

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

SPINY LOBSTER COMMITTEE

Beau Rivage Resort

Biloxi, Mississippi

October 2, 2017

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 Doug Boyd.....Texas
 Dave Donaldson.....GSMFC
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1 The Spiny Lobster Committee of the Gulf of Mexico Fishery
2 Management Council convened at the Beau Rivage Resort, Biloxi,
3 Mississippi, Monday morning, October 2, 2017, and was called to
4 order by Chairman Martha Guyas.

5
6 **ADOPTION OF AGENDA**
7 **APPROVAL OF MINUTES**
8 **ACTION GUIDE AND NEXT STEPS**
9

10 **CHAIRMAN MARTHA GUYAS:** For the Spiny Lobster Committee, are
11 there any changes to the agenda for that committee? Seeing
12 none, we'll adopt the agenda as it stands. We've got minutes
13 from our last meeting in June. Any changes to those minutes?
14 Seeing none, the minutes are approved. Dr. Kilgour has put
15 together our action guide, and the first thing on that is to go
16 through the draft options for Spiny Lobster Amendment 13, and so
17 I will turn it over to her.

18
19 **REVIEW OF DRAFT OPTIONS FOR SPINY LOBSTER AMENDMENT 13**
20

21 **DR. MORGAN KILGOUR:** Thank you. We have draft options for Spiny
22 Lobster Amendment 13, which has two actions. The first action
23 will address the bully netting issues, and the second one will
24 be discussing either to re-introduce the procedure that would
25 allow FWC to directly talk to NMFS about regulations or not, and
26 so I will walk you through the purpose and need, which is on
27 page 5. I will read it while we're waiting.

28
29 The purpose of this action is to conform federal regulations for
30 spiny lobster that apply to the EEZ off Florida with recently
31 adopted Florida state regulations, and to re-establish the
32 procedure for the protocol for an enhanced cooperative
33 management system. The need for this action is to establish
34 consistent state and federal regulations to effectively manage
35 and enforce the harvest of spiny lobster off Florida to prevent
36 overfishing while achieving optimum yield.

37
38 If there are no questions, concerns, or comments, I will move
39 ahead to Action 1, which is the bully netting gear in the
40 Exclusive Economic Zone off of Florida. Alternative 1 is no
41 action, do not establish an endorsement for bully net gear or
42 regulations related to bully nets for spiny lobster commercial
43 harvesters in the EEZ off of Florida in the Gulf of Mexico and
44 South Atlantic.

45
46 Alternative 2 would establish an endorsement for bully nets and
47 align federal regulations to be consistent with Florida
48 regulations for spiny lobster commercial harvesters using bully

1 net gear by implementing the following: require commercial bully
2 net vessels in the EEZ off Florida to have a bully net
3 endorsement from Florida; require that the vessel be marked with
4 the harvester's bully net endorsement number using reflective
5 paint or other reflective material; prohibit commercial bully
6 net vessels from having trap pullers onboard; and prohibit the
7 simultaneous possession of a bully net and any underwater
8 breathing apparatus, not including dive masks or snorkels,
9 onboard a vessel used to harvest or transport spiny lobster for
10 commercial purposes.

11
12 **CHAIRMAN GUYAS:** Any questions about that action? I did want to
13 note one thing. There is also a commercial limit for bully nets
14 and dive, and I don't know if it would go here in this action,
15 but, the next thing that we'll get to on our agenda, there's
16 some other issues that we need to talk about outside of bully
17 nets, to get FWC and council regulations more aligned, but that
18 may fit in here, under this action.

19
20 **DR. KILGOUR:** Following going through this document, there have
21 been several regulations that have been identified by FWC staff
22 that are not consistent in the federal regulations with the
23 state regulations, and so, in 4(b), I will go over those
24 quickly, and one of them is a bag limit for -- I think it's
25 specific counties, and am I incorrect on that, Martha?

26
27 **CHAIRMAN GUYAS:** That's right.

28
29 **DR. KILGOUR:** For both commercial bully nets and dive gear, and
30 so, if you want to add those into this action, I guess you can
31 just tell me, or maybe I will need a motion, but is it okay that
32 we wait until we go over those?

33
34 **CHAIRMAN GUYAS:** Leann.

35
36 **MS. LEANN BOSARGE:** Thanks. I was reading through this last
37 night, and I just had one quick question. Can you brief us on
38 kind of how it came about, the bully netting changes? I know
39 you briefed us a while back on it, but, when I was reading it
40 last night, I was just trying to understand if some of these new
41 regulations were a result of seeing increased effort, like in
42 commercial bully netting, or if it was more that there was maybe
43 an issue in some overlap areas, like physical areas, between
44 recreational bully netters and commercial bully netters. I was
45 just trying to figure out what was driving the train.

46
47 **CHAIRMAN GUYAS:** I wish Bill Kelly were here, because this was
48 one of his big things. It was a commercial industry request,

1 largely. There are certainly other users that had some issues
2 with bully nets, but Bill's group had wanted to see an
3 endorsement for bully nets. There was some concern that there
4 was an uptick in the bully netting versus trapping versus
5 diving, and so the endorsement was created and these regulations
6 were created to kind of cap us where we are, I guess, with the
7 bully net fishery. Doug, if you want to chime in, feel free.

8
9 **EXECUTIVE DIRECTOR DOUG GREGORY:** Right. Because of the trap
10 certification program and the limit on traps and people wanted
11 to get into the fishery, they found bully netting was an easy
12 way to get in, and so those landings have been increasing, and
13 there have been some enforcement reports that, since bully
14 netting is done at night, it's sometimes used as a cover for
15 robbing traps.

16
17 **CHAIRMAN GUYAS:** For those that are unfamiliar with the spiny
18 lobster fishery, on the commercial side, there is trapping and
19 there is diving, and those are both limited, whereas bully
20 netting was not, and so now there's this endorsement and these
21 regulations, and so they do have some constraints, folks that
22 are doing that.

23
24 **MS. BOSARGE:** Thank you.

25
26 **CHAIRMAN GUYAS:** Are there other questions or comments or
27 thoughts on this action? It looks no, and so I guess let's move
28 forward.

29
30 **DR. KILGOUR:** Great. The second action is something we
31 discussed at the last council meeting, or the June council
32 meeting, and that was there used to be a procedure in Amendment
33 2 that was part of the protocol, where FWC could come directly
34 to NMFS and suggest regulations, and, as long as they met
35 certain criteria, they could be directly incorporated into the
36 federal regulations without having to go through an amendment
37 process.

38
39 This action would reestablish the cooperative management
40 procedure for the protocol for the roles of federal and State of
41 Florida agencies for the management of spiny lobster, and I just
42 kind of want to highlight basically that FWC will be doing the
43 analyses and the public hearings for any rules for
44 recommendation.

45
46 Those rules will need to be reviewed by the Regional
47 Administrator, to make sure that they're consistent with the
48 National Standards, the Lobster FMP, and other applicable law,

1 and then they also need to be vetted through the council, in
2 that the council will review the proposed rule and make sure
3 that it's consistent with the Magnuson-Stevens Act and the
4 objectives of the FMP.

5
6 Once all of those steps are met, then it can go directly to the
7 RA to publish the proposed rule for implementation, and so that
8 is basically something that, in Amendment 10, when the protocol
9 was updated, the procedure was omitted, and so we would be
10 reestablishing a procedure that I think was inadvertently
11 omitted when the protocol was updated. If there are any
12 questions, I would be happy to address those.

13
14 **CHAIRMAN GUYAS:** I've got a few, but, before I give mine, I will
15 give the committee an opportunity. Leann, go ahead.

16
17 **MS. BOSARGE:** Morgan, I think you just answered it. That was my
18 question that I had to myself, was so it was put in place in
19 2002, but then, in 2012, with Amendment 10, for some reason or
20 another, that ability for Florida to have this streamlined
21 rulemaking process was revoked, but you're saying that it wasn't
22 done as a purposeful action of the council and it was just
23 something that was just somehow overlooked in that Amendment 10
24 or something like that?

25
26 **DR. KILGOUR:** Right, and so the protocol to do this was updated,
27 and then the framework procedure for amendments was also
28 implemented in Amendment 10, and I think that this procedure for
29 the state going directly to -- How they implement that protocol
30 was omitted, and I don't think it was an intentional thing. I
31 mean, it's used so rarely that we didn't even realize that the
32 procedure wasn't there until this bully netting issue came to
33 light, and then we realized it wasn't there.

34
35 **CHAIRMAN GUYAS:** As I was reviewing the procedure and the
36 protocol, one thing that stuck out to me, or the question that
37 came to my mind, was can both of these things be one document,
38 so that one doesn't get left behind? As I was reading them, it
39 also seems like they overlap, to some degree. They're both kind
40 of describing this process that needs to happen, and so I will
41 just pose that question to whoever can answer that, and I'm not
42 sure who it is. Mara.

43
44 **MS. MARA LEVY:** Are you saying to keep them together, meaning we
45 could just put the protocol in here for information's sake,
46 right, and say this is the protocol that's already established
47 and this action is addressing the procedure, so they would be
48 together, or are you saying you want to look at amending the

1 protocol that's already established?

2
3 **CHAIRMAN GUYAS:** Perhaps amend. It made sense to me, as I was
4 reviewing them. We have these two numbered lists that kind of
5 describe what needs to happen, and why couldn't there just be
6 one document that explains that all of these things need to
7 happen for this procedure or protocol to take place?

8
9 Those words are synonyms too, and so I kept confusing them as I
10 was flipping through, as to which document I was looking at, and
11 so that was just me, my simple mind. It made sense to just have
12 all of the steps take place in a single document, rather than
13 have two separate lists that clearly got confusing somewhere
14 along the line, because one got left behind when the protocol
15 was modified. Andy.

16
17 **MR. ANDY STRELCHECK:** Martha, in reading the procedure, I would
18 be interested in your take, in terms of how easily it could be
19 met. I guess one of my concerns, in reading through it, is it
20 states that analyses and information will be provided on or
21 before February 1 for implementation by August 6, but then we
22 talk about running it through the SSC and the advisory panels
23 and making sure the supporting analyses are completed, and so
24 that seems to be a lot that has to happen in a very short period
25 of time if the analysis came in around February 1. Obviously,
26 if it comes in well before that, then it would be a non-issue,
27 but I'm curious to hear your take on that, as well as maybe the
28 council, in terms of making that happen in a timely fashion.

29
30 **CHAIRMAN GUYAS:** I'm glad you brought that up, because that hits
31 on two of the questions that I had about this. One of my
32 thoughts was -- It would seem, to me, to make sense to move that
33 process up, or that step in the process up, where we're getting
34 SSC input, if that's necessary, and if we needed to do hearings.
35 Start that process before the FWC takes final action.

36
37 We don't want to be in a situation where we've done something
38 and then the council can't, and so that was one thought. Then I
39 kind of had the same question for you, Andy. If we got to the
40 end of this process before February 1, is that enough time for
41 you all on your end to get something implemented?

42
43 **MR. STRELCHECK:** I think, generally, I would say yes. It would
44 be contingent on the completeness of the analyses, and, if the
45 APs and SSCs had already met, we could do proposed and final
46 rulemaking thereafter.

47
48 **CHAIRMAN GUYAS:** Another question I had related to that was, if

1 you look at Step 2 here, based on the best available scientific
2 information, FWC will develop alternative proposed rules and
3 socioeconomic analyses, and the question I had when I was
4 reading that was does that mean that FWC would be going through
5 the NEPA process, or would we just continue to go through our
6 normal process and then work with NOAA staff or council staff,
7 whoever is necessary, to do the necessary NEPA and other
8 analyses? Two things.

9
10 **DR. KILGOUR:** I don't think that it's FWC's job to do the NEPA
11 process. I didn't say this at the beginning, but I basically
12 copied this language directly from Amendment 2, so that it was
13 verbatim, with the exception of, I think, Regional Administrator
14 was something different in Amendment 2, and they also had a
15 couple other terminology things that have since been changed,
16 but this is the strawman. If there's anything about this
17 procedure that needs to be modified, this is the place to do it.

18
19 One thing that I also forgot to highlight is that this is a
20 joint amendment, and so the SSC review and AP review process has
21 to go through both the South Atlantic and the Gulf Council, and
22 so, if the dates that are in this procedure aren't consistent
23 with how quickly something needs to be implemented, then that's
24 perhaps something that we also should address and modify.

25
26 **CHAIRMAN GUYAS:** I think the other changes that I had, I think
27 the only thing that's left is reading, especially in Step 2,
28 because the procedure here was written such a long time ago, it
29 was before the FWC even existed, and so our process was a little
30 bit different.

31
32 We don't work through the Governor and Cabinet anymore to do our
33 rulemaking. We have a commission that does that independently,
34 and so I think we would need to make some changes to reflect
35 that, and, Morgan, I can send you some stuff to get you started
36 on that, and so I think that's all the discussion points that I
37 had. Have I opened up any other cans of worms for questions for
38 other folks on this action? Is everybody okay? All right. I
39 guess I will turn it back to Morgan.

40
41 **DR. KILGOUR:** Okay. Just to make sure that I have all of this
42 right in my own head, some things that will need to be modified
43 will be the process that Florida goes through. It's no longer
44 through the Governor or the Cabinet and it's through the
45 commissioners.

46
47 Also, other things that will need to be modified is maybe some
48 less specific language on the analyses that FWC must do, so

1 that, in Step 5, it's based on the state analyses of impacts
2 that the council staffs, with the assistance from FWC, will
3 prepare the supporting documentation for the EA, the RIR, et
4 cetera, and so perhaps that socioeconomic analyses portion might
5 need to move there, although, if it has to go through public
6 hearings, maybe we need to involved the council staff in the
7 process a little earlier, or NMFS staff a little earlier, so
8 that that analyses is conducted before it goes out to public
9 hearings.

10
11 As long as I meet with the lawyers and the IPT and make sure
12 that everything is happening in the appropriate order, will that
13 be acceptable for the next draft of this document? I will let
14 Mara weigh in on that first, if you say that's okay.

15
16 **MS. LEVY:** Just to point out that, sort of going towards your
17 earlier point, Martha, about combining the protocol and the
18 procedure, and I don't see any reason you can't do that. The
19 protocol seems to be much more broadly stated. These are this
20 agency's general responsibility, and this is this -- We agree to
21 work together, and then the procedure has more specifics.

22
23 You could put them together, and, if you're going to make
24 changes to the procedure about the type of analyses and stuff
25 that are expected from the state, then you might want to look at
26 the protocol, because the protocol does say that the FWC will
27 provide biological, economic, and social analyses of the impacts
28 of the proposed rule and alternatives, and I think the idea
29 behind it originally was that Florida was going to give NMFS and
30 the council all of this analysis and information that NMFS would
31 then be able to use to do whatever NEPA was required.

32
33 If that's not something that the state and the council want to
34 require going forward for the protocol and the procedure, you
35 might want to look at that together and figure out what types of
36 analysis the state is going to provide or not provide.

37
38 **CHAIRMAN GUYAS:** The more we talk about this, it sounds like
39 that's a good idea, to try to edit both of these things together
40 and combine them, at least into the same document, and figure
41 out exactly what we want to do. Does everybody understand kind
42 of what we're doing? Do you need a motion, Morgan, to do this?

43
44 **DR. KILGOUR:** Yes, please.

45
46 **CHAIRMAN GUYAS:** Okay. Is anybody willing to make a motion to I
47 guess modify Action 1 to combine and edit both the protocol and
48 the procedure? It's Action 2, sorry.

1
2 **MR. JOHN SANCHEZ:** You word it, and I'll make the motion.

3
4 **MR. DOUG BOYD:** I will second it.

5
6 **CHAIRMAN GUYAS:** We have a motion from John and seconded by Doug
7 to modify Action 2 to combine both the protocol and the
8 procedure. Is there any opposition to this motion? Seeing
9 none, the motion stands.

10
11 Anything else that we need to do on this document, Morgan, or
12 should we move to our list of other issues?

13
14 **DR. KILGOUR:** We can move to the list of other issues. I do
15 want to highlight that the existing protocol is already in the
16 document, in Appendix C, and so I will just move that to the
17 forefront for the next one and modify the things that we
18 discussed in committee here.

19
20 The last little bit for spiny lobster is, again, those different
21 regulations that aren't consistent between state and federal,
22 and so, if we could go to Tab K-4(b), I believe. Items that
23 would require council action are the bag limits onboard
24 commercial bully net and dive vessels. Right now, it's a 250, I
25 think, bag limit for specific counties in Florida during the
26 normal season, I believe, and so, if the council wants to
27 include those bag limits for those specific counties, that would
28 require action by the council.

29
30 There also was a -- In the chart that was provided to you, there
31 is degradable panels in traps, and Florida has a different trap
32 definition, and so there has to be a degradable panel of a
33 certain size on their spiny lobster and crab traps.

34
35 That is not consistent in the federal regulations, and it was
36 brought to our attention by the regulation writers that this is
37 because it's specific to Florida and that incorporating a
38 degradable panel in traps would apply to all Gulf states, if we
39 change the CFRs to include the Florida definition, and then we
40 have no definition of artificial habitat or casitas in the CFRs,
41 and so, if the council wants to address artificial habitat or
42 casitas, that would require council action to discuss what that
43 is.

44
45 Things that can be changed in the codified text to maintain
46 consistency -- This is something that I just want to bring to
47 your attention, that these will probably, when we move forward
48 with Amendment 13 and we get to final stage and have codified

1 text for the councils to review, some of these changes won't be
2 necessarily in this document, but they will be updating, based
3 on new dates from FWC and to change some of the typos that are
4 in the CFRs, and so these are to rename "unmarked buoys and
5 traps" to "derelict traps and buoys", just to maintain
6 consistency with FWC, change the reference in the CFRs regarding
7 pulling traps belonging to another person to the particular
8 specific rule dates that FWC has. Those have been updated, and
9 so those dates and those references will change.

10
11 Update the phone numbers for the Division of Marine Fisheries
12 Management, change the word "loading" to "landing", and our
13 regulation writers are looking into this, and so are we on the
14 IPT, on seeing if that is really what is intended, and then
15 change the word "foeign" to "foreign", because that was
16 definitely a typo.

17
18 Things that the committee and the council need to weigh-in on
19 are if they want to address the bag limits, the degradable
20 panels and traps, and the definition of artificial habitat.

21
22 **CHAIRMAN GUYAS:** If I may, on a couple of these, with the
23 artificial habitat definition, I think we would want to be
24 careful about that, because, of course, artificial habitat has -
25 - There is a lot of different meanings of that. We have some
26 stuff in there specific to lobster in our rules, but we can work
27 closely on that one and see what the right thing to do is.

28
29 On the unmarked buoys and traps, what we would be really trying
30 to do is allow derelict or unmarked traps to be removed in-
31 season. We have had situations where we've had traps in federal
32 waters that have lost their buoys and their markings, and we're
33 not able to remove them in-season, because there is no allowance
34 for that currently, under federal regulations. In state waters,
35 we do have the ability to remove these derelict traps.

36
37 Then a lot of these things, as Morgan mentioned, are just
38 housekeeping updates, misspellings and updating references and
39 phone numbers and links and that kind of thing. Doug.

40
41 **EXECUTIVE DIRECTOR GREGORY:** The removal of traps is
42 particularly important because of hurricanes, and, like the we
43 just experienced, a lot of traps are scattered, and buoys are
44 tangled up and traps are tangled up together, and it's very --
45 We want to clean that up as quickly as possible.

46
47 **CHAIRMAN GUYAS:** Yes, and you're absolutely right, and so we
48 have a mechanism for state waters where, if a fisherman can't go

1 and get his traps, his boats are not able to run or whatever the
2 situation is, another fisherman -- You fill out a form, and
3 another fisherman can pull your traps for you.

4
5 Otherwise, that would not be allowed, and it would be considered
6 trap robbing, but, yes, there are lots of people that are
7 utilizing that process now, after Irma, and so it's helpful to
8 them, and we want to keep that option open for them even when
9 those traps are in federal waters. I think the form -- This is
10 in the CFR, but we've updated our language since, or FWC has
11 updated their language, since it was last visited or last
12 changed by the councils.

13
14 At this point, if there aren't any other questions, I think what
15 we need to do here is we need to give direction to Morgan as to
16 whether we want to incorporate these other changes into our
17 amendment. John.

18
19 **MR. SANCHEZ:** I don't know if we need a motion, per se, but,
20 yes, I would like to see that. Obviously, the industry has
21 worked very closely with the State of Florida in developing the
22 trap certificate program, in going with through it, with a long
23 history of addressing issues as they come up.

24
25 Some of these structures that are put out there, devising
26 precise definitions of trap configurations, like throats and
27 biodegradable panels and all of that, and a lot of thought went
28 into this evolution of that fishery, and we have worked closely
29 with the federal government on managing this, and I would like
30 to see this incorporated, so that we can continue to foster this
31 relationship that we have.

32
33 **EXECUTIVE DIRECTOR GREGORY:** Could you please make a motion?

34
35 **MR. SANCHEZ:** I make a motion to incorporate this.

36
37 **CHAIRMAN GUYAS:** Morgan, go ahead.

38
39 **DR. KILGOUR:** I think I would need a specific motion to
40 incorporate the bag limits, the degradable panels, and the
41 definition of artificial habitat. The other things, I don't
42 need a motion on. I am just alerting you to, the next time we
43 have codified text for spiny lobster, these things will be
44 updated, and so, if I could get a motion to either all three of
45 those things need to be in either Amendment 13 or have their own
46 amendment, but a little bit more specific direction I would
47 really appreciate, so that I'm not just interpreting things on
48 my own.

1
2 **MR. SANCHEZ:** You did a good job. That works for me. In this
3 amendment.

4
5 **CHAIRMAN GUYAS:** Doug.

6
7 **EXECUTIVE DIRECTOR GREGORY:** Can you add to that "and the other
8 listed changes to codified text"?

9
10 **MR. SANCHEZ:** Certainly.

11
12 **DR. KILGOUR:** I don't need that. We're already going to do
13 that.

14
15 **EXECUTIVE DIRECTOR GREGORY:** My concern is this business of
16 removing traps in-season is not just a change to codified text,
17 and, if we don't list that in some manner, it may be
18 problematic.

19
20 **DR. KILGOUR:** We went through all of this with the regulation
21 writers, and it really is just updating the specific effective
22 rule dates, which would automatically -- Because, in the
23 codified text, it's just the specific rule dates and the
24 references, and so, if we update those to the updated language
25 of FWC in the codified text, we don't need a full action or
26 amendment for that. All we have to do is update the codified
27 text to cite the appropriate rule and date.

28
29 **CHAIRMAN GUYAS:** Okay. I think we've got our motion on the
30 board here. Does that look like your motion? Do we have a
31 second to this motion? It's seconded. Thank you. **Any**
32 **opposition to this motion? Seeing none, the motion carries.** I
33 believe that takes us to Other Business. Go ahead.

34
35 **MR. STRELCHECK:** Just one thing to add. Working off of Doug's
36 comment, there are certainly administrative changes that we can
37 make as part of the rulemaking that wouldn't have to be
38 incorporated in the amendment.

39
40 The other recommendation that I would make to staff is to,
41 wherever possible, try to incorporate the Florida Administrative
42 Code, so that we're not constantly in this loop of trying to
43 update the regulations based on changes that they're making on a
44 regular basis.

45
46 **CHAIRMAN GUYAS:** Thanks, Andy. Whatever help you all need, just
47 let us know, and we can do what we need to do to help you out.
48 All right. Now we're at Other Business, and, seeing none, I

1 think that means our committee is adjourned.

2

3 (Whereupon, the meeting adjourned on October 2, 2017.)

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