GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

SPINY LOBSTER MANAGEMENT COMMITTEE

Key West Marriott Beachside Hotel                      Key West, Florida

June 20, 2018

VOTING MEMBERS

Martha Guyas (designee for Jessica McCawley)..................Florida
Doug Boyd......................................................................Texas
Roy Crabtree.....................................................................NMFS
Dave Donaldson..........................................................GSMFC
Phil Dyskow.....................................................................Florida
John Sanchez...............................................................Florida
Bob Shipp.........................................................................Alabama

NON-VOTING MEMBERS

Kevin Anson (designee for Scott Bannon).........................Alabama
Leann Bosarge..................................................................Mississippi
Glenn Constant.............................................................USFWS
Dale Diaz..........................................................................Mississippi
Tom Frazer........................................................................Florida
Johnny Greene..................................................................Alabama
Campo Matens..................................................................Louisiana
Paul Mickle (designee for Joe Spraggins).........................Mississippi
Robin Riechers................................................................Texas
Greg Stunz.........................................................................Texas
Ed Swindell........................................................................Louisiana
LT Mark Zanowicz..........................................................USCG

STAFF

Steven Atran.................................................................Senior Fishery Biologist
Matt Freeman..................................................................Economist
Douglas Gregor.............................................................Executive Director
Morgan Kilgour...............................................................Fishery Biologist
Mara Levy..........................................................................NOAA General Counsel
Emily Muehlstein.........................................................Public Information Officer
Ryan Rindone...............................................................Fishery Biologist & SEDAR Liaison
Bernadine Roy...............................................................Office Manager
Charlotte Schiaffo.........................................................Administrative & Human Resources Assistant
Carrie Simmons............................................................Deputy Director

OTHER PARTICIPANTS

Shannon Cass-Calay.......................................................SEFSC
Michael Drexler.........................................................Ocean Conservancy, St. Petersburg, FL
Traci Floyd.........................................................................MDMR
Susan Gerhart...............................................................NMFS
1 Walter Hoppe..........................................................USCG
2 Bill Kelly..........................................................FKCFA, Marathon, FL
3 Bart Niquet..........................................................Lynn Haven, FL
4 Captain Scott Pearce..............................................FL
5 Clay Porch.............................................................SEFSC
6 Eric Raslich..........................................................Key West, FL
7 Lance Robinson......................................................TX

— — —
# 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. Spiny Lobster Landings Update ....................................5
6. Public Hearing Draft Spiny Lobster Amendment 13 ...........6
7. Other Business .............................................................15
8. Adjournment ...............................................................16

---
TABLE OF MOTIONS

PAGE 7: Motion in Action 1 to make Alternative 2 the preferred alternative. The motion carried on page 7.

PAGE 7: Motion in Action 2 to make Alternatives 2 and 3 the preferred alternatives. The motion carried on page 7.

PAGE 9: Motion in Action 3 to make Alternative 1 the preferred alternative and move Action 3 to Considered but Rejected. The motion carried on page 9.

PAGE 11: Motion to move Action 4 to Considered but Rejected. The motion carried on page 12.

PAGE 15: Motion in Action 5 to make Alternative 2 as amended by the committee the preferred alternative. The motion carried on page 15.

PAGE 15: Motion to approve Spiny Lobster Amendment 13 for public hearings. The motion carried on page 15.

- - -
The Spiny Lobster Management Committee of the Gulf of Mexico Fishery Management Council convened at the Key West Marriott Beachside Hotel, Key West, Florida, Wednesday morning, June 20, 2018, and was called to order by Chairman Martha Guyas.

ADOPTION OF AGENDA
APPROVAL OF MINUTES
ACTION GUIDE AND NEXT STEPS

CHAIRMAN MARTHA GUYAS: I will call the Spiny Lobster Committee to order. Let’s start with adoption of our agenda, which I see is getting posted on the board now, and, if I may, I want to add a couple of things that we can hit on in this, in our committee meeting, and I think they will be really quick.

One would be hopefully an update on the status of the lobster ACL amendment, and I hear we might have an update on that, and then, at some point, I want to talk about some FWC trap management changes that are occurring and a process that we’re going through, and so I will just briefly mention that as well. Any other additions or changes to the agenda? If not, can I get a motion to approve the agenda, as amended? It’s so moved by John, and I see a second by Mr. Boyd. Thank you. Any opposition? Seeing none, the agenda is approved as amended.

Any changes to the minutes? Seeing none, I think we can adopt the minutes as written. We have an action guide here that Morgan has put together, and thank you for that. We’re going to tackle two things today, the landings update, and then we’ll get into our amendment, and so who is going to give us our landings update? Sue. Thank you.

SPINY LOBSTER LANDINGS UPDATE

MS. SUSAN GERHART: Thank you. We have the landings from the last fishing year, 2016/2017, that are complete, and those landings there, and we were at 94 percent of the ACL, and so we did manage to stay within the ACL this time.

We did exceed the ACT. Usually that triggers the review by the review panel, as part of our accountability measure. However, because of Regulatory Amendment 4 that is going through to increase the ACL, that wasn’t necessary, and I will stop and update you on that, since you asked for it.

We did just get the notice of publication for that amendment, the final rule for that amendment, which will publish on the 22nd, which is Friday, and it will be effective on July 23, and
so that will be in place before too far into the next fishing year.

For the 2017/2018 fishing season, we have the commercial landings. However, because of the hurricanes, FWC was not able to do their survey of the recreational sector, and so we don’t have the recreational landings there, and so, again, we’re changing the ACL, and so we don’t anticipate this being a big problem. Thank you.

CHAIRMAN GUYAS: Are there question for Sue about these data? Okay. It looks like we’re good. Morgan, are you ready to go through the amendment?

PUBLIC HEARING DRAFT SPINY LOBSTER AMENDMENT 13

DR. MORGAN KILGOUR: I sure am. If it’s all right with you, as I go through each action -- The South Atlantic saw this document last week and had several changes that it requested, and if you would like me to go through those as I go action-by-action, I am happy to do that as well.

CHAIRMAN GUYAS: Yes, I think that would be helpful for us, and should we cover law enforcement comments kind of the same way? Do you think that would be useful?

DR. KILGOUR: Yes, I think so. This is the public hearing draft for Spiny Lobster Amendment 13, which would modify spiny lobster gear requirements and cooperative management procedures. The first action is on page 7, and it’s the Florida state bully net permit, marking requirements, and gear prohibitions for bully net gear in the EEZ off of Florida.

The first alternative would be no action, and that would have a Florida state commercial bully net permit would not be required for bully net gear in the EEZ. The second alternative would be to align federal regulations to be consistent with Florida regulations for spiny lobster commercial harvesters using bully net gear by implementing the following: require commercial bully net vessels in the EEZ off Florida to have a bully net permit from Florida; require that the vessel be marked with the harvester’s Florida bully net permit number using reflective paint or other reflective material; prohibit commercial bully net vessels from having trap pullers onboard; and prohibit the simultaneous possession of a bully net and any underwater breathing apparatus (not including dive masks or snorkels) onboard a vessel used to harvest or transport spiny lobster for commercial purposes. At the South Atlantic Council meeting, in
this action, they made Alternative 2 the preferred alternative.

CHAIRMAN GUYAS: John.

MR. JOHN SANCHEZ: If appropriate, and in the interest of just being able to move forward, I would move that we select Alternative 2 as well as the preferred alternative.

CHAIRMAN GUYAS: Okay. Do I have a second for that motion? Second from Mr. Boyd. Thank you. Let’s get that on the board. Any other discussion on this motion, or any discussion? I think we’ve discussed it a couple of times at past meeting, but this is also what the South Atlantic chose, and so we’ll be in accordance if we move forward with this. Is there any objection to this motion? Seeing none, the motion carries. I guess let’s go to Action 2.

DR. KILGOUR: Action 2 is the commercial spiny lobster bully net and dive gear trip limits in the EEZ off Florida. Alternative 1 would be no action. Alternative 2 would establish a commercial daily vessel harvest and possession limit of 250 per day per vessel for spiny lobsters harvested by bully net in or from the entire EEZ off Florida. Alternative 3 would establish a commercial daily vessel harvest and possession limit of 250 per day per vessel for spiny lobsters harvested by diving in or from the EEZ only off Broward, Dade, Monroe, Collier, and Lee Counties, Florida. The South Atlantic selected Alternative 2 and Alternative 3 as its preferred alternatives.

CHAIRMAN GUYAS: Okay. Are there questions or discussion? John.

MR. SANCHEZ: Let’s follow the lead of the South Atlantic on this. I know we’ve discussed this, and I will make a motion to select Alternative 2 and Alternative 3 as the preferreds, as per the note at the end of the action item.

CHAIRMAN GUYAS: Okay. Is there a second to this motion? Thank you. It’s seconded by Mr. Boyd. Any discussion on this motion? Is there any opposition to this motion? Seeing none, the motion carries. Mr. Boyd.

MR. DOUG BOYD: Just a question. Is there a crew limit when you’re fishing with bully nets on harvest?

CHAIRMAN GUYAS: Let me think through this. I think it depends on how the commercial -- Where the commercial license is, if it’s on the individual or the vessel, and so, in the case of the
vessel, no. I don’t think there is a crew limit, but these are, of course -- These are vessel limits too, and so --

MR. BOYD: Thank you.

CHAIRMAN GUYAS: Okay. I think we’re good for Action 3.

DR. KILGOUR: Action 3 is the specification of degradable panels in spiny lobster traps in the EEZ off Florida. This was brought to the Law Enforcement Technical Committee, because we have differing definitions of those degradable panels.

In Alternative 1, in the EEZ off Florida, a spiny lobster trap constructed of material other than wood must have a panel constructed of 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 top 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. That is what is currently in the regulations.

Alternative 2 would be, in the EEZ off Florida, a spiny lobster trap constructed of material other than wood is required to have a degradable panel no smaller than six inches by four inches or no smaller than the dimensions of the throat or entrance of the trap, whichever is larger, and shall be constructed of cypress or untreated pine slats no thicker than three-quarters-inch. This degradable panel must be located on the top horizontal section of the trap.

This was brought to the Law Enforcement Technical Committee, and the technical committee felt that most of the traps were being constructed in a way that would be consistent in the state waters and in the EEZ off of Florida. However, the South Atlantic convened its Spiny Lobster AP and found that that might not indeed be the case.

The South Atlantic made the motion to select Alternative 1 as the preferred, with the intention of moving Action 3 to the Considered but Rejected, because of the difficulties in this action for enforcement purposes.

CHAIRMAN GUYAS: Roy.

DR. ROY CRABTREE: My memory was that the AP -- Some of the commercial fishery had some real issues with this and didn’t feel this would work in the EEZ, and so everyone pretty much agreed that this kind of needed to go back to the drawing board
and to hold off on this for a while.

I will make a motion that we concur with the South Atlantic and adopt Alternative 1 as the preferred and remove Action 3 to the Considered but Rejected.

CHAIRMAN GUYAS: Is there a second for that motion? It’s seconded by John. I will chime in here and say that I listened to that South Atlantic AP meeting, and there was some good discussion about this. There is some different trap practices that are occurring in federal waters, and I will talk more about this later, but FWC is going through a trap fisheries management project, where we’re looking at not only the lobster fishery, but stone crab and blue crab, our main trap fisheries, and we’re doing some cleanup and fixing some issues with those rules, and one of them may end up being the specifications for these traps, and so I think it makes sense to hold off on this for now. Mr. Diaz.

MR. DALE DIAZ: Thank you, Ms. Guyas. I’m not on your committee, but, to add to what Dr. Crabtree said, I do remember, at the South Atlantic meeting last week, there was also a concern from law enforcement that they would have a hard time distinguishing types of wood, and so Alternative 2 is specific to cypress or untreated pine, and that was also in the discussion. Thank you.


DR. KILGOUR: Okay. We are flying along. Action 4 is the harvesting restrictions near artificial habitat in the EEZ off Florida. This was an action that the IPT has recommended for removal, because there has been a lot of concerns that how do you site these areas that are allowable for artificial harvest in the EEZ.

The Law Enforcement Technical Committee said that they would -- A linear measurement of ten yards is currently used by Florida, but this ten-yard rule in the EEZ could be difficult to enforce, and, at the South Atlantic meeting last week, they moved, because of some General Counsel concerns and other issues, they moved to move this action to the Considered but Rejected appendix, and now I will go through the alternatives.
Alternative 1 would be no action. Federal regulations have no formal definition developed for artificial habitat and there are no restrictions for harvest and possession of spiny lobster in the EEZ off an artificial habitat as defined by the Florida Administrative Code.

Alternative 2 would be no person shall harvest any spiny lobster from artificial habitat in the EEZ off Florida. The harvest and possession limits in the water of spiny lobster in excess of the recreational bag limit is hereby prohibited within ten yards of artificial habitat, as is consistent with FAC 64B-24.006(12).

For a note, for the purpose of this prohibition, “artificial habitat” means any material placed in the waters of the State of Florida or in the EEZ off Florida that is reasonably suited to providing cover and habitat for spiny lobster. Such material may be constructed of, but is not limited to, wood, metal, fiberglass, concrete, or plastic, or any combination thereof, and may be fabricated for the specific purpose of attracting lobsters or for some other purpose. The term does not include fishing gear allowed by federal regulations, legally-permitted structures, or artificial reef sites constructed pursuant to permits issued by the United States Army Corps of Engineers or by the state regulatory agency. There is that.

CHAIRMAN GUYAS: Okay. I suspect we need to have a little discussion about this one, and I will note that we have Captain Scott Pearce here from FWC Law Enforcement, in case you all have questions about how this may be enforced in state waters. Mr. Gregory.

EXECUTIVE DIRECTOR DOUG GREGORY: Thank you, Madam Chair. I am just curious. Does the definition of artificial habitat include wrecks of vessels that have happened accidentally, rather than being placed there purposely?

CHAIRMAN GUYAS: Do you want to come up here, Scott? Mara has got her hand up, too. Go ahead, while Scott is coming up.

MS. MARA LEVY: Well, I mean, just according to the definition, which is fairly broad and somewhat vague, if it’s not permitted, then it is, and so anything in the water that is not either permitted fishing gear or a permitted structure by federal or state government could be considered artificial habitat if it’s, quote, reasonably suited to providing cover and habitat for spiny lobster, however that is interpreted.

CAPTAIN SCOTT PEARCE: I would say that, based on the way the
law reads, anything that is not permitted or by state or local
government or falls under the definition of artificial habitat
would be prohibited from harvest.

EXECUTIVE DIRECTOR GREGORY: Thank you. I will be more careful.

CHAIRMAN GUYAS: Dr. Crabtree.

DR. CRABTREE: This was a lot of the reason that we took this
out of the document at the council meeting. I mean, I think
everybody understands the issues in the Keys with casitas and
putting out artificial habitat and things, but, the way this is
written, it puts a lot of burden on the fishermen, in terms of
having to inspect the bottom within the area and make sure there
is nothing down there that could reasonably be suited to
providing cover and habitat for Florida, and, based on the
advice from our attorneys, that is just too open-ended and too
broad and produces a number of problems.

I raised the issue about does this apply to the trap fishery,
and so that, if you drop a trap down and there happens to be
something on the bottom and you pull the trap up, and I was told
no, because it says the harvest and possession in the water of
spiny lobster, and so that means that it applies only to divers,
but that kind of language is not very clear and explicit in some
of these things, and so, while I think the goals of what the FWC
is trying to do here are fine, I don’t think that the way this
is done right now gets us there, and so that was the reason that
the council removed this from the document.

CHAIRMAN GUYAS: John.

MR. SANCHEZ: I would make a motion to move Action 4 to
Considered but Rejected.

CHAIRMAN GUYAS: Let’s get that motion on the board, and, while
we’re doing that, do we have a second for this motion? Roy
Crabtree, would you like to second this motion?

DR. CRABTREE: Yes.

CHAIRMAN GUYAS: Thank you. Any other discussion on this one?

LT. MARK ZANOWICZ: For the Coast Guard, this is really
unenforceable. I think we talked about this at the LETC
meeting, and I think FWC does have the capability to inspect the
bottom, but I know, at least for the Coast Guard, we have no way
of determining whether there is going to be this material on the
bottom when we board a vessel, and so, if this is a federal regulation, there is going to be no way for the Coast Guard to enforce this.

CHAIRMAN GUYAS: Thank you. Other thoughts?

CAPTAIN PEARCE: Just in reading the definition, and, Doug, going back to your question, it does specifically say “placed”, and so it really speaks to an artificial habitat that is placed on the bottom, and so I would say that would exempt something that is like an older wreck or something like that that wasn’t intentionally placed in the location.

EXECUTIVE DIRECTOR GREGORY: Thank you. I will get your cell phone number.

CHAIRMAN GUYAS: Okay. Anything else on this one? Any opposition to this motion to move this action to Considered but Rejected? Seeing none, the motion carries. Last one, I think, right?

DR. KILGOUR: Yes, and it’s a doozy. Action 5 is the cooperative management procedure for federal and Florida state agencies for the management of spiny lobster. When all of these bully net gear regulations were put in place, it was understood -- We understood that the procedure to implement the cooperative management protocol wasn’t in place, and so this would be combining the protocol and the procedure so that FWC could submit regulations through NMFS rulemaking.

Alternative 1 would be no action, do not establish an enhanced cooperative management procedure for the management of spiny lobster. The councils must develop an amendment to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic to establish new federal regulations consistent with new Florida regulations.

Alternative 2 would establish an enhanced cooperative management procedure that allows Florida to request changes to the spiny lobster federal regulations through NMFS rulemaking. The following is the proposed language, which has been adapted from Amendment 2, for the procedure to be added to the existing protocol, and those are both combined in this version of the document, and I have several sections that are highlighted for your consideration. Do you want me to go through all ten items, or could I fast-forward to the highlighted portions?

CHAIRMAN GUYAS: I think we can fast-forward, if everybody is
okay with that. Any opposition to that? It doesn’t look like it, and so, yes, let’s go to the highlights.

DR. KILGOUR: In Number 2, the councils and NMFS acknowledge that the state, through the FWC, which has the exclusive authority established by the Florida Constitution to regulate the state’s marine life, is managing and will continue to manage the resource to protect and increase the long-term yields and prevent depletion of lobster stocks and that the FWC’s due process procedures and rule implementation procedures provide ample and fair opportunity for all persons to participate in the rulemaking process. That is slightly modified from what was in Amendment 2 for the FMP, to be consistent with current FWC procedures and protocols.

CHAIRMAN GUYAS: Okay. Morgan, are you looking for a motion to add this or just the committee’s blessing, more or less? Okay. Any discussion on this highlighted language here or thoughts? I think this better captures kind of the process on the Florida end of things, and so I think we’re good. Okay.

DR. KILGOUR: In Item 6, this discussion I think we had at the last Spiny Lobster Committee, was this timeline was difficult. The South Atlantic has removed this highlighted portion of “For regulations to be implemented by the start of the fishing season, FWC must complete these actions on or before February 1.”

The IPT had a lot of discussion on is that even feasible, and we couldn’t come up with a timeline that could guarantee that rulemaking could happen before the start of the season, and so we requested that this be either removed or -- That is what the South Atlantic did, was remove this highlighted portion from the procedure.

CHAIRMAN GUYAS: Okay, and so we’re moving this -- Basically, everything can still happen, but it’s just not according to that timeline, and so that seems to make sense, since there were a lot of question-marks in that timeline anyway, and so any other thoughts on this? Is everybody okay with removing this? I am seeing heads nod, and so it sounds good.

DR. KILGOUR: The last little highlighted portion is Item 8, and so, when we combined the protocol and procedure, it was -- These rules will apply to the EEZ for the management area from North Carolina through Texas, unless the Regional Administrator or the councils determine those rules may adversely impact other state and federal fisheries. In that event, the RA may limit the
application of the rule, as necessary, to address the problem. This was also removed by the South Atlantic Council. Again, this was left over from the protocol in Amendment 2 and Amendment 10.

CHAIRMAN GUYAS: Okay, and it seems like our intention with this document is to apply only off of Florida, and so it makes sense to take this out, I think, but any other thoughts on this? Okay. I think we’re good. Is everybody okay here with taking this language out? All right.

DR. KILGOUR: I think the last thing I would need for this particular portion is for the committee to select a preferred alternative and to direct staff on public hearings. Currently, we have this schedule to go to public hearings via webinar, and so those are the last two things I need.

CHAIRMAN GUYAS: Mara.

MS. LEVY: I just wanted to point out one thing with respect to this combined protocol and procedure that is just a little bit different than how it was written when they were separated, and so I worked on combining them, and what I tried to do was take out the -- It had a lot of duplicate provisions, and so it generally has the same thing.

One thing that the prior procedure and protocol did not have was that the proposed regulations would come to the council to be deemed as necessary and appropriate. I think the prior procedure and protocol just envisioned -- It envisioned the regulations going straight to NMFS and then the council sort of having a veto if they had a problem rather than an affirmative deeming, but I did change that and require that the councils actually deem the proposed regulations as necessary and appropriate, because that is a provision in the Magnuson Act.

We have had case law out of other jurisdictions that have basically said that’s the council’s responsibility, and so there is a requirement in here that the councils actually do that. I don’t really think that it will hold it up much. It would be at one meeting that the council would just look at it and deem the regulations, and so I just wanted to point that out.

CHAIRMAN GUYAS: Thank you. Okay. The South Atlantic did not choose a preferred here, because I think they were editing some language here. Oh, they did? Did they choose Alternative 2? Is that right? All right. Committee, would you like to do the same? John.
MR. SANCHEZ: So moved.

CHAIRMAN GUYAS: Okay, and so we’ve got a motion going up on the board. Do I have a second for that motion? Thank you, Roy. Any other discussion? Morgan.

DR. KILGOUR: I don’t know if you have to do this, but would you like to add some language saying as amended in committee, because we removed a couple of things that are currently in Alternative 2.

CHAIRMAN GUYAS: I think we can do that. We would be making Alternative 2, as amended in committee, the preferred. Is there any opposition to this motion? Seeing none, the motion carries.

As Morgan mentioned, I think we’ve made it to the end of the document, and we are at the public hearing stage here, and so it seems -- John.

MR. SANCHEZ: If we need a motion to approve this for public hearing, I would so move.

CHAIRMAN GUYAS: That would be excellent. Is there a second? Thanks, Doug. Second by Doug, and I am hoping that, since we are in Key West, that we’ll have some folks here this afternoon, since we’re local, that may be able to comment on this document, and then we can do a webinar or whatever as well. Is there any opposition to this motion? Seeing none, we’re approved for the council’s consideration for public hearing. Is there anything else that we need to do with this document, Morgan?

DR. KILGOUR: No.

OTHER BUSINESS

CHAIRMAN GUYAS: Awesome. Okay. In that case, I will -- I think we can jump to our Other Business item, which was the trap fisheries management that FWC is doing. Right now, or actually probably later this morning, especially for people on the webinar, if you want to turn on the TV to the Florida Channel, you can have a double spiny lobster management day.

The commission is going to be discussing a couple of trap fisheries management items, one of which is the soak time for commercial traps for the lobster fishery. That will be later this morning, and it’s a draft rule, and so they will be -- Assuming they move that forward, they will, I think, approve it
at their next meeting, but this is part of a larger effort that we’re undergoing to fix some issues with our trap fisheries, and so I just wanted to let people know that that was going on today as well. Any other business for the Spiny Lobster Committee? Dave.

Mr. Dave Donaldson: Didn’t you want to talk about the lobster ACL amendment?

Chairman Guyas: Sue covered it, and so we’re good. It’s being approved. All right. We’re adjourned.

(Whereupon, the meeting adjourned on June 20, 2018.)