

Items that would require Council action

Bag limits on board a commercial bully netters and divers

Degradable panels in traps

Definition of artificial habitat

Changes to codified text

Rename “unmarked buoys and traps” to “derelict traps and buoys” and include language that would encompass out of season traps being removed

Change reference in CFRs regarding pulling traps belonging to another person 622.405(b)(2)(i), and specific rule effective dates in 622.413 (b) (4)

Update incorporation of references for commercial harvester in 622.413 (b) (2)

Update phone numbers for the Division of Marine Fisheries Management

Change the word “loading” to “landing” in 622.408(b)(4)

Change the word “foeign” to “foreign” in 622.415(a)

All of FWC’s suggestions are found in the attached Tables.

FWC'S SUGGESTED CHANGES TO FEDERAL SPINY LOBSTER RULE (50 CFR PART 662 SUBPART R)

Table 1. Recommended changes related to creation of the FWC commercial Bully Net permit

Federal Rule Number	State Rule Number or Florida Statute	Issue and/or Concern	Proposed Change
622.400(a)(1)(i)	68B-24.002(4), F.A.C.	The F.A.C. definition of "commercial harvester" is incorporated into the CFR by reference with an effective date of July 1, 2008. As of May 1, 2017, FWC expanded the F.A.C. definition of "commercial harvester" to include persons who hold a valid bully net permit. FWC recommends CFR be updated to include harvesters who possess a valid bully net permit.	Update the incorporated by reference with an F.A.C. effective date of May 1, 2017.
622.402(a)	68B-24.006(7), F.A.C.	CFR requires commercial harvesters using traps or diving in federal waters off Florida to abide by the vessel and gear identification requirements in F.A.C. as of July 1, 2008. As of May 1, 2017, F.A.C. includes vessel identification requirements for commercial bully net harvesters. FWC requests the vessel identification requirements for commercial bully net harvesters be included in CFR.	Add the following rule language to 622.402(a): <i>An owner or operator of a vessel that is used to harvest spiny lobsters 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).</i>
622.404	68B-24.006(8), F.A.C.	As of May 1, 2017, F.A.C. prohibits traps pullers from being aboard vessels that are, or are required to be, marked with a bully net permit number. FWC requests this prohibition be included in CFR.	Add the following rule language to 622.404: <i>In the EEZ off Florida, no person shall operate any vessel that is required to be marked with a bully net permit number with a trap puller aboard, pursuant to 68B-24.006(8), Florida Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see §622.413).</i>
622.404	68B-24.007(5), F.A.C.	As of May 1, 2017, F.A.C. prohibits both a bully net and any underwater breathing apparatus from being simultaneously possessed aboard a vessel used in the harvest of spiny lobster for commercial purposes or aboard a vessel	Add the following rule language to 622.404 (Prohibited gear and methods): <i>In the EEZ off Florida, a bully net and any underwater breathing apparatus, as defined in Rule 68B-4.002, Florida</i>

Federal Rule Number	State Rule Number or Florida Statute	Issue and/or Concern	Proposed Change
		transporting spiny lobster for commercial purposes. FWC requests this prohibition be included in CFR.	<i>Administrative Code, in effect as of May 1, 2017 (incorporated by reference, see §622.413), may not be simultaneously possessed aboard a vessel used in the harvest of spiny lobster for commercial purposes or aboard a vessel transporting spiny lobster for commercial purposes. A snorkel shall not be considered an underwater breathing apparatus.</i>
622.408(b)	64B-24.0055(4) and (5), F.A.C.	CFR exempts all commercial harvesters from the recreational bag limit during the commercial and recreational fishing season. FWC has implemented vessel trip limits for commercial divers and bully netters. F.A.C. limits commercial divers harvesting in state waters and the adjacent EEZ off Broward, Miami-Dade, Monroe, Collier, and Lee counties to a daily harvest and possession limit of 250 lobsters per day. It also limits commercial bully netters in all state waters to a daily harvest and possession limit of 250 lobsters per day. FWC requests inclusion of commercial trip limit for divers and bully netters to ease compliance and enforcement.	Add rule language to 622.408 (Bag/vessel limits) that: (1) Incorporates by reference the state daily vessel harvest and possession limits for commercial divers and commercial bully netters in the EEZ off Florida. - OR - (2) Creates federal daily vessel harvest and possession limits of 250 lobsters for commercial divers in federal waters off Broward, Miami-Dade, Monroe, Collier, and Lee counties and for commercial bully netters in federal waters off Florida.

Table 2. Recommended changes to promote consistency between state and federal regulations that are not related to creation of the FWC commercial Bully Net permit

Federal Rule Number	State Rule Number or Florida Statute	Issue and/or Concern	Proposed Change
622.405(a)	68B-24.006(2), F.A.C.	<p>Both the CFR and the F.A.C. include specifications for trap construction; however, the F.A.C. has more specifications than CFR and there are additional discrepancies between the two rules.</p> <p>One discrepancy in the rules relates to the degradable panel construction and placement. CFR and F.A.C. require/allow the degradable panel to be constructed from different materials.</p> <p>FWC requests the CFR be changed for consistency in trap construction requirements related to degradable panels in traps constructed of materials other than wood.</p>	<p>(1) Revise 622.405(a) (Construction specifications) to read: <i>Construction specifications. In the EEZ, a spiny lobster trap may be no larger in dimension than 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm), or the volume equivalent. A trap constructed of material other than wood must have a <u>degradable panel no smaller than 6 inches (15.2 cm) in length and 4 inches (10.2 cm) in width constructed of cypress or untreated pine slats no thicker than ¾ inch (0.6 cm) wood, cotton, or other material that will degrade at the same rate as a wooden trap. Such panel must be located in the upper half of the sides or on the top horizontal section of the trap, so that, when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.</u></i></p>
622.408(b)(4)	68B-24.007(6), F.A.C.	<p>CFR establishes incidental bycatch limits for spiny lobster harvested by net or trawl. The bycatch limits are a proportion of the total catch of “all fish lawfully in possession on board such vessel.” While the bycatch limits in CFR are very similar to the bycatch limits established in F.A.C., the limits in F.A.C. are a percentage of the total weight of all <i>species</i> lawfully in possession.</p> <p>There is no definition in CFR for the term “fish,” thus FWC recommends the term <i>fish</i> be changed to <i>species</i> to clarify that the bycatch limit applicable to lobster harvested by net or trawl fisheries also includes net or trawl fisheries that target invertebrates.</p>	<p>Revise 622.408(b)(4) to read: <i>Harvest by net or trawl... 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 <u>species fish</u> 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 <u>species fish</u> lawfully in possession on board such vessel....</i></p>

Federal Rule Number	State Rule Number or Florida Statute	Issue and/or Concern	Proposed Change
622.402(c)	68B-55.004, F.A.C.	<p>CFR rule language authorizing the removal of derelict traps is more restrictive than F.A.C. CFR only allows removal of unmarked traps during times other than the authorized fishing season. Additionally, F.A.C. allows the removal of derelict traps and trap debris during the open season under specific conditions.</p> <p>This was an issue several years back. A dive charter operator from Jupiter, FL, located an unmarked trawl-line of lobster traps in federal waters. The unmarked traps could not be removed until after the season ended.</p> <p>FWC requests CFR be modified to allow removal of unmarked traps during the open or closed spiny lobster season.</p>	<p>Revise rule language in 622.402 (Vessel and gear identification) to authorize the removal of unmarked traps or buoys from the water at any time, including during the authorized fishing season. Revise the rule language in 622.402(c)(1) to read:</p> <p><i>(1) EEZ off Florida. Such trap or buoy, and any connecting lines, during times other than the authorized fishing season, 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.</i></p>
622.405(b)(2)	379.367(4)(a) and 379.3671(2)(c)3., F.S.	<p>Unlike F.S., CFR does not expressly prohibit the willful molestation of the taking possession of another harvesters' traps, lines or buoys, or removal of the contents of another harvesters' trap. In Florida state waters, these actions are considered trap theft.</p> <p>FWC requests the CFR specifically prohibit these actions.</p>	<p>Revise 622.405(b)(2) (Trap construction specifications and tending restrictions) to state something to the effect of:</p> <p><i>In the EEZ off Florida, a person may not willfully molest or take possession of another harvester's spiny lobster traps, lines or buoys, or remove the contents of another harvester's spiny lobster trap without the express written consent of the trap owner available for immediate inspection. Unauthorized possession of another harvester's trap gear or removal of another harvester's trap contents constitutes theft. Permission to pull or work traps belonging to another person may be granted--...</i></p>
622.408(b)	64B-24.0055(5), F.A.C.	<p>CFR exempts all commercial harvesters from the recreational bag limit during the commercial and recreational fishing season. As far back as August 2004 (could be earlier), FWC implemented vessel trip limits for commercial divers and bully netters. F.A.C. limits commercial divers harvesting in state waters and the adjacent EEZ off Broward, Miami-Dade, Monroe, Collier, and Lee counties to a daily harvest and possession limit of 250 lobsters per day. It also limits commercial bully netters in all state waters to a daily harvest and possession</p>	<p>Add rule language to 622.408 (Bag/vessel limits) that:</p> <p>(1) Incorporates by reference the state daily vessel harvest and possession limits for commercial divers and commercial bully netters.</p> <p>- OR -</p> <p>(2) Creates federal daily vessel harvest and possession limits of 250 lobsters for commercial divers in federal waters off</p>

Federal Rule Number	State Rule Number or Florida Statute	Issue and/or Concern	Proposed Change
		limit of 250 lobsters per day. FWC requests inclusion of commercial trip limit for divers and bully netters to ease compliance and enforcement.	Broward, Miami-Dade, Monroe, Collier, and Lee counties and for commercial bully netters in federal waters off Florida.

Table 3. Recommended changes to incorporations by reference and other technical changes.

Federal Rule Number	State Rule Number or Florida Statute	Issue and/or Concern	Proposed Change
622.405(b)(2)(i)	68B-24.006(9), F.A.C.	F.A.C. granting permission to have someone other than the trap owner work traps was incorporated by reference into CFR with an effective date of July 1, 2008. F.A.C. was amended on June 19, 2013 to change the form and requirements to obtain this permission. Also, renumbering of F.A.C. on May 1, 2017 affects this incorporation by reference. FWC requests correction of this incorporation by reference.	Update the “incorporated by reference” in 622.405(b)(2)(i) (Tending restrictions) to be Rule 68B-24.006(9), Florida Administrative Code, in effect as of May 1, 2017.
622.413(b)(2)	68B-24.002, F.A.C.	The F.A.C. definitions in rule for spiny lobster were incorporated by reference into CFR with an effective date of July 1, 2008. The F.A.C.’s definitions were amended on July 1, 2015 and May 1, 2017.	Update the “incorporated by reference” in 622.413(b)(2) (Incorporation by reference) to include the effective date May 1, 2017.
622.413(b)(4)	68B-24.006, F.A.C.	68B-24.006 (Gear: Traps, Buoys, Identification Requirements, Prohibited Devices), F.A.C., was incorporated by reference into CFR with an effective date of July 1, 2008. 68B-24.006, F.A.C., was amended on June 19, 2013 and May 1, 2017.	Update the “incorporated by reference” in 622.413(b)(4) (Incorporation by reference) to include the effective date May 1, 2017.
622.413(b)	N/A	CFR includes an outdated phone number for the Division of Marine Fisheries Management, and an incorrect link for the Florida Administrative Code.	Update the phone number to (850) 487-0554, and update the link to: www.flrules.org .
622.413(c)	N/A	CFR includes an outdated phone number for the Division of Marine Fisheries Management.	Update the phone number to (850) 487-0554.
622.408(b)(4)	N/A	The last sentence in 622.408(b)(4) (Harvest by net or trawl) reads: “...the term net or trawl does not include a hand-held net, a loading [sic] or dip net...”	The word <i>loading</i> should be corrected to <i>landing</i> .
622.415(a)	N/A	In 622.415(a) (Limited exemption regarding harvest in waters of a foreign nation), <i>foreign</i> is misspelled.	The word <i>foeign</i> should be corrected to <i>foreign</i> .