9.8 on the southeast coast of Florida. Thus, each fisherman averages 4.8 lobsters per day during the 2-day season in the Keys, and 2.4 lobsters per day outside the Keys. It appears that the 6-lobster bag limit is not affecting catch rates in either area. The increase to a 12-lobster bag limit in the Florida EEZ outside Monroe County is not expected to increase catch rates overall but may redistribute effort away from the Florida Keys.

Issue: Change to mid-week harvest.

Effects of the change in season on recreational harvesters are discussed in attached Amendment Section 5.4.2 ("Regulatory Impact Review"). Participants displaced by the season change can come to the Keys during the regular season which starts on August 6. However, it is possible that some number of participants will forego harvesting entirely without the weekend season. According to testimony from local businesses during Florida's rulemaking, adverse effects on the marine and land environments from the crowds and traffic associated with the weekend season more than outweighed any economic losses from potential reduced participation in the 2-day season.

Florida received reports that recreational fishermen were turning over coral heads to find lobsters during the 2-day season. Also, anchoring of the large number of vessels

involved in this season could result in damage to reefs and grass beds. Thus, efforts to reduce participation and/or shift effort away from the Florida Keys are expected to benefit the coral reef environment.

Issue: Elimination of traps and night diving.

Both gear rules are designed to reduce congestion around docks and canals and avoid safety problems associated with night activities by less experienced divers. Environmental damage can occur when weighted traps and buoy lines become entangled in sea fans, other corals and sea grasses. Prohibition of night diving in the Keys may also improve enforcement of resource conservation laws.

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

Recognizing that this is almost entirely a Florida fishery, the intent of Plan Amendment 2 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 2-day season. The direct effect of this alternative would be to maintain two different 2-day seasons, 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 6-lobster bag limit in place during the 2-day season outside Monroe County. Since participants averaged 2.4 lobsters per day outside Monroe County under the 6-lobster bag limit in place during 1991, it is unlikely that a 12-lobster limit will be reached anywhere in Florida under current circumstances.

#### Effect on Endangered Species and Marine Mammals

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 Irrecoverable 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 some recreational fishermen to forego trips to the Florida Keys rather than participate in the mid-week season. They might also go outside Monroe County to take advantage of the increased bag limits. Any reduction in effort in the Florida Keys is expected to result in long-term benefits to the productivity of the coral reefs.



**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 Statement of the FMP and Environmental Assessments published with the regulations implementing Amendments 1, 2, and 3.

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

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**8. OTHER APPLICABLE LAW**

### **Impacts on Other Fisheries**

Data available to the Council indicate this amendment will have no initial impact on other fisheries. Over the long-term some fishermen may participate in other fisheries during the special recreational season.

### **Habitat Concerns**

Habitats and related concerns were described in the FMP and Amendments 1 and 2.

### **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. In fact, the prohibition on night-time diving may enhance vessel safety. Shifting the two-day season to week days instead of weekend days should reduce vessel congestion and enhance vessel safety. The Councils have concluded that none of the proposed management measures directly or indirectly pose a hazard to crew or vessel safety under adverse weather or ocean conditions in that fishermen may fish either side of the Keys and avoid wind-induced rough waters. 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.

## **9. REFERENCES CITED AND SUBMITTED FOR THE RECORD**

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**TABLE 1**

**DESCRIPTION OF MANAGEMENT MEASURES**

Management Item	Proposed Measures	Rejected Measures
Season Change	Special recreational season change from last weekend in July to last Wednesday-Thursday in July off Florida	Status quo - differing days for federal and state special recreational seasons
Gear Restrictions	Allow only the use of bully nets, hoop nets or harvest by diving during special recreational season off Florida	Status quo - allow use of traps also
Fishing Restrictions	Prohibit harvest by diving at night off Monroe County, Florida	Status quo - night-time harvest by diving allowed
Bag Limits	Allow daily possession of 12 lobsters in the EEZ off Florida outside of Monroe County during special recreational season	Status quo - daily possession remains at 6 lobster for EEZ off Florida during special recreational season



**TABLE 2**

**SUMMARY OF EFFECTS OF THE PROPOSED MEASURES**

Management Measures	Impacts of Proposed Management Measures
Season Change	Unquantifiable positive effect on resource, coral reef complexes, and social structure of Florida Keys is anticipated; net impact on consumer surplus is not determinate; positive effect on producer surplus; likely no overall revenue impacts on support industries.
Gear Restrictions	Little to no effects.
Fishing Restrictions	Possible minor negative effect on commercial dive boats. Positive effect on vessel safety and enforcement cost.
Bag Limits	No anticipated effect on resource off Florida. Coupled with season change potential positive effect on resource, coral reef complexes and social structure of Florida Keys.