GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

SPINY LOBSTER COMMITTEE

Naples Grand Beach Resort Naples, Florida

June 5, 2017

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Martha Guyas (designee for Nick Wiley) .......................Florida
Doug Boyd ..................................................................Texas
Roy Crabtree .........................................................NMFS, SERO, St. Petersburg, Florida
Dave Donaldson .........................................................GSMFC
Campo Matens ..........................................................Louisiana
John Sanchez .............................................................Florida

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Leann Bosarge ...........................................................Mississippi
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- - -
# TABLE OF CONTENTS

1. Table of Contents ................................................................. 3
2. Table of Motions ................................................................. 4
3. Adoption of Agenda and Approval of Minutes ......................... 5
4. Action Guide and Next Steps .................................................. 5
5. Final Spiny Lobster Regulatory Amendment 4 ............................ 5
6. Summary of Public Comments ............................................... 5
7. Review of Amendment .......................................................... 6
8. Other Business ........................................................................ 9
9. Update on Bully-Netting Regulations ..................................... 9
10. Adjournment ......................................................................... 13

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TABLE OF MOTIONS

PAGE 8: Motion to recommend that the Spiny Lobster Regulatory Amendment 4 be forwarded to the Secretary of Commerce for review and implementation and deem the codified text as necessary and appropriate, giving staff editorial license to make the necessary changes in the document. The Council Chair is given authority to deem any changes to the codified text as necessary and appropriate. The motion carried on page 8.

PAGE 12: Motion to direct staff to begin work on a plan amendment to address the bully-net issue and reestablish the protocol procedures with the State of Florida. The motion carried on page 13.

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The Spiny Lobster Committee of the Gulf of Mexico Fishery Management Council convened at the Naples Grand Beach Resort, Naples, Florida, Monday afternoon, June 5, 2017, and was called to order by Chairman Marth Guyas.

ADOPTION OF AGENDA
APPROVAL OF MINUTES
ACTION GUIDE AND NEXT STEPS

CHAIRMAN MARTHA GUYAS: Our Lobster Committee members are John Sanchez, Doug Boyd, Roy Crabtree, Dave Donaldson, and Camp Matens. The first thing we need to do is I guess see if there’s any changes to the agenda. If not, let’s have a motion to adopt the agenda.

MR. JOHN SANCHEZ: So moved.

CHAIRMAN GUYAS: All right. Motion from John and second from Dave Donaldson. Any opposition to that motion? Seeing none, the agenda is adopted. How about the minutes? We have minutes from our last meeting in April. Any changes to those minutes?

MR. DAVE DONALDSON: Motion to accept.

CHAIRMAN GUYAS: We have a motion from Dave. Is there a second? Second from John Sanchez. Any opposition to the motion? Seeing none, the minutes are approved. Let’s jump right into the Final Spiny Lobster Regulatory Amendment 4, and Morgan is going to walk us through that amendment.

FINAL SPINY LOBSTER REGULATORY AMENDMENT 4

DR. MORGAN KILGOUR: Would you like Emily to go over the single public comment first, or would you like me to go through the amendment first? Whichever you prefer.

CHAIRMAN GUYAS: Sure. We can go through the comment. That’s easy enough.

SUMMARY OF PUBLIC COMMENTS

MS. EMILY MUEHLSTEIN: Okay. Thank you, guys. I will go ahead and go over -- We only had one comment received on this amendment, and it wasn’t about the annual catch limits for spiny lobster. It focused on the spiny lobster recreational trap closure.

Specifically, it states that there is no reason to ban spiny
lobster recreational trap fishing in federal waters of the South Atlantic. It’s not a frequently-used harvest method, and seasonal closures would be more appropriate, to avoid interactions with migrating whales, and that concludes my report.

CHAIRMAN GUYAS: Anna.

MS. ANNA BECKWITH: I can speak to this gentleman. He contacted us individually. He is from North Carolina. He had gone through quite a bit of effort to get the appropriate gear setup and colors and all the things that he needed to do, and then, as the council moved forward with this, he was surprised that we were moving towards banning the use of recreational pots.

We had tried to contact this individual much earlier in the process. He did not respond to our attempts to contact him during the earlier preparation of this amendment, and so I just wanted to bring that to your attention. It seems to me that the South Atlantic Council is not intending on changing our current preferred. We understand how that would slow down the amendment. We will discuss it next week, but my suspicion is that we will be moving forward as is.

CHAIRMAN GUYAS: Thanks, Anna. Morgan, do you want to take us through the actions real quick?

REVIEW OF AMENDMENT

DR. KILGOUR: Absolutely. Thank you. The first action is modifying the current definitions of management benchmarks, and Action 1.1 is the maximum sustainable yield and overfishing threshold.

The council’s current preferred Alternative 2 would have the MSY proxy and MFMT be equal to the revised OFL, as recommended by the Gulf and South Atlantic SSCs, using the mean landings from the years 1991/1992 to 2015/2016, plus two standard deviations, and that equates to 10.46 million pounds.

CHAIRMAN GUYAS: Is everybody comfortable where we are? Any questions or discussion on this action? I am seeing some thumbs-up, and so I think let’s keep moving.

DR. KILGOUR: Okay. Action 1.2 would modify the annual catch limit and the annual catch target for spiny lobster, and the Preferred Alternative 2 is the ACL is equal to the ABC, as recommended by the Gulf and South Atlantic Councils SSCs, using
the mean landings from the years 1991/1992 through 2015/2016 plus 1.5 standard deviations, which is 9.6 million pounds. The ACT would be 90 percent of the new ACL, which would equal 8.64 million pounds.

I should note that there is a review panel should be convened if there are two consecutive years of low landings or the landings are below 5.3 million pounds, and that would not replace the existing accountability measure of a review panel being convened if the ACT is exceeded, and so it would be in addition to that.

CHAIRMAN GUYAS: Thanks, Morgan. Any questions or comments on this one? Okay. I guess let’s move on then.

DR. KILGOUR: Okay. The last action in this document is prohibit the use of traps for recreational harvest of spiny lobster in the South Atlantic EEZ. The council’s current preferred alternative is Alternative 2, which would prohibit the use of traps for recreational harvest of spiny lobster in the South Atlantic EEZ.

CHAIRMAN GUYAS: Okay. Any questions or comments on this, given the testimony that Emily gave to us and then also Anna’s explanation? Doug.

MR. DOUG BOYD: Just a question. What is the reason behind prohibiting those traps over there? Is it the size of the stock or is the difficulty in obtaining it in the water it’s in or --

CHAIRMAN GUYAS: Anna, can you speak to that?

MS. BECKWITH: Certainly. We have had quite a bit of effort involved in managing black sea bass pots, due to right whale harvest, and the council’s current opinion is that trap gear is a commercial gear, and we’re not looking for additional vertical lines in areas that might interact with right whales.

MR. BOYD: Thank you.

CHAIRMAN GUYAS: Okay. I think that’s our last action. Is that right, Morgan?

DR. KILGOUR: That is correct.

CHAIRMAN GUYAS: Okay, and this is our last stop for this amendment, and so now would be the time, unless there is other questions or comments, for a motion to potentially ask the council to consider taking final action on this. Doug.
MR. BOYD: I would move that we take final action and submit to the council for approval.

CHAIRMAN GUYAS: John seconds. I know we have some boilerplate language here that we can use for the motion, if we can get that on the board. Our motion is to recommend that the Spiny Lobster Regulatory Amendment 4 be forwarded to the Secretary of Commerce for review and implementation and deem the codified text as necessary and appropriate, giving staff editorial license to make the necessary changes in the document. The Council Chair is given authority to deem any changes to the codified text as necessary and appropriate. Good, Doug?

MR. BOYD: That’s it. I can’t read it from here.

CHAIRMAN GUYAS: Yes, I thought I would help you out. Is there a second real quick, before I get these hands? Second from John. Okay. I will go Mara and then over to Morgan.

MS. MARA LEVY: Just to address the codified text that’s in your briefing book, there is the provision in there that is related to the South Atlantic’s action to prohibit the recreational traps.

NMFS has written it in a way to prohibit traps on a vessel that has spiny lobster, subject to the bag and possession limits, to try and get at that, and so I think that NMFS was just going to check with folks on the South Atlantic Council whether that kind of language is going to impact black sea bass pot holders, just to double-check that the way the regulations are written aren’t going to do something unintentional, and the only reason I’m raising that is, if there is an issue, it might get tweaked, and so then it would go back to the Chair for re-deeming, and I just wanted to let you know that.

CHAIRMAN GUYAS: Morgan.

DR. KILGOUR: I was actually just going to bring up that there is codified text to look at, and so we’re all good.

CHAIRMAN GUYAS: Any other questions or comments? Okay. Is there any opposition to this motion? Seeing none, the motion carries.

That will take us to our next item, which is Other Business. We have an update on bully-netting regulations, and somebody from NOAA Fisheries is giving this update, although I can probably
help.

OTHER BUSINESS
UPDATE ON BULLY-NETTING REGULATIONS

MS. LEVY: I guess it’s not clear to me exactly what this agenda item was supposed to be addressing. If you want to talk about the protocol and the procedure and the implications of that, I can do that, but maybe Morgan knows more about what is supposed to be happening under this agenda item.

DR. KILGOUR: I had sent you an email and asked for some clarification on whether or not there had been a decision, and so perhaps you can just let us know where we are on the decision for bully-netting, if we have to do a full amendment or if this can be procedural, and I know that that hasn’t been decided, but that’s what this was for. I don’t know what -- Do we need to move on with a full amendment, or is this going to be something that is decided between NMFS and FWC? That’s all.

MS. LEVY: So, from what I have looked at, there was the protocol and the procedure that went with that protocol that got established in Amendment 2, and I think tweaked in Amendment 3, and they went together, and so there was a protocol that said basically Florida is going to take the lead and can propose regulations directly to NMFS, and then there was a procedure that went with that protocol and said what you could do with respect to that.

From what I can tell, when the council did Amendment 10, they tweaked the protocol to update some language, but then got rid of the procedure that went with it and adopted the framework, and the framework provision replaced the prior protocol, but I don’t know that -- It’s hard for me to go back and history and figure out whether, when that decision was made, it was understood that now we have a disjointed protocol that anticipates that Florida would propose regulations directly to NMFS and a framework procedure that requires the council meeting and council involvement and actually implementing the management measures.

Prior, it sort of took council action out of the process, other than the council kind of having a veto and saying that, no, we don’t think this is consistent, but now all we have is the framework procedure, and that framework procedure allows for adjustment of management measures and things like that, but it’s through a council framework. We don’t have the other procedure that went with the protocol.
I think the council might need to decide if you want to go back and do a plan amendment and reincorporate, maybe with adjustments, the procedure that went with the protocol, so you can do that NMFS/Florida direct sort of implementation, or do you just want to look at what Florida is doing and then adopt consistent regulations or whatever under a normal framework procedure, and we can go back and look at whether the bully-netting requirements would fall under that framework.

I suspect they would, because it’s a gear requirement, although, if we’re banning it, it might require a plan amendment. We would have to look at that, but there is, as far as I can tell, no procedure to go with the protocol, and so, whatever happens, it’s got to go through the council.

CHAIRMAN GUYAS: Okay. Interesting. I can fill in, I think, a couple of things. Our staff recently made some changes to bully-netting regulations for state waters. In addition to that, our staff has gone through FWC spiny lobster rules and a lot of the existing CFR language, and found some housekeeping issues that need to be, I think, fixed and some inconsistencies.

We were operating, I think, under the assumption that I think the protocol still exists, and we have some -- I guess, when the South Atlantic discusses this next week, they have a document talks about the protocol, which seems like, if it still is something in play, it would need to be updated, because it references our old process under the Marine Fisheries Commission, which was the predecessor of FWC, and how our rules would have to go through the Governor and cabinet, which doesn’t happen anymore. Anyway, that’s a whole other thing.

We think we have an idea of what might fall under this protocol and what might not that we can certainly share with NOAA staff, and we can go from there, but I don’t know if there is any opinions or discussion about whether the Gulf Council wants to be involved in this process as we’re revising lobster regulations, or do people feel like FWC and NOAA can just figure it out and show the council the final product, and is that kind of how it worked under the protocol before?

MS. LEVY: Honestly, I’m not sure how it worked under the protocol, but, when you look at what was in Spiny Lobster 3, there is the protocol and the procedure, and the procedure then outlines what is covered, and so the protocol is more general and says they’re going to work together and FWC is going to do this and NMFS is going to do that, but then the procedure is
supposed to sort of then flesh out more, I think, of the
process, and it specifically says what changes are appropriate,
and that’s the part that we replaced.

Again, it’s do the councils want to go back and sort of
reinstate some sort of procedure that can actually -- That the
protocol can use, or are we just going to get rid of the
protocol and just go through the council framework process to
make things consistent, to the extent the council wants to do
that, and I think that’s your decision.

CHAIRMAN GUYAS: Let me ask a question. If we went back to
protocol versus framework, what would the council need to do for
that to happen? Do we need to actually go through an amendment
to do that? Oh, good times. So we’re looking at an amendment

MS. LEANN BOSARGE: It sounds like our options are a framework
to implement what you want to implement or amendment to get our
procedures and protocols back on the books, and so I guess my
question would be do you think this is sort of a once-in-a-blue-
moon occurrence or if this going to be more frequent, and then
it would seem to be obvious that we might need to go the
amendment route. I say obvious, but people may have other
opinions.

CHAIRMAN GUYAS: At this point in time, it’s kind of a once-in-a-blue-moon thing, but who knows in the future? We may be
working on lobster more frequently. Mara.

MS. LEVY: Well, I mean, you could potentially do them together.
You could do a plan amendment that implements whatever changes
you want to make with respect to bully-netting or whatever else,
and then you could also, in that amendment, we could address the
lack of the procedures to go with the protocol, and so if you
want to keep -- I mean, framework or amendment, they’re a little
bit different, but they’re not substantially different when it
comes to what you have to have.

MS. BOSARGE: I guess I was thinking about, if we did a full
amendment and we got into those procedures and protocols, I can
see where that may be more time-consuming and get in-depth
pretty quickly, versus the framework to implement what you want
to implement and get it on the books and go about your business,
but it’s totally -- Whatever the council wants to do.

CHAIRMAN GUYAS: Doug.
EXECUTIVE DIRECTOR DOUGLAS GREGORY: My impression is that there’s a lot of shallow water in federal waters on the Atlantic side of the Keys, so that that could be a loophole, and so it is possible that we could do a framework to address the bully-net issue and do it quickly and simultaneously do an amendment to change the protocol or go back to the protocol if the council wants and if the FWC wants to reestablish a protocol, and so that would be the quickest way to get it all done, I think, with two different documents.

CHAIRMAN GUYAS: It seems like that would make sense. That would make sense to me, I think, but we’ll also have to work with the South Atlantic on all of this as well, and so that’s another fun component of this. Committee, where are you on this? Any opinions? Not much excitement.

I think we’re looking at some kind of changes for lobster no matter what. Like I said, there are some changes in addition to the bully-net changes that we’ve identified that we probably need to think about, and we can talk to NOAA staff more about those, but --

DR. ROY CRABTREE: It seems to me that we ought to just do this all in one amendment, although I am trying to think, because I’ve been around a long time now, and I don’t recall when we ever used the protocol, but, if we want to fix it, that’s fine, and it seems to me that let’s do it all at once. There is not any burning urgency. Whatever bully-netting is going on in the EEZ, it must be fairly minimal.

CHAIRMAN GUYAS: Is there any opposition to the approach that Dr. Crabtree just described? Seeing nods to no. Okay. Do you need a motion to get this started?

DR. KILGOUR: Just for clarification, I think I would need a motion to start a framework to address the bully-netting issue, and I would probably need another motion if you wanted to fix the procedure to go with the protocol, and so, yes, I would need a motion for both of those things.

DR. CRABTREE: I was thinking we would do both of them in one amendment and do it all at once, unless somebody objects to that approach. I guess I am deferring to you guys, Martha.

CHAIRMAN GUYAS: It seems okay to me. I mean, if we’re going to be working on lobster --

DR. CRABTREE: All right. Then I will make a motion to direct
staff to begin work on a plan amendment to address the bully-net issue and reestablish the protocol procedures with the State of Florida.

CHAIRMAN GUYAS: Is there a second for this motion? Second from John Sanchez. Does everybody understand where we are? Any other questions or discussion? Doug.

EXECUTIVE DIRECTOR GREGORY: My only concern is there’s a lot of shallow water along the reef line that’s in federal waters, and people do bully-net along the reef line and in between the reefs that come to the surface, with the seagrass beds and the sand areas. There is a lot of undercuts in the grass beds, and lobsters go under there, and they come out at night, and so I am concerned that a plan amendment for the bully-net thing might leave a loophole for too long of a period of time. I am not certain, but I just have that concern.

CHAIRMAN GUYAS: Well, we won’t have anything done by the time the fishery opens for this year, and so I think we’re stuck no matter what, and so it may not be that big of an issue, or at least an issue that we can avoid, given that the fishery opens in a few months, or a few weeks. Anything else on this motion? Any opposition to this motion? Seeing none, the motion carries.

Is there any other business to come before this committee? Seeing none, we are adjourned.

(Whereupon, the meeting adjourned on June 5, 2017.)